Getting the Balance Right

Implementing Standards of Conduct in Public Life

Tenth Report
Cm 6407

COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other 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 seek to 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.

Tenth Report of the Committee on

Standards in Public Life

Chairman: Sir Alistair Graham

Getting the Balance Right

Implementing Standards of Conduct in Public Life

Report

Presented to Parliament by the Prime Minister
by Command of Her Majesty
January 2005
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Committee on Standards in Public Life

Standards in Public Life

Chairman:
Sir Alistair Graham

January 2005

Dear Prime Minister

I have pleasure in presenting the Committee's Tenth Report, which deals with the issues of proportionality in the operations of selected standards regulators established since the Committee's inception.

We think that the regulatory regimes in England for Ministerial public appointments, (the Office of the Commissioner for Public Appointments) and for the handling of complaints against local authority councillors (the Standards Board for England) have made useful starts, but exhibit significant weaknesses which need to be addressed. These weaknesses are structural and organisational.

Our proposals are radical and holistic. In line with the trend in other regulatory regimes, a Board of Commissioners should be created to sit alongside the existing Commissioner for Public Appointments. By linking individual Commissioners to one or more department, a proper strategic dialogue can take place between the regulator and appointing authorities.

We recognise the importance of safeguarding ministerial responsibility and accountability for public appointments whilst, at the same time, seeking to increase public confidence in the appointments system. This can be best achieved by identifying those public appointments which have greatest impact on the public and setting out clearer procedures which provide for greater involvement of Ministers at the crucial early stages of the appointments process. We also point the way to a significant convergence between the Public Appointments regulatory system and the system overseeing Civil Service appointments. We do not see a merger between the two systems or the two Commissioner posts as desirable at this time, though we do not rule it out in the longer term.

We are clear that the Standards Board for England should be transformed into a strategic regulator. This can and should be achieved by reforming the complaints system so that, in line with the principles of localism, independent local Standards Committees will act as a filter to deal with complaints against elected members which do not warrant the panoply of a national investigation. This will free the Standards Board to focus on those most serious complaints that pose a high risk to the reputation of local democracy. At the same time the Board will provide independent scrutiny of the operation of the national framework.

Finally, we believe that ethical organisational cultures are an important key to effective performance and high standards in the public sector. We set out a number of recommendations to further entrench the Seven Principles of Public Life into the culture of public bodies.

I look forward to hearing from you about the arrangements for the early implementation of these recommendations. I am available at any time to brief you about the content of this report.

Yours sincerely
Alistair Graham

Alistair Graham

CONTENTS

EXECUTIVE SUMMARY

1. Introduction and overview

1.1 The Committee on Standards in Public Life was established in October 1994 by the then Prime Minister in response to concerns about standards in public life. It was given wide-ranging terms of reference to examine current concerns about standards of conduct of all holders of public office. The Committee has published nine reports covering virtually all elected and appointed public office-holders.

1.2 The Committee's Tenth Inquiry was launched in January 2004 with the publication of an Issues and Questions consultation paper [**1**]. Since then the Committee has carried out a thorough process of consultation and analysis, taking oral evidence from some 72 witnesses and receiving 113 written submissions. In addition we have commissioned two pieces of supporting research. This, our Tenth Report, sets out the Committee findings in full and the associated CD-ROM includes all the evidence received, written and oral, as well as the research reports. This summary provides an overview of the main findings and a full list of the recommendations we have made.

1.3 The stated aim of the inquiry was to examine the administrative procedures which flow from the implementation of the various recommendations of the Committee since it was established a decade earlier. We wished to know whether the procedures and processes set up have been "effective, proportional and not excessive to the objects of the exercise". The selected areas for inquiry were:

- Appointments and reappointments to public bodies (not to the civil service);
- The management and enforcement of Codes of Conduct including declarations of interest across local government, the National Health Service, and other public bodies; and
- Whether the Seven Principles of Public Life are being embedded into organisational culture and what steps are being taken to ensure that this involves the appropriate use of training and development and is more than a box-ticking exercise.

1.4 The Committee's intention is to enhance the effectiveness of these arrangements and to ensure that they can produce the desired outcome of the highest standards of propriety in public life and make the Seven Principles of Public Life a living reality. There are three key components identified by the Committee during the inquiry that are relevant to the specific recommendations we make to improve the effectiveness of the three selected areas:

- **Trust**. Public trust is a pillar of public life. It is concerned with perceptions of honesty but is also about confidence and satisfaction with the outcomes of service delivery. Bridging the gap between values held by the public and their perception of official behaviour is a major challenge facing public bodies in the UK;
- **Governance.** Devolution has provided the opportunity for different models of standards regulation in public bodies to be developed. At the same time governance arrangements for public bodies in England have changed and developed as a result of new 'standards' regulators; and
- **Burden of Regulation.** As regulatory supervision of standards has grown, so have concerns about the potential for the imposition of unnecessary regulatory burdens. This has promoted a realisation that a more sensitive and proportionate or 'strategic' regulatory approach can have a positive impact and serve to better deliver the intended outcomes.

2. Public Appointments

2.1 The regulatory system for making public appointments is relatively new. It was created in 1995 following the First Report of this Committee. On the basis of the evidence we received about public appointments the system works relatively well but there are significant weaknesses and these need to be addressed.

2.2 The strengths include:

- The successful development of a culture which recognises the importance of appointment on merit;

- The broad (but not universal) acceptance by appointing authorities of the Commissioner for Public Appointment's authority as custodian of the Code of Practice on Public Appointments; and

- The commitment of most appointing authorities to running proportionate operations, strong on process, but clear that outcomes – excellent appointments contributing to public service delivery and carrying the confidence of both ministers and the general public – are important too.

2.3 The weaknesses in the system include:

- A small amount of unregulated Ministerial intervention in competitions in England and different from practice in Northern Ireland, Scotland and Wales. The intervention is symptomatic of the need to address the balance between Ministerial responsibility, merit and independent oversight in the current arrangements. Such unregulated intervention poses problems at a time when the Committee's research shows a continuing level of public concern about cronyism;

- The absence in the established appointments framework of the tools necessary for the Commissioner to implement a strategic approach. In the context of public appointments this means creating closer organic links between the regulator and the regulated so that disputes do not escalate; and

- Continuing under-achievement in widening the social base of candidates for public appointments.

2.4 There are a number of challenges to be faced. One is to conduct the debate about sensible reform in inclusive non-judgemental language.

2.5 A second and related challenge is to develop and reform the existing system for selecting members for the board of public bodies in a way which carries greater public confidence and reflects more accurately than at present the Seven Principles of Public Life. This means acknowledging the context of the public's general perception of cronyism in the filling of public appointments. It also means introducing clearer, less ambiguous, rules and procedures for the involvement of Ministers in competitions in which they are involved, so that appointments are demonstrably based on merit.

2.6 Some of the above is already in train and this success should be noted and celebrated. But greater progress will not be achieved without facilitating a more strategic approach to regulation. In making its recommendations, the Committee has sought to achieve five objectives:

(i) to strengthen the role of the Commissioner for Public Appointments so that she can better discharge her regulatory responsibilities;

(ii) to clarify the proper involvement of Ministers in the appointments process;

(iii) to reinforce the role of permanent secretaries as the guardians of the integrity of the appointments process;

(iv) to create the opportunity for the Commissioner's Code to be applied more flexibly, subject to appropriate safeguards. Any derogation from the Code would be dependant on the importance of the appointment and the appointing authority's expertise and record of achievement in making appointments, i.e. adopting a risk based approach; and

(v) to put in place a procedure for orderly resolution of any disputes between the Commissioner and appointing authorities.

2.7 All of the Committee's recommendations are designed to comply with the objective of proportionality and also to be consistent with the principles of appointment on merit, and openness in the appointments process.

2.8 Our recommendations are designed to build on the successes of the existing regulatory regime in a way which facilitates more strategic interventions and a more explicit partnership between regulatory and appointing authorities. The principal mechanisms to achieve this are a new Board of Public Appointments Commissioners and annual Public Appointments Plans for departments to set out their record and future policy and practice relating to the public appointments of chairs and board members of the public bodies they sponsor. A Board of Public Appointments Commissioners would create a forum for strategic thinking about public appointments. It would also enable individual commissioners to be linked to one or more department to assist in some high profile appointments and in the creation of annual Public Appointments Plans.

2.9 We have also set out some significant and necessary changes to the appointments process in England to take account of legitimate Ministerial interest in a small number of senior and strategic appointments to public bodies. In these 'starred' appointments it would be a requirement for Ministers to decide on a particular recruitment process to be adopted. Ministers would also be consulted throughout the process including at short-listing stage in similar fashion to procedures for civil service open competitions. At the same time (and again in line with the Civil Service Recruitment Code) Ministers would no longer have a choice between appointable candidates, but would delegate the decision to the responsible panel. In this way, the overriding principle of merit is entrenched but without prejudice to the principles of Ministerial Responsibility and Openness. Taken together the proposals for a new, 'starred' appointments process constitute a first movement towards convergence between the regulatory regimes for public appointments and civil service appointments.

2.10 We recommend a strengthening of the independent and professional elements of the system with proposals to consolidate the positions of the Commissioner for Public Appointments and independent assessors. As far as the Commissioner is concerned it is important to set out more clearly the procedures for resolving disputes with appointing authorities. We also propose that, in line with her Scottish counterpart, the Commissioner should be given reserve powers to halt appointments where she considers there has been a material breach to the Code. This would remove a loophole in the current arrangements which has encouraged some stakeholders to see the Commissioner as a 'watchdog' not a regulator. Independent assessors provide a critical independent element to the public appointments process. We believe their role as guarantors of the process can be developed further by standardising the way they are recruited and trained.

2.11 Above all we wish to emphasise the importance of taking a holistic look at public appointments to make sure that what is achieved is a transparent process leading to the appointment on merit of people able to do the job. This is the approach we have adopted in this Chapter. What is set out is an integrated package which seeks to rebalance the principles of independence, appointment on merit and Ministerial responsibility, in a way which enhances public confidence in the process and the likelihood of excellent appointments as outcomes. This is not a 'pick and mix' approach.

3. The Ethical Standards Framework for Local Government

3.1 The ethical standards framework for local government is arguably the most extensive and comprehensive statutory framework for standards of conduct of any group of public office-holders in the UK. Despite some flaws and problems with its operation it is, in the Committee view, a significant improvement on the situation prior to its introduction in 2000 and when the Committee last examined the area in its Third Report in 1997. Now, as then, it is possible for the Committee to conclude on the evidence it has received that **despite incidences of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct.**

3.2 However, the highly centralised method for handling complaints under the model code of conduct, as prescribed in the Local Government Act 2000, is at the heart of the many, and in our view justified, complaints about the proportionality of the system. This approach, where all complaints must first go to the national body – the Standards Board for England – runs contrary to the advice given by this Committee in 1997 [**2**] and of the Joint Committee which scrutinised the draft legislation in 1999 [**3**].

3.3 In terms of the two principal legs of our inquiry [**1**], **proportionality** and **culture**, this approach has had unintended negative consequences for both.

3.4 **Proportionality**. The system has generated a large number of apparently minor, vexatious and politically motivated complaints that have created a significant backlog of national investigations, leaving many members with accusations hanging over their heads for long periods of time.

3.5 **Culture**. The centralised system has arguably removed primary responsibility for standards from individual authorities (and members). Local Standards Committees, critical in our view to embedding high standards in each local authority, are under-used and in danger of falling into disrepair.

3.6 These problems have been compounded by some teething problems in the introduction of a

model code of conduct (mainly resistance from parish councillors to the requirement to register interests). There have also been serious and ongoing operational difficulties at the Standards Board in managing the centralised system, and delays by the Office of the Deputy Prime Minister in producing regulations to allow limited local involvement in the investigation and determination of cases.

3.7 These problems have, in the main, been avoided by the devolved equivalents in Scotland (although the framework there is only one year old) and Wales from whom some lessons can be learnt but where issues of scale make some other comparisons inappropriate. Northern Ireland is alone in not having a statutory framework for the conduct of local councillors and we recommend that this be addressed following the review of public administration, and upon the re-establishment of devolved government.

3.8 A number of positive developments to the operation of the framework in England occurred during the Committee's inquiry:

- the new Chief Executive of the Standards Board is committed to try and address some of the operational problems (i.e. a reduction in the time taken to complete investigations, the clearing of case backlogs and improved initial complaints handling);
- the Standards Board has already begun a review of the Model Code of Conduct to be completed in early 2005;
- the Office of the Deputy Prime Minister has introduced the long awaited regulations to allow the referral of some cases for investigation and determination to local Monitoring Officers and Standards Committees (these complement the 2003 Regulations that enable referral of completed Standards Board investigations of some cases for determination by local Standards Committees); and
- the Office of the Deputy Prime Minister has also produced a draft of the long awaited Code of Conduct for local government officers for consultation (issued in August for comment by November 2004).

3.9 The challenge for the Committee has therefore been to judge:

- whether these recent developments to address some of the problems in the operation of the framework in England, possibly backed up with further recommendations to fully utilise the new regulations and improve the Model Code of Conduct, will be sufficient to meet the significant concerns raised; or
- whether the centralised approach is inherently flawed and that it should move to a system that enables locally-based handling of complaints, within a national framework where only the most serious cases are investigated and determined by national bodies.

