



Standards
for England

Local Standards 2.0 – the proportionality upgrade?

A review of the local standards framework

Standards for England, March 2010

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1) Introduction

We are delighted to introduce the results of our recent review of the local standards framework '*Local Standards 2.0 – the proportionality upgrade*'. It's not just a stylistic device to give this report a 'techy' title, the parallels are valid. This is a report into the operation of a **system** a year and a half after its introduction.

And – just as with a new software application, however well designed and tested – after 18 months of live operation, collecting the experiences of real users will tell us much about how robust that system is.

Is it working as planned, or are there unintended consequences? Are there bugs and glitches which need fixing? How much does it cost to service and run? More fundamentally, is it a system worth having, or do we need something different altogether?

We know the local standards framework generates strong views. It's a system imposed by Parliament to regulate the behaviour of local politicians in their political arena – so it could hardly be otherwise.

For the purpose of this review we have collected opinion from the full range of stakeholders – weighing it alongside findings from our research programmes and evidence from cases, from our monitoring of local authorities' standards work, and from our busy advice and guidance 'help desk'.

We have also taken the opportunity to consider the principles which ought to underpin the operation of the local framework, and taken them into account in making proposals for change and improvement. In our view, these changes, if implemented, will help to achieve outcomes the public can have confidence in:

- high standards of behaviour among members of English local authorities
- an effective, proportionate redress system when members behave badly

The recommendations of this review are, we believe, timely. It makes sense to review and refine how the local standards framework is working now that we all have some experience of it in practice.

We believe that our proposals will chime with the views of those familiar with the framework in practice, and hope that they offer the Government a sound basis for development.



Bob Chilton
Chair
Standards for England



Glenys Stacey
Chief Executive
Standards for England

2) Executive summary

The local standards framework is working. There is evidence – presented within this review - that it is both having a positive influence on behaviour and generating confidence that bad behaviour will be dealt with. Within local government it attracts considerable support, although the public knows less about it.

After 18 months it is maturing and there is a body of evidence relating to most aspects of its use.

However, we know there are bugbears and glitches, both for those operating the system and those regulated under it, raising questions about the proportionality of the framework - its timeliness, cost and fairness to all, at all times.

We believe these difficulties can be fixed. The fixes are often pragmatic – ways of improving effectiveness and redressing proportionality to offer a better alignment of *nature of behaviour, degree, cost and clarity of process and sanction or outcome*.

Our recommendations, in chapter eight, are set into a narrative which describes our findings. We have also grouped the recommendations together in an appendix.

Key ones include:

- More streamlined local assessment – arrangements to more easily dismiss trivial and less serious complaints, saving on time, money and burdensome process.
- An enhanced role for independent chairs and vice chairs – in the assessment of complaints and the progress of investigations, with a counterbalancing extra power for the national regulator to investigate and if necessary remove poor performing or partisan chairs.
- A new power for standards committees to be able to halt investigations, if they have good reasons.
- A commitment to greater transparency for members who are the subject of complaints.
- The need to develop an approach which allows better understanding and management of costs associated with the operation of the framework.

We end with some thoughts about the need for and the role of the strategic regulator in this sector. With more streamlined local processes there will be extra risks to manage, and there is a growing need to provide high quality training, advice, support and access to good practice.

The review now goes to the Department for Communities and Local Government for their consideration. Although the majority of recommendations require legislative or regulatory change, some could be brought about through a change of emphasis in our work and guidance. However it is important to note that in all matters raised in this review we await government views before determining next steps.

3) Scope and methodology of this review

The remit of the review was to consider the proportionality and effectiveness of the **local standards framework** so as to make recommendations for improvement to the Department for Communities and Local Government.

By the local standards framework we mean those arrangements in principal English local authorities requiring them to properly constitute Standards Committees, which then carry out a range of duties, as set out in the relevant Acts of Parliament and associated regulations and guidance, including handling complaints brought against members of the authority under the national Code of Conduct for elected members.

Appendix 2 gives a brief overview of the development of the local standards framework.

Our review has been carried out in three stages:

Stage 1: We identified the key questions and issues we wanted to cover. We drew on the stated rationale behind the local standards framework, and current thinking on the principles of good regulation, in particular those that should underpin a standards framework. We considered research findings on the impact of the framework and took into account our experience of working with it. The key questions and issues we identified were:

- What has been the impact on public trust in politicians?
- What has been the impact on confidence in accountability mechanisms?
- What has been the impact on member behaviour?
- What are the key design principles of a standards framework?
- What aspects of the framework work well?
- What are the problems with the standards framework?
- What are the solutions/alternatives?
- What is the cost of the standards framework?

Stage 2: The first three questions were answered by drawing upon research already conducted. The remaining questions were addressed through a combination of previous research and experience, along with a specific consultation undertaken for us by Teesside University².

Alongside consultation with some monitoring officers and standards committee members, representatives from the following organisations have been consulted:

- Department for Communities and Local Government
- Audit Commission
- Local Government Association
- Local Government Ombudsman
- Standards Commission for Scotland

- Public Services Ombudsman for Wales
- Committee on Standards in Public Life
- Adjudication Panel for England
- Society of Local Authority Chief Executives
- Association of Independent Members of Standards Committees in England
- Association of Council Secretaries and Solicitors
- Society of Local Council Clerks
- Welsh Assembly

The Teesside work also included a comparison with the standards frameworks in local government in Scotland and Wales.

Stage 3: We developed our recommendations for improvement. To help us test and refine these recommendations we talked again with some of the organisations listed above. We know, therefore, that there is good support for the recommendations we have made.

The scope of this review did not include a review of the operation and effectiveness of the members' Code of Conduct itself as this has been the subject of a separate consultation run by CLG. Participants in the review did express concerns about the Code's language and detail and we have included a recommendation about the next formal review of the Code, which we plan to carry out during 2010-11.

4) Context to the review

The review is a timely test of opinions on our arrangements for regulating local politicians, and in any event good regulatory practice suggests that regulatory arrangements should be reviewed on a regular basis to ensure they are robust enough to deal with the issues of the day.

