



Office of the
Deputy Prime Minister

Creating sustainable communities

Standards of Conduct in English Local Government: The Future

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CHAPTER 1

Introduction

The Paper

1. This Paper draws together the Government's current views on the future of the conduct regime for local government in England. It sets out a vision for the future regime and provides a coordinated response to a series of recent recommendations, reviews and consultations relevant to conduct issues in local government.
2. In particular, this Paper incorporates the Government's response to:
 - Chapter 3 of the tenth report of the Committee on Standards in Public Life (Graham Committee) – Getting the Balance Right – Implementing Standards in Public Life – January 2005; and
 - The Role and Effectiveness of the Standards Board for England – Report of the ODPM Select Committee – April 2005.
3. This response to the Graham Committee has been published as part of the overall Government response to the tenth report. The response to the ODPM Select Committee has been published as a memorandum to the Committee. Full texts of these responses are reproduced respectively as annex A and annex B to this Paper.
4. This Paper also provides a response to:
 - Recommendations following consultation on the code of conduct for members – by the Standards Board for England – Published as annex C to this Paper.
 - Review of the Regulatory Framework Governing the Political Activities of Local Government Employees – An ODPM consultation paper – August 2004.
 - A Model Code of Conduct for Local Government Employees – An ODPM consultation paper – August 2004.

Principles applied in considering options for change

5. The Government's responses to these reviews and recommendations reflect that, as recognised by the Graham Committee, English local government has a strong track record of high standards of conduct, and are based on the continuing need:

- to maintain high standards of conduct for local authority members and employees,
- to define effectively what standards of conduct are expected of members and officers, and for such rules to be fair and clear,
- for an effective means of taking action when breaches of the rules occur, and for such means to be fair, clear, proportionate, rigorous and thorough, and
- to ensure measures are in place to guarantee public confidence in the appropriateness of the ethical regime.

The future – an integrated regime

6. Our vision is for the different elements of the conduct regime – including the members' code of conduct, the Standards Board and local standards committees – to work effectively together, and be an integrated whole.
7. We consider that local ownership of the conduct regime would best be achieved by a move to a more locally-based decision-making process, with equity and independence being ensured both by:
 - the retention of a central, strategic and investigatory role for the Standards Board for England, and
 - improvements to the operation and effectiveness of standards committees.
8. We also propose to simplify and clarify the code of conduct for members, so that it better reflects the way modern councils work and is easier for members and others to understand and use. We take the view that these changes, taken together, would ensure public confidence in giving standards committees powers to make initial assessments of all allegations.
9. In parallel, we envisage the conduct regime relating to local authority employees will be made more systematic, in particular, by the introduction of a code of conduct for employees, taking into account lessons learnt in the operation of the code for members. We are minded, however, to retain the current rules requiring senior local authority posts to be politically restricted, but for changes to be made to uprate the pay of political assistants and to ensure that pay increases to them will no longer require the Secretary of State's approval.

10. We believe this approach will provide the conduct regime that local government will need in future as it develops the kind of strategic role encouraged in our Discussion Papers¹ published this year and last year as part of the local:vision debate. A number of the ideas for change in this Paper require legislation. Subject to any further views and debate prompted by this Paper, our intention is to seek this legislation at the next convenient opportunity that Parliamentary time allows. Any comments or views on this Paper should be sent to:

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¹ The future of local government: Developing a 10 year vision;
Local Area Agreements: a prospectus;
Citizen Engagement and Public Services: Why Neighbourhoods Matter;
Vibrant Local Leadership;
Securing better outcomes: developing a new performance framework.

CHAPTER 2

Conduct of Members

Introduction

1. The conduct of members of local authorities is regulated by the ethical framework for local government, established by the Local Government Act 2000. The key features of this framework are
 - A statutory code of conduct for local authority members, setting out the conduct which is expected of members;
 - The Standards Board for England, an independent NDPB, funded by ODPM, whose officers investigate allegations that members have breached the code of conduct, and also promotes high standards of conduct in local government by providing advice and guidance to authorities and members;
 - Statutory standards committees for each principal local authority, responsible for promoting high standards locally. Local monitoring officers are responsible for investigating less serious cases, which are then referred for determination to standards committees.
 - The Adjudication Panel for England, a separate independent body, to which Standards Board's ethical standards officers refer the more serious cases for determination.
2. Our vision for the future has implications for all elements of the conduct regime, which we will consider in turn. We will start with consideration of the code of conduct.

THE CODE OF CONDUCT FOR MEMBERS

3. The code of conduct is central to the ethical framework. By May 2002 local authorities and other relevant bodies were required to adopt a code of conduct to include all the items included in the model code of conduct, setting out required standards of behaviour, issued by the then Department for Transport, Local Government and the Regions in November 2001. In September 2004, Nick Raynsford invited the Standards Board to undertake a review of the code, and to consider lessons learnt over the three years of the operation of the code. Detailed recommendations arising from the Board's consultation on this review were presented to the Office in October 2005. The Board's recommendations are at Annex C, enclosed.