3.10 **The Committee has concluded that, although improvements can and should be made to the existing system, the framework must move to locally-based arrangements for the initial handling, investigation and determination of all but the most serious cases. Only by local ownership and involvement can issues of ethical organisational culture be properly addressed and the overall regulatory framework for standards in local government made proportionate and strategic.**

3.11 In this respect the Committee is echoing its conclusions in our Third Report which said [**2**, page 3] *"Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity about standards has grown.* ***We believe that the key reason for this is that responsibility for the maintenance of standards has moved away from local government".*** (emphasis added)

3.12 The recommendations we have made are a package of interrelated changes to different aspects of the framework that, over a specified period of time, will in our view deliver the necessary improvements. In particular we recommend:

- moving to a more locally based system from January 2007;
- strengthening the independent composition of local Standards Committees;
- removing unnecessary restrictions on councillors representing their constituents; and

- clarifying the distinction between private and official conduct.

Taken together, our recommendations will enable the Standards Board to transform into a strategic regulator able to:

- establish and maintain the elements of a national framework within which Monitoring Officers, Standards Committees and councillors can manage ethical issues primarily at a local level;

- provide independent scrutiny of the operation of this framework, auditing performance and where necessary intervening until improvements have been made;

- support and enable Monitoring Officers, Standards Committees and councillors to deliver high standards of conduct in local government through self assessment tools, training materials and programmes and regional networks;

- work collaboratively with other regulators both in England and in the devolved administrations to improve standards of governance in local government; and

- investigate and determine (with the Adjudication Panel) those most serious complaints that pose a high risk to the reputation of local democracy.

3.13 The Standards Board in 2007 will therefore need to be very different to the Standards Board in 2004 if it is to achieve these aims. Its focus and the mix of skills and experience of its employees will need to change. The shift from a primary purpose of handling and investigating a large volume of complaints to the strategic approach described above will require a different allocation of resources. In the Committee's view this should in principle enable significant savings to be found from the current £9m annual budget of the Standards Board.

4. Embedding the Seven Principles of Public Life into Organisational Cultures

4.1 Embedding the Seven Principles of Public Life into organisational culture is a common thread that runs through this report. Our analysis and recommendations in Chapters 2 and 3 are specifically designed to introduce proportionate arrangements to do just this in the area of public appointments by government departments and in the conduct of councillors in local government.

4.2 In this final chapter we review some of the key generic components that can be applied more widely in all public sector bodies to enhance their governance arrangements in an effective and proportionate manner. Inevitably much of this concerns learning and drawing upon good practice in specific areas for more general application across the public sector. This is not always straightforward. While it appears that many of us can readily recognise a healthy organisation with ethical behaviour at the heart of its culture (i.e. part and parcel of everyday operations) we all find it more difficult to describe the constituents parts which have made it so.

4.3 However intangible the issue of culture appears, the Committee believes that it is critical to delivering high standards of propriety in public life in a proportionate and effective manner. Learning from good practice must play a central role and we have identified three key areas for improvement:

- **Training and development.** We were particularly impressed with the innovative experienced based learning techniques pioneered by the Audit Commission which help organisations reach their own determinations of their strengths and weaknesses and allow the solutions to come from within rather than imposed from outside. The tools have the added benefit of allowing benchmarking against similar organisations and, if widely used, will provide useful aggregate data on ethical culture across the public sector;

- **Governance of propriety in managing conflicts of interest**. A very real challenge faces public bodies in how to involve people with current and relevant expertise in non-executives roles, while at the same time ensuring no conflict or perception of conflict between public and private interests. Continual vigilance, openness and a risk-based approach can help organisations achieve this balance. Two recent reports [**4** and **5**] have wide applicability and we recommend that the best practice so described should be adopted by all public bodies; and

- **'Whistleblowing' – or more accurately – a culture that encourages the challenge of inappropriate behaviour at all levels.** We have sought to distinguish between the 'media' driven definition of whistleblowing and the role it can play internally in a healthy ethical organisational culture. Here, more than in any other area we have considered, the principle of Leadership is paramount if organisations are to truly 'live out' the procedures that all have in place. The statutory framework [**6**] is a helpful driver but must be recognised as a 'backstop' which can provide redress when things go wrong not as a substitute for cultures that actively encourage challenge of inappropriate behaviour. We have recommended that leaders of public bodies should commit themselves to follow the elements of good practice developed by Public Concern at Work, the leading organisation in this field.

References

1. *Getting the Balance Right: Implementing Standards of Conduct in Public Life*, Committee on Standards in Public Life, January 2003.

2. *Standards of Conduct in Local Government* Third Report of the Committee on Standards in Public Life, July 1997, Cm 3702-I.

3. *Report of the Joint Committee on the Draft Local Government (Organisational Standards) Bill*, July 1999, HL 102-1, HC 542-1.

4. *Report by AHL Ltd, Commission for Architecture and the Built Environment, Audit of Conflicts of Interest*, June 2004, HC 678, 17 June 2004.

5. *Conflicts of Interest*, OCPA June 2004.

6. Public Interest Disclosure Act 1998.

LIST OF RECOMMENDATIONS

Chapter 2: Public Appointments

RECOMMENDATION	MECHANISM	TIMEFRAME
R1. Departments should give serious consideration to giving their central appointments units operational responsibility for public appointments, particularly in cases where sponsor teams manage only one or two competitions a year.	Government Response to this Report	Immediate
R2. Annual Public Appointments Plans should be adopted as the key strategic document for departments to set out their policy and practice relating to the public appointments of chairs and board members of the public bodies they sponsor. These plans should be published documents, drawn up by the permanent secretary (in consultation, where appropriate, with the linked Public Appointments Commissioner) and reflecting the views of the Secretary of State.	Government Response to this Report	Immediate
R3. More systematic sharing of good practice in the making of appointments across public administration is urgently required. The Cabinet Office should convene an annual seminar of UK public appointments regulators and appointing authorities to exchange and debate good practice.	Government Response to this Report	Within one year
R4. In England, the Commissioner's Code of Practice paragraph 3.24 should be re-drawn, on the basis of the Civil Service Commissioners' Recruitment Code, at paragraphs 2.52, 2.53 and 2.54. This would permit ministerial involvement at short-listing stage in 'starred' public appointments where they have a particular interest in appointments to strategic posts within the limitations of the Seven Principles of Public Life, particularly Accountability, Openness and Objectivity.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R5. (a) The process for 'starred' appointments, i.e. senior competitions likely to attract the specific interest and involvement of Ministers, should be set out in the Code of Practice as a special starred category.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
(b) Starred appointments should be identified in annual, published, Public Appointments Plans which set out a department's public appointments record, policy and implementation plans.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
(c) For other appointments which are not starred, Ministers may wish and should be able to sign off the planning arrangements for the competition. They should not be consulted at short-list stage and should not be involved again until the post-interview final selection of the candidate to be appointed.	Government Response to this Report (Commissioner's Code of Practice)	Immediate

R6. Paragraphs 2.55, 2.56 and 2.57 of the Civil Service Commissioners' Recruitment Code should be incorporated into the Public Appointments Commissioner's Code of Practice for use in starred appointments.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R7. The Commissioner should consult urgently with appointing authorities to revise and develop paragraph 3.37 of the Code of Practice dealing with non-compliance so that there is a clear and unambiguous procedure for the resolution of disputes between the Commissioner and an appointing authority.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R8. The Commissioner for Public Appointments should exercise fully her functions under the Order in Council to maintain the principle of selection on merit in relation to public appointments. The Commissioner should not hesitate to publish a contemporaneous report or issue a statement (paragraph 3.37 of the Code of Practice notes that "the Commissioner may decide to comment publicly") setting out in detail where she has reasonable belief that an appointing authority has breached the Code of Practice. She should only do this after she has held a face-to-face meeting with the Minister concerned in an attempt to seek to resolve any dispute and it is clear the Minister will not accept her proposal.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R9. The 2002 Public Appointments Order in Council should be amended to include the reserve powers set out in sections (7) and (8) of the Public Appointments and Public Bodies etc (Scotland) Act 2003. These would enable the Commissioner, where an appointment has not been made, to direct Ministers to delay making an appointment until Parliament has considered the case.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R10. We recommend that The Responsibilities of an Accounting Officer and the Ministerial Code be amended to make reference to the explicit responsibility of permanent secretaries, as accounting officers for the propriety of public appointments made by their departments.	Government Response to this Report	Immediate
R11. (a) The Government should actively review the experience of setting up and running central lists in Northern Ireland, Scotland and Wales, the NHS Appointments Commission and the Commissioner's own Central List of 22 independent assessors with a view to producing proposals in conjunction with the Commissioner within one year for a proportionate, cost-effective, centrally-run system. (b) In the meantime, only independent assessors recruited to the Commissioner's Central List should be used for starred appointment competitions involving Ministers. Departments should continue recruiting and managing their own lists of independent assessors, on condition that they use an accreditation system run by OCPA which accredits assessors to be employed.	Government Response to this Report Government Response to this Report	Within one year Immediate

R12. We recommend that OCPA and the NHS Appointments Commission should work together to produce integrated, competency-based, induction and development programmes for independent assessors, together with a model, light appraisal system. This should be the basis of an accreditation or 'kite-mark' without which an independent assessor would be unable to act.	Government Response to this Report OCPA and NHS Appointments Commission	Within one year
R13. The political activity questionnaire was designed and intended for monitoring purposes only. We recommend that the Commissioner's Code of Practice should set out clearly that the questionnaire should not be shown to anyone involved in the selection process.	Government Response to this Report	Immediate
R14. (a) The 2002 Public Appointments Order in Council should be amended to allow the creation of a Board of Public Appointments Commissioners. The Board should be chaired by a First Public Appointments Commissioner.	Government Response to this Report Legislation (Order in Council)	Immediate
(b) Public Appointments Commissioners should each be linked to a small number of Departments, providing assistance to the Department in constructing and publishing annual departmental Public Appointments Plans. These plans should be the executive responsibility of the department and signed off by the Board of the Public Appointments Commission.	Government Response to this Report	Immediate
(c) Public Appointment Commissioners should be available to chair selection panels for 'starred' appointments.	Government Response to this Report	Immediate

Chapter 3: The ethical standards framework for local government

RECOMMENDATION	MECHANISM	TIMEFRAME
NORTHERN IRELAND R15. Following the review of public administration, and upon the restoration of the Assembly in Northern Ireland, a Statutory Code of Conduct for Councillors should be introduced with a proportionate and locally-based framework for enforcement, drawing upon experience of other parts of the UK.	Legislation	Upon restoration of the Assembly
ENGLAND R16. Parish councils should remain with the ethical framework for England: the same principles of conduct should apply to all locally-elected representatives, irrespective of the size of authority (or the powers of that authority) to which they were elected.	N/A	N/A
R17. The Government should announce its intention to amend Part III of the Local Government Act 2000 in the parliamentary session 2005/06 to enable the sifting of complaints to be undertaken by local Standards Committees.	Government Response to this Report	Immediate
R18. The amendment to Part III of the Local Government Act 2000 should: • Place a duty on the Standards Board for England to delegate the responsibility for initial sifting of complaints to individual local Standards Committees. The delegation should be subject to the operation within a national framework prescribed by the Standards Board (and based upon criteria used by the Standards Board in sifting and referrals) by which local Standards Committees can decide: (i) whether to investigate a complaint or not (and if not whether mediation or conciliation between parties or general action in relation to awareness and understanding of the Code is appropriate); (ii) which complaints are of such potential seriousness they should be referred for national investigation; (iii) whether, following a local investigation, a complaint should be referred to the Adjudication Panel; or (iv) to hear and determine the case, with an appropriate penalty where necessary; or (v) accept that no breach has occurred; or (vi) to instruct the monitoring officer and/or Standards Committee chair to instigate mediation or conciliation between parties or general action in relation to awareness and understanding of the Code. • Introduce a requirement for Standards Committees to report annually to the Standards Board and full Council on the operation of the ethical framework;	Amendment to Part III of the Local Government Act 2000	During parliamentary session 2005/6 and implemented from January 2007

• Introduce a requirement for each Standards Committee and the Standards Boards to determine and publish targets for the completion of each stage in the complaints-handling process they are responsible for and to report on these as part of their respective annual reports; and • Provide a power for the Standards Board to audit the operation of the framework by a local Standards Committee and, if necessary following the audit, to remove the delegation until satisfied that necessary remedial action has been undertaken.		
R19. The Government should introduce, as a matter of urgency, secondary legislation to require a majority of independent members and an independent chair for Standards Committees and sub-committees in England. This is a critical element of our proposals to improve the existing system and to lay the ground for the subsequent introduction of the locally-based system.	Secondary Legislation	Immediate
R20. Prior to the introduction of the locally-based system, all complaints assessed by the Standards Board as not requiring any investigation should also be sent to the local monitoring officer and Standards Committee so that they: (i) are fully aware of complaints made within their jurisdiction; (ii) can become familiar with the criteria used to decide whether an investigation is justified or not; and (iii) judge whether the complaints indicate that some informal mediation between members or parties might be required or general awareness raising or training.	Standards Board's Operations	Immediate
R21. That the Standards Board should take steps to communicate more robustly and publicly to complainants, members and the public more generally, those minor, trivial, vexatious and politically inspired complaints which are inappropriate to be dealt with under the ethical framework (following the example of the Local Government Ombudsman for Wales).	Standards Board's Operations	Immediate
R22. The Committee welcomes the steps taken by the Standards Board to resolve delays and backlogs in investigations. These measures should be further bolstered by taking full advantage of the new s66 regulations to refer to a local level a steadily increasing proportion of complaints judged worthy of investigation. In light of our recommendations to enable initial complaints-handling to be done at the local level, the experience of operating the s66 regulations over the next two years should be used by the Standards Board to develop the framework within which local Standards Committees will decide whether to refer a complaint for investigation by the Standards Board.	Standards Board's Operations	Immediate