Since the inception of the local standards framework, in May 2008, regulation elsewhere has been under critical scrutiny: for example in the financial and social services sectors where it has been found wanting and in Parliament, where weaknesses in the expenses regime have impacted on public trust in politicians.

The public should be able to trust those that they elect to represent them and make decisions affecting their lives. The public expects elected politicians to hold themselves to high standards of conduct³ and research shows that confidence in the integrity of politicians is valued by the public⁴.

Confidence in political systems is also important. A recent poll⁵ found that 80% of people surveyed did not just blame MPs for the current problems but also 'the parliamentary system'.

Having mechanisms which ensure that politicians can be held to account is an important cornerstone of democracy. For politicians falsely accused of wrongdoing, good systems bring the added benefit of clear exoneration.

Deepening citizen participation has emerged as a theme of national policy proposals for local government. The local standards framework gives a key role to individuals from within the local community but outside of local politics, the standards committee independent chairs and independent members.

The review took place at a time of financial uncertainty and constraint within the public sector. In making our recommendations we have been mindful of this. But cost must be weighed against the benefits of effective regulation, whatever the arena for regulation.

5) Support for the standards framework: evidence from research

We can find little support for the complete removal of the ethical standards framework in local government - and wide support for having one. Specific research for this review concludes:

“... although there are problems within the existing framework, the removal of the framework (is) simply not a viable alternative. It is considered to have provided tangible benefits and to perform an extremely valuable role in local democracy².”

Since its inception there has been a growth in support for the Code of Conduct. By 2009 94% of members and officers agreed that all members should sign up to a code, compared to 84% in 2004⁶.

Other research has concluded both that the standards framework is a safeguard, vital to ensuring public accountability³ and that the standards framework has brought focus and coherence to ethical governance and the training and advice on standards expected of councillors⁷.

Members of the public are using the standards framework as a mechanism for holding local elected politicians to account for their behaviour. In 2008-09, 2,863 complaints about the behaviour of local authority members were made across England, over half by members of the public.

There is a growing perception within local government that the standards framework, in its past and present form, is improving member behaviour. However this has not translated into public perception.

Table 1. Percentage of sample agreeing with the statement ‘member behaviour has improved in recent years’^{6 8 9}

Year	2004	2007	2009
Members and officers	27	44	47
Public	n/a	11	9

We believe that a realistic goal of ethical regulation is to ensure that accountability mechanisms are open, transparent and accessible to those who want to use them. Furthermore, the public need to have confidence that such mechanisms will uncover poor behaviours and deal with miscreants appropriately.

So, any work which seeks to assess the impacts of the standards framework in local government must include an assessment of public perceptions. In this review we have taken public views into account through specific research undertaken in 2009².

Our research suggests that the improved behaviour is due to a combination of the raised awareness of the Code of Conduct and rules of behaviour¹⁰ the support the framework provides to the sanctioning, demotion and resignation of councillors⁷ and the threat of sanctions¹¹.

There is a high level of confidence, within local government, that local authorities will uncover breaches of the Code of Conduct and deal with them appropriately⁶. Again, however, the public is not so confident¹², as illustrated below.

Confidence in local authority to uncover a breach



Confidence in local authority to deal with local councillor appropriately if a breach were to be uncovered



Many different factors combine to influence public perceptions of trust and confidence in politicians; a number of these are outside the control of local government⁷.

Public perceptions alone, therefore, are not a fair indicator of the effectiveness of the standards framework.

In 2007 a House of Commons Public Administration Select Committee concluded¹³:

'If the link between levels of regulation and levels of public trust is complex, that leads inevitably to questions about whether it is realistic or desirable to make increased trust a goal of ethical regulation.'

We want the public to recognise that principles matter to local government, and moreover to have confidence in the mechanism for holding local politicians to account.

The view from within local government that the standards framework has had an impact on behaviour is borne out by the degree to which it has influenced changes of practice.

The standards framework has brought about a range of innovation in local government which help to improve governance processes and procedures, and enhance accountability arrangements^{7, 14, 16}.

For example, there have been innovations in:

- communicating standards issues both within authorities and to the public
- training members
- engaging leaders to ensure that standards become part of the culture of the organisation
- promoting local democracy
- ensuring good governance across partnership arrangements.

There are other factors, outside the formal standards framework, which can help ensure high standards, for example the role of political parties⁷.

Research leads us to conclude, from the perspective of those in local government, that the framework has been largely effective. Benefits include increased confidence in accountability, improved member behaviour and improved governance arrangements.

6) A standards framework built on principles

A perception² of the current local standards framework is that it has developed in the absence of any design principles.

We make a distinction here between the ten principles of ethical conduct in local government¹⁷ which underpin the Code of Conduct, and a set of design principles which could help us shape the standards framework.

Based on discussions with stakeholders, we recommend eight design principles.

1. The framework should be fair. All involved should feel their views are heard.
2. The framework should be swift. It should permit the majority of allegations to be dealt with promptly.
3. The framework should be local. Local authorities should take ownership of their own standards arrangements.
4. The framework should be free from political bias. For the framework to have credibility key decisions and judgements need to be made by individuals who are, and are seen to be, free of political bias.
5. The framework should be clear and transparent. Processes, costs and outcomes should be readily understood by members, officers and the general public so that all can make judgements about the proportionality and effectiveness of the framework.
6. The framework should strike a balance between the twin tasks of promoting principles and enforcing rules. It should have access to a range of remedies and sanctions which reflect the seriousness of the particular failings of standards.
7. The framework should give the public confidence that poor behaviour will be uncovered and dealt with appropriately.
8. The framework should be cost effective. All of the above should be provided at a reasonable cost, proportionate to the benefits to accrue through improved standards.

A consequence flowing from these principles is that the full benefits of a locally based framework will only be realised if it is supported, as other regulatory schemes are, by a regulator working to best practice in regulation and seeking to achieve agreed regulatory outcomes – in this case that there are high standards of conduct among members in authorities and that there is an effective and proportionate standards framework in operation.

