



Submission of evidence to the Committee on Standards in Public Life's review of MPs' expenses

As the national regulator overseeing the conduct framework for locally elected councillors, the Standards Board for England welcomes the opportunity to submit advice to this important enquiry. While there is a difference between the roles of national and local politicians there could be lessons from local government which may help the Committee in its deliberations.

The primary focus of the current enquiry is into reform of the system of expenses and allowances and we will address that point specifically in our response. However, we believe the current concerns are not just about the system of allowances and expenses per se but also about the way such rules are overseen and enforced. Such issues cannot be divorced from the wider area of a conduct framework and accountability mechanisms.

The local government conduct framework

Following the Local Government and Public Involvement in Health Act 2007, responsibility for ethical standards in local government was devolved to the local level. This change to a greater emphasis on local arrangements put into effect the recommendation of the ninth report of the Committee on Standards in Public Life. Local standards committees are now at the heart of the new arrangements, promoting high standards and receiving and dealing with allegations of misconduct. The Standards Board is now a strategic regulator overseeing the effectiveness of local arrangements.

As the Committee concluded in its ninth enquiry, it is important that any conduct framework has credibility among and ownership by those who are regulated. That is why most matters are now properly handled at the local level and the national regulator only deals with those matters which cannot be dealt with at a local level. This is either because of local conflicts of interest or, more importantly, to ensure public credibility in the way high profile and contentious matters are handled. However, as the Committee also concluded, it is important that there is an independent body outside of the regulated community which is able to secure the framework so that it is free of improper political influence.

So, as well as handling those cases for which local resolution would not be in the public interest, the Standards Board also sees to it that the framework operates fairly and proportionately and that standards committees are supported to protect them from inappropriate local political interference.

Protection

The public should have the assurance that they can trust those that they elect to represent them and make decisions affecting their lives; and that, where elected representatives fall below expectations, there is a redress mechanism which is independent, transparent and effective. Over the course of our first year as a strategic regulator, 2,863 complaints were made at a local level, of which 54% were made by members of the public. Almost half of all allegations related to alleged failure to declare a personal or prejudicial interest when taking decisions which directly affect people. There is clearly widespread concern that decisions are being made out of self-interest rather than in the public interest. The local framework ensures the public is protected by allowing such concerns to be publicly aired, assessed and resolved.

In addition, politicians should have the assurance that, when they are wrongly accused of malpractice, a trusted and independent review body is available to exonerate them. So far, just over half of allegations made have resulted in no action being taken. Without this transparent exoneration, there is a danger that allegations linger and taint reputations unfairly.

Clearly, local government is not immune from the possibility of inappropriate behaviour. Indeed, there have been 132 known breaches of the Code of Conduct found in the last year. However, it should be borne in mind that some 80,000 councillors (including those at parish level) are regulated through the framework and the system in place in local government does act as a disincentive to misconduct through effective overview and complaint handling.

Public confidence

Confidence in the accountability mechanisms of government is crucial. A recent BBC/Ipsos Mori poll found that 80% of people surveyed did not just blame MPs for the current problems but also 'the parliamentary system'. Any new arrangements to regulate national politicians should therefore be designed to address both present concerns and to ensure that it is a robust system for the future able to rebuild public trust.

In particular, the arrangements will need to ensure that, where there are allegations of misconduct, these are able to be uncovered, examined and disposed of appropriately and independently, without political pressure. The current standards framework for local government offers a model which evidence shows is proving appropriate in its context.

Those being regulated have confidence in the regulatory system. A recent survey (2009) of councillors and officers, commissioned by the Standards Board and undertaken by BMG Research, found that 74% were confident that a breach of standards of behaviour would be uncovered by the local authority, and 80% were confident that such a breach would be dealt with appropriately. These figures were consistent across all tiers of local government. They show a widespread recognition of the importance of an accountability framework for those in public office, regardless of the responsibilities they have.

