

*Standards in
Public Life*

Standards of Conduct in
Local Government
in England, Scotland and Wales

*Summary of the Nolan Committee's Third Report on
Standards in Public Life*

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

The Committee on Standards in Public Life was established by the then Prime Minister in October 1994, under the Chairmanship of Lord Nolan, to consider standards of conduct in various areas of public life, and to make recommendations.

Standards of Conduct in Local Government in England, Scotland and Wales

Summary of the Third Report of the Committee on Standards in Public Life

Introduction

Our third study has looked at aspects of conduct in local government, in England, Scotland and Wales. What we have found elsewhere in our studies of public life holds good for local government. Despite instances of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct. The number of people who have used their position in local government for their own ends is small compared with the majority who genuinely wish to serve their community.

We have been impressed by the positive attitude which local councillors and officers have taken to our inquiry, and their awareness that high ethical standards are critical to maintain public confidence in local government. Nonetheless it is important to have in place mechanisms to prevent misconduct and to deal with it effectively.

We have commented in our previous two reports that attempting to enforce good conduct through detailed rules, especially where these are based on the presumption that people will naturally misbehave, can itself contribute to wrongdoing. Nowhere is this more true than in local government. Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity persists and in some cases has grown. We believe that the key reason for this is that responsibility for the maintenance of standards has moved away from local government.

We believe that a new start can be made on an ethical framework for local government within the climate of improving relations between central and local government that has now existed for some years. This would take the best of what already exists, but place leading responsibility with local government itself.

The effect of this would be a radical change in the ethical framework within which local government operates. We propose:

- *a clear code of conduct for councillors developed by each individual council within a framework approved by Parliament;*
- *that each council should have a Standards Committee to deal with matters of propriety and to have powers to recommend to the full council that errant members should be disciplined;*
- *the creation of new Local Government Tribunals to act as independent arbiters on matters relating to councils' codes of conduct and to hear appeals from councillors and others;*
- *the involvement of the courts in imposing penalties for misconduct, to replace surcharge;*
- *following consultation, a new statutory offence of misuse of public office.*

Codes of Conduct

While we believe it is important that local authorities themselves should adopt their own codes of conduct, we recognise that this should be done within a national framework. There has to be a degree of consistency across local authorities and an assurance that certain minimum standards will be attained by any individual code. We believe this should be achieved by:

- *a statement of the 'General Principles of Conduct for Local Councillors' approved by Parliament;*
- *a 'Model Code of Conduct for Local Councillors' prepared by representatives of local government and also approved by Parliament;*
- *a requirement on each local authority to adopt a local code of conduct which incorporates and reflects the general principles and achieves at least the same effect as the approved model code.*

This structure would place on each local authority a firm responsibility to think about and adopt a code, within the national framework, to meet its local needs. It would ensure that ownership of the code was held by that local authority. It would also enable the local authority to take into account specific local circumstances and to have the flexibility to change the detail of its code if those circumstances changed.

Although it is important that responsibility for drawing up its own code is placed firmly on each individual local authority, there is a need for an independent arbiter to consider whether a local authority's code has 'at least the same effect as' the model code approved by Parliament. A Local Government Tribunal set up under the Tribunals and Inquiries Act would fulfil this role. We set out in the report some thoughts on how the tribunal might operate and be staffed.

The structure above would replace the present National Code of Local Government Conduct which is widely felt to be confusing and unhelpful.

Recommendations R2-7 and R23-25

Registration and declaration of interests

The individual local authority codes which we recommend above will produce far greater clarity for the individual councillor. We believe that this clarity needs to be carried through into the rules on the registration and declaration of interests and into the action to be taken by councillors when faced with a potential conflict. We believe these rules should cover:

- *a public register of interests covering the pecuniary interests of a councillor, close family members and members of his or her household; and non-pecuniary interests which relate to the councillor's service on bodies with which the council is associated.*
- *all relevant interests should be declared at meetings. There should be a graded response up to and including withdrawal from the meeting by the councillor where there is a real danger of bias, but in lesser cases it should be possible for a councillor to participate in the meeting and, in some cases, to vote;*

If a councillor failed to abide by these rules, the Standards Committee would be able to recommend to the full council that the councillor should comply or be disciplined.