Government response to the recommendations of the Standards Board for England's review of the code of conduct for members

4. The Government welcomes the recommendations the Board has presented, arising from its consultation on the review of the code of conduct for members. We appreciate the hard work the Board has put into this review, the detailed recommendations it has formulated, and the advice and support it has given the Office on how it sees its future role developing as a strategic regulator.
5. We agree that amendments to the code should be made along the lines suggested by the Board, including:
 - making the code clearer and simpler, but
 - maintaining a rigorous approach to the identification of serious misconduct,
 - amending the regime for declaring interests and speaking at council meetings particularly for members who also serve on other public bodies,
 - making changes to the arrangements for determining whether conduct in private life should fall within the ambit of the code, and
 - amending the rules on the reporting of allegations by members to reduce the number of vexatious complaints.
6. The amendments will take into account the lessons learnt during the first three years of operation of the code, and make it a simpler and more proportionate document that makes judicious relaxations in areas where the need for relaxations have been identified (particularly to support councillors' advocacy role for their constituents and the public bodies on which they serve), and provide a clearer focus on the issues that really matter. We will also consider amendments to clarify the intention of the code in certain areas such as unlawful discrimination, where inconsistencies or concerns about the jurisdiction of the conduct regime have been identified by the Board's review.
7. We also accept the Board's recommendation that a clearer balance needs to be set between the need for an authority to protect genuinely confidential information and members' rights to make information available in the public interest, in the light of the provisions of the Freedom of Information Act. In addition, we accept the Board's recommendation that a specific provision should be added to the code to clarify that bullying behaviour constitutes a breach of the code. We agree with the Board that bullying should play no part in the local government world.

8. The Government's responses to particular detailed recommendations have been included as appropriate into our responses to various of the recommendations proposing changes to the code of conduct by the Graham Committee on Standards in Public Life and the ODPM Select Committee.
9. The Office will work closely with the Board in agreeing the detail of the proposals for inclusion in a statutory instrument to implement amendments to the code of conduct. The Board's detailed proposals are set out at Annex C.

LOCAL STANDARDS COMMITTEES AND THE STANDARDS BOARD FOR ENGLAND

10. Following careful consideration of the recommendations of both the Committee on Standards in Public Life and the ODPM Select Committee, we have come to the conclusion that there would be considerable benefits in the introduction of more local decision-making.
11. In order to ensure independence and thoroughness on which public confidence in such a locally-based system depends, we consider there is a fundamental need to improve the independence of standards committees and encourage the building up of the capacity and capability of the committees to undertake their new role. The changes will also mean the evolution of the Standards Board into a strategic, arm's-length body dealing only with the most serious cases nationally, and ensuring capacity is increased at local level through increased support, advice and guidance. The effects of the changes will therefore have impacts on the roles of the standards committees, the local authority officers who support the committees (particularly monitoring officers), and the Standards Board for England.

Standards committees

12. We consider that the standards committees should be at the heart of decision-making within the conduct regime. Standards committees are in the lead in ensuring high standards of conduct at the local level, and are increasingly taking on a greater role in the determination of cases. We wish to continue this development, and we consider that it would be a logical step to extend their role further to take on the initial assessment of all allegations. Monitoring officers would undertake the investigation of most allegations, and committees would make determinations of most cases. Only the most serious cases would be referred to the Standards Board for investigation.
13. A more locally-based regime would provide an appropriate way for local knowledge of the authority and its members to be fed into the decision-making process. It would enable the experience and skills of the monitoring officer to be used more effectively, including potentially allowing more opportunity for local mediation or other intervention falling short of investigation, which might allow disagreements to be defused

- before they turn into full-blown allegations. Such a regime might also give an opportunity for standards committees to spot politically inspired or vexatious complaints, which might mean that unworthy cases could be rejected as soon as possible, but handled with an understanding of local pressures and sensitivities.
14. Monitoring officers and committees would need to become central not only in investigating but also in promoting and championing high standards, and ensuring that standards become embedded as an intrinsic part of the local culture. In taking ownership of this issue in this way, committees would become the main means of increasing councils' awareness of standards issues.
 15. There is a need for capacity building measures and support to be provided to standards committees between now and the coming into effect of the new regime to enable authorities to be ready to take on their new responsibilities. The Government will work closely with the Standards Board to ensure that guidance is provided on the role and responsibilities of monitoring officers and standards committees and they are ready to take on their new roles. We attach importance to such guidance and the Board's support of monitoring officers and standards committees. This is essential to deliver the consistency of approach we expect across all local authorities.
 16. However, authorities will also need to do more than at present to ensure that monitoring officers and standards committees are:
 - properly supported,
 - are of the appropriate quality and
 - are able to promote high standards of conduct throughout each authority, so that concern for conduct issues is embedded in every aspect of councils' work.
 17. We accept the Graham Committee's strong view that to retain public confidence in the independence and rigour of a more locally-based regime, standards committees should be required to have an independent chair. However, we do not accept that committees should be required to have a majority of independent members. In our view, it is essential to ensure the inclusion in committees of independent members who reflect a balance of experience, but not that a majority of members should be independent.
 18. The Board has stressed the need to retain the rules requiring committees to include parish members where appropriate, so that parish interests continue to be properly represented. We also acknowledge the value there would be, as stressed by the Board, in committees sharing their experiences and expertise and possibly joining forces in recruiting independent members, or in the provision of monitoring officer services.

