

Issues and Questions

Aspects of Conduct in Local Government in England, Scotland & Wales

The Nolan Committee

The Committee on Standards in Public Life

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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.

Elements of Best Practice

Best practice, subject always to Proportionality for smaller organisations, includes:

Appointments

- a publicly available written appointments process;
- job descriptions and person specification;
- the use of advertisement and/or consultation with interested bodies and other forms of canvassing;
- the encouragement of nominations (including self nominations);
- the sifting of candidates by a nominations committee;
- defined terms of appointment after which reappointment should not be automatic.

Openness

- making the agendas and minutes of governing body meetings widely available, together with board papers where this will not inhibit frankness and clarity;
- publicising forthcoming meetings and summarising decisions in a newsletter or through some other user-friendly method;
- holding an open annual meeting at which board members can be questioned by the public and press;
- setting up more specialised consultation bodies for important interest groups; publishing an annual report which includes information on the role and remit of the body, its plans or strategy; the membership of the board; and where further information can be obtained;
- publishing audit reports;
- making publications available as widely as possible, for example by sending them to interested parties and putting them in local public libraries.

Codes of conduct

- a statement of the aims and values of the body;
- statements of the obligations of the body towards its customers, staff, community, and other interested parties;
- information about the body's approach to openness and arrangements for acquiring information about its activities;
- procedures for handling Inquiries and complaints;
- procedures for raising complaints with an independent body.

Whistleblowing

- a clear statement that malpractice is taken seriously in the organisation and an indication of the sorts of matters regarded as malpractice;
- respect for the confidentiality of staff raising concerns if they wish, and the opportunity to raise concerns outside the line management structure;
- penalties for making false and malicious allegations;
- an indication of the proper way in which concerns may be raised outside the organisation if necessary.

Foreword by the Rt Hon the Lord Nolan

This Committee is a standing committee 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 third study, we are looking at aspects of conduct in local government. As with all our public services, local government has undergone considerable changes in recent years. We need to be sure that the arrangements for preserving the values and standards of public life which we expect of local government have kept pace with these changes.

To do this successfully we need the views of those who provide local government 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, as SOOO as possible, and certainly no later than 11 October, to us at Horse Guards Road, London SW1P 3AL.

We should welcome the views of individuals as well as organisations. The details of individuals personal experiences often raise important general questions.

NOLAN

Introduction

1. The Committee on Standards in Public Life was established 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.
2. 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.
3. In May 1996 we produced our second report (Cm 3270), dealing with further and higher education bodies (including universities), grant-maintained schools, training and enterprise councils (local enterprise companies in Scotland). and housing associations.
4. On 5 June 1996 we announced that our third study would be a review of aspects of conduct in local government. This paper sets out briefly the main issues and questions which we have initially identified as significant, and invites comments.
5. We plan to consider our priorities within this study again in the light of the response to this consultation. We may not cover all the issues set out below in equal depth, and we may decide to include other issues not mentioned below but raised in consultation.
6. We welcome written comments from local authorities themselves, from those involved in local government as councillors or staff, from individuals and organisations who have particular dealings with local authorities, and from the general public.
7. At a later stage we shall take oral evidence from invited witnesses. At our hearings we shall concentrate on those issues which have emerged as important from the written consultation.

Invitation to submit evidence

8. We should welcome early written comments. Initial comments received by 2 August 1996 will be particularly helpful. But we shall consider in full all written submissions received up to 11 October 1996. We urge those who wish to respond to do so promptly.
9. Written submissions should be sent to:

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

10. This study is looking at aspects of conduct in local government in England, Scotland and Wales. There are differences in structure and legislative framework between the countries. This paper does not attempt to set these out. The existence of differences, and the reasons for them, is likely to be one aspect of the study. We are not seeking to address at this stage the different institutional arrangements in Northern Ireland, although we do not rule

out dining this in due course.

11. In principle, parish, town and community councils fall within the scope of this Study, but we shall consider in the light of the consultation the extent to which any issues relating to councils in that tier of local government need to be considered separately.

12. 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 senders own responsibility. As with our other studies, in due course submissions will be placed in the Public Records Office unless the Committee has agreed with a writer that a particular submission should be treated in confidence.

15. This study is not considering the role or functions of local government, or its structure. We are not reviewing local authority boundaries, or examining the merits of policies such as contracting out, compulsory competitive tendering, or the transfer of functions to other bodies.

The Nolan framework

16. Our first two reports have set out a common ethical framework which is in line with current thinking and good practice and is appropriate for the present day arrangements in which public services are provided by bodies of diverse size, structure and status.