When applying the design principles, decisions have to be made about inherent tensions between them. Between 'fairness' and 'swiftness', for example, or between local decision making and national consistency. The framework must find ways to keep these tensions in balance.

7) The case for a local framework

Until 2008 the Standards Board for England, as it was then called, received and filtered all allegations of misconduct. Between 2002-2004 we carried out all investigations. This arrangement continues to prevail in the Scottish and Welsh frameworks. Between 2004 and 2008 we were able to refer most cases for local investigation and/or determination. Since 2008 allegations are received and assessed locally and the more serious, contentious or complex can be referred to us for investigation at a national level.

During our review we explored afresh the arguments around a centralised, versus a local, system in England.

The key advantages of a centralised system are:

- A central body dealing with all allegations is more likely to achieve consistency of process and outcome, than is a framework that allows local authorities to deal with their own cases.
- A central body removes the resource burden on local authorities of the cost of investigations and the time and effort involved in formal meetings to deal with them.
- A central, independent body would be expected to give the public a greater degree of confidence in the impartiality of the framework compared to matters being handled by a subject member's own authority.

We believe the consistency argument is one of degree. There should not be huge differences in similar cases, between authorities, in either process or outcome. However, there is room for some local variation. We are mindful of the consistency issue and **recommendation 5** addresses this further. On cost, although centralisation reduces the burden on local government, it then transfers it to a central regulator.

We also considered a regional option, where standards committees (and assessment, consideration and review committees) could be set up for a defined region. The consistency considerations apply as for a centralised model, and in addition this arrangement could be less resource intensive than a completely localised system.

But on balance we continue to support the principle of a local system, and our reasons are similar to those proffered by CSPL¹⁸. A local framework:

- enables local people to be involved in managing ethical standards issues and encourages them to be aware of issues going on in their authority
- allows the use of local information which may influence decisions about the seriousness or validity of a complaint
- provides an opportunity for the monitoring officer and standards committee to deal with some issues via more informal and proportionate methods.

The focus of this review has been on the procedural elements of a standards framework. That is, the mechanisms that are engaged following an allegation of a breach of the Code of Conduct.

However, the standards framework – and the duty of standards committees to promote high standards – is firmly located within broader ethical governance arrangements in local authorities. These impact on the culture of an

organisation and play a key role in preventing standards problems in the first place.

Such aspects include, for example, the role that leaders and chief executives can play, and the role that political parties can play in ensuring the discipline of their members. In our regulatory role we are keen to stress the importance of these aspects and to encourage and disseminate notable and innovative practice in local government.

Overall we believe local ownership is less likely to result in authorities perceiving standards issues as something 'done to them' rather than something for which they have responsibility.

In turn, this is more likely to result in the importance of high standards of behaviour being embedded in the culture of an organisation, leading to subsequent innovations that emphasise prevention.

8) Our findings and recommendations

The recommendations which follow are intended to bring a better match between the framework and the design principles set out in section 6 above.

They also set out to address particular criticisms of the current framework. It is suggested that:

- it's too easy to get on the investigative track and too hard to get off it
- the framework is too cumbersome
- trivial complaints clog up the system
- members should know as soon as possible when they have been the subject of a complaint.

We have found that making recommendations in one area, which might enable the framework to adhere to one design principle or address one criticism, has a potential impact on another area or another design principle. It follows therefore that our recommendations are interlinked and should be considered as a whole.

While based on research and taking into account the views of others, the recommendations are our own.

In some areas there are conflicting arguments for particular options. In the narrative below we set out options considered as part of the review, explain why we rejected some and provide a rationale for preferring others.

8.1) Improving the local handling of complains

A summary of how the local standards framework currently deals with complaints is set out within appendix 2, on page 35.

We found a general consensus that the current process beginning with the assessment of a complaint, and leading if necessary to its investigation and resolution, can be cumbersome, difficult to understand, resource intensive and slow.

Two broad alternatives were considered:

1. replacing the current investigation arrangements with an open hearing
2. streamlining and simplifying the process

It is worth noting that the two are not, necessarily, mutually exclusive, but for explanatory purposes, we can consider them as alternatives.

An open hearing would involve both the complainant and the member complained about, along with witnesses, coming together in a 'one-off' hearing to present evidence, answer questions and argue the merits of their cases.

A key benefit, suggested by some consultees, would be that, on the face of it at least, it simplifies the process. It would remove some of the formal meetings currently necessary as part of the process and negate the need for a resource-intensive investigation.

At the same time it would be a transparent process, giving members the opportunity to face their accusers.

There are however, disadvantages:

- Compiling evidence for a hearing would not, in our view, necessarily require less work than carrying out an investigation. Evidence would still need to be collected and disclosed to the parties involved.
- An open hearing is potentially adversarial. We believe the onus on complainants to articulate their case would be intimidating for many members of the public and could deter them from making legitimate allegations.

For these reasons we preferred the alternative, looking to see how we could streamline and simplify the existing investigative process.

8.1.1) Simplifying the local filter

Currently, all allegations received by a local authority have to be considered by an assessment sub-committee. This means a meeting must be convened between one elected member, one independent member and, if the case involves a parish or town councillor, one parish/town councillor (with the likely inclusion of the monitoring officer for advice). Arranging this meeting takes time and incurs costs. Many complaints do not need such a formal mechanism.

We feel the current arrangements are unnecessarily resource intensive and slow down the process. Making a decision about whether or not an allegation is within the remit of the Code of Conduct is relatively simple and generally uncontroversial.

In the first instance, we recommend it is made much clearer that the monitoring officer acts as an initial filter, assessing which allegations fall within the remit of the Code and which do not.

Recommendation 1:

The law should say that monitoring officers, rather than standards committees, should receive all allegations and make a decision about whether or not they are within the remit of the Code of Conduct.

8.1.2) Swift assessment by the independent chair

Building on recommendation 1, we considered two alternatives to the current assessment sub-committee approach for dealing with those allegations which the monitoring officer has deemed as being within the remit of the Code of Conduct.