Standards Board for England

19. A shift in emphasis in the system from central to increased local decision-making, will have a consequential effect on the role carried out by the Standards Board for England. We consider that the Board should continue to have a central role in the conduct regime for local government. The Board's remit under the Local Government Act 2000 is already to provide advice and guidance to authorities and assist in the creation of a culture of high standards of conduct in authorities. Starting in November 2004, the Board's officers have referred increasing numbers of less serious allegations for local investigation and determination. Currently about 50% of cases referred for investigation are being referred for local action. We propose that this trend towards a more locally-based system should continue and increase, so that the revised conduct regime should develop out of trends already well under way.
20. The Board is already a champion and promoter of consistently high standards of conduct across local government. We wish the Board to continue in this role, and with the referring of cases for local action now part of the conduct regime, the Board needs to continue to adjust the focus of its work away from the investigation of cases and towards the provision, maintenance and monitoring of a national framework of support for authorities to ensure high standards locally.
21. We see the Board as developing a role where it
 - defines what people should expect the standards regime to deliver, including the roles expected of monitoring officers and standards committees, and then
 - ensures the effectiveness of their performance.

The Board would issue guidance on roles and responsibilities, and would then need to ensure that authorities carried out these roles effectively and provide support to them through the increased availability of guidance and training.

22. Arrangements need to be put in place for committees to report to the Board on how they have been undertaking their role, which could be done through the submission of annual reports, in a common format, and for the Board effectively to monitor their performance, by taking a proportionate, risk-based approach to ensure they are acting effectively, with particular focus on perceived poorer performers.
23. Standards committees would refer only the most serious cases for investigation by the Board. The Board must have powers to refuse to take on referred cases if it believes they are better handled locally and that the authority merely wishes to avoid dealing with the allegations.

24. However, to ensure that action is taken in cases of unacceptable performance by standards committees, and where it is thought they are not operating in the public interest, there will be a need for the Board to be able to withdraw committees' powers to deal with cases and for those cases instead to be handled by the Board itself. There will be need for clear criteria for the basis of taking away an authority's powers to deal with cases, and to minimise the risk of challenge to the Board's decision to step in because of its concerns about the authority's performance.
25. The support and guidance from the Board will be aimed at preventing misconduct happening in the first place by
- ensuring that members are aware of their responsibilities and that
 - authorities have systems in place to reduce the potential for misconduct to occur.

The Board will set a framework of training requirements, producing guidance material to trainers, setting minimum requirements for monitoring officers and standards committees and supporting self-assessment by authorities.

Summary

26. To summarise, the headline issues on which changes are proposed and whether amendments will be brought into effect by primary or secondary legislation are as below.

Issues for secondary legislation	Issues for primary legislation
All chairs of committees to be independent and committees to include independent members who reflect a balance of experience.	Initial assessment of all allegations of misconduct to be undertaken by standards committees, rather than the Standards Board.
Monitoring/reporting requirements for standards committees, so the Standards Board can check on progress.	Local monitoring officers to investigate most cases, and standards committees to determine most cases.
	The Board only to investigate the most serious cases. The Board's role to be redefined as supporting, monitoring and overseeing authorities' performance in dealing with allegations.
	Intervention powers for the Board when they consider committees are not operating effectively.
	New provisions providing powers for standards committees to impose higher penalties to reflect the need to address the more serious cases.

27. The possible timing of primary and secondary action to put the proposals into effect is referred to in chapter 4, below.
28. The detailed consequence of these decisions for the Government's response to the recommendations of the Graham Committee and the ODPM Select Committee are set out in annexes **A** and **B**, enclosed.

Capacity building measures needed to make the changes effective

29. The Government appreciates the assistance provided by the Standards Board in considering the consequences of a move to a more locally-based conduct regime. We appreciate the willingness they have shown in cooperating with us in shaping the new regime. The Board has drawn our attention to a number of issues which must be addressed to ensure that the changes are implemented effectively.

Independent members and cooperative working

30. The Board has supported the proposal to increase the contribution made by independent members on standards committees but has drawn attention to its concerns about the variability of capacity and experience of such members and the fact that some authorities are already having difficulty in recruiting sufficient numbers. A requirement for more members to be independents will mean these difficulties will deepen.
31. In addition, local decision-making will mean some areas having a greater workload than others, particularly in those district councils with large numbers of parishes. The Board has therefore proposed allowing standards committees to combine, for example, to have county-wide committees to assess parish cases, so as to share the burden between authorities. There may also be circumstances where it would be advantageous for unitary authorities to share standards committees.
32. We appreciate the benefits there would be for authorities to work closely together, for example, to share information or to combine forces in achieving economies of scale in joint recruitment exercises for independent members, or the sharing of monitoring officers' services. We will consider with the Board the most effective way to promote such joint working and cooperation, so that authorities will be able to carry out their roles, including whether a statutory requirement should be imposed for standards committees to cooperate, or even to require them to work together jointly.
33. It will be important that the skills and knowledge of independent members are appropriate for their increasingly demanding role. We accept there may be a valuable role for the Board in setting guidelines for the recruitment of independent members and in some way overseeing the effectiveness of the recruitment process.

Role of monitoring officers

34. We accept that the quality of service from monitoring officers to members and their authorities will be crucial to the operation of the system, and the perception of fairness and effectiveness of the overall conduct regime. The Board has expressed concerns about the capacity of some monitoring officers to carry out their new investigatory role. Some monitoring officers, for example, feel they are under-resourced and isolated from the centre of decision-making in their authorities. We will invite the Board to provide guidance on the role and responsibilities of monitoring officers, setting out the requirements they will need to attain to do their job. Training and support need to be provided to equip monitoring officers for their role, which need to be locally-driven by standards committees, as part of their ownership of standards issues locally, with the Board assisting in ensuring that high standards are being achieved.