15. In our first report we drew up the seven principles of public life. These represent the core values applicable to public life and public service of all kinds. We recommended that every body providing public services should draw up codes of conduct for both managers and staff which incorporate these Principles, and should reinforce these through training, including induction training. We emphasised that internal systems for maintaining standards need to be supported by external scrutiny.

16. We also set out a number of detailed recommendations on best practice in appointments, openness, codes of conduct and whistleblowing. The seven principles, and the key elements of best practice, are set out at the front of this paper.

17. In our second report, we reaffirmed the seven principles and considered further the practical problems of securing high standards through accountability in a diverse mix of local bodies. We noted the need for public bodies which fund other service providers to retain some responsibility for standards, and the need to have proper arrangements to ensure local accountability of centrally funded bodies.

How Local Government fits in

18. In this, our third study, we wish to look at the way in which local government fits into this overall framework, and at the adaptations to the framework which might be needed to make it relevant to local government.

19. Local government is a major component of public life in Britain. Its activities at all levels affect the entire population. Local government spends £70 billion a year. This is 10% of GNP, and a quarter of all government expenditure. It is a major employer of over 2.5 million people. Its role has been changing in recent years, with a move away from direct service provision, greater use of private contractors, and an increase in what is often called the

enabling' role. Local authorities now undertake many functions in partnership with other organisations, public and private. It is timely to examine whether the safeguards, many of which were devised before the role of local government began to change, are still appropriate.

20. Local authorities have a number of features which need to be taken into account in any study. They are run by councillors who are elected and answerable at the ballot-box. They have wide-ranging functions within the local community. They have powers of taxation. They are creatures of statute, and must operate within statutory powers and controls. Some of the rules affecting individual councillors and officers are enforced by financial and criminal sanctions.

21. In our study we need to start from where local government stands at present on these matters. Some arrangements may be long established and difficult to change even though they would not be the starting point today. But we should not want to be so constrained by the existing arrangements that we do not consider the possibility of radical change.

Specific Issues

Codes of Conduct/Declaration of Interests

22. Local Councillors are subject to the National Code of Local Government Conduct. This was first proposed and drafted in the 1970s by the Redcliffe-Maude Committee on Local Government Rules of Conduct, and revised in 1990 following the Widdicombe Committee of Inquiry into Local Authority Business.

23. The current version was drawn up by a joint government and local authority working group. It was formally issued by three Secretaries of State, has statutory status, and was approved by resolution of each House of Parliament. Every councillor has to sign it.

24. The Code covers such matters as when to declare pecuniary and non-pecuniary interests, how to decide whether interests are significant enough to affect participation on council business, when to seek advice from officers, and related issues.

25. The government describes the Code as providing, by way of guidance to councillors recommended standards of conduct in carrying out their duties and in their relationships with the council and its officers. The local ombudsmen (see para 44) may regard a breach of the Code as incompatible with good administration, and make a finding of maladministration. The Commission for Local Administration in England issues advice on complying with the Code.

26. The recent report of the Task Force on the Conduct of Local Government in Scotland, which was a joint exercise by the Scottish Office and COSLA (The Convention of Scottish Local Authorities) concluded that the Code was in need of review. This view is also widely held in England and Wales.

27. We shall wish to consider what changes might be needed to the Code in the light of current thinking, particularly in relation to non-pecuniary interests, interests of relatives and partners other than spouses, gifts and registers, connections with people and organisations in a commercial relationship with the council, councillors representing their authority on

other bodies, relations with staff, dealings with the media and disclosure of information.

28. We shall also wish to consider whether the present arrangements for production and issue of the Code are those most likely to secure awareness of the Code and compliance with it. We have previously taken the view that codes are most effective if they are drawn up by individual organisations specifically for their own use, and form part of the corporate culture. Does the need for a single National Code override this?

29. Is a National Code approved by Parliament sufficiently flexible? Is it too difficult to change? Should there be separate English, Scottish and Welsh Codes? Is the relationship between the Code, the statutory provisions on pecuniary interests, regulations on the register of members' interests, and the government circular on pecuniary interests, satisfactory? Would it be better to have a single structure of guidance, with an over-arching general code and more detailed subsidiary rules?

30. Is it satisfactory to combine a National Code, policed externally by the ombudsman, with internal council codes which may go further but will be internally policed? What is the relationship between codes and local authority standing orders, some of which are legally prescribed? What are the responsibilities of the council, as a corporate body for enforcing the National Code internally? What, if any, are its responsibilities for enforcing regulations on pecuniary interests?