- The monitoring officer should be the person who decides what should happen to those allegations which are within the remit of the Code.
- The independent chair, with advice from the monitoring officer, should be the person who decides what should happen to those allegations which are within the remit of the Code.

We are aware that many allegations, although within the remit of the Code, are not sufficiently serious to warrant an investigation. The first option would have the benefits of ensuring that cases could be assessed more quickly and involving fewer resources than current arrangements. Many of the monitoring officers we spoke to favour this option.

We are concerned that such an arrangement has the potential for the monitoring officer, as a paid employee, to be subject to pressure from elected politicians seeking to influence his or her decision. The perception of independence is compromised in this option.

The second option better addresses these concerns as standards committee chairs are not employees, but instead are chosen to represent the public with political independence a key requirement.

We recognise it is not always possible for the chair to be available to make decisions. For example, they may be on holiday or may be conflicted, and therefore we recommend that the vice chair (also independent) can deputise in such cases.

In addition, we recommend that standards committees develop a wider range of reciprocal arrangements so that chairs can assess each others' allegations. This could be particularly valuable in helping those authorities which have high numbers of allegations.

We recognise that some monitoring officers and elected members have concerns about both the skills and understanding of local government of independent chairs and the extent to which they are impartial. We address these concerns in recommendations 16 and 17.

Recommendation 2:

For allegations within the remit of the Code the independent chair of the standards committee, acting with the advice of the monitoring officer, should determine what happens to an allegation.

The chair would have a choice of five options

- to take no further action – (effectively determining that the behaviour complained about is not sufficiently serious, if proved, to warrant any sanction)
- to refer for local investigation
- to refer to SfE for investigation
- to refer to the monitoring officer for other action
- to refer to the standards committee to seek their advice in choosing one of the previous four options.

The standards committee chair should provide written reasons for each decision.

Recommendation 3:

The vice chair of the standards committee should be an independent member.

Recommendation 4:

If the chair is unavailable or has a conflict of interest in relation to an allegation then the independent vice chair should deputise. Standards committees should be able to develop reciprocal arrangements so that their chairs can assess each other's allegations.

Recommendation 5:

Standards committees should undertake retrospective periodic reviews of these decisions to ensure consistency and quality. The national body should also provide oversight via its regulatory role.

8.1.3) Removing the right to review

We know that the framework in many authorities gets 'clogged up' through having to deal with reviews of cases from those complainants not satisfied with the assessment decision.

Not only is this time consuming, it also has cost implications because a review committee or sub-committee of different members (one elected member, one independent member and, if the case involves a parish or town councillor, one parish/town councillor) needs to be set up. We also know that only around one review in 20 leads to a reversal of the original decision.

However if there is not to be a mandatory right of review, we need to make alternative arrangements to redress the perceived loss of fairness and the check and balance that the review procedure brings.

But on balance we do not believe there should be an automatic right of review built into legislation.

Recommendation 6:

The current statutory review arrangements should be removed but authorities should be given a discretionary power to allow for the review of particular decisions. This review could be undertaken by the standards committee or a sub-committee of it, by an independent member of the standards committee not involved in the initial decision or by any of these from another principal authority.

8.1.4) Removing the need for a consideration committee

The consideration committee is another committee or sub-committee that, currently, must be convened (one elected member, one independent member and, if the case involves a parish or town councillor, one parish/town councillor), following an investigation. It has to decide whether to accept a finding by a monitoring officer after investigation that there has been no breach of the Code or, if a breach is found, decide whether the

case should go to a standards committee hearing or to the First-tier Tribunal.

Again, we are aware of the time and cost involved in convening such a committee. We considered two alternatives to the current arrangements:

- The monitoring officer should determine what should happen.
- The independent chair or vice chair, advised by the monitoring officer, should determine what should happen.

The consideration committee was designed to avoid the risk of the monitoring officer being put under improper influence to bring a matter to an end by deciding there had been no breach. Hence for the same reasons as in 8.1.2 above, we decided upon the latter option.

As with recommendations 1, 2, 3 and 6, our recommendation here will enable a swifter response, and has beneficial cost implications when compared to the current arrangements.

Recommendation 7:

After completion of a local investigation the chair of the standards committee should decide whether to accept a finding of no breach, and where a breach is found, whether the case should go to a local hearing or to the First-tier Tribunal. Vice chairs should be able to deputise in this role.

Standards committees should be able to develop a wide range of reciprocal arrangements with other standards committees so that their chairs can assess each other's investigations in this way.

Recommendation 8:

The chair or the vice-chair should have a greater role in case management, making the pre-hearing decisions (For example, setting deadlines for responses to documents, deciding which witnesses should be called to give evidence and dealing with applications for an adjournment) with advice from the monitoring officer.

A consequence of recommendations 1 to 8 is that standards committees would be able to focus on the more serious matters demanding their attention including their role of promoting high standards (See 8.9), as well as their oversight role.

8.2) Deterring trivial complaints

There is a set of related perceptions and misconceptions about trivial complaints: that the standards framework encourages them; that it is

clogged up with them; and that there are serial trivial complainants who waste authorities' time and cost them large amounts of money. We believe, based on our monitoring information, that such circumstances are very rare. Nevertheless these perceptions undermine the credibility of the framework. In those few local authorities where this is true it can be a drain on resources.

Recommendations 1, 2, 3 and 6 will, we believe, enable local authorities to deal more swiftly and more appropriately with trivial or less serious complaints.

We have received suggestions for dealing with serial, trivial complainants. The following ideas were considered:

- sanctions against trivial complainants
- all complaints by a person deemed as 'a serial trivial complainant' to be dealt with by the national body
- the cost of 'failed' complaints to be met by the complainant
- the cost of complaints to be covered by the 'loser'.

All these would be likely to deter trivial complainants. However, they would also deter justified complaints. Even 'serial trivial complainants' may still, on occasion, have justified complaints.