Role of political leaders and senior managers

35. We accept that a revised regime can only be successful if political leaders and senior managers have the right skills and are committed to making the system work. The Board will undertake work with other key stakeholders to support leaders and chief executives of authorities to ensure that concern about standards is embedded as crucial to a well-run authority, including the provision of better and earlier induction of members and staff into their roles. The Board will also liaise with political parties to underline to them the effect which politically-inspired allegations can have in damaging the public perception of local government.

Application of the code of conduct to other bodies

36. The Board has suggested a need to consider whether the code of conduct should apply to members of partnership boards and other public sector bodies responsible for spending public money, in addition to the authorities and bodies already subject to the conduct regime. The Government is not currently persuaded that this is the right approach, but we would welcome views on this issue.
37. We invite the Standards Board to develop further the Government's proposals for the implementation of the revised conduct regime outlined above, in consultation with its stakeholders, including arrangements to tackle the issues it has identified as requiring attention in advance of the revised regime being fully implemented.

CHAPTER 3

Conduct of Local Government Employees

Review of Political Restrictions

What the review covered

1. In 2004 ODPM consulted on a review of the regulatory framework governing the political activities of local government employees set out in the Local Government and Housing Act 1989. These rules provide for certain senior posts to be 'politically restricted' and for an Independent Adjudicator to consider applications for exemption from political restrictions. They also provide arrangements for the employment of political assistants, including provisions relating to their pay.
2. 411 responses were received to the consultation. The responses received were as below.

1989 Act restrictions

3. Many felt that the existing rules were working, were well understood, were not unduly onerous to administer, and provided the basis of the current level of trust between members and staff, and that there was therefore no need to make changes to the rules.
4. The most frequent qualification made by those who felt that no radical change was needed was that there was clear scope for reducing the number of staff covered by the rules. Some felt that more emphasis could be placed on considering the specific duties of each post, and not purely the salary threshold, but others considered that this would be unduly onerous for authorities to administer. Narrowing the scope of the restrictions to senior posts only was also a popular view from those in favour of retaining the political restrictions framework.
5. Some suggested that a suitably framed code of conduct for officers was capable of delivering the appropriate degree of neutrality and propriety, negating the need for any further safeguards in the form of specific provisions restricting activities.

6. *Options for inclusion in conduct package*

Either

- Retain the framework of restrictions, but amend so that the rules are more narrowly applied, eg to most senior posts or certain categories of posts based on closely defined job descriptions

Or

- Do away with political restrictions altogether, possibly replacing them with a suitably framed code of conduct for officers

The Government's response

7. The Government is committed to the principle of the political neutrality of local government employees. To ensure that this principle is retained, we are currently minded to retain the existing framework which restricts the political activities of certain senior staff. We will, however, consider amendments to the existing rules to ensure the restriction only applies to the most senior, or the most sensitive, posts.

Independent Adjudicator

8. In considering the best way to handle exemptions from political restrictions, opinion was roughly divided on whether or not the Independent Adjudicator's current role could instead be undertaken by local standards committees or monitoring officers, perhaps backed with suitable central guidance. Some felt that it was important to retain the impartial scrutiny of the Independent Adjudicator. This also had the benefit of providing consistency across the country.

9. *Options for inclusion in conduct package*

- Abolish post of Independent Adjudicator
- Delegate to local standards committees or monitoring officers, with suitable central guidance

The Government's response

10. The Government believes that, within the overall legislative framework, local authorities should take ownership as much as possible for the operation of the rules at local level. We are currently minded, therefore, to abolish the post of Independent Adjudicator, and delegate his role in the making of decisions on applications for exemption from political restrictions to standards committees.

Political assistants' pay

11. We also consulted on whether political groups should contribute to the funding of political assistants and on changing the method of uprating assistants' pay. Responses were received from political parties, MPs and representative bodies for local authorities and political assistants.
12. Respondents were divided on whether political groups should contribute to the funding of assistants, although most of the political parties and representative bodies considered there should no change to the current arrangements. Those not in favour of contributions being made by political parties were largely the principal authorities, most of which said that the current arrangements worked satisfactorily. Many felt that there was a need to maintain the fairness which the current system provided to each political group, and that any change could undermine openness and transparency.
13. Most respondents also expressed support for some uprating of assistants' pay and there was a firm consensus in favour of linking their pay rate to local government scales rather than, as now, following a fixed rate set by central government by means of a Statutory Instrument. The majority favoured a link to the NJC Spine Points. Spine Point 44, which was the reference point for previous increases by SI, was a popular level, with others suggesting Spine Point 49 as a more suitable peg.
14. In addition, those who expressed a view generally felt that rules governing Mayoral political assistants should be in line with those for local authorities. However, those authorities which have Mayors considered the current rules should be retained.
15. *Options for inclusion in conduct package*
 - Uprate future pay of political assistants to appropriate local authority scales set by the National Joint Council Spine Point – between 44 (the current equivalent Spine Point), and 49.
 - Make an interim increase by issuing a Statutory Instrument.
 - Bring rules governing Mayoral political assistants in line with those for local authorities.

The Government's response

16. The Government appreciates the concerns felt by many about the delays in the uprating of the pay of political assistants arising from the current ad hoc arrangements for increasing their pay by means of a Statutory Instrument. We are currently minded, therefore, as an interim measure, to issue an Instrument as soon as possible increasing the pay rate to Spine Point 44, and to pursue primary legislation to fix permanently the rate to a scale between Points 44 and 49.

