

UPHOLDING STANDARDS IN PUBLIC LIFE CIPFA BETTER GOVERNANCE FORUM 14 OCTOBER 2010

I am delighted to be here, talking to this audience.

My justification for talking about upholding standards in public life is that for the last couple of years I have been chair of the Committee on Standards in Public Life, whose remit that is.

I am the fifth chair. The first was a distinguished judge, the late Lord Nolan. It was he who established the seven principles of public – **selflessness, integrity, objectivity, accountability, openness, honesty and leadership**. Lord Nolan believed that these principles should characterise the behaviour of every holder of public office.

The principles apply not only to individuals. They should also characterise the behaviour of public organisations.

To that end they have been widely adopted in the codes of practice of most public bodies. They underlie, for example, CIPFA's own Good Governance Standard, developed and promulgated through this forum. Most public office-holders and public servants know that they ought to abide by them – even if they cannot recite them by heart.

They are – or ought to be – the bedrock of our country's public service ethos – or indeed of that of any well-functioning democracy. We notice when they are not there. Countries whose public services are not characterised by integrity, honesty and so on tend to be very unpleasant places in which to live.

The principles may be eternal. But even over a period as short as 16 years public expectations about standards of behaviour have changed. The Committee's interpretation of what the principles imply has changed accordingly.

Lord Nolan's Committee, for example, thought of honesty largely in terms of the avoidance of conflicts of interest. These days honesty in everyday parlance has a much wider meaning – we expect office holders to be truthful and not to mislead us. An expectation that is not infrequently put under some strain.

I am sure that I do not need to tell this audience that strong ethical values are not simply about morality. Organisations that want to achieve sustainable, enduring success need to focus on how they do things as well as what they do. There is a consistent relationship in the public sector between organisations that practice the virtues of openness, accountability and so on and successful performance.

A healthy ethical culture is also more likely to produce individual and organisational behaviours that increase public trust in the organisation. A trusted organisation is more likely to be listened to and engaged with. This can be particularly important when, as now unpopular decisions are being taken as the public sector responds to current economic challenges.

It follows that it is even more essential to maintain investment in ethics and governance in a time of austerity when the temptation might be to cut back, and when there is so much change in people and organisations.

Role of the Committee

The role of the Committee is often misunderstood. We are not a regulator. We do not have responsibility for investigating individual instances of poor behaviour. We do not pass judgement on transgressors. Nor do we impose sanctions.

Our role instead is to provide public policy advice, to the Prime Minister and others. Our interest is in the framework for maintaining and enforcing high standards rather than in acting as a policeman.

We have no existence in statute. We have no power to demand evidence. We have no power to enforce our recommendations.

That does not mean we are powerless. It does mean that our impact depends on what we say being sufficiently well argued and authoritative.

The process by which we reach our recommendations is therefore crucial. If we are to retain moral authority it is important that we conduct our inquiries in a way which is above reproach – manifestly independent, based on evidence and not prejudice, open and transparent and giving everyone who wants the chance to contribute.

Over the years the Committee has had a remarkably good record in getting its recommendations accepted - though sometimes we have had to continue to argue our case for some time after our reports have been published.

We are able to do this because we are a standing committee, not one set up ad hoc for a particular purpose and then disbanded.

Our continuing existence also means that we can occasionally return to areas of public life we have considered in the past and look at them again in the light of developments.

We have recently launched an inquiry into the funding of political parties, the second time we have looked at this subject. The inquiry takes place in the context of a widespread suspicion that very large donations from wealthy individuals or organisations, including trade unions, can result in either the award of honours – particularly membership of the House of Lords - or inappropriate influence on decisions, or both. I hope some of you will give evidence. It is an important topic which raises a number of important and difficult issues.

MPs' expenses

Last year, of course, we conducted an inquiry into MPs' expenses. The facts are well known.

Many MPs regard themselves as being underpaid, though few would say so publicly. Partly for that reason many came to regard expenses as being entitlements, not something which needed to be justified in each case. We were told that they were encouraged in this belief by different party leaders, implicitly or explicitly. Crucially, the salaries of MPs were a matter of public record. The expenses claimed by any individual MP were not.

Not surprisingly therefore what some MPs did was simply to bundle up receipts for household expenses which often added up to just below the maximum claim. Some made no real attempt to consider whether the claims related to money they had spent in the pursuit of their duties in Parliament. So money was paid in relation to some surprising things – including the infamous duck house.

It was also possible to game the system, for example in relation to where you claimed your main home to be, or to exploit it in other ways.

I do not believe for one moment that it would be right to regard the vast majority of MPs at the time as intrinsically venal. Indeed I used to believe, and still do believe, that we enjoy one of the least corrupt political classes in the world.

But the system was corrupt and some MPs allowed themselves to be corrupted by it. Many of those who were themselves entirely innocent went along with what their colleagues were doing, for whatever reason. It is fair to acknowledge that there were several limited attempts to reform the system from within. But they all foundered, or largely foundered, in the face of some determined opposition.

