

## **Ethical standards in local government**

### **Response to call for evidence from the Committee on Standards in Public Life**

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#### **Introduction**

We welcome the opportunity to contribute to this important consultation. In our view the standards regime in local government needs urgent attention. The removal of Standards for England (previously the Standards Board for England) created an opportunity to develop local solutions to meet the needs of councils, councillors and the public on issues on conduct and ethics. That opportunity was not taken up. Councils are constrained by an inability to put in place robust regimes that follow through from complaint, to investigation, through to censure and sanction in a way that is open, transparent and meets the needs of natural justice and equality and human rights legislation.

In our view, Government needs to put in place a permissive legal framework for conduct and standards that can give councils the confidence that they can put in place strong, independent systems at local level that can police and enforce those standards – as well as promoting a culture that rewards and encourages positive behaviours.

Our evidence is drawn from:

- The provision of support to a large number of councils and councillors since 2003 (when CfPS was established), and in particular support to councils experiencing significant challenges around member culture and behaviour;
- Responses, over the course of many years, to the CfPS Annual Survey of overview and scrutiny in local government, which has in some editions touched on issues around conduct;
- Research carried out around the abolition of Standards for England by CfPS and other organisations;
- Conversations with national policy-makers and others around shared experiences of conduct and standards issues (in particular, CfPS contributed to the recent CSPL round table on this subject).

#### **Comment on existing systems**

##### Justification for the abolition of Standards for England

Opinion within and outside the sector around the abolition of Standards for England was mixed. Some agreed with Government that the national standards regime was unfit for purpose, and too onerous. Government expressed the view very strongly

that the Board's systems and processes had been abused by councillors engaging in "tit for tat" complaints, and that in any case it was unreasonable for the "unelected" Board to pronounce on councillors' guilt or innocence, particularly bearing in mind the sanctions that could be handed down. Worry was particularly expressed that Board action could be used to stifle whistleblowers.

It is worth pointing out that, shortly before its abolition in 2010, the Board produced an evaluation of its work and performance which largely dealt with these criticisms. Some expressed worry that the abolition of the regime, even if accompanied by new criminal offences relating to standards and behaviour alongside a beefed up local regime, would lead to local issues going unchecked. It is worth pointing out that there is no evidence that the abolition of Standards for England has resulted in a significant worsening of conduct and ethical standards in local government; although evaluating this effectively is obviously extremely challenging as the two regimes are not especially comparable. Nevertheless, it is not possible to argue that the issue of ethical standards in the sector is one which is unimportant – continued and serious issues of conduct, behaviour and decision-making continue to make themselves felt in a way that make it clear that some change and reform is necessary.

### Changes since the abolition of Standards for England

The abolition of the national Code, and of the Adjudication Panel, and their replacement with local systems, has had mixed results. On the plus side the new arrangements allow councils more flexibility to establish light touch systems, and systems which are designed to meet the needs of local areas. On the negative side, the lack of a systematic national backstop places, we think, too much onus on local areas themselves to resolve complaints and issues of poor behaviour, with little support and no real power to impose meaningful sanctions.

An area where standards regimes have always struggled is in where poor conduct is a symptom of a wider cultural problem – and a wider governance problem. In the old regime, this was reflected in councils which suffered from cascades of "tit for tat" references to the Standards Board – that behaviour had itself been normalised, with poor personal conduct (and inappropriate organisational responses to that conduct) becoming a part of the political environment of that authority. Similarly, in environment with no external systems to arrest poor behaviour, local standards regimes (despite the presence of the independent person, on which we comment in more detail below) can prove unable to cut through local politics and local context to act meaningfully and conclusively. The lack of effective local sanctions is a part of this, but culture goes wider than this.

CfPS has provided support and advice to some councils where the lack of effective sanction for behaviour that falls short of the outright criminal has been a huge problem. People do not tend to obey rules simply because of the existence of a sanction, but because there is an internal aspect to the way that they act and behave which compels them to act in what they consider to be the "right way". But sanction is a vital backstop which can help to guide the development of this internal aspect of people's thinking. Its absence in the current framework – with the exception of the creation of new criminal offences, the applicability of which are vanishingly small – is notable.

## The main behaviour and ethical issues

Culture is central to behaviour. Many councils have plans for organisational development, and member development, which involves the adoption and promotion of “values” of behaviour. Many councils incorporate the Nolan principles into their constitutions and use forms of words around member conduct in rules of procedure, and other documents, which makes expectations around conduct explicit.