R23. The Standards Board should review its Human Resource Management policies, including pay scales, to ensure that it puts a priority on secondments and transfers from local authorities to the referral and investigations units, thereby increasing and refreshing the level of local government experience.	Standards Board's Operations	Immediate. Implemented before January 2007
R24. The general principles, currently contained in a separate Order, should be incorporated into the Model Code. This will add clarity about the fundamental purpose of the Code and help provide a context for members behind some of the more detailed provisions in the Code. It will also make the Model Code more relevant to members of the public and assist in providing a route into the Code when considering making a complaint.	Standards Board's review of the Model Code of Conduct	April 2005
R25. The phrase "in any other circumstance" should be removed from the Model Code in England (paragraphs 4 and 5 of schedule 1) so as to add clarity to the distinction between private and official conduct.	Standards Board's Review of the Model Code of Conduct	April 2005
R26. Failure to register an interest (financial or other) should normally be treated as a matter for local investigation and determination. This should be reflected in the operation of the new s66 regulations, and in the new locally-based system.	Standards Board's review of the Model Code of Conduct, Standards Board referral criteria	April 2005
R27. The following principles should apply where members are appointed, or nominated, to an outside body by their local authority (or have their membership approved by their local authority); are a member of another relevant authority; or are a member of another public body in which they hold a position of general control or management. They should be free to speak but not vote, subject to: (i) the declaration of a personal interest; (ii) the matter before the Council/Committee does not relate to an application by the outside body for any licence, consent or an approval or any objection to such matters or to any statutory order or regulation to be made by the local authority; and (iii) any representations must be made in an open and transparent manner.	Standards Board's review of the Model Code of Conduct and, if necessary, primary legislation	April 2005
R28. In planning decisions the ability of elected members to represent constituents' interests where they have personal and prejudicial interests has been unnecessarily diminished. This should be changed to give any elected member the right to speak (but not vote) for their constituents at a planning committee meeting or at any other quasi-regulatory meeting, provided: (i) a declaration of personal interest is made, including the nature of the interest; (ii) the representations are made in an open and transparent manner; and	Standards Board's review of the Model Code of Conduct and, if necessary, primary legislation	April 2005

(iii) the member making the representations (whether a member of the Committee or not) withdraws at the completion of their representations.		
R29. The three principal regulators (Standards Board for England, Local Government Ombudsman for Wales, and Standards Commission for Scotland) should put in place formal arrangements for the sharing of experiences and best practice. This should be extended to include the body with designated responsibility for enforcement of a new statutory framework in Northern Ireland.	The three principal regulators	Immediate
R30. Prior to the introduction of the locally-based system consideration should be given as part of the review of the Code of Conduct to amend the duty to report a possible breach of the Code so that it becomes a "duty to report a possible breach to the monitoring officer and Standards Committee chair" who would then be responsible for deciding whether a formal complaint to the Standards Board should be made.	Standards Board's review of the Model Code of Conduct	April 2005
R31. All local authorities should consider using the Audit Commission/Standards Board Ethical Governance Audit tool and facilitated workshop to self-assess their arrangements for ensuring ethical standards.	Local authorities and Audit Commission	Immediate
R32. The Standards Board should develop model training and development materials that can be used to provide monitoring officers and Standards Committee members with the key competencies required to sift, investigate and determine complaints under the ethical framework. All monitoring officers and Standards Committee members should have undertaken training using this material by January 2007.	Standards Board's Operations	Immediate
R33. The Standards Board should develop further the concept of regional forums to facilitate regional support networks for monitoring officers and Standards Committee members.	Standards Board's Operations	Ongoing

Chapter 4: Embedding the Seven Principles of Public Life into organisational cultures

RECOMMENDATION	MECHANISM	TIMEFRAME
R34. Boards of all public bodies should, in their procedures, provide for a right of access for individual board members to a senior official in their sponsor department, and through them to the permanent secretary and Minister if necessary, to raise concerns about systemic and sustained failures in either the board's processes or strategic decisions. Before exercising this right of access, a board member should raise their concerns with the chair or the board as a whole.	Government response to this report. Boards of all public bodies	Within one year
R35. The boards of all public bodies should commit themselves to the adoption and use of the Audit Commission's self-assessment tool, Changing Organisational Culture Audit, which is especially designed to help embed a good conduct culture.	Government response to this report. Boards of all public bodies	Within one year
R36. The Commissioner's Code of Practice on Public Appointments should be reviewed and revised as a matter of urgency to reflect and incorporate the principal recommendations of PricewaterhouseCooper's audit report, *Conflicts of Interest*, produced for the Office of the Commissioner for Public Appointments in June 2004 and the general recommendations in the report by AHL Ltd, *Commission for Architecture and the Built Environment, Audit of Conflicts of Interest*, HC 678, 17 June 2004.	The Commissioner for Public Appointments	Within three months
R37. All regulators should review their procedures for handling whistleblowing by individuals in bodies under their jurisdiction, drawing upon best practice (for example the Audit Commission and Financial Services Authority).	Government response to this report	Within one year
R38. Leaders of public bodies should reiterate their commitment to the effective implementation of the Public Interest Disclosure Act 1998 and ensure its principles and provisions are widely known and applicable in their own organisation. They should commit their organisations to following the four key elements of good practice i.e. (i) Ensuring that staff are aware of and trust the whistleblowing avenues; (ii) Provision of realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity; (iii) Continual review of how the procedures work in practice; and (iv) Regular communication to staff about the avenues open to them.	Government response to this report. Leaders of all public bodies	Within one year

CHAPTER 1
INTRODUCTION

The Committee and its terms of reference

1.1 The Committee on Standards in Public Life was established in October 1994 by the then Prime Minister, the Rt Hon John Major. Its 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.

1.2 On 12 November 1997, the present Prime Minister, the Rt Hon Tony Blair MP, announced additional terms of reference:

To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.

1.3 The Committee has published nine reports listed at Appendix F. Further information about the Committee is at the back of this report, which also includes the membership of the Committee during this Tenth Inquiry.

The purpose and scope of the inquiry

1.4 The Committee is now ten years old and through its work during the past decade has, in the view of many, successfully mapped the ethical framework in which those who serve the public have operated and should operate. By proposing the Seven Principles of Public Life, recommending new institutions and better codification of practices, the Committee has made an important contribution to the fabric which it was put in place to review [**1**].

1.5 The Committee's Tenth Inquiry, launched in January 2004 with the publication of an Issues and Questions consultation paper [**2**], has the stated aim of examining the administrative procedures which flow from the implementation of the various recommendations of the Committee since it was established a decade earlier. We wished to know whether the procedures and processes set up have been "effective, proportional and not excessive to the objects of the exercise" [**2**, page 3]. The selected areas for inquiry were:

- Appointments and reappointments to public bodies (not to the civil service);
- The management and enforcement of Codes of Conduct including Declarations of Interest across local government, the National Health Service, and other public bodies; and
- Whether the Seven Principles of Public Life are being embedded into organisational culture and what steps are being taken to ensure that this involves the appropriate use of training and development and is more than a box-ticking exercise.

1.6 The Committee's intention is to enhance the effectiveness of these arrangements and to ensure that they can produce the desired outcome of the highest standards of propriety in public life and make the Seven Principles of Public Life a living reality.

1.7 This inquiry is not therefore a review or stock-take of how and whether previous Committee recommendations have been implemented by the Government or others, but rather a look forward to how the desired outcomes can be better achieved. The recent public attitudes research published by the Committee [**3**] highlighted the public's strong expectation that public office-holders should admit and, most importantly, learn from their mistakes. Our aim in this report is to do just that, and in a way which bolsters a culture of continuous improvement in securing high standards, not a culture of blame.

The inquiry process

1.8 The work of the Committee is evidence-based. Where conclusions are reached and recommendations made they are on the basis of an analysis of the evidence received and generated during an inquiry. Evidence for this inquiry has come from three main sources: written submissions, public hearings, and specifically commissioned research. In addition the Committee has drawn upon its own previously published work and on relevant work published by other bodies. A list of relevant Committee recommendations from previous reports is at Appendix A. All evidential sources are referenced throughout the report.

Written submissions

1.9 With the publication of the Issues and Questions Paper on 16 January 2004 [**2**], the Committee invited written submissions on any or all of the selected areas (paragraph 1.5 above) and in respect of some specific questions raised by "current concerns" regarding the procedures introduced to implement standards of conduct in those areas. The paper was circulated widely to both Houses of Parliament, to members of the devolved administrations in Northern Ireland, Scotland and Wales, to all local authorities and public bodies in the UK and to a wide range of organisations (including local libraries and national and local newspapers). The paper was distributed to a number of academics and other political commentators as well as to those members of the public who showed an interest in our work. The paper was additionally available on the Committee's website. One hundred and thirteen submissions were subsequently received.

1.10 All written submissions (save, in accordance with the Committee's long-standing procedure, those which we were asked to treat as confidential or those we considered might be defamatory) can be found on the CD-ROM which forms part of this report, as well as on the Committee's website. A list of those who submitted written evidence is at Appendix B. The CD-ROM also contains a copy of this report, transcripts of the oral evidence, and full copies of the research commissioned specifically to support the inquiry. In this report, references to written evidence provide a common reference number, submission number and a specific page number i.e. [22/85/04].

Public hearings

1.11 Between May and October 2004, the Committee took evidence at a total of ten sessions of public hearings in Belfast, Cardiff, Edinburgh and in London. A list of witnesses who gave evidence, either on their own behalf or in a representative capacity, is set out at Appendix C. In this report, references to the transcripts (published on the CD-ROM) provide the date of the hearing and paragraph number taken from the oral evidence i.e. [18.05.04 261].

Supporting research

1.12 Within its modest resources, the Committee decided to commission two specific pieces of research to support the inquiry in the two areas which generated most written evidence: the operation of the local government ethical standards framework; and the procedures for making public appointments (both published in full on the CD-ROM and on the Committee's website).

1.13 The first piece of research was undertaken by Richard Lester and Keith Stevens of the Better Governance Forum of the Chartered Institute of Public Finance and Accountancy, using a mixture of desk-based and questionnaire evidence, on *A comparison of and observations on differences in codes in local government*. The executive summary of the research report is at Appendix D and the results are discussed in detail in Chapter 3.

1.14 The second piece of research was undertaken by Ros Payne and Gavin White from Creative Research, using the analysis of interviews held with recent candidates, on *Public Appointments: Experiences of Recent Candidates*. This piece of research was co-funded with the Cabinet Office, the Office of the Commissioner for Public Appointments and the National Heath Service Appointments Commission. The executive summary of the research report is at Appendix E and the results are discussed in detail in Chapter 2.

Structure of the report and recommendations

1.15 The main part of the report is set out in the following three chapters covering each of the selected areas of the inquiry together with an executive summary which includes a consolidated list of all the recommendations made in the report.

1.16 The Committee makes no apology for using the third selected area, embedding the Seven Principles into organisational culture, as a common thread throughout the report and dealing with it in detail in Chapter 4. Much of the evidence submitted on this area concerned best practice and addressed relatively intangible issues such as leadership, trust and culture and is therefore not particularly conducive to specific and prescriptive recommendations. It appears that, while many of us can readily recognise a healthy organisation with ethical behaviour at the heart of its culture, we all find it more difficult to describe the constituent parts which have made it so. However, the Committee is convinced that it is this area that is central to delivering the desired outcomes for high standards of propriety in public life. As the Audit Commission put it in its written evidence to the inquiry [22/85/04]:

"A recurring theme in the public interest reports issued by auditors and the Commission's fraud surveys is that the problem is often that the controls are overridden or not applied, not that they do not exist"; and

"Embedding the right culture as well as the right processes is the key to achieving long-lasting improvements in the governance of public services."

1.17 We have therefore aimed, within this introduction and in Chapter 4, to set out the key components of embedding the Seven Principles into organisational culture. These can be used by government and all public bodies when considering measures to improve standards of conduct, rebuild the trust people place in public institutions and thereby deliver more effective public services.

1.18 The Committee has then used these key components in considering specific measures that could improve the effectiveness of the two further areas of the inquiry, public appointments (Chapter 2) and the ethical standards framework for local government (Chapter 3).

1.19 Finally, and as the Audit Commission pointed out, again in their written evidence to us [22/85/04], the inquiry was conducted "against a background of declining trust in public institutions, changing models of governance and public service delivery, and concerns about the burden of regulation". All of these factors have had an impact on the Committee's thinking and conclusions in this inquiry.

Trust

1.20 Public trust is a pillar of public life [**4**]. The extent and degree of public trust is a key indicator of the legitimacy of public institutions. Trust is concerned with perceptions of honesty, but is also about confidence and satisfaction with the outcomes of service delivery [**5**]. Public trust varies across different organisations and office-holders, and its allocation is not immutable. There are positive and negative drivers of trust. The positive drivers for public bodies include: demonstrably learning from mistakes; keeping promises; where staff treat customers well; and where this relationship is widely recognised. The negative drivers of trust include: organisations being uninterested in customers' views; and having poor leaders and managers [**6** p.9].