The second option would be contrary to the principle of 'local ownership'. The fourth option could also be a deterrent to members standing for election as they would, justifiably, be concerned about incurring costs. We have decided, therefore, against any new specific recommendation to address such complainants. Instead we believe recommendations 1, 2, 4 and 7, will prevent them from using up resources and clogging up the system.

We do, however, want local authorities and standards committees in particular, to be more robust and public in discouraging trivial complaints generally and serial trivial complainants specifically.

Recommendation 9:

Standards for England should produce guidance that urges chairs to be more robust in their decision letter and highlight when they believe an allegation to have been trivial.

8.3) Closing down an investigation

A criticism of the standards framework is that it is very difficult to stop an investigation, even when it is agreed that there is little or no benefit in continuing. Examples from our own experience include when a member who had been the subject of a complaint had died, when a member has resigned and when an apology has been received, and accepted, by the complainant.

Enabling a complaint to be closed down at any time would prevent resources being unnecessarily expended. We considered the following options on who might close down a case:

- monitoring officer
- chair of the standards committee
- the full standards committee

We have referred earlier to our concerns about a paid employee being placed under political pressure and we believe that the potential for such a situation also arises here.

Our concern with the chair undertaking this role is that they may be 'too close' to the case – the chair will have been the one who made the decision to investigate in the first place and may be reluctant to overturn this decision.

We think it best if the full standards committee take this decision, based on a recommendation from the monitoring officer.

Recommendation 10:

The monitoring officer should be able to recommend to the standards committee – at any stage and for any reason – that an investigation be stopped. The standards committee should decide whether or not to accept such recommendations by considering how the public interest is best served.

8.4) Enhancing members' 'right to know'

A frequently heard criticism of the current assessment process is that members who are the subject of a complaint only find out that they have been complained about after an initial decision has been made on whether or not the allegation merits an investigation.

At present the legislation requires the standards committee to notify a member. However in order to do that they have to meet, which introduces a delay. Our guidance says members should be told as quickly as possible, but the law needs to be clarified.

However, members feel they have a 'right' to know. Potential complaints are often discussed openly and sometimes publicised, and members can find themselves the subject of rumour or press interest which they are unprepared for as they are unclear about the precise nature of the allegation.

Importantly, we feel the current situation is contrary to the design principle of transparency. On balance we think the current situation is

unsatisfactory. The framework should be as transparent as possible and members who are the subject of an allegation have the right to know, as soon as possible, about that allegation.

Recommendation 11:

On receipt of an allegation the monitoring officer should inform a member that they have been the subject of a complaint unless there are compelling circumstances not to (for example, a risk of prejudicing an investigation by intimidation of witnesses or destroying or compromising evidence).

8.5) Publishing decision notices

Currently, notice of a decision about the outcome of some investigations and most hearings has to be published in a local newspaper. The intention is laudable in that it facilitates transparency.

It does, however, have a cost impact for local authorities. The current economic climate, coupled with increasing use of the internet, leads us to conclude that a better alternative is for decision notices to be published prominently on council websites. This will keep to the design principle of transparency, yet mean an easy cost saving for local government.

Recommendation 12:

Local authorities should no longer be required to publish decision notices in the local newspaper. Instead they should be publicised on the local authority's website.

8.6) The composition of standards committees

One of our design principles is 'independence'. Recommendations 2, 4 and 7 ensure that there is an independent element in key decisions in the investigative process, and recommendation 16 will ensure independent overview of the local standards framework and its application.

We considered increasing the mandatory number of independent members on standards committees or having standards committees composed entirely of independent members. A key benefit of this would be to give the public greater confidence that local arrangements were truly impartial and that local government was not simply 'investigating its own'.

However, we believe that such a move would have negative consequences which outweigh this benefit:

- Political groups may be less likely to take ownership of standards issues, and buy-in to the importance of high standards, as it would be perceived as something outside of their remit and something that is 'done to them'.
- The credibility of standards committees, and standards issues, would be undermined as standards committees rely on elected members for their knowledge and guidance of 'how local government works'.

- We know that some standards committees already struggle to attract sufficient independent members.

On balance we believe the current approach is right.

8.7) Parish and town councillors and the Code

The inclusion of parish and town councils in the standards framework divides opinion.

There is a view that it is a disproportionate mechanism for parish and town councils, particularly those which have few resources and few powers

On the other hand we believe that parish and town councils should be included within the standards framework and our reasons echo those of the CSPL¹⁸; parish and town councils are part of the fabric of local democracy, and many do spend significant sums of public money.

All national parties have plans to increase the significance of this sector and such councils are statutory consultees in the planning process. We think that it is beneficial if there is a consistency of standards to which all elected members have to adhere.

The National Association of Local Councils (NALC) supports this position.

Parish councillors in fact make up around three quarters of all members covered by the Code. They account for just under half of all complaints; 2,557 between May 8 2008 and 31 December 2009.

An advantage of their exclusion would be a resource one – this would significantly reduce the number of allegations and so the amount of resources used to deal with them. However we remain convinced that parish and town councils should be included in the framework for the reasons set out above.

8.8) The cost of the local framework

It became clear during our review that quantifying the cost of the standards framework was problematic². Costs are calculated on a different basis by different authorities.

Elements of cost include the cost of convening meetings and remuneration for standards committee members, the cost of investigations and costs associated with other action and sanctions. Case costs vary depending on volume of cases, case type and methodology of investigation. Currently there is little transparency in these costs, nor consistency in the way they are calculated.

We recognise that we need to do more work to be able to offer better information on reasonable costs, both to allow authorities to better judge their expenditure and to allow the public and stakeholders to better assess proportionality and effectiveness of the framework.

The cost of investigations is of particular concern – we are interested in seeing the cost of investigations contained while maintaining natural justice.

We have been mindful of actual and potential costs to local government and the public purse as we have carried out this review. Many of our recommendations would result in reduced costs to local government.

For example, a local filter and reducing the number of sub-committees involved in case handling would result in lower administrative costs. Similarly, not having to publish decision notices in a local newspaper would result in cost savings.