17. We are not currently minded to make any further changes to the rules relating to political assistants.

Rules relating to employees acting as elected members

18. Most people who commented on these rules relating to the right of employees to have time off to carry out public duties as elected members, and prohibiting councillors from being officers of the same authority, thought the current rules should remain in place.

The Government's response

19. In view of the responses received, the Government is currently minded not to make any changes to the rules relating to employees acting as elected members.

CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES

What the proposed code covered

20. We also consulted last year on a draft code of conduct for local government officers. The draft was broadly in line with the provisions of the code for members, setting out standards of behaviour to be expected of employees.
21. 640 responses were received. Opinion was roughly split for and against introducing a code for officers. There was no strong endorsement of the merits of introducing a national code – particularly for staff who were not in senior posts. In fact, many comments pointed to the need to allow for adaptation to local terms and conditions. Many also pointed out that certain groups and professionals were already subject to codes of conduct which were directly applicable to, and already proven to be effective in guiding the conduct of, their duties.
22. There may be a case for not enshrining the officers' code in legislation; instead issuing it as guidance, which authorities can adapt to their terms and conditions for staff. Some consultees thought there was a case for introducing a code as a means of dispensing with the framework of political restrictions.
23. *Options for inclusion in the conduct package*

If we proceed with model code for employees

- Augment it to the extent that political restrictions legislation can be repealed

- Agree to exclude certain categories of employees who have their own code, ie school governors, police authority workers (thereby meeting concerns from some consultees). Also exclude professionals who have their own codes of conduct
- Amend the draft to make the code clearer and more tightly defined
- Make changes which reflect relevant amendments agreed for the members' code, where appropriate

If we do not proceed with code for employees

- Acknowledge that too much local adaptation is necessary, and that this negates the purpose and benefits of a national model code for officers; therefore, publish it in the form of guidance, which local authorities can adapt to their own local terms and conditions.

The Government's response

24. The Government considers that it is important to maintain high standards of conduct for local authority employees. To ensure that such standards are defined effectively and consistently, we are currently minded to issue a code of conduct which all employees should follow. The intention would be that the code would set out only general principles of conduct, and that authorities should take ownership of the operation of those principles locally. We are currently minded therefore that the code should be incorporated into each employee's contract of employment, with decisions on detailed interpretation a matter for each authority.
25. To ensure that the lessons learnt from the operation of the code of conduct for members are fed into the employees' code, further consideration of the content of the code for employees will be needed following on from detailed amendments to the members' code in the light of the Standards Board's review.

Summary

26. To summarise, the changes we are minded to pursue, and the action needed in terms of primary and secondary legislation, are as below:

Issues for secondary legislation	Issues for primary legislation
Issue a code of conduct for local government employees.	Retain current rules requiring senior and sensitive posts to be politically restricted, but ensure the restriction only applies to the most senior or most sensitive posts.
	Abolish the post of Independent Adjudicator – Provide for local standards committees to make decisions on posts exempt from political restrictions.
Uprate current rate of pay of political assistants by Statutory Instrument to Spine Point 44.	Amend the 1989 Housing and Local Government Act to allow for the pay rate to be permanently linked to a scale between Spine Point 44 and 49, with no further need for Statutory Instruments to be issued each time to increase the rate.

CHAPTER 4

The Way Forward

1. This Paper sets out the Government's thinking on the general direction of travel for the development of the conduct regime for local government. Any comments on the Paper would be welcome.
2. We recognise that some of the provisions which we are minded to implement will require primary legislation. Subject to any views and debate which this Paper might provoke, we intend to seek primary legislation at the next convenient opportunity as Parliamentary time allows.
3. Some of the proposals can, however, be put into effect through secondary legislation, which should allow these to be implemented potentially in quicker time. There would be benefits in providing for a phased introduction of the measures, since, as we have indicated in respect of the conduct regime for members, there is a need for capacity building measures to be put in place, so as to prepare monitoring officers and standards committees for their roles in the revised regime, and allow for change to evolve organically.
4. We now intend to work with the Standards Board and other stakeholders to carry forward the changes identified in this Paper, having regard to comments and debate the Paper itself generates. We will wish to agree with stakeholders a realistic timetable for implementing those changes that we decide to adopt.

ANNEX A

GOVERNMENT RESPONSE TO THE RECOMMENDATIONS IN CHAPTER 3 OF THE 10th REPORT OF THE GRAHAM COMMITTEE ON STANDARDS IN PUBLIC LIFE – GETTING THE BALANCE RIGHT – IMPLEMENTING STANDARDS OF CONDUCT IN PUBLIC LIFE

Introduction

The Government welcomes the recommendations in Chapter 3 of the 10th report of the Committee on Standards in Public Life, and the contribution which the Committee has made to the development of thinking on the future of the conduct regime for local government members. The Committee will be aware of the recent recommendations of the ODPM Select Committee on the role and effectiveness of the Standards Board for England, as well as the recommendations flowing from the Board's recent review of the code of conduct for members. The detailed response below reflects the Government's conclusions following consideration of the recommendations arising from all of these reports.

We agree with the general view the Graham Committee took that there would be benefits in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities. We consider this should take place within a national framework and with a strong continuing role for the Standards Board at the heart of the regime in providing guidance and support and promoting best practice on the handling of allegations by local authorities. We consider this is necessary to ensure public confidence in the fairness and independence of the system. We share the Committee's vision of a Board with a strategic role in championing high standards of conduct and ensuring the effectiveness of the regime.