1.21 Quantitative research prepared by BMRB Social Research earlier this year, and published by the Committee [**3**], confirms that levels of trust in different types of public office-holder vary considerably. People express higher levels of trust in 'frontline' professionals (doctors, head teachers) and those whom they perceive to be impartial or independent than they do in senior managers (in local councils and the civil service) and those perceived to be politically motivated (Government Ministers, MPs in general and local councillors) [**3** p.27-8].

1.22 The survey shows that the general public has high expectations of senior holders of public office, both elected and appointed. These public expectations broadly reflect the Seven Principles of Public Life in which public office-holders are expected to act in the public interest, to behave with financial propriety, to be objective and fair in making public appointments, to be accountable to the public and to be open and honest in their communications [**3** p.69-70].

1.23 It is encouraging that few people in Britain believe that standards of conduct overall among holders of public office in this country are low. Most respondents did not perceive standards to be in decline, and most perceived standards to be average or above average for Europe.

1.24 However, respondents drew a contrast between their own strong ethical values and their perception of less rigorous behaviour in public institutions. For example, when asked their views about public appointments, merit and fairness emerge as key priorities for the general

public. However, "there is a widespread belief that cronyism is common in the appointment of public office-holders". Furthermore, the majority of people do not see cronyism as a practice in decline [**3** p.52-55].

1.25 Bridging the gap between values held by the public and their perception of official behaviour is a challenge for public policy in general. It is also a central challenge for our report, since public values are closely aligned to the Seven Principles of Public Life.

Governance

1.26 There are two issues of governance that have a direct bearing on our report. First, the pattern of public administration in the UK was changed decisively in 1997 by the introduction of a devolved Parliament and Executive in Scotland, and an Assembly in Wales. Devolution in Northern Ireland was also introduced (in 1998), although the Assembly was suspended for the duration of the inquiry. It was with good reason that the Committee held public hearings in Edinburgh, Belfast and Cardiff. The early years of devolved administrations have seen significant differences in approaches to the regulation of public bodies, and the enforcement of Codes of Conduct. This has provided a rich stream of comparative material and experience for the Committee. The Committee is happy to place on record its view of the priority given to standards issues and the vigour with which these issues have been addressed under the devolved arrangements.

1.27 Secondly, the governance of propriety arrangements in the public bodies within the remit of this inquiry have changed and developed too. The regulators within the scope of this inquiry are relatively new. The Office of the Commissioner for Public Appointments in England and Wales was established in 1995. The National Health Service Appointments Commission was established in 2001. In local government, the Standards Board for England was established in 2001. In Scotland, the Standards Commission was created in 2000 and a new, separate post and office of the Scottish Commissioner for Public Appointments was only created this year. In Wales, the reconfigured office of the Welsh Ombudsman is in its infancy too. We take full account of the relatively recent nature of this institutional development. However, we also recognise that the robustness of these new arrangements is a key factor in the removal of impropriety and in the generation of public confidence.

The burden of regulation

1.28 There has been a significant growth in regulatory supervision in the last three decades. This has been generated by the transfer to independent bodies of functions that were previously the preserve of central government. Alongside the intended benefits of increased accountability and freedom from political interference, regulatory bodies have within their operations the potential for the imposition of unnecessary regulatory burdens [**7**]. There has been growing concern about this development which, indeed, was one of the motivations for the present inquiry.

1.29 Concern about uncritical regulation has promoted a realisation that a more sensitive and proportionate or 'strategic' regulatory approach can have a positive impact on the quest for wider public access to high-quality, cost-effective, public services. Strategic regulation is built therefore on understanding user perspectives, sharing good practice, and using resources effectively to provide more incentive to change in behaviour [Audit Commission 22/85/04, para 2.6].

1.30 Much of this approach incorporates long-accepted principles of regulatory behaviour such as:

- A rigorous assessment of costs and benefits with a concern for achieving value for money both by the inspected organisation and within the inspection regime itself;
- Being independent of the inspected organisation and being seen to be so;
- Reporting in public using impartial evidence; and
- Work carried out objectively with skilled and experienced people to high standards using relevant evidence, transparent criteria, and open review processes [**8**].

1.31 There are also newer ideas, a number of which were set out in written and oral evidence, which expressly link regulatory behaviour to service delivery. These include the importance of:

- A focus on public service outcomes from a user perspective;

- Acting as a catalyst to help public bodies improve their performance;
- Concentrating on work where it will have most impact – so that activity is **proportionate** and based on risk assessment;
- Involving collaborative work with other inspectorates and review bodies to achieve greater co-ordination and a more holistic approach to the assessment of performance;
- Sharing learning to create a common understanding of performance which encourages rigorous self-assessment and better understanding of their performance by inspected organisations; and
- Enabling continuous learning so that inspections can become increasingly effective and efficient [**8**].

1.32 These ideas have been widely influential and have led to significant changes in regulatory practice [**9**].

1.33 The Committee is clear that the principles of strategic regulation have great prescriptive value in informing the approach in this report to regulatory change and development.

The framework within which the Committee works

1.34 This Committee is an advisory body only. It reports to the Prime Minister but sets its own programme after consultation between the Committee and the Government. It has no legal powers. It cannot summon witnesses to appear before it. It has no powers of enforcement and has, therefore, no power to impose any of its recommendations.

Acknowledgements

1.35 We would like to record our thanks to those who took the time and trouble to make a written submission, or who provided additional evidence at our request and in particular those who, in addition, appeared before us to give oral evidence. We were fortunate to receive evidence from a wide range of well-informed witnesses whose experience and insights have proved extremely valuable.

References

1 *The Report of the Quinquennial Review of the Committee on Standards in Public Life.* Cabinet Office 2001

2 *Getting the Balance Right: Implementing Standards of Conduct in Public Life, Issues and Questions Paper.* The Committee on Standards in Public Life, January 2004

3 *Survey of public attitudes towards conduct in public life*, Prepared by BMRB Social Research, Committee on Standards in Public Life, London, 2004

4 Baroness Onora O'Neill, BBC Reith Lectures 2002 – A Question of Trust, Lecture 1. Spreading Suspicion, downloaded from www.bbc.co.uk/radio4

5 *Exploring Trust in Public Institutions*, Report for the Audit Commission, MORI

6 *Corporate Governance*, Audit Commission, 2003

7 Independent Regulators, Better Regulation Task Force, October 2003

8 *A Modern Approach to Inspecting Services*, Audit Commission, 2004

9 *The Government's Policy on Inspection of Public Services*, The Prime Minister's Office of Public Sector Reform, July 2003

CHAPTER 2
PUBLIC APPOINTMENTS

Introduction

2.1 The regulatory system for making public appointments is relatively new. It was created in 1995 following the First Report of this Committee. In comparison to its counterpart – the regulatory system for civil service appointments which was established 150 years ago – the Office of the Commissioner for Public Appointments (OCPA) is in its infancy. On the basis of the evidence we received about public appointments the system works relatively well but there are significant weaknesses and these need to be addressed.

2.2 The system is undoubtedly an improvement on the pre-existing arrangements of unfettered ministerial patronage. The strengths include:

- The successful development of a culture which recognises the importance of appointment on merit;
- The broad (but not universal) acceptance in appointing authorities of the Commissioner for Public Appointment's authority as custodian of the Code of Practice on Public Appointments; and
- The commitment of most appointing authorities to running proportionate operations, strong on process, but clear that outcomes – excellent appointments contributing to public service delivery and carrying the confidence of both ministers and the general public – are important too.

2.3 The weaknesses in the system include:

- A small amount of unregulated ministerial intervention in competitions in England and different from practice in Northern Ireland, Scotland and Wales. This intervention is symptomatic of the need to address the balance between ministerial responsibility, merit, and independent oversight in the current arrangements. It is particularly problematic in the face of a continuing level of public concern about cronyism;
- The absence in the established appointments framework of the tools necessary for the Commissioner to implement a strategic approach. In the context of public appointments this means creating closer organic links between the regulator and the regulated so that disputes do not escalate. It also means having the potential to reward exemplary appointing authorities with a lighter regulation and allowing resources to be focused on areas of sub-standard practice;
- Continuing under-achievement in widening the social base of candidates for public appointments. One key issue here is the absence of a coherent and joined-up remuneration policy. This does damage to the coherence of the two-tier system as set out in the Code, and has a detrimental effect on widening the social base of appointees; and
- The absence, until very recently, of sustained corporate thinking to address the challenge of conflicts of interest of board chairmen and members. We deal with this in Chapter 4.

2.4 There are a number of challenges to be faced. One is to conduct the debate about sensible reform in inclusive non-judgemental language. Ministers are not 'the guilty men and women' responsible for systemic weaknesses. They are the legitimate embodiment of ministerial responsibility and accountability and the requirement to make excellent merit-based appointments. The origins of recent disputes between the Commissioner and a number of permanent secretaries which we refer to below do not lie in ill-will or base motive. With slender resources the Commissioner for Public Appointments has worked tirelessly to champion appointment on merit and to increase the authority and independence of the Office of the Commissioner (OCPA). Permanent secretaries have overseen proportionate and well-regarded competitions without losing sight of their loyalty to Ministers or their responsibility for propriety. Where there has been conflict it has emerged from the difficult and perennial task of balancing ministerial responsibility, merit and independent oversight.

2.5 A second and related challenge is to develop and reform the existing system for selecting members for the boards of public bodies in a way which carries greater public confidence and reflects more accurately than at present the Seven Principles of Public Life. This means acknowledging the context of the public's general perception of cronyism in the filling of public appointments. It also means introducing clearer, less ambiguous rules and procedures for the involvement of Ministers in competitions in which they are involved, so that appointments are demonstrably based on merit. The requirement is for highly skilled staff using modern and professional selection methods which are proportionate to the responsibilities associated with posts, and which contribute to a widening of the base from which public office-holders are selected.

2.6 Some of the above is already in train and this success should be noted and celebrated. But greater progress will not be achieved without facilitating a more strategic approach to regulation. In making its recommendations, the Committee has sought to achieve five objectives:

(a) to strengthen the role of the Commissioner for Public Appointments so that she can better discharge her regulatory responsibilities;

(b) to clarify the proper involvement of Ministers in the appointments process;

(c) to reinforce the role of permanent secretaries as the guardians of the integrity of the appointments process;

(d) to create the opportunity for the Commissioner's Code to be applied more flexibly, subject to appropriate safeguards. Any derogation from the Code would be dependant on the importance of the appointment and the appointing authority's expertise and record of achievement in making appointments, i.e. adopting a risk-based approach;

(e) to put in place a procedure for orderly resolution of any disputes between the Commissioner and appointing authorities.

2.7 All of the Committee's recommendations are designed to comply with the objective of proportionality and also to be consistent with the principles of appointment on merit, and openness in the appointments process. In the area of public appointments delivering the objectives set out above involves two sorts of changes.

2.8 Firstly, changes are required to the overall framework which simplify and clarify the rules so that they are capable of being widely understood and implemented. In practice this requires a convergence of selection rules for public appointments, with the existing rules for the selection of civil servants by open competition.

2.9 Secondly, a board of Public Appointments Commissioners is needed to support and supplement the existing public office of Commissioner. The new Commissioners should be linked to individual departments and work with them to draw up annual plans for exemplary practice. Our proposals (set out in detail in this chapter) are designed to provide incentives for appointing authorities so that they are rewarded for demonstrable good practice with the prospect of lighter regulatory oversight.

The mandate and operations of the Commissioner for Public Appointments

2.10 Before the creation of the Office of the Commissioner for Public Appointments in 1995, the public perception of bias in ministerial appointments to public bodies had in the words of this Committees' First Report "become quite widespread". The Committee shared this concern, "particularly about the absence of independent checks and balances, not least because suspicions of bias remain nearly impossible to prove or disprove." The resulting uncertainty "did not provide solid ground on which to build public confidence in a public appointments system" [CSPL First Report, para 4.22, 4.26].

2.11 The Committee's First Report recommended a new system regulated by a Public Appointments Commissioner. It was proposed that appointments should be made on the basis of merit, but that "ultimate responsibility for appointments should remain with Ministers". This process should be "open", with fully documented and reviewable reasons for appointments set out. The "most fundamental safeguard is the establishment of clear published principles governing selection for appointment". This would leave the Ministers with considerable

power of patronage: "It does not, however, follow that Ministers should act with unfettered discretion" [CSPL First Report, para 4.31].

2.12 The Government responded positively to these proposals and accepted them. The 1995 settlement therefore introduced the principle of merit-based selection regulated by a new Commissioner for Public Appointments who disseminated the rules in a code of practice. Ultimate responsibility for appointments remained with Ministers [**1**].

2.13 The post of Commissioner for Public Appointments was established in November 1995. The Commissioner is now appointed by the Queen under the Public Appointments Order in Council 2002 [**2**], which consolidates and amends the 1995 and 1998 Orders. The Commissioner, currently Dame Rennie Fritchie, is independent of both the Government and the civil service.