We are also committed to providing training, guidance and support in effective and efficient investigation, to help authorities avoid unnecessary expenditure in this area.

Recommendation 13:

Standards for England should assist local government by developing a clear and consistent understanding of the costs of the local standards framework and, through working with local authorities, identify and promote ways of ensuring those costs are reasonable and that excessive and wasteful expenditure can be avoided.

8.9) The local framework and promoting high standards

The focus of the review has been on the process aspects of the framework, for example the complaints, assessment and investigative processes and the roles of the various individuals involved. We also recognise that standards committees have a statutory role to promote high standards of behaviour, and that there are many ways in which local government can engage to demonstrate high standards.

For example, engaged political parties, strong identification with the council and supportive political and managerial leadership all contribute toward good ethical governance⁷.

These duties under the framework should be encouraged. This is the promotion of ethical principles, as well as rules, which features in the design principles. The regulator should play a lead role in co-ordinating and disseminating good practice which leads to good ethical governance.

In this way local authorities will be encouraged to observe the spirit as well as the letter of the law. It also encourages local solutions, and an emphasis on prevention rather than reliance on the more costly formal elements of the framework.

Recommendation 14:

Local authorities should be encouraged to develop local solutions. Good practice in local solutions should be shared so local authorities can benefit from each other's experiences.

8.10) The members' Code of Conduct

The Code of Conduct has been subject to relatively regular review and a detailed study was not included within the scope of this work. That said, a review of the framework will inevitably include some comment on the Code.

We believe that a Code is the right way to regulate the behaviour of members of local authorities. However, the climate in which it operates changes over time, making regular review important. Reviews should, for example, take account of how the Code is being interpreted by the First-tier Tribunal (formerly the Adjudication Panel for England) and by the higher courts.

We believe future reviews should look for opportunities to simplify the Code.

Recommendation 15:

The next review should look for opportunities to simplify the Code and ensure that it is readily understood by members, and remains fit for purpose.

9) The role of the national regulator

In a year when Parliament has chosen to operate with specialist, independent regulation of its standards, we have looked again at whether there is a need for a national regulator over the local standards framework and if so what its role should be.

There would be some immediate financial benefits to national government in not having such an organisation. There would be a related reduction in regulatory burden, but a need for local standards committees to retain all cases, however challenging. Such a move would also support the design principle of local standards being a local responsibility.

There are, however, powerful arguments for a national regulator.

In the research undertaken by Teesside University² there was a strong consensus among stakeholders that national oversight gives politicians, officers and the public confidence that there is independent scrutiny of the standards framework, that poor performance is being dealt with and political interference can be addressed.

A national regulator is not just there to ensure local authorities are discharging their responsibilities – for example by monitoring complaint handling and making sure investigations are completed without undue delay – but has the key regulatory function of assessing systemic, sectoral and entity risks of standards failure – and acting to minimise them.

We accept that an emphasis on local ownership will bring variations in interpretations of the Code. But a national regulator helps bring some consistency to those interpretations, to process and to the application of sanctions. For the framework to have credibility, and avoid accusations of being a postcode lottery, any variations must be within acceptable parameters. A national body should, via its training, advice and guidance, as well as through its national oversight, ensure a greater degree of consistency than if each authority were left to its own devices.

Our own evidence shows that there is a significant demand for advice, guidance and training and development to help authorities discharge their functions. Standards for England currently provides support to local government via, for example, online training materials, telephone help lines, the ethical governance toolkit and our annual assembly. Much support comes in the form of technical expertise on case handling, and interpretations of the Code of Conduct.

This expert resource, and training role, would be particularly important for independent chairs, in light of the greater responsibility given to them in recommendations 2 and 7.

We do not want to inhibit local innovation and the development of informal options in dealing with standards issues. Recommendation 14 stresses the value of this. We do play a key role disseminating examples of how authorities have developed various local solutions to ensure good ethical governance as well as good practice in case handling.

There is a small, consistent, and far from insignificant class of contentious and high profile cases (for example complaints about members of the standards committee, or complaints by senior officers about the Leader or other senior members) which it is inappropriate to handle locally and should be handled at a national level.

Recommendations 2 and 7 give greater responsibility to independent chairs. We know that some monitoring officers and elected members have concerns about both the skills and impartiality of independent chairs. We need sufficient checks and balances to safeguard against poor performance and inappropriate political interference, and we believe this imposes a need for further training and guidance from Standards for England and for a specific extra power to deal with poor performance of independent standards committee members.

Standards for England is committed, in its 2010-13 Corporate Plan, to carrying out a review of its powers to ensure it is able to respond appropriately, proportionately and effectively to meet the requirements of its regulatory role. That work would need to take into account the implications of the recommendations set out in this review, if they are accepted.

Recommendation 16:

Standards for England should develop its training role. In particular it should respond to the increased responsibility given to independent standards committee chairs by ensuring basic training is provided to enable them to fulfil this role.

Recommendation 17:

The national regulator should have power to investigate allegations that the chair/vice chair of a standards committee was not acting impartially, or performing poorly. If there is sufficient evidence that this is the case then the national regulator should be able to remove the chair/vice chair of the standards committee.

Appendix 1

The Recommendations

The recommendations are repeated here, alongside a note of the main legislative provisions which would need to be amended to bring about the proposed change.

Recommendation 1:

Monitoring officers should receive all allegations and make a decision about whether or not they are within the remit of the Code of Conduct.

Changes to s.57A(1) and s.57C LGA 2000 to replace references to the standards committee with references to the monitoring officer

Addition to Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow monitoring officers to do this.

Change to paragraph 11 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow monitoring officers to inform the subject member on receipt of the complaint.

Recommendation 2:

For allegations within the remit of the Code the independent chair of the standards committee, acting with the advice of the monitoring officer, should determine what happens to an allegation. The chair would have a choice of five options:

- to take no further action (effectively determining that the behaviour complained about is not sufficiently serious, if proved, to warrant any sanction)
- to refer for local investigation
- to refer to Standards for England for investigation
- to refer to the monitoring officer for other action
- to refer to the standards committee to seek their advice in choosing one of the previous four options.

