

## **Issues and Questions**

### **Local Public Spending Bodies**

*Further and Higher Education bodies (including Universities)*

*Grant-maintained Schools*

*Training and Enterprise Councils and Local Enterprise Companies*

*Housing Associations*

#### **The Nolan Committee**

*The Committee on Standards in Public Life*

### **Contents**

#### **Seven Principles of Public Life**

##### **Foreword by Lord Nolan**

##### **Introduction**

##### **Issues and Questions**

The appointment and accountability of board members

The role of boards in relation to the officers and staff

The safeguards in respect of conflicts of interest

Conclusion

#### **The Local Public Spending Bodies**

Colleges of Further Education

Higher Education Institutions

Grant-maintained Schools

Training and Enterprise Councils (TECs)

and Local Enterprise Companies (LECs)

Housing Associations

General

#### **Timetable and address for submissions**

## ***The Seven Principles of Public Life***

### **Selflessness**

Holders of public office should take decisions 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 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.

---

**These principles apply to all aspects of public life.  
The Committee has set them out here for the benefit of  
all who serve the public in any way.**

## **Foreword by the Rt Hon Lord Nolan**

The first report of this Committee, published in May this year, received widespread publicity. The conduct of Members of Parliament and Ministers was a subject of great public interest.

But our task did not end with that report. We are a standing committee. We are charged with examining key areas of public life and, if necessary, making recommendations designed to ensure that the highest standards are maintained, and are seen to be maintained.

In this, our second study, we are looking at local public spending bodies. We are doing so because the services which they provide are very important to us all. They have been subject to great change in recent years. We need to be sure that in seeking improvements in service we have not put at risk those values and standards which are the cornerstone of public life.

To do this successfully we need the views of those who provide these services, of those who use them, and of the public at large. I hope those who read this paper will consider the issues carefully and send their comments, by the end of October if possible, to us at Horse Guards Road, London SW1P 3AL.

## Introduction

1. The Committee on Standards in Public Life was set up by the 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. It was set up against a background of increasing public concern about standards in many areas of public life. In May 1995, we produced our first report (Cm 2850), dealing with Members of Parliament, the executive (Ministers and civil servants), and executive Non-Departmental Public Bodies (NDPBs), including NHS trusts.

2. In June 1995 we announced a review of aspects of local public spending bodies. By this we mean "not for profit" bodies which are neither fully elected nor appointed by Ministers, but which provide public services, often delivered at local level, which are wholly or largely publicly funded. This review complements the work we have already done on executive NDPBs, and is in many ways the second stage of that work. These bodies, like executive NDPBs, are engaged in the delivery of public services on the ground, and can reasonably be expected to achieve the same standards of openness and accountability. But the differences in structure may mean getting to those standards by different routes.

3. The bodies which fall into that category and which are specifically the subject of this consultation document are higher and further education bodies (including universities); grant-maintained schools; training and enterprise councils (TECs); local enterprise companies (LECs — the Scottish equivalent of TECs); and housing associations. We recognise that some of these bodies universities in particular — have a role which goes wider than their immediate local areas. Nevertheless it is convenient to consider them together under this heading.

4. Taken together these bodies are responsible for spending at least £11 billion of public money each year. They operate at the boundary of the public and private sectors. They have considerable freedom to set their own priorities, yet their decisions are in many respects part of public policy. Their actions may have a significant impact upon their local communities, going beyond those who are directly involved in the organisations themselves. Bodies in each of these groups have been the subject of public concern, although perhaps not to the same degree as many of the institutions covered in our first report. A particular concern is the position of boards and management committees: how are the members chosen?; how are they held to account not just for the proper use of funds but also for the quality of their decisions?; are the checks and balances sufficient to reduce the risk of lapses in standards of conduct as well as to identify them at audit stage?

5. The importance of this area has grown significantly in recent years. Rapid growth has caused some difficulties, and as a result much work is taking place in various quarters to clarify the standards of conduct and propriety, and accountability, appropriate to the staff and boards of these bodies. In this review we plan to examine this work, and its results, and

to seek to identify common principles and good practice which can be applied widely across the sector.

6. The purpose of this paper is to set out the main issues and questions which we shall be considering in this study, together with brief background on the bodies concerned, and to invite comment on these issues. We seek comment from the bodies themselves, from those involved in managing them, from staff, from funding bodies, from those who use their services, and from members of the public. At a later stage we shall take oral evidence from invited witnesses. **You are invited to send written comments by 31 October 1995 to:**

**The Secretary  
Committee on Standards in Public Life**

**Horse Guards Road  
London SW1P 3AL.**

7. We are not investigating individual cases of wrongdoing. Information we receive on such cases may form the background to the development of general principles, but this will be at the sender's own responsibility. As with our first study, submissions will be in due course be placed in the Public Record Office unless the Committee has agreed with a writer that a particular submission should be treated in confidence.