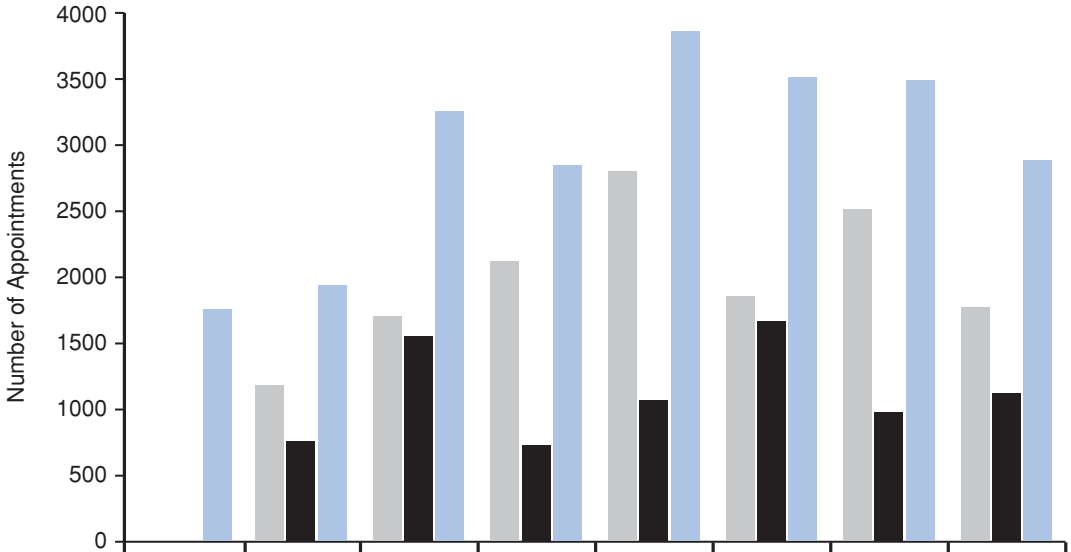
2.14 The functions of the Commissioner are set out in the Public Appointments Order in Council 2002. Of the six functions of the Commissioner, the first says that the Commissioner shall "exercise her functions with the object of maintaining the principle of selection on merit in relation to public appointments". The second function is to prescribe and publish a code of practice on the interpretation and application of the principle of selection on merit for public appointments by appointing authorities. The third function is to "audit appointment policies and practices pursued by appointing authorities to establish whether the code of practice is being observed by appointing authorities". The fourth function is to "require appointing authorities to publish 'such summary information as may be specified relating to selection for appointment'" [**2** section 2, 1-6].

2.15 The Code of Practice "sets out the regulatory framework for the public appointments process" and "aims to provide departments with a clear and concise guide to the steps they must follow in order to ensure a fair, open and transparent appointments process that produces a quality outcome and can command public confidence" [**3**].

2.16 The public bodies regulated by OCPA are governed by the 2002 Order in Council. This defines a public body as "any body listed for the time being in the Schedule to this Order or any body which the Minister for the Cabinet Office has specified in writing as being a public body for the purposes of this Order" [**2** section 1,1]. Significantly, only 11,000 out of about 30,000 public appointments by Ministers are regulated in this way.

2.17 Diagram 1 below makes two facts clear. First,

Diagram 1



	1996	1997	1998	1999	2000	2001	2002	2003
New Appointments		1177	1696	2117	2793	1849	2510	1765
Re-appointments		753	1549	723	1063	1657	970	1113
Total Appointments	1753	1930	3245	2840	3856	3506	3480	2878

Year

the total number of appointments made to public bodies regulated by the Commissioner has grown markedly since the system was first created. This is the case despite the fact that the total number of appointments has decreased slightly in each of the last three years. This growth – which was prompted by the extension of the Commissioners remit in 1998 to appointments to the boards of advisory bodies – was not envisaged [**4**]. There is also evidence from one original member of the Committee that the new 'Nolan' arrangements were neither designed for such extensive use nor were intended to apply to advisory bodies [**5**].

2.18 Secondly, a significant proportion of the total number of appointments is made up of reappointments. In these circumstances it is important to be clear that the processes for reappointments are robust and merit-based, and are not overlooked through a concentration on appointments alone.

Devolved arrangements

2.19 The Commissioners remit covers appointments made by members of the National Assembly for Wales. In March 2003, the Scottish Parliament passed legislation to set up a new, separate Commissioner for Scotland. Karen Carlton was appointed as Scottish Commissioner in 2004. In Northern Ireland, there is also a separate OCPA office, and Dame Rennie is also Commissioner.

The National Health Service Appointments Commission

2.20 The NHS Appointments Commission was set up as a Special Health Authority within the National Health Service from 1 April 2001. Until then, Health Ministers had been responsible for making non-executive appointments to NHS bodies. The Appointments Commission was established to make all chair and non-executive appointments to NHS Trusts, Primary Care Trusts and Health Authorities. All the 5,600 appointments made by the Commission fall within the remit of the Commissioner for Public Appointments. *The Commissioner for Public Appointments Code of Practice for Appointments made by the NHS Appointments Commission* [**6**] sets out the regulatory framework for appointments by the Commission in line with the Seven Principles of Public Life. The Commission operates under the general directed authority of the Secretary of State, but makes almost all its appointments completely independently of Ministers [NHSAC 22/88/01][a].

2.21 The evidence we have received points to the fact that, whatever its defects, the Commissioner for Public Appointments regulatory regime is superior to the one that existed before 1995. In the view of one of the leading UK executive search firms: "the frameworks developed and applied by successive Commissioners for Public Appointments, and made to work by government departments, have raised the quality of merit-driven decision-making in appointments processes and produced a situation in which politically-driven decision-making in defiance of merit is rare. In some areas, most notably in the NHS but also for board memberships of important public corporations, this is quite a change from the situation of 10-15 years ago" [Saxton Bampfylde Hever 22/28/03]. This is a view widely shared, even by opponents of the detailed arrangements in the current system.

2.22 Within this general picture, the Code of Practice of the Office of the Commissioner for Public Appointments has led to changes in procedures and attitudes which have opened up public appointments to a wider range of citizens, men as well as women [Dr Lily Segerman-Peck 22/78/02]. Much of the credit for this transformation should go to the present Commissioner, Dame Rennie Fritchie: "What Dame Rennie Fritchie has done is to build an 'outstanding platform' " [Tom Frawley 22/103/05].

2.23 Public appointments are also now made in a more open and transparent way. The procedures for making senior public appointments are: "sensible and proportionate… they help to increase transparency, fairness and merit-based selection. They reduce the opportunities for inappropriate influence, whether political or personal. They allow good potential candidates to volunteer and be considered" [Odgers Ray & Berndtson 22/81/02]. As the Audit Commission pointed out, "Positions are being advertised openly and candidates are recruited and interviewed against specific skill based criteria"' [22/85/05].

2.24 In summary, we were told about a "rather sensible system" which acts as "a badge of

[a] "For a small number of national appointments relating to new NDPBs or Special Health Authorities, the formal appointment has been made by DoH Ministers. However, they have not generally requested a choice of names and have ratified the single recommendation from the Commissioner" [NHSAC 22/88/07].

reassurance" for probity. And a system which, despite flaws, works [Tony Wright MP 18.05.04 12, 13]. As Dame Rennie Fritchie herself explained, "If I remember why my office was set up in the first place, it was set up to ensure that cronyism was not the order of the day and it was set up to ensure people who were appointed were fit for appointment" [Dame Rennie Fritchie 18.05.04 168]. Significant steps have been made towards these goals.

Proportionality

2.25 Having set out the contrast between the new and the old, we next examine whether benefits have been won through a disproportionate and excessively bureaucratic application of procedures under the Code of Practice. In the standards field, proportionality is concerned with the balance between propriety, accountability and efficiency, and, in this context, the relationship between processes and outcomes. As far as public appointments are concerned, there are two, related aspects of proportionality that we are particularly interested in.

2.26 Firstly, whether the processes used in making public appointments selection properly match the desired outcomes, compliance costs and risks associated with the activity. This is a feature of the 'don't use a sledgehammer to crack a nut' approach advocated by the Better Regulation Task Force [7]. The Committee's Fourth Report in 1997 noted that as far as public appointments were concerned the principle of proportionality had "not properly been taken into account. Practical implementation of procedures has become too cumbersome" [CSPL Fourth Report, para 10, p.3].

2.27 To ensure a proportionate approach, there are important balances to be struck in the application of the Seven Principles of Public Life to public appointments. The principles of Objectivity and Accountability necessitate the application of rules of fair procedure ensuring appointments on merit. On the other hand this needs to be done in a way which avoids a slavish approach to rules and process without sufficient regard to outcomes. Overburdensome rules are not in themselves a guarantee of good conduct or excellent appointments. As we were reminded in written evidence, perfect rules are not the holy grail (or its secular equivalent) – excellent appointments are [Sir Andrew Turnbull 14.09.04 4355-6; Saxton Bampfylde Hever 22/28/07]. In addition, there is a need for critical judgement and the exercise of professional skills by the civil servants who run competitions in line with the principle of Leadership. This in turn requires experience and high quality training and development.

2.28 We set out our findings about the relationship between processes and outcomes in paras 2.30-37 below. We also report on the findings of our specially commissioned survey of candidates in paras 2.38-52.

2.29 Secondly, inherent in the application of proportionality (and also in the principles of strategic regulation) is a regulatory framework which gives incentives to rule-abiding (not rule-obsessed) processes, sensitive to desired outcomes. We deal with this in paras 2.53-55 below.

A proportionate system?

2.30 In looking for proportionality in the public appointments process, we have drawn on a range of evidence including the views of the regulator, individual departments, search consultants used by departments, and candidates from a large number of competitions.

2.31 For one search consultant handling a mix of senior public sector and commercial searches: "the procedures currently in place for making senior public appointments are sensible and proportionate. In our opinion they help to increase transparency, fairness and merit-based selection. They reduce the opportunities for inappropriate influence, whether political or personal. They allow good potential candidates to volunteer and to be considered" [Odgers Ray & Berndtson 22/81/02].

2.32 Another search consultant that had advised on more than 200 senior government appointments in the last decade agreed. Proportionality was: "a vital principle without which the others can end up doing unintended but significant harm. The Commissioner for Public Appointments draws regular attention to it and seeks to implement it in practice...our experience is that the present public appointments framework on the whole works and on the whole achieves reasonable proportionality" [Saxton Bampfylde Hever 22/28/07]. This is a cautious and balanced assessment and rightly so.

2.33 Proportionality is one of the Seven Principles set out in the Commissioner's Code of Practice. It is

the one which the Commissioner for Public Appointments told us central appointments teams and sponsoring units in departments had difficulty in interpreting. As a result, OCPA auditors were asked to undertake a themed review on proportionality in 2002. The findings were mixed. In some cases the auditors found a rigid application of all the procedures regardless of whether the particular appointment warranted them. In other cases, there was an equally inappropriate blanket application of modified procedures [22/57/05-06].

2.34 Dame Rennie told us:

"One of the difficulties about applying proportionality stems from the fact that people in sponsor teams may only be responsible for one or two public appointments during their time there. It is often difficult therefore for them to form an opinion on what is proportionate, as their experience is limited…This is made more difficult with a shifting population of fairly junior people dealing with the appointments process in sponsor teams, who are often not connected to the HR team in the department. If the central appointments teams in departments were enhanced and able to undertake the day-to-day administration of the appointments process, then they would build up professionalism in how and when to apply proportionality, as well as expertise on the other aspects of the appointments process" [Dame Rennie Fritchie 22/57/06].

RECOMMENDATION

R1. Departments should give serious consideration to giving their central appointments units operational responsibility for public appointments, particularly in cases where sponsor teams manage only one or two competitions a year.

2.35 At present, the Commissioner's Code of Practice sets out that all bodies which fall within the Commissioner's remit are allocated to an upper or lower tier according to the level of remuneration paid to their members and/or the level of government funding they receive. Departments have discretion to raise a body that meets the lower tier criteria into the upper tier "if warranted by its public profile" [**3**, para 3.01].

2.36 One way in which the Code enables a proportionate approach is the provision for a first reappointment to be made for upper tier bodies, subject to a satisfactory performance assessment. This saves the department having to go to open competition after the incumbent's first term. There is also no limit, subject to the ten-year rule, to the number of reappointments to 'lower tier' bodies [22/57/06]. The Code provides an important opportunity to develop significant proportionality using these provisions. This can be seen from diagram 1 which indicates that a large proportion of OCPA-regulated appointments are in practice reappointments. We commend the Commissioner for her attempts to professionalise the appraisal arrangements which support this development. We note that good practice in this area has been led by the NHS Appointments Commission [22/88/09-10]. There is more work to be done in putting in place a more rigorous appraisal system for Board members. We deal with this in paras 2.148-152 below.

2.37 There are also specific provisions in the Code of Practice for a 'lighter touch' where a public body falls into the 'lower tier' category i.e. where members individually receive less than £5,000 annually in fees and the body receives less than £10 million per annum in government funding.[b] Most of the advisory NDPBs fall into this category. As Dame Rennie Fritchie explained to us in evidence:

"The proportionate process for these appointments allows for an unlimited number of reappointments to be made, subject to a maximum of ten years and satisfactory performance appraisals; these posts can be publicised on websites rather than in the national press; the independent assessor need only review, as opposed to take part in, the whole process; [and] 'conversations with a purpose' with short-listed candidates can take place, rather than a full interview process" [22/57/06].

2.38 Such was the concern that departments had failed to take advantages of the opportunities for proportionate applications of the Code of Practice that the Committee commissioned a small but significant piece of qualitative, independent research to examine in detail the experiences of recent candidates for appointments to the boards of NHS and public

[b] "If the chair receives £20,000 or more, that appointment alone is subject to upper tier procedures, however, the body remains in the lower tier" [**3**, para 0.1].

bodies regulated by the Commissioner for Public Appointments. The work was undertaken for the Committee by Creative Research in the summer and autumn of 2004 [**8**]. An executive summary is attached to this Report at Appendix E, and the full report is set out in the accompanying CD-ROM.