The issue is that these expectations, written on paper, tend not to be followed through in practice. Councils need to recognise the specific behavioural challenges that they are likely to experience (or are experiencing) and put in place specific systems to challenge and tackle them.

These issues are likely to include:

- Bullying and intimidation (member-member and member-officer). This includes understanding the limits of appropriate political action. Different people’s attitudes and considerations of what can be considered ordinary “political” activity can vary wildly. One person’s “robust debate” is another’s bullying. Issues around how structural inequality plays out in the council context (particularly in relation to the councillor corps, but also in relation to gender and ethnic considerations amongst both officers and member) is increasingly important, but is rarely tackled or even mentioned as an issue. More straightforward power dynamics are better understood (bullying of junior officers by senior officers, or Cabinet members; bullying councillors by Whips or Cabinet members, other similar abuses of power). But even tackling those issues is difficult. They will play out differently from authority to authority. Always, the statements that senior people (especially the Leader and Chief Executive) make about behaviour has a huge impact on what is seen as acceptable.
- Overly informal and/or inappropriate relationships. On the other end of the spectrum sits relationships which are too close. This is a problem in two respects. Firstly, overly close member/officer relationships. It is right that members and officers have positive working relationships, but where these tip into meaningful friendships risks develop – around assumptions relating to officers’ partiality, and around officers’ and members’ ability to carry out their necessary roles of mutual challenge. Secondly, overly close relationship between people within the council and those with whom the council partners or contracts. This is an increasingly pressing issue as public service delivery becomes atomised, and an increasing number of people and organisations come to have a stake in both decision-making and deliver at local level. Sometimes, this involves decision-making becoming more opaque and informal, occurring in spaces other than formal council meetings.
- The operation of declarations of interest, and acting proactively on these declarations. The making of declarations of interest is a core part of local government decision-making and is generally well-understood, but often that understanding begins and ends with the formal act of decision-making itself. It is important to recognise (as we noted above) that the development of policy and decisions happens in informal spaces; focusing on a declaration at the formal decision point is less effective if the decision has been crafted by someone with a notifiable interest, even if that person leaves the room when the decision is in the act of being made;
- Whistleblowing. All councils have systems in place for dealing with whistleblowing, but in reality those systems can be complex, isolating and therefore unattractive to people with concerns to raise. The act of whistleblowing can be career-ending, and is usually at least career-defining. The import of the act, and the strength of character

required to do it, is significant. But most councils focus on the presence or otherwise of a whistleblowing process without thinking about the individuals operating within it. The extent to which councils are able to respond positively to challenges from within – even where those challenges are uncomfortable and make serious allegations about practice, conduct and ethics – is a defining feature in the presence of a positive organisational culture.

### The role of the Monitoring Office and the independent person

We are concerned at the relatively weak overall position in local authorities on corporate governance. This goes beyond the standards regime: it reflects a local government landscape where expertise on governance issues have been hollowed out, and where staff no longer possess the time and expertise to reflect on and intelligently apply local governance systems.

This is particularly expressed in the respective roles of the MO and Independent Person in respect of the local standards regime. MOs have declined in influence and importance in recent years. It is increasingly common to see MOs no longer sitting as permanent members of corporate management boards, and/or occupying second-tier positions in the corporate hierarchy.

The role of the independent person is similarly weak. Within an environment where a strong corporate culture of probity exists the independent person can provide a valuable safeguard – ensuring that the standards committed to be the organisation are adhered to and understood by all. Where that commitment is lacking, the independent person can be isolated. They have a limited freedom to act. Overall, the people in these two formal roles have few formal drivers that they can use to address more systemic issues, or to follow through individual complaints in a way that will always be fair.

### The role of regional / national political parties

Different political parties will often use local, regional and national structures to enforce standards of behaviour. This will often begin with informal sanctions within political Groups; the whip can be removed, and so on. However, the extent to which this can be seen as part of the “formal” approach that councils take on standards is moot. Particularly at the most local and informal level, they can be seen as harmful to councillors’ right to natural justice. Disciplinary action at this level needs oversight.

This oversight is often provided by party structures, but this will generally happen in a way that is unco-ordinated with enforcement action at local level. In particular, different expectations around conduct may exist than those that exist within local authorities themselves. This potential tension (and the space that this uncertainty provide for poor behaviour) needs to be addressed.

Politics (and local democracy generally) is seen as a safeguard on conduct, but this is often overstated. Removal of a councillor at the ballot box is not a helpful or timely sanction, even if conduct matters are live issues in local election campaigns.

## An improved and enhancement system

This part of our response makes brief suggestions of what an improved and enhancing system for ethical standards and conduct might look like.