31. More specifically on registration and declaration of interests, are the existing regimes consistent with best current practice? Is it appropriate for non-declaration of pecuniary interests to be a criminal offence, given that this does not appear to be the case in any other public body? Is there any justification for treating pecuniary and non-pecuniary interests differently? Is the statutory nature of some of the rules an advantage or a disadvantage in enforcement terms? Would internal enforcement mechanisms without criminal penalties actually be more effective? Would it be better if all enforcement of codes and regulations was done internally in the first place subject only to external scrutiny?

32. Are the arrangements for granting dispensations which allow councillors with a pecuniary interest to take part in business satisfactory? Is there a good reason for having a different procedure for pecuniary and non-pecuniary interests? Responsibility for granting dispensations in respect of pecuniary interests lies with the Secretary of State (except for parish councils). Is the Secretary of State well placed to do this, given that (except in Scotland in respect of surcharge) he has no other casework role in the area of local government conduct?

Role of councillors

33. Councillors answer to the electorate. But they must act within their statutory powers, and risk penalties if the council's actions are ultra vires. Do the current arrangements create a satisfactory framework of accountability for councillors collectively and individually? Are the arrangements for promoting and ensuring proper standards of conduct among councillors as a whole satisfactory? Do they distinguish between collective and individual standards of conduct?

34. Do the arrangements adequately identify where responsibility for particular actions and

activities lies? Is enough done to identify and publicise those levels below that of the full council where delegated responsibility lies, and to ensure that public accountability exists? Does the collective responsibility of the council in any way confuse accountability where responsibility really lies with committees or officers?

35. The legal framework appears to place a great deal of personal responsibility on individual councillors. and to provide stringent penalties. The internal management of council business is heavily shaped by decisions of the courts and the ombudsman. Is the balance right between preventing corruption and misbehaviour on the one hand, and allowing the proper exercise of discretion and judgement on the other? Are the potential liabilities incurred by elected representatives appropriate in relation to those incurred by appointees or paid staff? Are there other ways in which the internal management of local authorities can be regulated. which would) be more consistent with other public bodies?

Role of Officers

36. In respect of officers, we shall want to consider many issues similar to those we have set out above for councillors. We shall wish to take account of the non-statutory nature of the codes which apply to officers.

37 The code of conduct for officers in England and Wales is issued by the Local Government Management Board, together with the local authority associations. Local authorities are not compelled to adopt it. The code sets out the minimum standards which should apply in addition to questions of conflict of interest it covers such matters as political neutrality, relationships between officers and councillors, separation of roles during tendering, acceptance of hospitality and sponsorship of events. We shall want to consider whether the code covers all relevant issues, and its relationship with practices in individual authorities.

38. We shall want to look at the statutory responsibilities of certain officers. In central government bodies, it is held that accountability is diminished if responsibility is taken away from the chief executive, who is the accounting officer. in contrast, statutory responsibilities in local government are split between the chief executive (technically the head of paid service), the chief finance officer, and the monitoring officer, although the chief executive can also be the monitoring officer.

39. Has the introduction of the monitoring officer been an improvement, or an unnecessary change? Should the monitoring officer's duties lie with the chief executive? Should the chief executive be formally associated with the chief finance officer's duties? What are the best arrangements for giving clear and unequivocal lines of responsibility and accountability? Does the existing system work in practice, or are there problems with it?

40. Are the statutory duties of the monitoring officer capable of being complied with by a single officer. or by one who is not the chief executive? Are they capable of being complied with at all. Would the duties be more appropriately restructured and imposed on the paid staff as a whole, under the direction of the chief executive, so as to clarify the position of officers in respect of potentially improper instructions? Is the existing statutory framework the best way of achieving compliance, Or would it be better to have a system which concentrated more on creating internal compliance mechanisms?

41. Is there any more general need for clarification of the relationship between officers and

councillors? in particular, are the lines of responsibility between particular council committees, and the officers who serve them, and the corporate management of the authority, sufficiently clear? Does the chief executive have the appropriate responsibilities and powers in this area?

Role of auditors and ombudsmen

42. The district auditor has a policing function in respect of local authority activities which goes significantly wider than accountancy matters.

43. The auditor has a role in relation to surcharge of councillors and officers, and disqualification of the former. In addition, in recent years the auditor has been given additional powers to issue prohibition notices, preventing councils from undertaking activities which he considers to be unlawful, and to seek judicial review of decisions with financial implications which he considers may be unlawful.

44. The local government ombudsmen have developed a role which goes wider than consideration of the outcomes of individual cases, and addresses the general procedures of local authorities. In England, a fundamental review of the role of the local government ombudsman (the Commission for Local Administration) is in progress, and the second stage report is likely to be published in the summer.