8. This study is looking at arrangements in England, Scotland and Wales. In this paper we have sought to describe separately the arrangements which exist in each country but to avoid repetition we have not always fully described arrangements which are separate but similar in each country. We are not seeking to address in detail at this stage the different institutional arrangements in Northern Ireland, although we do not rule out doing this in due course.

9. The next section of this paper sets out the main issues and questions. It is followed by sections which briefly describe the bodies concerned.

## Issues and Questions

10. In our first report, we identified seven principles of public life which are printed on the inside cover of this consultation document. We also identified a number of key mechanisms essential for maintaining standards of conduct, which we called the "common threads".

11. We will be looking at local public spending bodies in the light of that work. We will be examining, therefore, the potential for conflicts of interest in the context of the principles of **selflessness, objectivity, integrity and honesty**. We will look at the complex and difficult question of the way in which **accountability** operates in bodies which are funded centrally yet have a clear local focus; we will examine approaches to confidentiality, particularly commercial confidentiality, using the principle of **openness**; and, finally, we will examine the **leadership** role of the boards and executives.

12. We will also pay attention to three common threads which we believe to be essential in establishing best standards of conduct. These are: the establishment of codes of conduct (already common in local public spending bodies); mechanisms of independent scrutiny; and the standards of guidance and training available to those who have volunteered to serve.

13. We also intend to build on our more detailed work on national quangos and NHS bodies (Chapter 4 of our first report). Many of the principles outlined in our first report will be equally applicable to these local bodies, although they may need to be interpreted in different ways to reflect different circumstances. We therefore intend to focus our new work on the three broad themes set out below which appear to be of particular relevance to local public spending bodies. These are

- i) the appointment and accountability of board members;
- ii) the role of boards in relation to the officers and staff; and
- iii) the safeguards in respect of conflicts of interest.

14. The issues and questions set out below are not meant to be comprehensive or exclusive; they simply give respondents a guide to the range of issues we need to consider. We will be happy to receive submissions which cover the whole field or which concentrate on a small section of it; and we would also like to hear from respondents who believe that there are areas of concern we have not identified.

### **The appointment and accountability of board members**

15. Each local spending body is managed by a board. This may also be known as a management committee, governing body or council, but for convenience we use the term 'board' throughout this paper. A key feature of these boards is that they are largely responsible for the arrangements to appoint or re-appoint their own members, within

statutory or contractual guidelines on the criteria for membership and the overall composition of the board. The process of appointment appears to be conducted generally on a rather informal basis, relying heavily on local networking by the members, particularly the chair, and the chief executive. Is this indeed what happens? If so, does this provide sufficient accountability for board membership? Does the statutory framework, in some cases backed up by reserve powers for Ministers to appoint or dismiss board members, provide an adequate level of public accountability? Or is it sufficient for accountability to be based on performance, leaving the bodies freedom to organise themselves in the way they believe will be most effective? Are national lines of accountability through national quangos, Ministers and Parliament sufficiently clear? In particular does accountability through the National Audit Office to the Public Accounts Committee in financial matters, and to Departmental Select Committees on other aspects, provide effective scrutiny? Do they allow sufficient weight to be given to the views of local communities? In particular, given the lengthy chain of accountability to Parliament, can such a process be genuinely effective, or are more direct mechanisms needed? How important a role does external audit play in maintaining high standards, both through traditional audit and through modern systems audit and value for money reviews?

16. Some bodies have taken steps to formalise the appointments process. This often involves establishing a nominations, appointments or search committee to advise the main board. In some cases, these committees include independent members who have no formal connection with the main board, but are either experienced and respected members of the local community or help to represent a group of people with a major interest in the success of the organisation. Should there always be a formal process for selecting board members? Should this always include a nominations committee? Are there other aspects of good practice in appointments, such as published job descriptions and selection criteria, which could be more widely used? Should any process involve an independent element, as recommended in our first report for Ministerial appointments to non-departmental public bodies (NDPBs) and NHS bodies? Could the Public Appointments Commissioner have a supervisory role in some cases?

17. Given the substantial role played by board members in selecting their own colleagues and replacements, is there a danger that a relatively small group of people will tend to assume and perpetuate their control of the body? Is there a danger that boards will recruit in their own image and become closed to new people and new ideas? Is there an increased risk of impropriety or insufficient scrutiny of standards? On the other hand, is there merit in continuity which calls for careful phasing of terms of office? How can the best balance be struck between continuity of membership and change? Do those who may be critical, however constructively tend to get excluded to the detriment of healthy debate and decision-making? Do these self-perpetuating mechanisms command public confidence? Are they sufficiently robust as a basis for appointing boards which will be entrusted with responsibility for public services?