We also agree that confidence would be enhanced by strengthening the capacity and capability of standards committees to undertake a more active role by increasing the contribution made by independent members serving on committees and a simplification and clarification of the code of conduct for members, so that it is easier to understand and operate at local level. We will work closely with the Standards Board on the detailed proposals for amendments to the code of conduct, and implement changes as soon as practicable. Where these require primary legislation, our intention is to seek this at the next convenient opportunity that Parliamentary time allows.

The Government's detailed responses on each of the Committee's proposals are set out below:

The Committee proposed:

R16. Parish councils should remain within the ethical framework for England: the same principles of conduct should apply to all locally-elected representatives, irrespective of the size of authority (or the powers of that authority) to which they were elected.

The Government's response:

We accept that parish councillors should continue to be subject to the conduct regime for local government, reflecting the importance of the role of parish councils in the local government world.

The Committee proposed:

R17. The Government should announce its intention to amend Part III of the Local Government Act 2000 in the Parliamentary session 2005/06 to enable the sifting of complaints to be undertaken by local Standards Committees.

The Government's response:

We accept in principle that the Local Government Act 2000 should be amended to provide for more locally based decision-making. We will aim to make the necessary amendments as soon as Parliamentary time allows.

In advance of the introduction of the revised regime, the Government wants the Board to work closely with local authorities so that standards committees and monitoring officers are properly supported, and have the capacity and capability to do their jobs.

The Committee proposed:

R18. The amendment to Part III of the Local Government Act 2000 should:

Place a duty on the Standards Board for England to delegate the responsibility for initial sifting of complaints to individual local Standards Committees. The delegation should be subject to the operation within a national framework prescribed by the Standards Board (and based upon criteria used by the Standards Board in sifting and referrals) by which local Standards Committees can decide:

- (i) whether to investigate a complaint or not (and if not whether mediation or conciliation between parties or general action in relation to awareness and understanding of the Code is appropriate);**
- (ii) which complaints are of such potential seriousness they should be referred for national investigation;**
- (iii) whether, following a local investigation, a complaint should be referred to the Adjudication Panel; or**
- (iv) to hear and determine the case, with an appropriate penalty where necessary; or**
- (v) accept that no breach has occurred; or**

(vi) to instruct the monitoring officer and/or Standards Committee chair to instigate mediation or conciliation between parties or general action in relation to awareness and understanding of the Code.

Introduce a requirement for Standards Committees to report annually to the standards Board and full Council on the operation of the ethical framework.

Introduce a requirement for each Standards Committee and the Standards Board to determine and publish targets for the completion of each stage in the complaints-handling process they are responsible for and to report on these as part of their respective annual reports; and

Provide a power for the Standards Board to audit the operation of the framework by a local Standards Committee and, if necessary following the audit, to remove the delegation until satisfied that necessary remedial action has been taken.

The Government's response:

We accept the principle that the initial assessment of allegations against local authority members should be undertaken by local authorities. We also accept that the exercise of this provision should be within a framework operated by the Standards Board, and that the Board should provide advice and guidance to committees on the operation of the assessment process. There should also be provision for the Standards Board to investigate in certain cases, including allegations of a particularly serious nature or cases which might have a national significance or set an important precedent.

We accept that the powers provided to standards committees should be broadly in line with those suggested by the Committee. We will give further consideration to the detail of the provisions, for example, on the circumstances when a case should be referred by a committee back to the Standards Board for investigation.

We accept in principle the need to have appropriate reporting arrangements in place, so that the performance of standards committees can be effectively monitored and for the Board to be able to take appropriate action, for example, in terms of providing advice and support, or otherwise intervening, in cases where improvements in performance might be made.

The Committee proposed:

R19. The Government should introduce, as a matter of urgency, secondary legislation to require a majority of independent members and an independent chair for Standards Committees and sub-committees in England. This is a critical element of our proposals to improve the existing system and to lay the ground for the subsequent introduction of the locally-based system.

The Government's response:

We accept that more locally-based decision making needs to be supported by an increase in the capacity and capability of standards committees to deal with the increased numbers of cases and their new filtering role, so as to ensure the fairness and independence of decision-making, on which public confidence in the system depends. We accept that this will be assisted by requiring that all chairmen of standards committees should be independent and committees should include independent members who reflect a balance of experience, but not that a majority of members should be independent since we consider it important to ensure the local ownership of standards by all members.

The Committee proposed:

R20. Prior to the introduction of the locally-based system, all complaints assessed by the Standards Board as not requiring any investigation should also be sent to the local monitoring officer and Standards Committee so that they:

- (i) are fully aware of complaints made within their jurisdiction;**
- (ii) can become familiar with the criteria used to decide whether an investigation is justified or not; and**
- (iii) judge whether the complaints indicate that some informal mediation between members or parties might be required or general awareness raising or training.**

The Government's response:

We accept that, in advance of the introduction of legislation to provide for more locally-based decision taking, it would be sensible for the Board to liaise closely with standards committees, including sharing experience of case handling, so that committees can develop their knowledge and skills in this area. It has always been the Board's practice to notify monitoring officers of complaints not requiring investigation, together with the reasons why that decision was made. The Board will work to ensure that all monitoring officers share that information with their standards committees so they can consider any lessons which might be learnt.

The Committee proposed:

R21. That the Standards Board should take steps to communicate more robustly and publicly to complainants, members and the public more generally, those minor, trivial, vexatious and politically-inspired complaints which are inappropriate to be dealt with under the ethical framework (following the example of the Local Government Ombudsman for Wales).