Officers

We believe it is important to build on the work that has already been done by the Local Government Management Board and individual local authorities in establishing codes of conduct for officers. We considered whether a formal framework similar to that for members was needed but concluded that the way forward was to build on the existing arrangements.

One particular area that gave us cause for concern was the potential for improper behaviour if the normal professional relationship between member and officer became unsatisfactory by being either too cosy or too combative. A number of councils already adopt a formal protocol setting out the relationship between officers and members; we believe that principle should now be extended throughout local government.

The role of the so-called statutory officers - head of paid service, monitoring officer, finance officer - is particularly important. We therefore recommend that the government should re-examine their roles and should consider extending the statutory protection of chief executives who are threatened with disciplinary action to the monitoring and finance officers.

Recommendations R19-22

Discipline

In our various contacts with councils and in our public hearings we were struck by the difficulty that can be experienced in bringing an errant councillor to book. In the absence of satisfactory disciplinary procedures available to the council itself, the political parties have, to some extent, filled that vacuum. We accept that these party-centred procedures can have a valuable role, but believe the council itself should be able to discipline members. This is the thrust of our recommendations for a Standards Committee coupled with the independent scrutiny of a Local Government Tribunal.

We have been persuaded by the evidence put to us by many witnesses that the concept of surcharge of councillors is unsatisfactory. We believe it is particularly unsatisfactory to have a procedure in England and Wales in which the District Auditor formulates and prosecutes a case against individual councillors, judges guilt or innocence, and determines the penalty on the basis of his own calculation of financial loss. We believe that the concept of surcharge itself is now outdated. It should be abolished and be replaced by the direct involvement of the courts in judging guilt or innocence and the appropriate penalty.

We believe that it is important for all holders of public office to be covered by a statutory regime which enables action to be taken in the event of misconduct which is serious, but does not entail bribery or corruption. In our report and in a consultation paper which is being published to coincide with it, we therefore recommend, subject to further consultation, the introduction of a new statutory offence of misuse of public office. This new offence would address one of the great inequalities felt by those in local government as it would apply to all in the public service and not just to councillors and officers.

Planning

Planning is probably the most contentious matter with which local government deals and is the one on which we have received by far the most submissions. Inevitably the planning process produces both winners and losers. The planning process puts elected councillors into the position of taking decisions within a legal framework but also being required to exercise their representational role on behalf of their constituents. Those who lose out frequently put the blame on the process itself.

We have no doubt that there have been serious abuses of the planning process: many of these have been the subject of separate inquiries and others were mentioned to us during the course of our public hearings. But we are not convinced that some of the more mechanistic solutions proposed are necessarily the right ones to prevent abuse.

Our recommendations on codes of conduct and conflicts of interest will be of particular importance in their application to planning. We also believe that local authorities should examine how their planning processes match up to standards of best practice that we have drawn from a variety of individual councils.

There are some specific areas where action is needed. We believe it is important that members of planning committees should be trained in planning procedures and planning law. We have particular concerns about planning gain and about local authorities granting themselves planning permission; we believe that there are changes which can help to reduce the potential for planning permission being bought or sold; and we believe that there should be greater openness in the planning process. We also believe it important that the relevant Secretary of State should be notified of all planning applications involving the local authority's own property or land which contravene the local plan or excite a substantial body of objections. Consideration can then be given to which applications should be called in for decision.

Other issues

We have focused our report on the main areas that have concerned our witnesses and on the areas that we consider have the most significant effect on standards. However, there are some areas not covered above on which we comment. These mainly arise out of different methods of providing public services.

We look at the effects of Compulsory Competitive Tendering, Joint Ventures, Management Buy-outs and Local Authority Companies. Broadly we conclude that, provided arrangements for audit are satisfactory, and provided local authorities take proper responsibility for the provision of services by such organisations, it should be possible to tackle issues of standards in these bodies satisfactorily. Our two fundamental propositions set out in our second report bear repeating for local authorities:

"Where a citizen receives a service which is paid for wholly or in part by the taxpayer, then the government or local authority must retain appropriate responsibility for safeguarding the interests of both user and taxpayer regardless of the status of the service provider"

"Central control of autonomous but centrally-funded local bodies should be limited as far as possible to setting policy guidelines and operating boundaries, to ensuring an effective audit framework, and to the effective deployment of sanctions. Government and Parliament should aim to ensure that local mechanisms to influence the activities of local bodies exist, and should give them the support necessary to ensure accountability."