18. The statutory or contractual requirements for membership are cast in general terms to allow boards flexibility in meeting their own membership needs. For many of the bodies a major requirement appears to be to ensure that a proportion of members come from a business or professional background. Should categories of membership be prescribed in more detail? In the educational institutions being studied there are varying provisions for parent, staff and student representatives. Should representation of recognised interest groups be mandatory in more areas, and should such groups have direct powers of nomination? Should there be any other formal mechanisms to ensure that boards encompass a balance of skills, experience and interests?

19. Our first report examined the openness and transparency of Ministerial appointments procedures, and the same issue may be relevant to this study. Could these bodies do more to encourage the widest pool of talent to come forward, perhaps by advertising or search techniques where they are cost-effective? Could more be done to consult other interested groups in the local community? Is it clear to those who may wish to apply, or otherwise have an interest, how the selection procedure works?

20. Ministers, Councillors and MPs who do not discharge their responsibilities adequately must answer to the electorate. NDPB Board Members can be called before Select Committees, and can be dismissed by Ministers. To whom are the members of these boards accountable for their individual performance? It appears that some can be dismissed by Ministers, but others cannot. What are the mechanisms for ensuring that performance of board members is reviewed, that regular reappointment is required, and that this is not automatic? Should maximum terms of office be laid down? How do board members answer to funders, to client groups, and to the local community, for their actions and performance? Many board members serve on a voluntary and unpaid basis. How important is it to maintain the principle of voluntary service? Are the responsibilities being allocated too great for entirely voluntary boards? Can more be demanded of a paid board member than a volunteer? Or can volunteers be held to account just as rigidly as, for example, unpaid councillors, for financial management?

### **The role of boards in relation to the officers and staff**

21. For each of the bodies, the board as a whole is responsible for the strategic overview and direction of the organisation and for the efficient and proper use of public funding. Day to day management is generally the responsibility of the chief executive (or head, principal or vice-chancellor) acting within the strategic framework set by the board.

22. Guidance issued to some of the bodies by government, NDPBs or by their own representative bodies stresses the need to maintain a clear division of responsibilities between the non-executive board and the senior staff. However, practice seems to vary. We need to consider whether it is possible for boards to assume too much direct operational

control; whether this could be to the detriment of maintaining the wider view of the organisation's and the public's interest; whether such a situation could increase the potential for conflicts of interest; and whether it could restrict the board's ability to question management effectively. On the other hand, we need to consider the situation where a board can leave too much freedom of action to senior executives. There is a possibility of boards which do not scrutinise executive decisions. There is also the possibility that key board members may be able to act without others being fully involved. In either case, such situations create a risk that the framework of checks and balances may break down, and the system of controls loses effect, creating greater potential for impropriety.

23. We also need to consider whether the chief executive should have a duty to challenge where appropriate decisions by the board which may be improper or may jeopardise public funds, the general division of accountability between boards and professional staff, and the safeguards against either encroaching on the other's proper responsibilities. Does the Clerk or Secretary to the Board have a role to play in this, and if so, what should it be?

24. We shall seek to identify good practice in governance, both in theory and in operation. In particular, have boards adopted formal codes of conduct? Have bodies taken steps to set out clearly the roles and responsibilities of the board, its committees and its senior staff? Should there be safeguards to ensure that organisations do not become overly dominated by small groups? Should adherence to appropriate codes be made a condition of receipt of public funds? Are any safeguards needed in respect of delegated powers to committees? What role should be played by committees in general, and by remuneration committees and audit committees in particular?

25. External auditing provides an annual check on financial propriety. The extent to which these bodies are more regularly held accountable for financial and non-financial decisions varies. Each of the bodies is made accountable for the public funding it receives to its parent department or the relevant NDPB by contractual terms or conditions attached to grant. These "sponsors" vary considerably in the extent to which they adopt a close monitoring or directing role. Some organisations have other mechanisms to aid accountability. Several "old" universities, for example, have provision in their Charters for a Visitor to resolve disputes involving staff or students which cannot be satisfactorily settled at governing body level. Should arrangements for external monitoring be more widely adopted? Are there other ways in which these bodies should be made more accountable? If so, to whom? What sort of mechanisms would help problems to be identified and resolved before they become too serious?

26. The statutory and contractual requirements for openness vary. Some bodies, such as TECs/LECs, are required to hold an annual public meeting. Others, including FE colleges, must make board papers and minutes available for public inspection. Does greater openness of proceedings help to act as a check in the public interest? Given the Public Accounts Committee's concern about 'gagging' clauses in relation to severance payments, should

these be outlawed, either in these cases alone or more widely? Should meetings be open, or agendas, papers and decisions be made available? In some cases, the actions of staff have been instrumental in bringing dubious practices to light, but staff can be unwilling to come forward for fear of the effect on their careers. Should all such bodies have formal, confidential and independent mechanisms for dealing with public or staff concerns about impropriety?