2.39 The research consisted of a total of 71 qualitative telephone interviews with candidates and potential candidates for a range of appointments in 30 different competitions across four central government departments. Half of these competitions were run by the NHS Appointments Commission for non-executive directorships in a range of NHS Primary Care Trusts. The remaining competitions were sponsored by three central government departments and included a range of board positions across the upper and lower tiers. They included candidates from very high-profile and senior competitions. The process for recruiting respondents is set out at Appendix E. The sample was drawn to include candidates at all stages of the selection process. The researchers were able to reflect the view of the preponderance of unsuccessful candidates and not only successful ones.

2.40 Respondents were overwhelmingly of the view that the appointments process should be rigorous, open and fair, and many felt that their experience had suggested that it was. The responsibility associated with public appointments meant that the best candidate had to be found and this required that the recognised process should be followed.

2.41 A number of candidates favourably compared the rigour of the current public and health appointments process with the patronage style of the pre-1995 system or with the private and voluntary sectors. For example:

"I've been asked to join a number of Boards in the private sector; it's always been a telephone call, 'would you like to join my Board?', no interview, nothing… the main difference between the public sector and the private sector is a clear responsibility…[for] a clear and open process. It's not the case with all the public sector appointments I have to say, but with this one and one or two others that I have been approached about, I felt it was a pretty straightforward process" [Appointed].

2.42 Respondents did not themselves perceive proportionality to be a serious issue and this was a view held irrespective of the level of position applied for. They "did not regard the process that they went through as unnecessarily burdensome; indeed for a few it seemed rather lightweight especially in terms of the length and conduct of the interview" [**8**, para 2.2].

2.43 For the most part, candidates reported that the components of the appointments process they were involved in seemed to work well. The timescales were felt to be acceptable, with some departments being more efficient at keeping the process moving than others. However, a broad range of candidates expressed the concern that an 'inner circle' of those who already held a public appointment were more likely to be appointed in a competition, and that older candidates from outside London were at a disadvantage. These perceptions arose particularly when the application of the appointments process went awry [**8**, paras 2.3, 4.4, 2.3, 2.4].

2.44 The researchers reported key drivers of candidate satisfaction from the 30 relevant competitions. Firstly, respondents were more likely to feel positive about the process if they were informed about the context, the process and the numbers of candidates involved. In the absence of being given a clear picture, candidates "may suspect that things are happening behind the scenes that they do not know about". This puts a premium on accurate, courteous, understandable, timely and personal communication from the department or NHS Appointments Commission in reporting outcomes or changes to arrangements. Candidates who were less happy with the process "have often been recipients of communications that are abrupt and standardised and lack personalisation" [**8**, para 2.5.1].

2.45 Secondly, and related, candidates want to feel that the level of consideration given to their application recognises the effort that they have put in and that someone has looked seriously at what they have to offer. They want to feel that their interest is valued and that even if they are not right for the position in question, there is an opportunity for their potential for other positions to be identified. In this context, rejection letters by return post and the wasting of candidates time at interview because of tokenistic inclusion were seen as counter-productive and interpreted as lack of serious recognition. There was also a general impression that databases used to store

the details of unsuccessful candidates for future competitions were not very effective.

2.46 Thirdly, candidates want the selection process to work both ways so that in addition to being evaluated for the position, they can also reassure themselves that they want it and are confident in their ability to perform in it. This was delivered at interviews where there was a constructive exchange of views and an opportunity to ask questions. But the process was perceived negatively as one-way, where, having done a great deal of work to complete an application, the interview was a dry and formal occasion. Here candidates were left with a sense of gaining nothing from the experience.

2.47 Finally, respondents made a number of comments about the details of the application and selection process itself. Here we summarise the more important points.

2.48 Advertisements for board positions were judged 'staid', formulaic and unlikely to attract the widest possible range of candidates. Information packs were judged necessarily bulky by serious candidates but also overly technical and jargon-ridden. There was appreciation of clear job and person specifications within the packs though sometimes these were vague or confusing with the potential to waste the time of applicants and also departments who had to sift through unsuitable applications. Application forms and their use of open-ended questions were judged helpful and an indication that candidates would be treated equally. There was genuine confusion about the treatment of disabled candidates and the use of the guaranteed interview scheme [**8**, paras 5.4-5.7].

2.49 Many respondents who were not short-listed felt that their rejection had been handled politely and tactfully, and assumed they had been beaten 'fair and square' even when they had no idea who had eventually been appointed. By contrast, a number felt their rejection letters were off-hand, unhelpful, and unspecific about the process.

2.50 In the competitions that the researchers examined, longlist interviews were often conducted by an executive search agency. The success of the practice of outsourcing these interviews rested on the skills and knowledge of the recruitment consultants themselves, and this was perceived as variable.

2.51 In short-list interviews most respondents mentioned the contribution of the independent assessors in "ensuring fair play". The format of interviews varied from the relaxed and informal to "very formal and regimented, almost to the extent of being 'quasi-judicial' ". For one appointed candidate the latter approach: "creates a very negative impression. Moreover… [it] does not seem appropriate when discussing a contribution which is rather more a service than a well remunerated post". There was a preference for an approach which was both rigorous and professional but also reasonably relaxed to enable candidates to represent themselves better [**8**, paras 6.3-6.4].

2.52 In summary, the research findings (which will repay careful reading across appointing authorities) suggest that existing processes do not, in the aggregate, act as a disincentive to excellent candidates putting themselves forward for public office. This is a welcome finding and one shared in evidence we received. There is, however, no room for complacency, and some evidence of lapses into bureaucratic insensitivities. We set out directly below a recommendation for departments to look more strategically at the issue of proportionality so that they can implement change to safeguard against unnecessary regulation.

Public Appointments Plans

2.53 In its First Report [CSPL First Report, para 4.62] the Committee recommended that Secretaries of State should report annually on the public appointments made by their departments. Although departments do include information about public appointments in their annual reports, we now return to the proposal of a free-standing document as a vehicle to accelerate proportionality and additional openness.

2.54 We believe that annual Public Appointments Plans should be adopted as the key strategic document for departments to set out their policy and practice relating to the public appointments of chairs and board members of the public bodies they sponsor. These plans would be published documents, drawn up by the permanent secretary (with the assistance, where appropriate, of the linked Public Appointments Commissioner, see below, paras 2.170-176), and reflecting the views of the Secretary of State.

2.55 The plans could and should be the vehicle for

signalling a significant reduction in regulation where this is justified by exemplary performance in the previous year. In the construction of these plans the department would set out in concise terms:

- Progress in achieving objectives in the previous year. Because of the fragile state of public confidence in the public appointments system, lighter regulation should be earned on the basis of demonstrable performance not merely taken for granted.

- Proposals for those appointments to be labelled 'starred' where Ministers have a more active involvement in the selection process. (See below, para 2.99-104.)

- Proposals for the approach to upper and lower tier appointments. There are substantial opportunities for the use of flexible approaches here, reflecting the core requirements of the Code of Practice, the characteristics of the customers/stakeholders the department serves, and the requirements of a truly proportionate approach.

- Specific outreach work proposed and an equality and diversity strategy as the basis for more representative outcomes in competitions.

- Remuneration policy. After a very long delay, revised guidance on remuneration for the chairs and board members of public bodies was issued in September 2004 during the course of the inquiry [**9**]. This confirms the responsibility of departments to determine remuneration. The Public Appointments Plan presents an opportunity for departments to explain policy on remuneration (bearing in mind that an inclusive approach to appointments needs to be sensitive to remuneration) and arrangements for review.

- The regulatory status of public bodies sponsored by the department. A policy account of those public bodies sponsored by the Department subject to the regulation of the Commissioner for Public Appointments, those outside this regulation, and those where the regulatory responsibility is planned for change in the course of the year. (We are aware of the iteration of some of the more administrative aspects of this information in the annual Cabinet Office publication, *Public Bodies*.) This account is necessary to throw more light on what one witness called a "demi-monde…of ephemeral and ever-changing policy networks and consortia" [Professor Lord Smith of Clifton 22/108/06, para 4.12].

RECOMMENDATION

R2 Annual Public Appointments Plans should be adopted as the key strategic document for departments to set out their policy and practice relating to the public appointments of chairs and board members of the public bodies they sponsor. These plans should be published documents, drawn up by the permanent secretary (in consultation, where appropriate, with the linked Public Appointments Commissioner), and reflecting the views of the Secretary of State.

Balancing ministerial responsibility, merit and independent oversight in the appointments selection process

A Public Appointments Commission?

2.56 We gave consideration to a radical proposal from the House of Commons Public Administration Select Committee (PASC) in its Fourth Report of 2003 to replace the whole system created in 1995 with a Public Appointments Commission [**10**]. This would be statutory, independent, and along the lines of the existing NHS Appointments Commission. It would:

- be perceived as independent, making appointments based on merit without Ministers or senior civil servants being influential in any way;

- specialise in appointments and become increasingly professional and proactive in comparison to government departments; and

- be open and transparent.

2.57 We are attracted by the long-term potential of this proposal which removes Ministers from the selection process. It will become increasingly attractive with the developing success of the NHS Appointments Commission, if there is a successful launch of the new Judicial Appointments Commission, and if there is no serious response to the weaknesses in the present system identified by this report.

2.58 However, we note the wisdom of the PASC report in accepting "that it might well be more difficult [than the NHS Appointments Commission] for a single Whitehall-wide body to be sufficiently flexible to cope with a wide range of different types of public appointments" [**10**, Ch 4, para 203].

2.59 We agree with this judgement, which combined with evidence from this inquiry of the relative success of the new arrangements established in 1995, suggests that these core arrangements should continue, though suitably reformed.

2.60 We were impressed with the evidence given to us by the NHS Appointments Commission about its seriousness in developing the professional basis of its recruitment and selection processes, in particular, the steps it has taken to look rigorously at issues of competency-based recruitment, appraisal, and reappointment. We were disappointed to learn that these good practice developments have not been discussed as widely in Whitehall departments as we think they ought to have been [15.7.04 3378-3380]. There is an urgent need for a more significant exchange of good practice of this kind.

RECOMMENDATION

R3. More systematic sharing of good practice in the making of appointments across public administration is urgently required. The Cabinet Office should convene an annual seminar of UK public appointments regulators and appointing authorities to exchange and debate good practice.

2.61 There is significance in the recent decision by the NHS Appointments Commission to widen its remit and seek recruitment assignments from central government departments beyond the functional area of health. In this sense, appointing authorities themselves may well decide in the coming months whether there is an appetite for a central and professional appointments commission to replace or sit alongside existing arrangements.

Varieties of ministerial involvement across the UK

2.62 Much of the practice in relation to ministerial involvement in the public appointments process varies in different parts of the UK. In England and Wales the selection process is regulated by the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies [**3**]. There are parallel codes in Northern Ireland and Scotland, and practice in Wales is modified by the Commissioner's Code for the National Assembly for Wales. Under the Commissioner's Code, Ministers are consulted very early in the planning stage to agree both the selection criteria and the way the process is to be conducted. Ministers and officials are equally free to suggest names of possible candidates who might be encouraged to apply for the vacancy. Applications from those they suggest must be received by the same closing date and should be treated in the same way as for other applications. Once the panel has selected appointable candidates, Ministers will then be offered a choice from which to make a final selection [**3**, paras 3.06, 3.24b, 3.36].

2.63 While ministerial involvement at the beginning and end of the appointments process of the kind set out above is explicitly set out in the Code of Practice, there is a variety of practice on Ministerial involvement at the short-listing stage of the appointments process *and afterwards.* Some of this practice is contested.

2.64 In **Scotland**, ministerial involvement at the short-listing stage does not take place [Karen Carlton 17.06.04 1400-04]. The Permanent Secretary of the Scottish Executive, John Elvidge, commented:

"It is long-standing policy, agreed and recently reconfirmed with Ministers, not to consult them at the short-listing stage. The view taken is that identification of the short-list is best left to the selection panel which through application of the agreed criteria, should be able to identify the best candidates for interview" [22/83/05].

2.65 Tavish Scott, MSP, the Deputy Minister for Finance, Public Services and Parliamentary Business in Scotland who gave us evidence confirmed that Ministers are not consulted at short-list stage:

"That is so and…I think it is right that Ministers are not involved then until they see a final submission in terms of a recommendation."

He went on to say:

"I think the other advantage of that is the scrutiny we come under. I think if we were seen by some to be dabbling in the process at an earlier stage...there would be all kinds of questions in parliament about objectivity and

political interference etc" [Tavish Scott MSP 17.06.04 1570-1].

2.66 In **Wales**, Ministers may sit on selection panels for appointments to upper-tier bodies. However, when they do, under the Commissioner's Code for the National Assembly for Wales, they must invite two nominated members of the relevant Assembly subject committee which shadows each ministerial portfolio to sit on the panel with them [Sir John Shortridge 22/79/04]. Within the current political party balance of the Welsh Assembly this means that at least one of the subject committee nominees is from a different political party than the Minister.

2.67 Under the Code for the Welsh Assembly, Ministers must consult subject committee nominees at three stages during the appointment process:

- the start of the process;
- the short-listing stage; and
- the final decision stage.

Subject committee nominees are asked to consider appointments on the basis of merit and "The fact that politicians from opposition parties are involved in the appointment process helps to ensure that it is free from political bias" [Sir John Shortridge 22/79/05].