The Government's response:

We accept that it is important for the Board to continue to respond publicly and robustly in the case of minor, trivial or vexatious complaints. It is important that the message is given to potential complainants that vexatious allegations will not be investigated and will be rejected straightaway, so as to discourage any inclination to make unfounded allegations. The Board is already active on this issue. At its suggestion, the provision in the code requiring members to report to the Board all allegations of breaches of the code by other members will be deleted, which should discourage some trivial complaints. In addition, the Board has identified a need to work with political parties further to reduce politically-inspired tit-for-tat complaints which can damage the public perception of local government.

The Committee proposed:

R22. The Committee welcomes the steps taken by the Standards Board to resolve delays and backlogs in investigations. These measures should be further bolstered by taking full advantage of the new s66 regulations to refer to a local level a steadily increasing proportion of complaints judged worthy of investigation. In light of our recommendations to enable initial complaints-handling to be done at the local level, the experience of operating the s66 regulations over the next two years should be used by the Standards Board to develop the framework within which local Standards Committees will decide whether to refer a complaint for investigation by the Standards Board.

The Government's response:

The Government appreciates the Committee's support for the steps the Board has taken to tackle backlogs and delays in case handling. We accept that the numbers of cases dealt with at local level should be increased. Following the issuing of regulations under section 66 of the Local Government Act 2000 last year, the Board has been referring increasing numbers of cases for local investigation and determination. It should be possible to use the Board's experience of operating the rules on the referral of cases locally to inform the development of procedures for standards committees to make decisions on how cases should be dealt with.

The Committee proposed:

R23. The Standards Board should review its Human Resource Management policies, including pay scales, to ensure that it puts a priority on secondments and transfers from local authorities to the referral and investigations units, thereby increasing and refreshing the level of local government experience.

The Government's response:

The Standards Board has actively sought secondments and permanent recruitment from the local government world. The Board's investigators have between them over 200 years of local government experience. Case managers

in the Board's Referral Unit have a combined total of over 40 years of employment in local authorities. The Board will continue to ensure that its management policies put an appropriate emphasis on the recruitment and retention of staff with local government experience.

The Committee proposed:

R24. The general principles, currently contained in a separate order, should be incorporated into the Model Code. This will add clarity about the fundamental purpose of the Code and help provide a context for members behind some of the more detailed provisions in the Code. It will also make the Model Code more relevant to members of the public and assist in providing a route into the Code when considering making a complaint.

The Government's response:

The Government accepts that there would be benefits in incorporating the ten general principles of public life as a preamble or an annex to the code of conduct, where the principles would provide extra context for understanding the code. Following its review of the code of conduct, the Standards Board has proposed the inclusion of the principles as a preamble to the code. We intend to make amendments to allow for the principles to be published alongside the code.

The Committee proposed:

R25. The phrase 'in any other circumstance' should be removed from the Model Code in England (paragraphs 4 and 5 of schedule 1) so as to add clarity to the distinction between private and official conduct.

The Government's response:

We believe that councillors should set an example of leadership to their communities, and that they should be expected to act lawfully even when they are not acting in their role as members. We do not agree therefore that the code should be amended so as only to refer to actions by members in their official capacity and not their private lives. Following its review of the code, the Standards Board has, however, recommended that the current rule should be amended to provide that certain behaviour outside official duties should continue to be regulated, but that this should be restricted only to matters that would be regarded as unlawful. We accept this proposal, since it would balance the need for members to continue to set an example to their communities, and the need to exclude from proscription actions of which certain people might merely disapprove.

The Committee proposed:

R26. Failure to register an interest (financial or other) should normally be treated as a matter for local investigation and determination. This should be reflected in the operation of the new s66 regulations, and in the new locally-based system.

The Government's response:

We accept that in many such cases it would be appropriate for a failure to register an interest to be referred for local investigation and determination. However, we consider that each case should continue to be treated on its merits, and that a blanket approach for all cases would not be the right approach. For example, a case where a member wilfully and knowingly refuses to complete the register because he disagrees with the principle of registration would be likely to be viewed differently to a case where the member had overlooked or forgotten the need to fill in the register.

The Committee proposed:

R27. The following principles should apply where members are appointed, or nominated, to an outside body by their local authority (or have their membership approved by their local authority); are a member of another relevant authority; or are a member of another public body in which they hold a position of general control or management. They should be free to speak but not vote, subject to:

- (i) the declaration of a personal interest;**
- (ii) the matter before the Council/Committee does not relate to an application by the outside body for any licence, consent or an approval or any objection to such matters or to any statutory order or regulation to be made by the local authority; and**
- (iii) any representations must be made in an open and transparent manner.**

The Government's response:

Following its review of the code, the Standards Board has proposed something similar to this proposal. Members frequently hold appointments to other public bodies and the current code places an onerous responsibility on members to declare membership of other public bodies, and withdraw from meetings when issues relating to these bodies are raised. We accept the fact that in some circumstances a discussion can involve the public body with which the member is concerned without the member's judgement of the public interest being prejudiced. We recognise that it is necessary to balance the need to give public reassurance that decisions are being taken in the public interest, and enable members to represent the concerns of public bodies on which they serve and use the experience and knowledge they have gained from their membership of those bodies.