27. Boards are also responsible for the appointment of the chief executive and often for other senior staff. They are subject to employment law like any employer, but some trade unions and professional bodies have expressed concern that some senior staff have been treated in a high-handed fashion. We shall wish to consider whether the ability of staff to raise concerns related to standards in public life is impaired in such situations.

### **The safeguards in respect of conflicts of interest**

28. For each type of body there is a framework for identifying and resolving conflicts of interest, although they do not appear to be as extensive as those employed by other branches of the public service, such as local government or non-departmental public bodies. In general, members of these bodies are under an obligation to declare a financial interest as it becomes relevant during the course of business. In some circumstances they may be required to withdraw from the meeting, take no part in the discussion or refrain from voting. For none of the bodies, except Housing Associations and TECs/LECs, does there appear to be a statutory or contractual requirement for a register of interests to be established, and only for TECs/LECs does there appear to be a requirement for it to be made available to the public. Some individual bodies have developed more detailed arrangements of their own, often based on models produced by their representative organisations, but practice varies.

29. We shall wish to identify good practice in establishing workable and unbureaucratic safeguards against conflicts of interest, and to examine how widely these should be applicable. Should there be registers? Should they be open for public inspection? What sanctions should there be in respect of non-compliance?

30. What should be declared? Should non-financial interests be included as well as financial, and the interests of close family members as well as the board member's own? Which non-financial interests are likely to influence decisions? How often should registers be updated? Should all potential conflicts which arise bar the member from remaining in the meeting or voting?

31. There is particular concern about public spending bodies awarding contracts to companies with which their board members are connected? Should there be special safeguards for such situations? Can this be done without creating unreasonable deterrents to business people taking on such posts because their businesses would actually be

disadvantaged? Are there other situations where special conditions apply such as where the body provides a service to an organisation or individual with whom a board member is connected (e.g. a TEC providing help with training to an employer, or a housing association making a property available to an individual)?

32. In many cases people are appointed to the board of a local public spending body because of their involvement with another local public sector body. There can be advantages in this. But should there also be safeguards to ensure that members act in the interest of the public and the organisation on whose board they sit, and not for the advantage of another body on which they also sit? Do similar considerations apply in the case of members elected by or appointed to represent staff or users? Are the existing limitations on certain members such as those representing staff and users appropriate?

### **Conclusion**

33. In looking at all the issues described above we shall wish to consider the extent to which comparisons across sectors are valid. Is good practice in one sector appropriate for another? Which principles are common, and which specific to certain bodies? Should there be greater consistency in the approach taken by central government?

34. We shall also wish to consider the most appropriate means of implementing general principles. Which matters need to be laid down in statute, which in conditions for the receipt of public funding, which in codes of practice, and which in guidance on good practice? Should responsibility for these matters rest with the sponsoring department, the intermediary quango (where one exists) or the individual body?

35. We shall also wish to consider the wider impact of any proposals. It would not, for example, serve the public interest if new safeguards and controls were to have the effect of deterring able local people from giving valuable public service, often with no financial reward.

36. In our first Issues and Questions paper, we posed completely open questions which did not pre-suppose any particular conclusions. For this second study we shall make a working assumption that the seven principles of public life should apply, without modification, to all these bodies. We shall also make a broad working assumption that, while the mechanisms for achieving this may be different, the standards for executive NDPBs laid down in our first report, which have now been accepted by government, should be achieved by bodies in this sector.

37. These are set down in Chapter Four of our first report, and include open recruitment and appointment by merit to boards, complying with the principles of the Public Appointments Commissioner's code of best practice; codes of conduct for board members and staff; a rigorous framework for ensuring propriety and accountability, including

mechanisms for ensuring that codes are observed; an individual officer to have a clear formal responsibility for ensuring propriety; audit arrangements to satisfy best practice principles agreed in the light of the current Cabinet Office/Treasury review; a clear route for addressing staff concerns on propriety matters; and policies on openness which conform to our published standard of best practice.

38. We ask, therefore, that submissions in evidence should take account of this existing framework. It would be particularly helpful to receive information about practices and procedures which achieve or exceed these standards, and about practices which fail to achieve them, together with suggestions on how such practices may be improved. Submissions proposing that standards either more or less stringent than those we have already laid down should be adopted in particular situations should set out clearly the reasons why this is proposed.

## **The Local Public Spending Bodies**

### **Colleges of Further Education**

39. There are 457 colleges in the further education (FE) sector in England: 287 general FE/tertiary colleges; 114 sixth form colleges; and 56 specialist colleges. Until recently most FE colleges were funded and managed by local authorities. On 1 April 1993 most became independent corporations run by a governing body. Public funding in England is now largely channelled through the Further Education Funding Council for England (FEFCE). The FEFCE made grants to colleges totalling £2.8bn in 1994/95, and plans to make grants of some £3bn in 1995/96. These will account for some two-thirds of colleges' income. In 1994/95 the Further Education Funding Council for Wales (FEFCW) allocated £169m in grants to 30 FE sector institutions, 5 Higher Education sector institutions and 11 institutions outside the sector sponsored by those within it. In 1995/96 grants amounting to £168m will be made available to institutions in Wales. The 46 colleges in Scotland are funded directly by the Scottish Office, and received £241m in 1994/95.