2.68 In **Northern Ireland**, it is not the practice to consult Ministers at the short-listing stage of a public appointment process. We were told by the Head of the Northern Ireland Civil Service that "We do not do this in Northern Ireland and it is not in our best practice guide" [Nigel Hamilton 29.06.04 1767]. Consultation with Ministers is confined to before the process begins and after it is completed, so Ministers "should be aware of the criteria for appointment at the outset" [Nigel Hamilton 22/86/07]. The process is then "entirely independent of Ministers both in the short-listing and in the interviewing stages and the result of this is that Ministers are provided with a list of candidates whom the panel considers to be appointable, *in alphabetical order*" [Nigel Hamilton 29.06.04 1767].

2.69 When asked if there were circumstances in which it would be advantageous to share the short-list with Ministers, Nigel Hamilton replied: "Not at this stage. That has not been our practice and I think we are keen to maintain the integrity of the process" [Nigel Hamilton 29.06.04 1773].

2.70 There are rare exceptions to this practice in the operations of Northern Ireland Office Ministers. The exceptions include appointments to three public bodies – the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission and the Northern Ireland Policing Board. Northern Ireland Office Ministers have a statutory obligation to ensure that, as a group, the membership of each of these bodies is representative of the community in Northern Ireland:

"For this reason and to satisfy Ministers that there is a sufficiently diverse range of candidates, they are shown for information only the names of those short-listed for interview" [Northern Ireland Office 22/94/04].

2.71 In **England**, there has been spirited exchange on the issue of ministerial involvement at the short-listing stage for a small number of senior public appointments.

2.72 As Sir Andrew Turnbull, Cabinet Secretary and Head of the Home Civil Service, told us: "The controversy has been about the bit in the middle: should they [Ministers] be kept informed of the progress of assembling the short-list?" [14.09.04 4271].

2.73 The Commissioner for Public Appointments pointed out that:

"Four departments misunderstood my Code and routinely share short-lists with Ministers when it is not a recognised part of the process, when the independent assessor is not around to see that happening, when the candidates themselves do not know that is the case and when, on very rare occasions, names may be removed, and indeed names added. Even if the Minister does not alter the list, the Minister in private in an unrecorded meeting, can say, 'I like this one, do not like that one' a kind of nod and wink approach" [18.05.04 75].

2.74 Sir Brian Bender, one of the permanent secretaries from these four departments, who also helpfully gave us evidence, commented:

"We have a shared objective between us of processes that ensure the appointment of quality candidates in a transparent way and that are not

open to accusations of cronyism, etc. ...we regard it as the role of permanent secretaries to ensure we have the processes in place to achieve that. The point of difference [with Dame Rennie] is a narrow but, we believe, important one that comes down to whether or not, between the beginning of the process and the end, Ministers can see lists of names, specifically at short-listing stage. It is, as I understand the difference, as simple as that" [Sir Brian Bender 15.07.04 3384].

2.75 Several points emerge from this set of circumstances. First, regardless of the merits of the case, the Commissioner's Code of Practice is, at present, silent on the question of ministerial participation in short-listing, even if the Commissioner's view is well known [Sir Brian Bender 15.07.04 3385. Dame Rennie Fritchie 18.05.04 97]. In any event, the public has a legitimate concern that these appointments are made on merit and free from political bias.

2.76 Secondly, the principle of participation by Ministers in the appointments process is not incompatible with the independence and integrity of the system. There is common ground here among a variety of important stakeholders, including the Commissioner for Public Appointments, permanent secretaries, Ministers themselves, and other informed players and observers. It is accepted good practice to seek the Minister's views at the beginning of the process on the role, description, person specification and publicity options for the vacant post, as well as inviting the Minister to put forward names of potential candidates [**3**, paras 3.06, p.19]. The Minister also currently chooses from the list of names submitted by the appointments panel at the end of the process [Dame Rennie Fritchie 22/57/08; **3**, para 3.36].

2.77 Ministerial involvement also upholds the accountability principle. Sir Andrew Turnbull told us that "for really significant appointments where bodies are implementing major pieces of government policy" Ministers ought to be involved at the planning stage "because they are accountable if that person does not ultimately perform" [14.09.04 4281]. We accept this important point.

2.78 Thirdly and paradoxically (in light of the points made in the previous paragraphs), there are perceived political dividends in terms of public trust for regulatory arrangements that consciously exclude Ministers from short-listing. In Scotland and (with noted exceptions) Northern Ireland, Ministers are not involved in the short-listing process. In Scotland the advantage is that Ministers are no longer seen as "dabbling" in the process [Tavish Scott MSP 17.06.04 1571]. In Northern Ireland, ministerial non-involvement at this stage is "to maintain the integrity of the process" [Nigel Hamilton 29.06.04 1773]. In Wales, the safeguard of ministerial involvement at short-listing stage is that they are shadowed by Welsh Assembly subject committee members of another party. This is a 'unique' system. The First Minister told us:

"I do not know of another dispensation anywhere in Europe, where you bring in members of other political parties to provide an additional political input" [Rhodri Morgan 07.07.04 2317].

2.79 Sometimes this has resulted in the Minister in the Welsh Assembly not getting the candidate he wanted. It is seen as "a kind of quality assurance against any drift into the political temptations of political nepotism" [Rhodri Morgan, 07.07.04 2318]. Given this safeguard Ministers are able to play a proactive role, involved in all aspects of the most significant appointment competitions. [Sir Jon Shortridge 07.07.04 2321, 2329].

2.80 Fourthly, there are also advantages to limited involvement of Ministers at short-listing stage. We were told by one executive search consultant that: "The assumption that Ministers meeting candidates only fosters political bias or personal whim does neither the majority of Ministers nor the majority of candidates justice." Ministerial involvement is helpful "in attracting the best candidates especially from groups of people who may need significant persuasion" [Saxton Bampfylde Hever 22/28/04]. It can also contribute to the relationship of trust that has to be built between the public body and the sponsor Minister [Sir Brian Bender 15.07.04 3348]. In any event there are, Sir Simon Jenkins told us, a certain number of appointments – the Chairs of high profile public bodies – where there is strong and legitimate Ministerial interest in the outcome [09.09.04 3729].

2.81 We agree that there are appointments where there is a strong and legitimate ministerial interest in the outcome. We do not agree that these appointments should be handed over to the Minister to make directly, and that in these cases the existing arrangements are a money-wasting, "laundering exercise" [09.09.04 3729].

Sir Simon Jenkins suggested that appointments of this type are "effectively a junior Minister being appointed within the confines of a particular department". With respect to Sir Simon, these appointments – for example the chairs of high profile public bodies – are differentiated from the role of junior Ministers by the judgement that the public bodies concerned are arms-length from government. The appointments process should reflect this judgement.

2.82 In England, there is evidence of a small but significant amount of unregulated ministerial intervention at short-list stage in competitions for senior appointments. We now discuss this evidence and measure it against the most relevant of the Seven Principles of Public Life – Accountability, Openness, and Objectivity. (See inside front cover)

2.83 **Accountability** is the basis upon which the Government asserts the right of Ministers to be involved through the selection process. As the Cabinet Secretary pointed out to us:

"It is of course the Secretary of State to whom, in most cases, Parliament has assigned ultimate responsibility for the function to be carried out by the appointee. Ministers are also accountable for the performance of the people they appoint. Of course we must guard rigorously against cronyism, but to build into the way that we make appointments a complete disconnection between the Secretary of State and the selection process may strike at the heart of the role that Parliament has given the Secretary of State. This cannot be right. We need to ensure that Secretaries of State are appropriately engaged in the process. For the majority of appointments, the purpose of a selection panel is to assist the Minister in making an appointment which is a) successful and b) commands public confidence, not to make the appointment itself" [Sir Andrew Turnbull 22/67/02].

2.84 We accept all the central propositions of this statement, namely: (i) the need to guard against cronyism; (ii) a rejection of a complete disconnection between the Minister and the selection process; (iii) a need to ensure that Ministers are appropriately involved in the appointments process; and (iv) ensuring that the selection panel is an integral part of the process by which the Minister can make successful appointments which command public confidence. Our proposals, set out below will, we believe, deliver each of these aims and in a way which is likely to command public confidence without undermining ministerial responsibility for decision-making.

2.85 **Openness**. As we set out in para 2.73 above, the Commissioner for Public Appointments expressed concern about the sharing, discussion of, and changing of short-lists with Ministers out of sight from independent assessors, and without candidates knowing.

2.86 This view was shared by experienced independent assessors with long experience of competitions. One gave evidence that behind-the-scenes ministerial expressions of preference at short-list stage are not unknown. This has led to the pressurising of civil servant panel members and consequent role conflict between upholding panel views and acting as policy adviser to the Minister [Dr Lily Segerman-Peck 14.09.04 4102-4125]. Another independent assessor thought that: "where Ministers do amend short-lists, it is unclear as to how that is recorded hence…transparency is also at risk" [Wendy Mason 22/46/06].

2.87 We were told by permanent secretaries that departments have been 'open' about the involvement of Ministers in the short-listing process. They expressed some irritation at a description of what happens as a 'private' showing of lists to Ministers [Sir Brian Bender 15.07.04 3328, opening statement; David Normington 15.07.04 3334, Sue Street 15.07.04 3371]. It was also pointed out that OCPA auditors had expressed no misgivings when reviewing arrangements in 2001 [Sue Street 15.07.04 3371]. However, Sir Brian Bender told us, when asked whether applicants would know *in advance* about the ministerial involvement in the selection procedure to be gone through:

"I think in the case of DEFRA, the absolutely honest answer is that the applicants should know, but we are now taking steps to make sure there is absolutely no doubt that they would know" [15.07.04, 3376].

David Normington (Department for Education and Skills) concurred: *"And that is the same for us. We are revising our guidance now"* [15.07.04 3377].

And Sue Street (Department of Culture, Media and Sport) agreed that "we need to clarify in advance that short-lists go to Ministers" [15.07.04 3382].

2.88 In summary, there are ambiguities and misunderstandings about the role of Ministers in short-listing for public appointments. These have arisen because the Commissioner's Code "is silent on the matter" [15.07.04 3385], even though the Commissioner has been clear herself about the irregularity of this activity. We do not consider that Ministers or permanent secretaries have been in any sense underhand or disingenuous, but their interventions have not, in our view, been fully open or widely understood. Current practice fails the test of Openness.

2.89 **Objectivity.** Dame Rennie Fritchie also expressed concern about the way in which Ministers can alter short-lists and the reasons behind these alterations. She expressed concern that by the Minister saying 'I cannot work with this person, take that name off,' at short-list stage, the principle of merit and equal opportunity would have been breached [18.05.04 75].

2.90 The response of Sir Brian Bender to this was that:

"If it is a matter of fact that this Minister cannot work with that individual then there is an interesting question of whether there is a real point in putting that individual through the next stage of the process, when it is pretty clear the Minister is not going to appoint them. It seems to me a perfectly legitimate issue for the Minister to raise, provided there are reasoned arguments as to why they cannot work with that individual. That would then go back to the panel for a judgement. Ultimately, one is trying to develop a relationship of trust between the body and the Minister" [Sir Brian Bender 15.07.04 3348].

2.91 We accept that there is a need to develop a relationship of trust between the sponsored public body and the Minister in the sponsoring department, though there is, of course, more than one way of doing this. However, there is also a need for *public* trust in both the public body and the Minister and the relationship between them. This, in our view, requires a strictly merit-based approach with limited and clearly-defined intervention by Ministers at short-listing stage – if that intervention is to happen at all.

2.92 From the two statements just quoted, it is clear that ministerial intervention at short-listing stage merely on the grounds of "I cannot work with this person, take that name off at this stage" does not meet the merit principle. A critical issue – as Sir Brian Bender pointed out – is the reasoned argument behind that judgement, which in his view should go back to the selection panel for a judgement.

2.93 There is therefore a compelling reason to document all expressions of ministerial views on candidates at short-list stage. The Code [**3**, para 3.31] requires that all decisions, including those to reject, must be fully documented in selecting a short-list. We are clear that this does not always happen at present [paras 2.73, 2.86], and that to protect the merit principle it is a *sine qua non* of ministerial involvement. Current practice does not always meet the test of Objectivity.

2.94 In summary, we received evidence both for and against the practice of ministerial involvement in the short-listing of candidates for public appointments. We were impressed with the practice of non-involvement as it currently operates in Northern Ireland and Scotland and for the special safeguards set up in Wales. **We make no recommendations for any changes in practice in the devolved administrations.**

2.95 In England, where there is ministerial involvement, the current practice is contrary to two of the Seven Principles of Public Life – Openness and Objectivity – and it should be changed. We believe that the Commissioner's Code of Practice should be revised to clarify the circumstances under which ministerial involvement in short-listing takes place and now set out how this should be done.

2.96 We have thought carefully about the principles under which ministerial involvement in short-listing should take place in England. They should be based on the Civil Service Commissioners' Recruitment Code, particularly paragraphs 2.52, 2.53, and 2.54:

"Ministers may have a particular interest in appointments to certain posts. That interest must be accommodated within a system which selects on merit, is free from personal or political bias and ensures that appointments can last into future Administrations. The Minister should be kept in touch with the progress of the competition throughout, including being provided with full information about the expertise, experience and skills of candidates on the long and short-lists. The Minister cannot interview the candidates or express a preference among them. Any further views the Minister may

have about the balance of the expertise, experience and skills required for the post should be conveyed to the selection panel" [**11**].