45. In our previous reports we have emphasised the need for external scrutiny of public bodies at all levels. We shall wish to consider whether the relationship between the internal responsibilities of councils, and these existing independent external bodies, is structured in the most effective way. It may be useful to consider the role of the local government ombudsmen in respect of guidance on and interpretation of the code of conduct, and the interaction of the ombudsmen's role with those of the courts, of the auditors, and of the officers of the council who are given specific statutory responsibilities.

Surcharge and penalties

46. We shall want to consider whether there should be a clearer distinction between corrupt behaviour, which would attract the attention of the criminal law, and improper behaviour, which might be addressed by other routes, such as disciplinary proceedings involving disqualification or suspension.

47. In particular, we shall wish to review the system of surcharge, which applies in no other area of public life. Could the procedures be improved? Is it right for auditors to impose penalties? Should the imposition of penalties be a matter for the courts? Should any system of surcharge or penalty operate in a different way for councillors than for officers? Would officers be more appropriately dealt with through disciplinary procedures under the supervision of an external tribunal? In Scotland, is it right for the Secretary of State to have a role?

Relationships with contractors

48. The nature of councils' relationships with contractors has changed with the reduction in direct in-house provision of services. Increasingly, services closer to the heart of council

work may be undertaken by contractors or consultants. It is now much more likely that there will be continuing operational relationships with consultants and contractors which go well beyond the relationship which exists at the time of the tendering process. Because close working relationships are desirable, and need to be encouraged in the interests of good service, it is necessary to look closely at the adequacy of the safeguards to ensure first that these relationships do not cross the boundaries of propriety, and second that the process of tendering remains impartial.

49. We shall wish to look at existing statutory and non-statutory roles, and procedures which have been developed, both for councillors and officers, with a view to ensuring that best practice is followed.

50. We shall wish to look at the procedures relating to the movement of staff from authorities to outside employment in general, and in particular to contractors, either individually to existing contractors or en bloc to external organisations who win contracts. We shall also want to look at what happens when services are contracted out or privatised, so that retained in-house staff are supervising contracts with former colleagues. We recognise that such situations will inevitably exist, and that any safeguards must not disadvantage in-house staff whose posts are contracted out.

Town and Country Planning

51. Up to now at national level the general codes of conduct, together with the statutory procedures and rights of appeal, have been considered to be sufficient safeguard in respect of propriety in Town and Country Planning issues, although a number of authorities have their own specific planning guidance. However we understand that the local authority associations, and the National Planning Forum, are considering a guidance note intended to help local authorities prepare their own local codes of conduct for councillors and officers dealing with planning matters.

52. We are well aware that large financial interests can turn on planning questions, and that strong passions can be aroused. We therefore wish to look specifically at the existing safeguards as they apply to planning, and at existing guidance on good practice. to consider whether they are adequate in all respects.

53. We shall want to look at the safeguards designed to prevent individuals. Whether officers or councillors, from being improperly influenced in respect of planning decisions, both on development plans and on individual applications. We shall also want to consider the safeguards against officers or councillors improperly influencing other councillors. This involves many of the general rules on registration and declaration of interests, and on withdrawal from meetings. together with specific rules on procedure, informal discussions and social events.

54. We shall wish to look at the procedure by which local authorities consider and grant planning permission for projects which they themselves are carrying out, in which they have a financial interest, or where they are in partnership with the planning applicant.

55. We shall also want to consider the safeguards against local authorities buying or selling planning permission in return for what is known colloquially as planning gain, and to the

Department of the Environment as 'planning obligations'. This is when a council which grants planning permission secures agreement from the developer that it will fund other works of community benefit.

About the Committee

Terms of reference

The Prime Minister announced the setting up of the Committee on Standards of Conduct in Public Life in the House of Commons on Tuesday 25 October 1994 with the following terms of reference:

"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."

The Prime Minister made it clear that the remit of the Committee does not extend to investigating individual allegations of misconduct. The Committee on Standards in Public Life has been constituted as a standing committee, with its members appointed for three years.

Committee Membership

The Rt Hon The Lord Nolan, Lord of Appeal in Ordinary (Chairman)
Sir Clifford Boulton GCB
Sir Martin Jacomb
Professor Anthony King
The Rt Hon Tom King CH MP
The Rt Hon Peter Shore MP
The Rt Hon Lord Thomson of Monifieth KT DL
Sir William Utting CB
Dame Anne Warburton DCVO CMG
Diana Warwick

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- Volume 1: Report (Cm 2850—I) £11.80

- Volume 2: Transcripts of Oral Evidence (Cm 2850—II) £38.00

Second Report: Local Public Spending Bodies

- Volume 1: Report (Cm 3270—I) £14
- Volume 2: Transcripts of Oral Evidence (Cm 3270—II) £34

Internet <http://www.open.gov.uk/nolan/csplhome.htm>