Changes to s.57A (2)-(6) LGA 2000 to replace references to the standards committee with references to the chair and to add the additional option of referring to the standards committee for advice on which option to choose.

Changes to paragraphs 6 – 8 Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to replace references to the standards committee and sub-committees with references to the chair

The standards committee chair should provide written reasons for each decision.

Recommendation 3:

The vice chair of the standards committee should be an independent member.

Addition to s.53(4) LGA 2000

Recommendation 4:

If the chair is unavailable or has a conflict of interest in relation to an allegation then the independent vice chair should deputise. Standards committees should be able to develop reciprocal arrangements so that their chairs can assess each other's allegations.

The following provisions would need amending to allow the vice-chair to deputise and to allow for reciprocal arrangements:

s.56A LGA 2000

s.57A LGA 2000

Paragraphs 6 – 8 Standards Committee (England) Regulations 2008 SI 2008 No. 1085

The Standards Committee (Further Provisions)(England) Regulations 2009 SI 2009 No. 1255

Recommendation 5:

Standards committees should undertake retrospective periodic reviews of these decisions to ensure consistency and quality. The national body should also provide an oversight via its regulatory role.

Addition to the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to require the retrospective reviews.

Also possible addition to regulation 3(2) of the Standards Committee (Further Provisions)(England) Regulations 2009 SI 2009 No. 1255 to include additional intervention powers based on concerns about the way in which the independent members are carrying out the initial assessment function.

Recommendation 6:

The current statutory review arrangements should be removed but authorities should be given a discretionary power to allow for the review of particular decisions. This review could be undertaken by the standards committee or a sub-committee of it, by an independent member of the standards committee not involved in the initial decision or by any of these from another principal authority.

Amend s.57B LGA 2000 by removing the mandatory review provision but allowing a discretionary one.

Paragraphs 6, 7 and 8 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 would need amending to reflect the proposed discretionary nature of a review.

Recommendation 7:

After completion of a local investigation the chair of the standards committee should decide whether to accept a finding of no breach, and where a breach is found whether the case should go to a local hearing or to the First-tier Tribunal. Vice chairs should be able to deputise in this role. Standards committees should be able to develop a wide range of reciprocal arrangements with other standards committees so that their chairs can assess each other's investigations in this way.

Addition to s.66 LGA 2000 to give the Secretary of State power to make regulations allowing the chair rather than a standards committee to make these decisions.

Amend regulation 17 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow the chair or vice-chair rather than a standards committee to make these decisions.

Addition to the Standards Committee (Further Provisions) (England) Regulations 2009 SI 2009 No. 1255 to allow the chair or vice-chair of other standards committees to make these decisions under reciprocal arrangements.

Recommendation 8:

The chair or the vice-chair should have a greater role in case management, making the pre-hearing decisions (For example, setting deadlines for responses to documents, deciding which witnesses should be called to give evidence and dealing with applications for an adjournment) with advice from the monitoring officer.

Addition to s.66 LGA 2000 to give the Secretary of State power to make regulations to allow the chair or vice-chair to make pre-hearing decisions.

Addition to the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to provide for case management.

Recommendation 9:

Standards for England should produce guidance that urges chairs to be more robust in their decision letter and highlight when they believe an allegation to have been trivial.

No statutory or regulatory changes needed to implement this recommendation.

Recommendation 10:

The monitoring officer should be able to recommend to the standards committee – at any stage and for any reason – that an investigation be stopped. The Standards Committee should view such recommendations with regard to how the public interest is best served.

Amendment to regulation 16 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to enable the monitoring officer to recommend that an investigation cease. Also regulations 14 and 17 would need to be made subject to the amended regulation 16.

Recommendation 11:

On receipt of an allegation the monitoring officer should inform a member that they have been the subject of a complaint unless there are compelling circumstances not to (for example, a risk of prejudicing an investigation by intimidation of witnesses or destroying or compromising evidence).

Amendment to s.57C LGA 2000 to require the monitoring officer rather than the standards committee to inform the member.

Change to paragraph 11 of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to allow monitoring officers to inform the subject member on receipt of the complaint.

Recommendation 12:

Local authorities should no longer be required to publish decision notices in the local newspaper. Instead they should be publicised on the local authority's website.

Amendment to regulation 17(3) (b), 17(5), 20(1) (b) of the Standards Committee (England) Regulations 2008 SI 2008 No. 1085 to remove the requirement for a notice in the local press.

Recommendation 13:

Standards for England should assist local government by developing a clear and consistent understanding of the costs of the local standards framework and through working with local authorities identify and promote ways of ensuring those costs are reasonable and that excessive and wasteful expenditure can be avoided.

No statutory or regulatory changes needed to implement this recommendation.

Recommendation 14:

Local authorities should be encouraged to develop local solutions. Good practice in local solutions should be shared so local authorities can benefit from each other's experiences.

No statutory or regulatory changes needed to implement this recommendation.

Recommendation 15:

The next review should look for opportunities to simplify the Code and ensure that it is readily understood by members, and remains fit for purpose.

Changes to the Local Authorities (Model Code of Conduct) Order 2007

Recommendation 16:

Standards for England should develop its training role. In particular it should respond to the increased responsibility given to independent standards committee chairs by ensuring basic training is provided to enable them to fulfil this role.

Addition to s. 57 LGA 2000 to make clear that the training role is a function of Standards for England. Addition to Schedule 4 paragraph 2 of the LGA 2000 for the same purpose.

Recommendation 17:

The national regulator should have power to investigate allegations that the chair/vice chair of a standards committee was not acting impartially, or performing poorly. If there is sufficient evidence that this is the case then the national regulator should be able to remove the chair/vice chair of the standards committee.

Addition to s.57D LGA 2000 to enable regulations to be made for intervention by the Standards for England where the chair/vice chair of a standards committee is not acting impartially, or is performing poorly.