Therefore there is just as great a level of support for the framework among parish councillors and their representative bodies as there is among the representatives of larger councils. In addition, the research shows that over time there has been an upward trend in those councillors and officers who believe that standards of

behaviour has improved over recent times (27% in 2004, 44% in 2005 and 47% in 2009).

We are currently undertaking research into public trust in local politicians and public confidence in accountability frameworks as part of our ongoing research programme. We will have findings in July and are happy to share these with the Committee.

Local checks and balances on expenses and other probity issues

Some checks and balances relate to the way local government works and are regulated by statute. Local government is subject to the Freedom of Information Act and as a rule expenses of elected members are published. Similarly, local government expenses are subject to an internal audit as well as an external audit overseen by the Audit Commission.

In addition, the Code of Conduct, as overseen by the Standards Board for England, requires both a register of gifts and hospitality received above a value of £25 and a register of members' interests to be publicly available. These are important safeguards which ensure that members can be properly scrutinised and held to account. They also protect members by allowing them to be transparent about their activities, and to protect themselves from accusations that they are somehow acting out of self-interest rather than in the public interest.

Within a local authority itself, claims for expenses by councillors can be paid only on submission of receipts and have to be approved by an officer accountable to the Statutory Finance Officer (the s151 officer). The position of this statutory officer is in turn protected by law so that they are free from improper political pressure.

The Code of Conduct to which all councillors are subject also says that members must not misuse council resources (which would obviously include allowances and expenses), should not act in such a way as to bring their authority or the office of councillor into disrepute, and that they must have regard to the advice of statutory officers.

The issue of a second home allowance would not arise for councillors as they have to live or work in the area they serve.

There are also statutory restrictions on the eligibility criteria of councillors. So for example, they are barred from holding certain senior or politically sensitive officer posts in one authority while being a member in another. This helps avoid conflicts of interest and ensures that the advice given by senior officers is seen to be free from political bias or interference. In addition, there are precise rules that govern 'twin-hattedness' – being a councillor in more than one authority. These restrictions mean, for example, that councillors cannot claim expenses from more than one authority for carrying out a single activity.

While there are no specific bars on relatives of councillors being employed, appointments to senior posts are usually made by appointments panels and must by statute be on merit (although political assistants can be appointed to support an elected mayor and party groups, subject to certain other statutory restrictions). The Code of Conduct means that any member would be excluded from taking part in the appointments process both through having a prejudicial interest and through seeking to secure an advantage or disadvantage if one of their relatives were a candidate. Members cannot be involved in appointments below senior level.

Remuneration for councillors is determined by reference to a local review conducted by an independent panel whose work is conducted in the public eye. Authorities are not bound by the recommendations of the review panel, although they do have to have regard to them. Decisions are taken in an open meeting subject to an access to information framework. In addition, the recommendations of the review panel and the authority's final scheme of allowances have to be published in a local newspaper and available for inspection. Councillors do not receive a payment for loss of office if they lose their seat or position in an election. Some authorities permit a pension scheme although this is both contributory and voluntary.

There are also clear rules governing appointment of councillors to executive positions, and electoral arrangements, including the number of councillors and warding arrangements, are discharged by an independent statutory body over which the local council has no control.

All of these rules taken together ensure that councillors are working within a tightly defined and transparent framework with appropriate independence built into the system.

Independent oversight

On top of these particular controls, there is an independent accountability framework to address concerns of alleged misconduct. In particular, there is an independent body – the Standards Board for England – which oversees and regulates local councillor conduct.

The Standards Board is at the apex of a framework which allows both those in local authorities and members of the public to submit complaints and allegations to a local standards committee chaired by an independent person. These local bodies are charged with ensuring that matters are looked at thoroughly and members are either sanctioned appropriately or cleared authoritatively. It also allows alleged issues of misconduct to be put into an appropriate context and for local rules to be explained and re-examined in the light of particular concerns.