The consequences for many individual MPs, and for trust in Parliament as a whole, were serious. A few were effectively hounded out of public life. Almost all faced public abuse, including many who

were almost certainly innocent of any wrongdoing apart from not challenging what some of their colleagues were doing.

The episode created a fine spectator sport for a while. But the overall effect was deeply damaging for trust in public institutions, and to the consent of the governed which is a necessary part of democracy. We will all suffer as a result.

Lessons to be learnt

Some of the features of this episode were unique to MPs. But it would be a mistake to think that what went wrong could not be repeated elsewhere. There are a number of important lessons to be learnt by anyone interested in the maintenance of high standards in public life.

First, the importance of leadership.

Leadership come last in the list of our seven principles. But it is one of the most crucial. Unless holders of public office promote appropriate values by leadership and example they will not be embedded in the culture and behaviour of their organisations. You can have as many codes of practice as you like. Public sector organisations in the UK have lots of them. But they will not achieve anything unless they are supported by strong leadership.

The tragedy of MPs' expenses is an example of what can go wrong when people who ought to have been showing leadership in a standards area failed to do so. Senior MPs must have known that the expenses culture in the House of Commons was pernicious. But very little was done about in the absence of openness and freedom of information.

Some of you may have seen the brief paper we issued earlier this year on various local government issues to close off an inquiry which had to be discontinued to make room for the work on expenses. In that we drew attention, not for the first time, to the importance of leadership in maintaining high standards in local authorities, particularly since processes for scrutiny are still developing.

The second lesson is the role of transparency in the maintenance of standards. A major contributing factor to the abuse that existed was that the House of Commons expenses system was the opposite of transparent.

Some in the House of Commons fought very hard to keep it that way, not least by outrageously attempting to claim that they should not themselves be subject to the Freedom of information Act which they had passed for everyone else.

I firmly believe that the arrival of complete transparency of expenses claims has been as important to the reform of the system as any of the detailed changes my committee recommended and which have now been implemented. Many of the expenses claims that were made would simply not have happened had those concerned known that they would be publicly available and likely to be publicly scrutinised.

Of course, transparency is two-edged. Greater openness has undoubtedly raised standards of behaviour in public life. But it may also have contributed to a decline in public confidence as people become aware of things which had previously been hidden from public view.

I hasten to say that I do not regard that as an argument for suppressing information. It should instead be a spur for public organisations and public office holders to raise their game.

The third lesson is about the requirement for intelligent institutional arrangements which support accountability and do not impede high standards of behaviour.

MPs are, of course, ultimately accountable through the ballot box. But elections happen infrequently. In the meantime in claiming expenses there was very little accountability to anyone except themselves. Not only was there no transparency about what was being claimed, or paid. There was also a largely ineffective system of audit.

In theory MPs expenses were audited by the National Audit Office. In practice that audit was not allowed to go beyond the signature of an honourable member. If he or she signed a piece of paper to the effect that expenses claimed were wholly, necessarily and exclusively incurred in the performance of their Parliamentary duties, that was regarded as the end of the matter.

The position was made worse by the fact that there was no independent element in the system. MPs could and did determine for themselves the arrangements for their own expenses. There was effectively no outside check, and no real scrutiny of what they decided.

That has now been put right in the new arrangements. An independent Parliamentary Standards Authority has been set up to decide, pay and monitor MPs expenses. It is intended that in due course this new body will also take on responsibility for determining MPs pay and pensions. Unfortunately it has not had a happy beginning. Despite recent progress it is disappointing that there appear to be a number of important operational difficulties which it still needs to overcome. I remain convinced that Parliament's own decision to set up an independent body was the right way to go. But it is vital that that the arrangements should be made fit for purpose as quickly as possible. They are supposed to be there to support MPs in doing their important jobs, not to make their lives more difficult.

Standards in local authorities

Against this background I want to finish by saying something about the proposals the coalition government has made for changes to the standards regime of local authorities.

These proposals go well beyond the simple abolition of Standards for England, the organisation charged with overseeing the arrangements. They include the sweeping away both of the mandatory centrally determined code of conduct for councillors **and** of the requirement for each local authority to have a standards committee with an independent chair to oversee standards. Local authorities will be free to maintain their own codes, and their own standards committees, if they wish. But there will no longer be a requirement to have either.

It appears that the new arrangements will instead have three main elements:

- Serious misconduct by councillors, for example abusing their position for personal gain, will be a criminal offence
- Individuals who feel they have been personally disadvantaged by something a council or individual councillor has done will be able to complain to the local government ombudsman. The ombudsman's powers will be beefed up by making local authorities legally obliged to implement ombudsman decisions
- For all other instances of poor standards of behaviour the remedy will be left to the ballot box, with the addition of a power of recall in instances of serious misconduct.