Addition to regulation 3(2) of the Standards Committee (Further Provisions)(England) Regulations 2009 SI 2009 No. 1255 to include additional intervention powers based on concerns about the way in which the independent members are carrying out the initial assessment function or any other function carried out as a result of these recommendations.

Addition to the above regulations to provide a mechanism for removal of the chair/vice chair of a standards committee.

Appendix 2

Background to the local standards framework

Although local government has been described as having a relatively clean bill of 'ethical' health^{18, 19, 20} there were, nevertheless, several notable incidences of poor ethical behaviour in local government during the 1970s, 1980s and 1990s.

- The John Poulson case is often cited as a landmark case of corruption in local government. Poulson was an architect who bribed numerous public figures in order to win contracts. The leader of Newcastle City Council was jailed for his role in this case.
- The 1980s saw high profile problems in Liverpool City Council, where the district Labour Party was suspended after its members were accused of putting militant tendency interests ahead of council ones.
- At Westminster City Council Leader Dame Shirley Porter was the central figure in the 'homes for votes' scandal which resulted in her being ordered to pay back millions of pounds in surcharges, costs and interest to the council.
- The 1990s saw 19 Doncaster councillors found guilty of falsifying expenses claims, with one councillor receiving a four year prison sentence in the 'Donnygate' scandal.

Concerns about the conduct of MPs and government ministers led the then Prime Minister to establish the Committee on Standards in Public Life (CSPL) in 1994. The remit of the CSPL was expanded to include conduct in public life more generally and its third report, published in 1997, focussed on local government.¹⁹

For local government, CSPL recommended a statutory standards framework to replace the hitherto voluntary system. They called for a localised standards framework including a code of conduct to which councillors must sign up, a standards committee for each council and local government tribunals to act as independent arbiters on the code of conduct and to hear appeals from councillors and others.

The government introduced a new ethical framework via the Local Government Act (2000). The Act introduced a statutory Code of Conduct that applied to all members, and two new national bodies; the Standards Board for England, which was to assess and investigate allegations of breaches of the Code of Conduct, and would also issue guidance, and the Adjudication Panel for England which would hear the most serious cases.

Standards committees, already present in some authorities, were made compulsory and their role was to adjudicate on a completed investigation and to promote high standards.

The standards framework in local government was not merely a reaction to the risks of poor standards. Positive ambitions included a desire to build trust and confidence in politicians and local democracy, and recognition of the importance of high standards of behaviour to good governance.

Once in operation there were criticisms of this first standards framework, made worse by delays in legislation which would have enabled more cases to be referred to the local level. There was a concern that standards committees and monitoring officers were being marginalised, that the centralised system inhibited the consideration of local circumstances and context when considering cases, and that the Standards Board was unable to focus on the most serious cases.

CSPL, in its tenth report¹⁸ returned to look at the standards framework in local government and advocated a more localised framework, with the Standards Board taking a more strategic oversight role.

The recommendations were accepted by government and enacted in the Local Government and Public Involvement in Health Act (2007). Local authorities now have greater responsibility for their own ethical arrangements; standards committees handle complaints locally, not the Standards Board, and standards committees must promote high ethical standards.

The Standards Board (known as Standards for England) now has the role of a strategic regulator, overseeing the effectiveness of the local ethical standards framework, monitoring local arrangements and engaging with those authorities where standards are poor or at risk.

Standards for England still investigates those complaints not suitable for local authorities to deal with themselves, but the majority of complaints are dealt with locally.

How the local standards framework deals with complaints

The current arrangements require standards committees to convene a properly-constituted assessment sub-committee to receive complaints.

At this point they can:

- decide to take no further action
- ask the monitoring officer to investigate the complaint locally
- ask Standards for England to investigate the complaint
- ask the monitoring officer to resolve the matter through alternative action (such as mediation or training) – in which case no finding is made as to the complaint itself

A complainant, if not satisfied with the assessment decision to take no further action, has the right to have the complaint considered again by a review sub committee (properly constituted with different individuals to the assessment sub-committee).

Where complaints are investigated locally a properly constituted consideration committee is required to receive the investigation report. It can:

- agree with the monitoring officer that no further action is necessary
- refer the case to the Standards Committee or a hearing sub committee
- refer the case to the First Tier Tribunal (Local Government Standards in England)

When hearing cases, standards committees or hearing sub-committees can:

- find no breach of the code
- find a breach but no further action is required
- impose a sanction of up to six months suspension
- impose other sanctions such as a requirement that the member undergo training or apologise

The First Tier Tribunal can impose a wider range of sanction, up to five years disqualification.

A member can appeal to the First Tier Tribunal against a finding of breach and / or against the sanction applied.

The impetus for high ethical standards is mirrored by an emphasis on governance - the systems and processes, culture and values by which an organisation is controlled and directed.

Good governance is held to contribute toward improved performance, better services and stronger leadership. High ethical standards are recognised as a key component of good governance for example in CIPFA/SOLACE's good governance framework²¹ and have been included as criteria in the Audit Commission's Comprehensive Area Assessment.

Alongside these developments was the growing concern that councils were becoming disconnected from their communities and that there was a need to rebuild trust in local councillors and confidence in local democracy.

Some characteristics of public disengagement with politics are falling voter turn out, falling civic engagement and falling party memberships. While the actual cause of this disengagement is not clear, it is not hard to imagine how public perceptions of members' standards of behaviour might influence public desire to engage in local democracy.

These concerns were reflected in two white papers which formed the government's Local Government Modernisation Agenda (the 1998 white paper Modern Local Government: in touch with the people, and the 2001 white paper Strong Local Leadership, Quality Public Services) and other legislation (Local Government Acts of 1999 and 2000).

The modernisation agenda sought to achieve²²:

- improvements in local services
- more effective community leadership by councils
- increased accountability
- greater engagement of local stakeholders
- improved public confidence in local government.

Confidence and trust were closely linked with the issue of conduct so that better conduct by members and officers and being accountable (along with improved services) would result in improved confidence and trust.

Appendix 3

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