In turn, the local standards committee is supported by a monitoring officer who has statutory protection in the same way as the chief finance officer. The Standards Board has been given guardianship of the framework by Parliament and oversees its effective operation, so that it is done without local political interference and in the public interest.

An independent regulator such as the Standards Board further ensures that there is clear national guidance on what is and is not acceptable. This acts as a guarantor to the public that they have the right to expect the same standards regardless of locality. The Standards Board, as a respected independent body, also advises government on how rules can be clarified and, where appropriate, simplified so that the focus is on the principles behind the rules and not merely on simple adherence to the rules.

Public redress

One of the key elements in any framework must be a way of ensuring the public has confidence both that their complaints are taken seriously and that there is appropriate redress where misconduct is found. Our evidence shows that such a framework – ensuring local resolution wherever possible but with independent oversight – engenders increasing public trust.

Throughout the existence of the local government conduct framework, well over half of complaints have come from the public and this figure has continued through the transformation to a more locally based system. Public confidence in any framework and in the stewardship of that framework must be a key watchword.

Public confidence is further enhanced where there are seen to be effective and proportionate sanctions available. Under the local framework, findings of misconduct can result in a range of consequences for the councillor who has broken the Code of Conduct, from censure through to suspension and, ultimately, disqualification. Suspension halts entitlement to allowances. We have commissioned BMG Research to investigate public perceptions of the proportionality of the local standards framework. We will have findings in July and would be happy to share these with the Committee.

We hope that the Committee finds this brief summary of the local framework helpful for its deliberations. Drawing on this experience, the Standards Board has given some thought as to the key principles which should underpin an accountability framework. We would therefore also like to offer the Committee some of our learning on matters to be taken into account in designing any national framework.

Designing an accountability framework

In designing any regulatory solution, account would need to be given to established regulatory principles as articulated in the five principles of good regulation:

- Proportionality: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
- Accountability: Regulators must be able to justify decisions and be subject to public scrutiny.
- Consistency: Government rules and standards must be joined up and implemented fairly.
- Transparency: Regulators should be open and keep regulations simple and user friendly.
- Targeting: Regulation should be focused on the problem and minimise side effects.

In addition, there are particular design principles specific to a conduct framework which have been identified mainly from the findings from two pieces of research which we commissioned and which we are happy to share with the Committee. One research project was undertaken by the University of Manchester (Greasley et al 2006), the purpose of which was to identify the key components of an ethical environment in local government.

The other research project is being undertaken by Cardiff University (Cowell et al 2009), the purpose of which is to assess the impacts of the ethical framework on local government. This latter research is ongoing, but we do have findings from phase one of the project. In submitting these principles there are two caveats:

1. The design principles outlined here emerged from a study of local government rather than central government.
2. The design principles have been identified from a broader ethical framework rather than simply a framework for overseeing expenses.

That said, both the MPs' expenses framework and the ethical governance framework in local government are mechanisms for holding elected politicians to account. The

principles are mutually reinforcing so that collectively they can create the systems, processes, culture and values necessary for a good accountability framework. The design principles are:

- Strike an appropriate balance between rules and trust.
- Ensure independent overview.
- Ensure effective leadership.
- Underpin with transparency and good communication.

Strike a balance between rules and trust

Any accountability framework requires a balance between rules and trust in their oversight. The framework needs to ensure that those who breach the rules are discouraged while, at the same time, it maintains the good will of others. While rules are important, paradoxically there is a danger that having a set of rules which is too tightly defined can lead to a complexity which makes understanding of the rules too difficult to grasp. The Standards Board has worked hard to ensure that the local Code of Conduct has become simplified over time and concentrates on the core underlying principles.

In addition, where there is over-reliance simply on rules, an assumption can arise that if an expense or behaviour is not proscribed then it is acceptable, without having regard to underlying principles. In turn, this can lead to a 'minimal compliance' attitude so that there is compliance with the letter of the rules but not the spirit. Principles based regulation, rather than rules based regulation, is likely to prove better able to cope with the variety of issues that arise and to be better able to handle unexpected future issues.