40. The affairs of colleges are regulated in various ways. Each governing body is bound by the corporation's instrument and articles of government, which are laid down in regulations. The conditions attached to both FEFCE and FEFCW funding are set out in a financial memorandum, which governing bodies are responsible for complying with. The Principal of the college is also directly accountable to the funding body for the use of central funding, and may be required to accompany the relevant Accounting Officer to hearings of the Public Accounts Committee on matters relating to central funds paid to the college. The governing body is generally responsible for making or renewing appointments to its own number, within a statutory framework set out in the college's instrument of government. Agendas, papers and minutes of meetings must be open to public inspection, but there is no requirement to hold any public meetings. Any financial conflicts of interest must be declared as business arises, and the member must not take part in the discussion or vote. There is no requirement for a register of interests to be produced.

41. Guidance is available in a 'Guide for College Governors' issued in England by FEFCE in May 1994, and in Wales by the Welsh Office in summer 1995. These included a model code of conduct. The Colleges Employers Forum has also produced a model code of conduct for corporation members in England and in Wales, and the Association for Colleges is preparing a model code of ethics.

### **Higher Education Institutions**

42. The higher education (HE) sector in England, consists of 72 universities (including 35 former polytechnic or colleges), 48 Colleges of HE and 28 schools of the University of London. They are autonomous bodies established either by Royal Charter (in the case of the "old" universities) or Act of Parliament. Since 1 April 1993, the Higher Education Funding

Council for England (HEFCE) has made grants to these institutions, with a planned provision of £3.5bn in 1994/95, accounting for over one third of the HE sector's income as a whole. The Higher Education Funding Council for Wales (HEFCW) made grants in 1994/95 totalling £230m to 14 institutions. In Scotland, the Scottish Higher Education Funding Council (SHEFC) made grants totalling £510m to 23 institutions. A further £1.2bn was distributed to the HE sector in 1994/95 as tuition fees paid by local education authorities and through the Research Councils.

43. The framework of regulation is structurally broadly similar to the FE sector. However the tradition of independence in universities compared with FE colleges undoubtedly makes a substantial difference in practice. University councils or governing bodies are bound by their Royal Charters or by an instrument of government as set out in regulations. The Privy Council plays an important role in approving Royal Charters, instruments of government and university status. The conditions attached to HEFC funding are set out in a financial memorandum, which with governing bodies are responsible for complying. The vice-chancellor of the institution is also directly accountable to the relevant Council for the use of Council funding. The governing body is generally responsible for making or renewing appointments to its own number, within the framework set out in its Royal Charter or in the statutory instrument of government. The practice on whether agendas, papers and minutes of meetings are open to public inspection appears to vary: in some older universities they are available only to board members, management or staff. There is no requirement to hold any public meetings. Any financial conflicts of interest must be declared as business arises, and the member must not take part in the discussion or vote. There is no requirement for registers of interests to be produced.

44. Guidance is available in a 'Guide for Members of Governing Bodies of Universities and Colleges in England and Wales' issued by the Committee of University Chairmen in June 1995, with the support of the Funding Councils for England and Wales. The SHEFC is working with the appropriate representative bodies in Scotland to produce comparable guidance, which it expects to publish by autumn this year.

### **Grant-maintained Schools**

45. There are currently 1057 schools in the grant-maintained (GM) sector in England, and 16 in Wales. There is 1 self-governing school in Scotland. Since 1988, schools in England and Wales have been able to opt out of local education authority control. Following approval by the Secretary of State to opt out, schools were funded directly by central government. From 1 April 1994 the Funding Agency for Schools (FAS), an executive body of what is now the Department for Education and Employment (DEE), was established to take over much of the department's responsibility for funding GM schools in England. Expenditure in 1994/95 totalled £1.6bn. Some elements, such as policy for determining the annual maintenance grant, remain with the Department. In Wales, funding remains the responsibility of the Welsh Office which made grants of £30m in 1994/95. The one self-governing school in

Scotland is the responsibility of the Scottish Office where its 1994/95 grant totalled £385,000.