One area which we do not believe is yet sufficiently well developed in local authorities is the handling of internal concerns about standards - whistleblowing. More should be done to provide clear routes by which concerns can be raised both by staff working in local authorities and those outside who are providing public services. Similarly we believe it is important that the local authority takes responsibility for handling complaints about its services, whatever organisation is providing those services. The new means of provision of services has resulted in considerable movement of staff from local authorities; rather than formal business appointment rules, we recommend dealing with any risks through the terms of contracts of employment.

Becoming a local councillor is now just one of the ways in which individuals can offer themselves for public service. At a local level there is a demand for people to serve on the boards of grant maintained schools, training and enterprise councils and many other bodies. There is a concern among councillors that such board members are less constrained in their actions and subject to fewer sanctions, and that there should be greater recognition of the democratically elected status of a councillor.

We received a number of submissions about the level of allowances, the timing of council meetings, the status of councillors and the willingness of employers to provide time off to attend meetings. While we do not believe there is a prescriptive answer to some of the problems raised by these submissions, we do believe that local authorities could themselves do more to make the working arrangements for members more accessible and should work with employers to remove bars to becoming a local councillor.

Recommendations R1, R26 and R31-33

Recommendations

- R1 Local authorities should re-examine their working methods to identify disincentives which bar particular groups from serving as councillors and, where possible, remove them. They should seek the co-operation of local employers to overcome the obstacles faced by their employees who wish to serve.*
- R2 The present National Code of Local Government Conduct should be replaced by a statement of the 'General Principles of Conduct for Local Councillors'. This should be a Great Britain document, issued by the Secretaries of State for the Environment, for Scotland, and for Wales, and approved by affirmative resolution of both Houses of Parliament.*
- R3 The Secretaries of State should take powers to approve 'Model Codes of Conduct for Local Councillors' prepared by the local government associations and ombudsmen, provided that any Model Code which is approved incorporates and reflects the 'General Principles'.*
- R4 Each local authority should be required to adopt a local code of conduct which incorporates and reflects the 'General Principles' and achieves at least the same effect as the approved model code.*
- R5 Every new councillor, and every councillor on re-election, should be required to state that they had read, understood and would observe their local code.*
- R6 The appropriate Secretary of State should be able to make a formal request to a local authority that it should make changes in its local code or standing orders if he or she considers that it does not achieve at least the same effect as the model code. If the local authority does not comply, the Secretary of State should be able to refer the code to the relevant Local Government Tribunal (see R24), which would have the power to order changes.*
- R7 The Commissioner for Local Administration (the local ombudsman) should be able to recommend changes to a local authority's code, and if necessary refer the matter to the relevant Local Government Tribunal for a final decision.*
- R8 Every council should have to maintain a public register of councillors' interests, listing their pecuniary interests; those non-pecuniary interests which relate closely to the activities of the council and associated bodies, or which members of the public might reasonably think could influence a councillor's judgement; and pecuniary interests of close family members and people living in the same household as the councillor.*
- R9 It should no longer be a criminal offence to fail to register a pecuniary interest.*
- R10 Unless they have a dispensation, councillors who have a direct pecuniary interest in a matter under consideration should have to declare that interest, withdraw from the meeting or discussion, and take no further part in the business in question.*
- R11 Councillors should have to declare any interest which is not of a pecuniary kind, and which members of the public could reasonably think could influence their actions, speeches or votes.*
- R12 Unless they have a dispensation, councillors should withdraw from consideration of matters where they have an interest whose existence creates a real danger of bias, that is where they or their close family are likely to be affected more than the generality of those affected by the decision in question.*
- R13 All the existing primary legislation on conflicts of interest in local government should be repealed and be replaced by a provision giving effect to the common law principles set out above.*