The removal of mandatory codes and standards committees will be, effect, be a return to the situation which existed before the 2000 Act. It will also mean that English local authorities will be subject to

less onerous requirements than their counterparts in Scotland and Wales, or indeed than Parliament itself.

I understand, of course, why these proposals have been made. They are very much in line with the Government's thrust towards localism generally. It is also true that a number of things have changed since the pre 2000 arrangements were found wanting, including the advent of Freedom of Information.

I also completely accept that, though it has been significantly improved since it was first set up, the highly centralised system created by the previous Government had a number of flaws. It was not what my committee had recommended. In two reports under my predecessors in 1997 and 2005 we stressed the importance of localism, meaning putting the onus on local authorities to maintain their own standards, and of proportionality. We did not in 1997 recommend a national body to oversee standards.

There is correspondingly much in the proposals which my committee can welcome. In particular:

- A return to a system based on local ownership of standards.
- Increased powers for the ombudsman. The ombudsman ought to be able to look at both organisational and individual behaviour in a robust way, applying sound common sense and judgement to situations which have previously been dogged by an approach which had become too rule-based
- The objective of ending trivial, vexatious or politically motivated complaints about standards. Such complaints have been a central weakness in the system since its inception – though it has to be recognised that, as local auditors have also sometimes found, some frequent complainers can occasionally come up with a real issue

But my Committee does nevertheless have two serious concerns.

First, it is in my view a distinct step backwards to abandon the notion of a code of conduct. This would set local councillors apart from almost every other holder of public office, including Members of Parliament. It is tempting to believe that even in the absence of a code people would always be clear about the proper boundaries of conduct in public life. But that would fly in the face of experience. Continuing with a mandatory code, set locally but within a national framework, would mean that local councillors could be clear about what was expected of them. Just as importantly, so could their electors.

It has been argued that it would be sufficient to rely on the seven principles of public life. Wedded as I am to them, I do not for one moment accept that they are sufficient to meet the requirement without some form of elaboration of what they mean in a local authority context.

Incidentally, I also think that there should be a code of conduct for local authority officers. The previous Government did consult about this, twice. But nothing resulted.

Second, the criminal law is clearly the right place to deal with examples of serious misconduct. But there are many types of behaviour for which a criminal prosecution would not be appropriate or easy to undertake but which most of us would believe would fall well short of the standards expected of public office holders and deserving of some sort of sanction if both standards and confidence in them are to be maintained.

A few examples drawing partly on a recent article in the Municipal Journal, itself drawing on recent adjudication or first tier tribunal decisions would be:

- Misuse of council computers for pornography.
- Serial bullying of officers
- Deliberate breach of procurement rules for reasons other than personal gain. Or
- The leak of confidential information which could undermine a council's ability to negotiate with commercial partners.

Arguably some of these **could** lead to a criminal prosecution, depending on the precise circumstances. But equally they may not. Some other types of behaviour, like assaulting a fellow councillor, **could** be regarded as criminal, but for various reasons might still not lead to a prosecution.

The point is that there is a considerable grey area of overlap between criminal activity and actions which fall short of that but which nevertheless are liable to bring councils and councillors into disrepute unless dealt with appropriately and robustly.

Moreover, some politically inspired complaints can be both well disguised and timed to cause maximum embarrassment at election time. Involving the police in a new order of cases may simply up the ante and offer scope for even more political mischief, even if the Act is very carefully drawn.

Fundamentally, I do not myself believe that it is sufficient to leave behaviours such as those I have mentioned to be dealt with only either through criminal prosecution **or** by the ombudsman or through the discipline of the ballot box. Ultimate accountability does, of course, lie with electors. But elections only take place every four years. When elections do happen, electors make up their minds who to vote for on a range of party and other considerations as well as the behaviour of individual representatives. There is one very prominent example of a local administration being re-elected with an increased majority following a pretty critical public interest report by the Audit Commission.

I do not myself have any special brief for the current system. But simple abolition on its own is not enough. If public confidence is to be maintained the new arrangements need to include as essential parts:

- A mandatory code of conduct, locally determined but within a national framework set by Parliament. The starting point should be what the public expects of those they elect, not minor points of law.
- A mechanism for making complaints.
- A local but independent mechanism for investigation of complaints about behaviour which are non-trivial but not appropriate for criminal sanction.
- Some way of ensuring that local codes of conduct are meeting the minimum standards, and possibly for dealing with some of the more serious complaints, for example those involving the behaviour of a leader.

These requirements could be met by a number of different institutional arrangements. It would, for example, be possible in principle to meet them through an expansion of the ombudsman role – though on the face of it that would not meet the desire for local determination- or as has been suggested through more peer review involving the LGG or in other ways. The key point is that my Committee believes strongly that relying solely on the criminal law and the ballot box is not enough. Unless we maintain an appropriate and effective framework which meets the requirements I have outlined there is a real risk that bad conduct will not be dealt with effectively and public confidence will be further eroded. My committee will therefore continue to press these points on Government.

Thank you for listening.