46. GM schools have largely taken on functions previously undertaken by the local education authority to whom they were accountable. Their affairs are regulated in various ways. Each governing body is bound by the school's Instrument and Articles of Government. Earlier GM schools followed model instruments; those for later schools are laid down in Regulations made by the Secretary of State. The conditions attached to funding are set out in a financial memorandum (the "Rainbow Pack"), which with governing bodies are responsible for complying. The governing body as a corporate body, is directly accountable to FAS in England, the Welsh Office in Wales and the Scottish Office in Scotland, for the use of funding. GM schools are also subject to scrutiny by the National Audit Office (NAO) and the Office for Standards in Education (OFSTED). The NAO have statutory access to books and records of GM schools as part of their function of auditing the FAS and are required to produce an annual report to Parliament on value or money at GM schools. OFSTED report every four years, inter alia, on the efficiency and effectiveness with which a school is managed in England (every five years by HM Chief Inspector of Schools in Wales and periodically by HM Inspector of Schools in Scotland).

47. In a GM school which was formerly a local authority school (technically a 'county' school), the governing body is responsible for making or renewing the majority of appointments to its own number, within a statutory framework set out in the school's Instrument of Government. When the school is established as a GM school the number of governors appointed by members of the governing body (the 'first' governors) must be greater than the sum of the other governors (i.e. elected parent and teacher governors, including the head, but excluding sponsor governors where the school has sponsors). There is a statutory requirement that some first governors must be members of the local business community. Where a governing body is considered not to be carrying out its responsibilities satisfactorily or is seen to be failing in its statutory duties, the Secretary of State has the power to appoint additional governors or replace any or all, of a school's first governors in order to assist the governing body overcome its problems. Training and support for governors is provided by a variety of professional bodies.

48. The position of the 300 GM schools which were formerly "voluntary" schools (mostly church schools) is substantially different from that of the other bodies which are covered in this study although the issues which arise are broadly similar. Instead of 'first' governors there are 'foundation' governors, who are appointed by the organisations which appointed governors before the school became a GM school. There is a requirement that the number of nominated foundation governors must outnumber all other categories of governors. The governing bodies themselves, therefore, are not necessarily self-perpetuating, but all the issues of accountability propriety and standards may well arise in equal measure, because of the involvement of unaccountable sponsors.

49. The governing body can pay members' expenses under a scheme approved by the Secretary of State. A governing body has the power to accept gifts and hold and use them for the purposes of the school, to buy and sell land and property (usually with the Secretary of State's permission) and to invest funds.

50. The governing body is also responsible for selecting, appointing, disciplining and dismissing staff. The governing body is encouraged to delegate many of its functions and decision-making powers to committees consisting, in some cases, of a minimum of three governors. Governors can, and often do, delegate staff appointments to the Head, but not their discipline or dismissal. The governing body is responsible for any decisions taken by individual committees. Agendas, papers and minutes of meetings must be open to public inspection, except items deemed to be of a confidential nature. There is no requirement to hold meetings in public, but an annual meeting must be held to which all parents are invited, and governors must produce an annual report for discussion at this meeting. Any financial conflicts of interest must be declared as business arises, and the member must not take part in the discussion or vote. There is no mandatory requirement for a register of interests to be drawn up.

51. Guidance on the legal responsibilities of governors in GM schools is contained in 'School Governors — A Guide to the Law' issued by the Department for Education in November 1994. Discussions are in progress on the possibility of drawing up guidance on the conduct of governors and on their relations with head teachers.

### **Training & Enterprise Councils (TECs) (in England and Wales) and Local Enterprise Companies (LECs) (In Scotland)**

52. There are 81 TECs and 22 LECs, which together form a network covering the whole of Great Britain. They were established in 1990—92 by groups of business people and others in response to a prospectus issued by Government. Together they are responsible for around £2bn of public expenditure (£1.4bn in England and Wales, £550m in Scotland). They are private limited companies (usually limited by guarantee), whose operation is governed by the Company's Memorandum and Articles of Association (which are agreed by the Secretary of State for Education and Employment); and their agreements with government or enterprise bodies. More than 9000 of their funding comes from the taxpayer.

53. The role of TECs and LECs is to involve the local business community in training programmes and to encourage business training and local enterprise. Many of these programmes, or their forerunners, were previously run directly by Government departments. As new employment, training and enterprise programmes have been introduced, they have also been delivered through contracts with TECs and LECs.

54. TECs in England operate under contracts, negotiated and renewed annually jointly with the Secretaries of State for Education and Employment, Environment, and Trade and

Industry The Government Regional Offices perform a monitoring function on behalf of the Secretaries of State. TECs in England are progressively being awarded three-year operating licences. In April 1995 22 TECs had received such licences, and all 74 TECs in England are expected to have them by 1997. In Wales, contracts with TECs are negotiated on an annual basis by the Welsh Office (on behalf of the Secretary of State for Wales). Welsh TECs operate in partnership at a local level with the economic development functions of the Welsh Development Agency the Development Board for Rural Wales and local authorities.