Any accountability framework needs to be backed by robust, formal mechanisms for overseeing and dealing with problems when they arise. Formal mechanisms ensure enforcement of the principles, give the framework credibility and deter miscreants. In local government the formal mechanisms would include protocols on relationships between councillors and officers, the Code of Conduct, and the investigatory mechanisms that can be triggered as a result of a breach of the Code.

Independent overview

Independent overview provides potential benefits in both satisfying public opinion that issues are being dealt with fairly and with some objectivity, and practical benefits for dealing with disputes and queries. In the local government context, independent overview is supplied both by the Standards Board itself and by local standards committees.

Local standards committees, amongst other things, help promote confidence in local democracy and deal with complaints about councillors. They must be chaired by an independent person appointed through open competition and must have a minimum of 25% independent membership. The BMG Research referred to earlier found that 82% of councillors and officers believed their standards committee to be impartial and 85% were satisfied with how it deals with complaints against councillors.

An independent, national body has protection against the local pressure that can be exerted from those being regulated. This is further reinforced by clarity of the role of such a body – for example whether it is itself a sanctioning body or overseeing the operation of the framework generally. However, all evidence shows that public trust is best engendered by independent overview.

Leadership

The importance of leadership in ensuring the success of accountability frameworks has been well documented (for example Greasley et al 2006, Audit Commission 2003). While an independent body can set the rules and ensure their effectiveness, leaders play a vital role internally in setting the tone, culture and standard of behaviour. In local government, 'leaders' includes both officers, for example, chief executives, as well as political leaders. Evidence from our Cardiff research shows that where these leaders are actively engaged and supportive of standards issues, the authority itself is likely to face fewer issues of concern.

In addition, political parties, as well as individuals, can also play a key leadership role in upholding appropriate standards amongst their members. They can provide the appropriate support and advice in dealing with problems and also act swiftly before a misdemeanour needs to be settled by the more formal framework. Any framework must therefore emphasise the responsibility of individuals and parties to demonstrate leadership in ensuring high standards.

Having a respected independent chair of a standards committee who is able to command the trust of all political parties and of the public is also a key aspect of leadership of standards at a local level. For any standards framework to have public credibility it needs not just the public to have confidence, but to know that their concerns are being effectively articulated and championed by an independent body. An effective independent standards committee chair is able to act as this intermediary between the public and the state to ensure the framework works in the public interest.

In turn, the national regulator must be seen to show leadership in championing and supporting these independent chairs to give the public confidence that the system is being operated on behalf of the individual. In the recent BMG survey, nearly 90% of independent chairs believed the Standards Board was effective in defining acceptable standards of behaviour and therefore showing leadership in setting public expectations of acceptable and unacceptable behaviour.

Transparency and good communication

The current high media profile and public concern have highlighted the power of transparency in an accountability framework. People may be more likely to behave in a principled and appropriate manner if they are subject to the press and public oversight that transparency can bring.

In local government, at an individual level, the registration of interests and gifts helps identify conflicts of interest. At a more organisational level, rules related to decision-making, such as forward plans of committee and council business and the scheme of delegation, help make clear who is responsible for decisions, when decisions are made and what background papers are available.

However, transparency is most effective when combined with effective communication. Viewing individual expenses claims in isolation from expenses rules, for example, enables them to be held up to ridicule. Any independent regulator should therefore have a duty not only to oversee a framework but to communicate that framework effectively to the public.

Conclusion

In conclusion, we believe there are important lessons to be learned about the way that local government is regulated. We would urge the committee, in considering its recommendations, both to consider these lessons and bear in mind the wider design principles above when making its recommendations. The Standards Board for England would of course be very willing to submit further information to the Committee if needed and would welcome the opportunity to discuss our thoughts in greater detail.