We intend to make amendments to the code which will adopt a solution involving the member making a declaration of personal interest at the time when he speaks on a relevant issue (rather than at the start of the meeting). In addition, even where the member has a prejudicial interest in the matter relating to the body he represents (eg where the matter has a direct impact on

the body concerned, or where the member is involved in regulatory matters in a decision-making capacity such as in respect of planning and licensing), he should be allowed to remain in the meeting to speak on behalf of the body, or on behalf of a campaign that he supports, but should withdraw before the vote.

The Committee proposed:

R28. In planning decisions the ability of elected members to represent constituents' interests where they have personal and prejudicial interests has been unnecessarily diminished. This should be changed to give any elected member the right to speak (but not vote) for their constituents at a planning committee meeting or any other quasi-regulatory meeting, provided:

- (i) a declaration of personal interest is made, including the nature of the interest;**
- (ii) the representations are made in an open and transparent manner; and**
- (iii) the member making the representations (whether a member of the Committee or not) withdraws at the completion of their representations.**

The Government's response:

As in the case of the response to recommendation R27, following its review of the code, the Standards Board has proposed something similar to this proposal. We accept there would be benefits in a more proportionate approach which recognises more clearly the need for members to act as local advocates, as well as the need for public reassurance that decisions are being made in the public interest.

We intend to make amendments to the code which will adopt a solution including the narrowing of the definition of personal interests which members are required to declare, a requirement for the member to declare his or her interest at the point where he or she speaks on a relevant issue, and, when the member has a prejudicial interest in a matter, he or she should be able to speak at the meeting but withdraw before the vote.

The Committee proposed:

R29. The three principal regulators (Standards Board for England, Local Government Ombudsman for Wales, and Standards Commission for Scotland) should put in place formal arrangements for the sharing of experiences and best practice. This should be extended to include the body with designated responsibility for enforcement of a new statutory framework in Northern Ireland.

The Government's response:

The Standards Board hosts regular meetings with the Local Government Ombudsman for Wales and the Standards Commission for Scotland for the sharing of experience and good practice. The Board will continue to maintain these contacts and will seek ways of working closer and consider the extension of these arrangements, as appropriate. ODPM, the Audit Commission, the Local Government Ombudsman and IDeA also attend these Joint Working Group Meetings to ensure that conduct issues are seen in the wider context of corporate governance more generally.

The Committee proposed:

R30. Prior to the introduction of the locally-based system consideration should be given as part of the Code of Conduct to amend the duty to report a possible breach of the Code so that it becomes a 'duty to report a possible breach to the monitoring officer and Standards Committee chair' who would then be responsible for deciding whether a formal complaint to the Standards Board should be made.

The Government's response:

Following its review of the code, the Board has proposed that the requirement in the code for members to report to the Board any breach of the code by other members should be deleted. They take this view because of the encouragement some members feel this provision gives to the reporting of trivial or vexatious complaints. We intend to accept this proposal.

Following the introduction of a locally-based system, it will be a matter for standards committees to make decisions on whether cases should be referred to the Standards Board for action. However, prior to the introduction of that revised regime, and in advance of advice and guidance from the Board, it would be premature straightaway to give standards committee chairs a filtering role. Before local filtering is introduced, the Board will continue to copy information on all local allegations to local monitoring officers, so as to share experience on how such cases might be effectively dealt with, and will be working with authorities on the development of their knowledge of the issues and their capacity to deal with cases.

The Committee proposed:

R31. All local authorities should consider using the Audit Commission/Standards Board Ethical Governance Audit tool and facilitated workshop to self-assess their arrangements for ensuring ethical standards.

The Government's response:

We welcome the Committee's support for the ethical governance toolkit, which the Board has developed in partnership with the Audit Commission and IDeA. The Joint Working Group Meetings referred to in the response to R29 monitor the development and progress of the dissemination of the toolkit.

The Committee proposed:

R32. The Standards Board should develop model training and development materials that can be used to provide monitoring officers and Standards Committee members with the key competences required to sift, investigate and determine complaints under the ethical framework. All monitoring and Standards Committee members should have undertaken training using this material by January 2007.

The Government's response:

The Board will continue to develop training materials for monitoring officers and standards committee members. It recognises that a move towards the initial assessment of allegations by local authorities will mean a redirection of the Board's efforts towards the provision of advice and support to equip monitoring officers and standards committees for their new role in making initial assessments of all complaints, as well as investigating and determining most allegations. The Board will ensure that appropriate guidance and training materials are in place in advance of the introduction of the new arrangements for more locally-based decision making. Work will also be needed by the Board to build capacity and capability at local level, including having regard to recruitment practices, so the right skills and resources are available for monitoring officers and standards committees to be able to do their job.

The Committee proposed:

R33. The Standards Board should develop further the concept of regional forums to facilitate regional support networks for monitoring officers and Standards Committee members.

The Government's response:

The Standards Board has undertaken a considerable amount of work to foster forums and regional support networks for monitoring officers and standards committee members. It has hosted four annual national assemblies for standards committee members, and has supported the development of regional forums of independent standards committee members. It will continue to provide speakers for such forums where requested, and attend regional meetings of the Association of Council Secretaries and Solicitors. It has developed and is continuing to support networks of monitoring officers and standards committees around the country, for example, through the provision of training materials and the circulation of newsletters giving information on issues of mutual interest to members and officers. The Board will continue to support and maintain these networks, with the aim of sharing knowledge and good practice. We will consider ensuring these regional networks develop more formal structures, which might include regional 'primus inter pares' monitoring officers and chairs.