55. The LECs in Scotland work as the operational arm of two Non-Departmental Public Bodies, Highlands and Islands Enterprise and Scottish Enterprise ("the enterprise bodies"). Their role is somewhat wider than that of TECs. Their primary function is the delivery of local economic development programmes, including environmental improvement, as well as skills and management training. The Highlands and Islands LECs also have a role in social development.

56. Generally TECs and LECs are not suppliers of services; they act as catalysts within their area for economic development (primarily via the financial support which they are able to give towards the start-up, training and business counselling costs of small and medium sized enterprises) and as purchasers of training from a wide variety of outside suppliers both in the public and private sectors. Over 900o of finance is provided by Government through contracts for the delivery of specific training and economic development objectives. Both TECs and LECs may also raise additional finance through "membership" schemes and from the provision of their own locally determined services.

57. As private sector companies, they are responsible for making their own board appointments and for the appointment of staff. However the Government (and in Scotland the enterprise bodies) may specify eligibility criteria for these appointments through the operating agreements; for example there is a requirement that two thirds of board members should be top level executives of local employers; the Chairman should be from a company or partnership of at least three years standing, with either an annual turnover exceeding £5m or 25 or more full-time employees. With the exception of the Chief Executive board appointments are non-executive and unremunerated.

58. Both TECs and LECs are subject to the audit requirements of the Companies Acts. Public funding to TECs is also subject to scrutiny by the Government's regional offices in England and the Welsh Office in Wales (or for LECs by the enterprise bodies, Scottish Enterprise and Highlands and Islands Enterprise). The National Audit Office (NAO) and the European Court of Auditors also have access to organisations that contract with TECs to provide training (training providers) as well as the TECs themselves. NAO, unlike the European Court of Auditors, has no formal access to LEC records, although it has limited informal access which is being improved.

59. The TEC National Council is producing guidance to TECs on a framework for local

accountability By 1997 TECs in England will be required to operate under a licensing agreement with the Secretaries of State. This agreement will set out clearly the criteria for board eligibility; rules on conduct of business; how conflicts of interest will be avoided and, where they occur, be declared; the need to take account of the Cadbury Code of corporate governance and the TEC framework for local accountability; rules on openness; and audit arrangements.

60. The Comptroller and Auditor General told the Public Accounts Committee on 15 May that TECs were not government departments, nor executive agencies, nor companies of the normal kind working on contracts to the government, and that in his view this particular organisational form was one which had risks built into it.

### **Housing Associations**

61. Housing Associations (HAs) are bodies set up to provide social housing. This study is concerned with those housing associations which are registered either with the Housing Corporation, Scottish Homes, or Housing for Wales (Tai Cymru).

62. There are 2276 registered HAs in England. Of these, 1337 are Industrial and Provident Societies, 675 are charitable trusts and 264 are charitable companies limited by guarantee. In Scotland there are 273 registered HAs of which just over 100 operate under charitable rules. In Wales there are 98 registered HAs. 14 are registered charities and 62 are charitable companies.

63. Many HAs have received public sector capital grants in the past, and therefore manage publicly funded assets. Only some 300 mainly larger Associations ('developing HAs') are receiving development funds in England at present. In 1995/96 HAs in England will receive £1.2bn in capital grants and £17bn in revenue funding from the Department of the Environment through the Housing Corporation. Some 180 developing HAs in Scotland will receive £274.6m in capital funding from the Scottish Office through Scottish Homes. In Wales, 33 developing HAs will receive £94m in 1995/96. Over 9000 of capital grants are paid to the 300 leading HAs. In 1993/94 the 30 leading developing HAs received almost £1bn, and 8 HAs received over £40m each.

64. It should also be noted that many tenants of HAs are in receipt of housing benefit, and a large proportion of these tenants have their full rent paid from public funds. In 1993/94 41% of HA tenants in England derived their incomes wholly from state benefits. 61% of new lettings were made to tenants who were wholly on state benefits, and 16% to tenants who were partly on state benefits. With an average payment of £40 a week, HAs in England get an annual rental income from the state of some £946m.

65. HAs in England are regulated by the Housing Corporation, in Scotland by Scottish Homes, and in Wales by Housing for Wales. These are NDPBs appointed by the relevant

Secretaries of State. The current powers of these bodies derive mainly from the Housing Associations Act 1985, and from subsequent Housing Acts.\*

66. These bodies are the main providers of public funds to HAs, but this study is concerned with their regulatory functions. These can be described as:

- monitoring and regulating the activity of HAs to protect past and future public investment;
- promoting and assisting the performance of HAs;
- safeguarding the interests of their tenants.

67. Government policy has been that HAs (rather than local authorities) should be the main providers of new social housing, although it is now being proposed that other private sector organisations should be encouraged to seek public funding for this purpose. An increasing amount of council housing is being transferred to the ownership of HAs. It is said that HAs are paid to deliver a product: social housing for priority groups at an affordable rent, kept in good repair, with a good level of service to tenants.