### A culture of probity and good behaviour

We think that it will be important for areas to set locally understood standards of behaviour and activity: standards which make clear how they translate into practical, day to day activity. This recognises that this is a cultural issue, rather than one about minimal compliance with rules. It makes it easier to establish training, development and mentoring which can reflect these aspirations.

These standards must form a critical part of councils' plans for organisational development – and OD plans themselves must make more central the intersection between officers and members in their various roles, and highlight the risks attached to new systems and working practices. This is not to act as a brake on innovation, but to provoke councils to ensure that new ways of working (including more flexible, and informal, methods of decision-making) are marked by similar innovation on standard and behaviour.

Positive working cultures cannot emerge overnight. They require commitment from Chief Executives and Leaders, and others in senior positions. They require public statements about change, and continued transparency about how the council will hold itself accountable to ensure that this change happens.

### Member oversight

Ethical standards need to be owned by those responsible for adhering them. This starts with councillors themselves. The role of standards committees in both overseeing individual complaints, and in overseeing the cultural development of ethical standards, needs to be bolstered and made more transparent. This is about the visibility of those committees, their work and their outcomes. Local councils' overview and scrutiny committees can and should look at the role of these committees, and what they are doing to pursue and promote broader council activity on organisational development.

Member oversight and transparency can also play a role in ensuring fairness. Members need to be satisfied – advised by monitoring officers with the credibility and influence to enforce what is agreed – that the systems put in place to investigate and issue sanctions are fair and well understood. This is about more than councillors signing a form at the start of the electoral term; it is about continued engagement of standards as a concept. Similar oversight and ownership is needed from senior officers, and those working in partnership environments (even in private organisations) should be expected to subject themselves to these principles, and to the systems and processes that go along with them.

There are issues in play in relation to procedural fairness and natural justice with proper oversight can help to resolve. CfPS recognises that there is the potential for poorly designed and enforced standards regimes to interfere with councillors' Article

6, Article 8 and Article 10 rights. The assumption is that frivolous or otherwise baseless complaints on standards and conduct can be triaged out of the system, but this is not guaranteed. Similarly, the rights of complainants (who may be classed as whistleblowers) needs to be protected. These issues will be very difficult to navigate – both in terms of general principles and in respect of specific “hard cases”. For councillors and officers, openly learning the lessons from experiences and building and developing the local standards regime to account for these issues can be a critical way both of ensuring that local regimes stay relevant, and that they stay fair – and publicly transparent and accountable.

### Independence at local level

Because culture is local, and personal, standards must be as well. We have already discussed the shortcomings associated with imposition of systems centrally. Individual councils have to “own” their own response to standards, and they have to own the way that they reflect those standards in the way they work with partners and other stakeholders.

The maintenance of a degree of independence at local level – local standards committees, local systems of resolution, local agreement and discussion about how a culture of good governance will be developed – is vital to improved. Otherwise councils will become passive “recipients” of standards, imposed from elsewhere. This would lead to a culture of minimalism, compliance and gaming, which is entirely at odds from the systematic changes in attitude necessary for improvement.

### National structural solution: an enabling framework for local action

We have already noted that the new standards regime cannot be said to have resulted in a worsening of the position on standards nationwide. We are clear that any improvements to standards systems have to be about local action, and local culture – not centrally imposed systems.

Nevertheless, we think that there is a case for a national framework within which options exist on sanctions, oversight, and protections for key individuals. Councils could craft their own local systems to take advantage of particular elements of this framework, while not being constrained by detailed structural prescriptions on how their local regimes are to operate.

We consider that a part of the answer to independent, local oversight on standards could be the CfPS proposal for local Public Accounts Committees. LPACs, as independent bodies, would not necessarily investigate individual complaints but could have general oversight of the culture and practices around ethical standards, as a backstop – supportive of local standards committees. They could provide protections for Monitoring Officers and could play a role in the appointment and oversight of independent people.

A framework could also make available:

- National and regional (sector-led) mechanisms for dispute resolution and adjudication which conform to legal principles and whose operation is transparent. This would take standards out of the hands of a single authority to act on – should it wish to do so.
- A form of accreditation for local standards schemes, to assert their compliance with the law and to facilitate access to the national and regional schemes described above; with accreditation making available sanctions which would be applied in a legally consistent and transparent way;
- Sanctions, associated with the above, which are meaningful. These could include (for councillors) suspicion from council business for a given time, requirements to make restorative action where appropriate or in extreme circumstances removal from the authority outright.

Centre for Public Scrutiny  
18 May 2018