- R14 Regulations under the statute should be confined to requiring councils to have public registers of interests, to setting out the framework of interests which must be included in those registers, and to requiring councils to have rules covering declaration, withdrawal, and disciplinary procedures.*
- R15 Councils should set up a Standards Committee, composed of senior councillors, which should have the power to examine allegations of misconduct by councillors and to recommend disciplinary action to the full council, including the punishment of an individual councillor.*
- R16 A meeting of the full council (open to the public and press) to consider a report of the Standards Committee should be held as soon as possible after the Standards Committee has reported.*
- R17 The Standards Committee should have powers to propose the withdrawal from decisions of a member whose interests it considers are such as to create a real danger of bias, and to recommend disciplinary action against members who breach the council's code.*
- R18 The Commissioner for Local Administration in England should cease to issue general guidance about conflicts of interest.*
- R19 Every local authority should be required to draw up a code of conduct for officers (based either on the LGMB model or locally-drafted) incorporating rules for the registration and declaration of interests by officers similar to those we recommend for councillors.*
- R20 Every local authority should have its own written statement or protocol, governing relations between members and officers.*
- R21 The statutory powers of the head of paid service, monitoring officer, and chief financial officer should be reviewed by the Department of the Environment (and the Scottish and Welsh Offices) to determine whether they are workable and effective.*
- R22 The protection already available to chief executives who are threatened with disciplinary action should be extended to the council's monitoring and chief financial officers, subject to the findings of the review proposed in R21.*
- R23 The Standards Committee should be able to recommend the suspension of councillors for up to three months, as well as the imposition of lesser penalties.*
- R24 There should be Local Government Tribunals in England, Scotland, and Wales with the power to hear appeals from councillors who have been subject to a penalty imposed by a council; and to require an authority to alter its Code of Conduct, standing orders, and other procedures when necessary.*
- R25 The Local Government Tribunals should hear appeals from councillors against disciplinary action by their councils following a recommendation of the Standards Committee; and should have the power to disqualify councillors from office.*
- R26 Every local authority should institute a procedure for whistleblowing, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation. The Standards Committee might well provide an internal destination for such complaints.*
- R27 Surcharge should be abolished and, pending the introduction of a new statutory offence of misuse of public office (R28), replaced with a procedure in which the auditor applies to the courts for a ruling, and the court has the power to order compensation and/or impose disqualification from office.*
- R28 Subject to further consultation, there should be a new statutory offence of misuse of public office, which would apply*

to all holders of public office.

- R29 The District Auditor's 'stop' power in England and Wales should be discontinued and replaced with a system of formal warning notices.*
- R30 The right of a local elector to challenge an authority's accounts should be recast to avoid abuse of the process.*
- R31 Local authorities should ensure that people who receive services through a contractor to the local authority have access to a properly publicised complaints system.*
- R32 Staff of contracting organisations should have access to the local authority's whistleblowing procedures.*
- R33 Local authorities, which are concerned about conflicts of interest when staff move to the private sector, should consider the introduction of restrictive covenants, or stipulations in the contracting process, to avoid conflicts of interest.*
- R34 All members of an authority's planning committee (or equivalent) should receive training in the planning system, either before serving on the committee, or as soon as possible after appointment to the committee.*
- R35 Planning committees should consider whether their procedures are in accordance with best practice, and adapt their procedures if necessary, setting them out in a code accessible to councillors, staff, and members of the public.*
- R36 The Department of the Environment (and the Scottish and Welsh Offices) should consider whether present legislation on planning obligations is sufficiently tightly worded to prevent planning permissions from being bought and sold. The Departments should continue to reduce the time taken for planning appeals to be arranged and should set demanding targets to that end.*
- R37 Local authorities should adopt rules on openness that allow planning agreements to be subject to discussion by members of the authority and the public. They should not restrict access to supporting documents except where justified by the requirements of commercial confidentiality, which should be interpreted narrowly.*
- R38 The Government should require authorities to notify the appropriate Secretary of State of all planning applications in which they have an interest, either in the development or in the land, either where the proposed development is contrary to the local plan, or has given rise to a level of objections regarded by the appropriate Secretary of State as substantial.*
- R39 The Government should be more ready to use its powers to call in all major planning applications handled by an authority where, over a period of time, there is substantial public concern about that authority's decision-making procedures.*

July 1997

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