68. The Housing Corporation operates a Tenants' Ombudsman Service which has been set up within, but is independent of, the Housing Corporation. There is a proposal to put it on a statutory footing. All registered HAs must belong to the scheme, which deals with 1000 complaints a year. A similar arrangement operated by Scottish Homes deals with 100 complaints a year. In Wales, complaints are dealt with directly by Housing for Wales.

69. HAs are independent voluntary bodies. They vary widely in size and structure, both in respect of boards and of organisation of functions. Not all employ full-time paid staff. The National Federation of Housing Associations (NFHA) published in March 1995 the report of an inquiry into Housing Association governance, which made recommendations among other matters on the recruitment and membership of boards, the role and effectiveness of boards, and their accountability responsibility and stewardship. In December 1994, Scottish Homes published a policy framework document on its future relationship with Housing Associations and Co-operatives which dealt with similar matters to the NFHA governance report. Scottish Homes is now developing an action plan on how it intends to take its proposals forward.

70. Such recommendations are not mandatory Nor is the existing Code of Conduct and Management Practice which is published by the NFHA. In practice, however, the regulatory bodies, which maintain performance audit staff who visit HAs, appear to require the maintenance of standards broadly equivalent to the Code. The Code recommends that

---

\* The Registrar of Friendly Societies, and the Charity Commission, also have regulators' responsibilities, and HAs which are industrial and provident societies, or charities, must also adhere to their rules.

Associations maintain a register of interests, and this information forms part of the annual returns from HAs to the regulators. The Code also recommends that HAs adopt standards equivalent to the local government code on withdrawal from business when conflicts arise.

71. A particular feature of the HA regime is the very strict statutory framework on payments and benefits, set down in the Housing Associations Act 1985. This prohibits, among other things, payments and gifts to committee members; granting of tenancies to relatives of committee members or staff or payment of severance payments beyond contractual liabilities except in circumstances approved by the regulators; or entering into contracts with relatives of committee members or staff. The regulatory bodies can issue determinations relaxing the rules in specific situations. The NFHA review describes this as the strictest control regime in operation, and calls for it to be partially replaced by a declaration-based regime similar to that operated for local authorities.

72. HAs have statutory responsibilities towards tenants, both under general Landlord and Tenant legislation, and through the Tenants' Charter, which is imposed by government. HAs' relationships with local authorities, who are increasingly expected to meet their statutory housing functions by using HAs and other providers, are likely to be covered by contractual agreements, and a model form of agreement exists which has been drawn up by the NFHA, the ADC (Association of District Councils) and the AMA (Association of Metropolitan Authorities).

## **General**

73. The public sector is becoming increasingly diverse and the divide from the private sector less clear. While all the bodies under consideration fall within our terms of reference, we are aware that not all of them fall naturally into the usual definition of public life". We consider that it is particularly important to establish the extent to which traditional public sector values should inform their conduct and decision-making. It could be argued that bodies such as careers service contractors, Business Links services, City Technology Colleges, or local authority schools under the local management of schools (LMS) system fall within the scope of this study. The Committee has decided to concentrate on the five large spenders described in earlier sections, but those involved in delivering other local publicly-funded services such as those mentioned here may wish even at this stage to consider the relevance of this study to their own field of work.

## **Timetable and address for submissions**

74. Submissions and further evidence in response to this paper should be sent to:

**The Secretary  
Committee on Standards in Public Life  
Horse Guards Road  
London SW1P 3AL.**

We should be grateful for responses by 31 October 1995.

Produced by HMSO DoI 8389390 CCN 74888 7/95

## **About the Committee**

1. The Committee on Standards of Conduct in Public Life (the Nolan Committee) was set up by the Prime Minister on Tuesday 25 October 1994. The Committee has been established as a Standing Committee, which will remain in being to advise the Government of the day. Members were invited to serve to for three years in the first instance.

2. The Committee's terms of reference are:

"To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life."

3. For these purposes public life" is taken to include Ministers, civil servants and advisers, Members of Parliament, Members of the European Parliament elected in the UK, members and senior officers of all non-departmental public bodies and of National Health Service bodies, non-Ministerial office holders, members and other senior officers of other bodies discharging publicly funded functions and elected members and senior officers of local authorities.

4. The Committee is not charged with examining individual evidence of misconduct.

5. Lord Nolan, a Lord of Appeal in Ordinary chairs the Committee. The other members are Sir Clifford Boulton GCB, Sir Martin Jacomb, Professor Anthony King, the Rt Hon Tom King CH MP, Rt Hon Peter Shore MP, the Rt Hon Lord Thomson of Monifieth KT DL, Sir William Utting CB, Dame Anne Warburton DCVO CMG, and Diana Warwick.

**Local Public Spending Bodies**

**ISBN 0 7115 0292 7**

**HMSO**