2.97 These revisions were commended to us in evidence as rules which "work really well now and are a very sensible set of safeguards to civil service appointments" and "carefully judged modifications…to allow a degree of carefully regulated debate…" [David Normington 15.07.04 3482; Saxton Bampfylde Hever 22/28/06].

2.98 In practice, the adoption of this paragraph or something close to it would safeguard the following:

- That any candidates added to the short-list applied at the beginning of the process and were considered to have met the basic criteria by the sift panel;
- That the independent assessor involved in the competition was kept informed;
- That all discussions with Ministers at short-listing stage are properly recorded including the reasons for changes and can be justified objectively; and
- That any ministerial proposal for change should be referred to the selection panel which would exercise its own judgement and should not feel that it has to change the short-list because the Minister has said so or because of any other views expressed by Ministers.

RECOMMENDATION

R4. In England, the Commissioner's Code of Practice paragraph 3.24 should be re-drawn, on the basis of the Civil Service Commissioners' Recruitment Code, at paragraphs 2.52, 2.53, and 2.54. This would permit ministerial involvement at short-listing stage in 'starred' public appointments where they have a particular interest in appointments to strategic posts within the limitations of the Seven Principles of Public Life, particularly Accountability, Openness and Objectivity.

Starred public appointments

2.99 The arrangements for tiers, as currently set out in the Commissioner's Code, do not reflect a real hierarchy of significance of public bodies. They provide no clear indication of where busy Ministers with onerous responsibilities should set aside time to participate in the selection process.

2.100 As a result the current upper tier category is too undifferentiated. It needs prioritising to set apart that small number of public bodies whose strategic importance makes ministerial involvement in the appointment of chairs and board members a matter of public interest.

2.101 We propose a refinement which will:

- Reflect adequately the seniority of posts;
- Signal in a transparent way the small number of public bodies whose chairs and board members will be selected with the active participation of Ministers throughout the process; and
- Move the focus of attention from (at present) the selection phase to the critical and inadequately covered planning and preparation phases.

2.102 A small number of upper tier public bodies with significant strategic importance would use a 'starred' selection process for the appointment of chairs and board members. The department's annual Public Appointments Plan (see above, paras 2.53-55). would indicate which bodies justify the use of the starred process. Criteria for the adoption of the starred process would be that the public body exhibits one or more of the following:

(a) A high public profile and/or sensitive remit;

(b) Access to large public funds;

(c) Makes a major and demonstrable impact on the lives of citizens; and

(d) Plays a critical role in the implementation of government plans.

2.103 In the starred appointment selection process Ministers would be involved throughout in the pursuit of a merit-based appointment. This would embrace activities, to be set out in the Commissioner's revised Code of Practice, which we heard in evidence from Sir Andrew Turnbull, Baroness Prashar and others, add demonstrable value to the selection process:

- Early mandatory involvement at the beginning of the process to set out the method of selection, role, job description and person specification, and the skills needed to complement the rest of the team already in post [Sir Andrew Turnbull 14.09.04 4270; Dame Rennie Fritchie 18.5.04; Baroness Prashar 14.9.04 4239-43].

- Leaving to a highly skilled selection panel (including the independent assessor) the recommendations for long and short-lists and appointable candidates through the use of appropriate and proportionate selection techniques. Consultation about the short-list in line with the conditions set out in paragraphs 2.95–98 above.

- Selection of the candidate to be appointed (see para 2.109 below).

2.104 For other appointments which are not starred the reality is that there will not be and should not be continuous ministerial involvement. Ministers may wish and should be able to sign off the planning arrangements for the competition. They should not be consulted at short-list stage and should not be involved again until the post-interview final selection of the candidate to be appointed (paras 2.110).

RECOMMENDATION

R5. (a) The process for 'starred' appointments, i.e. senior competitions likely to attract the specific interest and involvement of Ministers, should be set out in the Code of Practice as a special starred category.

(b) Starred appointments should be identified in annual, published, Public Appointments Plans which set out a department's public appointments record, policy and implementation plans.

(c) For other appointments which are not starred, Ministers may wish and should be able to sign off the planning arrangements for the competition. They should not be consulted at short-list stage and should not be involved again until the post-interview final selection of the candidate to be appointed.

Ministerial choice

2.105 In Public Appointments competitions, Ministers usually have a choice from a number of acceptable candidates at final selection stage. [**3**, para 3.36]. This was not a recommendation in the Committee's First Report. Nor does it derive from the Public Appointments Order in Council which has nothing to say about ministerial choice. However, the Commissioner's Code of Practice does provide for a choice, and this is almost always exercised by Ministers.

2.106 Ministerial choice is one of the least understood features of the present arrangements. It has generated "much confusion" among Ministers and civil servants because of the contrast with the other and different sets of arrangements for open civil service competitions and internal civil service 'trawls' [Baroness Prashar 14.9.04, 4242]. Our research project into the experience of recent candidates also revealed uncertainty and some suspicion in the minds of candidates about how ministerial choice actually operated in practice [**8**, para 9.2].

2.107 We were told by the First Civil Service Commissioner that a key issue was ensuring there was "appropriate" involvement of Ministers through the selection process including agreement right at the beginning about what outcome is wanted. In that context, the professional working of the panel and the use of rigorous assessment techniques should generate sufficient confidence in Ministers that they would not even want or need a choice between appointable candidates [Baroness Prashar 14.9.04 4243]. Under revised arrangements, where there is for senior, 'starred' appointments, greater alignment with the current practices in the Civil Service Recruitment Code, notably the early participation by Ministers in scoping an appointment and contributing to short-listing, we believe that ministerial choice will quickly become unnecessary, and even an anomaly.

2.108 The First Civil Service Commissioner told us that the issue of ministerial involvement in selection processes had been a "longstanding saga" in the last four years [Baroness Prashar 14.09.04 4224]. One important flexibility was recently introduced to the Civil Service Commissioners' Recruitment Code which has relevance and potential applicability to public appointments. In rare cases "where, despite having been kept in touch throughout, the Minister does not feel able to appoint the lead candidate, he or she must

refer the matter back to the selection panel with his or her reasons. If, in the light of this explanation and having reviewed the balance of the selection criteria, the panel is minded to revise the order of merit and recommend another candidate from amongst those previously considered appointable, it must refer the case to the Civil Service Commissioners for their collective approval" [**11** para 2.56]. The Commissioners may either approve the submission of an alternative candidate or take the view that the original order of merit should stand. If, following the judgement of the Commissioners, the Minister is still dissatisfied, he or she can require a new competition to be held.

2.109 We have reviewed this revised arrangement in recent months. We believe that for starred appointments, it delivers a sensible balance between ministerial responsibility for appointments on the one hand and the need for appointment on merit and retained public confidence on the other. Full ministerial involvement up to and including short-listing **as well as** ministerial choice from appointable candidates as well is not consistent with the overriding principle of merit.

2.110 For non-starred appointments, where Ministers will not have full involvement, it is reasonable to continue to present Ministers with a choice of candidates judged appointable by the selection panel. However we believe this practice should be reviewed when the new arrangements for starred appointments have been implemented and have had a chance to settle down.

RECOMMENDATION

R6. Paragraphs 2.55, 2.56 and 2.57 of the Civil Service Commissioners' Recruitment Code should be incorporated into the Public Appointments Commissioner's Code of Practice for use in starred appointments.

The regulatory oversight of the Commissioner for Public Appointments

2.111 The regulatory oversight of the Commissioner for Public Appointments needs sharpening. The existing arrangements described in paras 2.10 – 16 are unsatisfactory. In policy (and in law) while the Public Appointments Order in Council establishes a framework for regulating and overseeing public appointments, it leaves the Commissioner as a regulator with insufficient regulatory power to deal with abuses to the Code. Most departments have accepted the value of the Code, and the Commissioner's help and assistance in its implementation [David Normington 15.07.04 3425]. However, some departments have disputed the Commissioner's interpretation of what is in the Code. More important, on a small number of occasions the views of the regulator have been set aside by Ministers. We think this is unacceptable.

2.112 Since, at present, the Commissioner, unlike her Scottish counterpart, has no power either to alert Parliament where there has been an abuse of the Code or to halt an appointments process, the operation of the Code constitutes only a partial safeguard against abuse.

2.113 We received evidence to suggest that ministerial disregard of the Commissioner's interpretation of her own Code of Practice has grown appreciably in the last two years. It is clear that this disregard is not confined to the Ministers of departments whose permanent secretaries were helpful enough to give us evidence. For example, a highly experienced independent assessor told us how during a competition in a fifth department she discovered that it was "routine" to send information at short-listing stage to the Minister [Dr Lily Segerman-Peck 14.09.04 4102].

2.114 Disregard is related to appointments at final selection stage as well as at short-listing. The Committee drew attention to one example of this in its last Annual Report. A Minister in the Department for Environment, Food and Rural Affairs (DEFRA) appointed someone to a committee position for which they had not applied or been interviewed, despite an open competition being held. Although the Commissioner raised this with the Department, the Minister went ahead with the appointment and declined to publish the required statement acknowledging that the Code had been breached [**12**].

2.115 We were also told of appointments by Ministers of candidates who had been excluded from short-lists because, in the judgement of the panel, they were not good enough to be interviewed. The responsible Minister also declined to publish the required press notice pointing to his deviation from the Code [Dr Lily Segerman-Peck 14.09.04 4144].

2.116 Witnesses have drawn attention to the paradox that Ministers are routinely shown the short-lists in civil service open competitions but not – in line with Dame Rennie Fritchie's interpretation of 'her' Code – for ministerial appointments. In the carefully chosen words of Douglas Board and Stephen Bampfylde, "Ministers themselves could also be forgiven for finding the rules around them a little perplexing" [Saxton Bampfylde Hever 22/28/04]. This may have influenced recent ministerial interpretation of the Public Appointments Code of Practice. We deal with the attendant issue of convergence at paras 2.167 – 2.169 below.

2.117 We have already set out above the importance of clarifying the wording of the Code on ministerial involvement in short-listing [see above Recommendation 4]. We note additionally that high profile public disputes between the regulator and departments about what the Code requires and permits have the potential to erode further public confidence in the integrity of the system. In this regard we welcome the informal discussions between the contesting parties and others to devise constructive ways forward [Dame Rennie Fritchie 9.09.04 3945-52].

2.118 One of the reasons for the public nature of the dispute between the Commissioner and permanent secretaries is the absence of clear guidance about the steps to be taken where the Commissioner believes there has been a serious departure from the Code of Practice.

RECOMMENDATION

R7. The Commissioner should consult urgently with appointing authorities to revise and develop paragraph 3.37 of the Code of Practice dealing with non-compliance so that there is a clear and unambiguous procedure for the resolution of disputes between the Commissioner and an appointing authority.

2.119 Currently, the Commissioner has powers in the Code to publish a report setting out that the Code has been departed from. We were told by both the (then) Cabinet Office Minister Ruth Kelly [21.10.04 4443] and Sir Andrew Turnbull [14.09.04 4290-4] that this power to publish constitutes a significant incentive to Ministers to heed the Commissioner's advice. We believe that this power should be used where, following a face-to-face meeting with the Minister and a period of reflection on both sides, it is clear that the Minister does not accept the Commissioner's proposal for resolving the issue.

RECOMMENDATION

R8. The Commissioner for Public Appointments should exercise fully her functions under the Order in Council to maintain the principle of selection on merit in relation to public appointments. The Commissioner should not hesitate to publish a contemporaneous report or issue a statement (paragraph 3.37 of the Code of Practice notes that "the Commissioner may decide to comment publicly") setting out in detail where she has reasonable belief that an appointing authority has breached the Code of Practice. She should only do this after she has held a face-to-face meeting with the Minister concerned in an attempt to seek to resolve any dispute and it is clear the Minister will not accept her proposal.

Reserve powers

2.120 We heard important evidence from Karen Carlton, the Commissioner for Public Appointments in Scotland, about her powers under Scottish legislation. Unlike the Commissioner in England, she is able to inform the Scottish Parliament where there has been material non-compliance with the Code of Practice. She also has power to direct Ministers to suspend the appointments process where an appointment has not been made [**13**]. Clearly, these are powers not to be used lightly, and, in fact, they have not been used at all up until now. However, their existence is both "significant and important" where authorities are looking to increase public confidence in the appointments process [Karen Carlton 17.06.04 1432].

2.121 We note that the Public Administration Select Committee in its Fourth Report of 2002-03 proposed that the Commissioner in England and Wales should have this additional reserve power or something similar [**10**, para 96]. This proposal was also endorsed by Dame Rennie Fritchie, the Public Appointments Commissioner, when she gave evidence to us [14.9.04 3991]. The Government, in reply, announced that it would monitor how the Scottish provisions operate [**14**].

2.122 The Committee has reflected carefully on the PASC proposal and the responses to it. The amendment of the 2002 Public Appointments Order in Council to include the reserve powers set out in sections (7) and (8) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 would enable the Commissioner, where an appointment has not been made, to direct Ministers to delay making an appointment until Parliament has considered the case.

2.123 The proposals for the resolution of disputes set out in Recommendations 7 and 8 above would do a great deal to ensure that these reserve powers are rarely, if ever, used. Nevertheless, their adoption would sensibly remove the loophole in the present arrangements in which the regulator is unable to halt an appointment competition where she believes the code has not been complied with in a material regard [Tony Wright MP 18.5.04 42-44].

RECOMMENDATION

R9. The 2002 Public Appointments Order in Council should be amended to include the reserve powers set out in sections (7) and (8) of the Public Appointments and Public Bodies etc (Scotland) Act 2003. These would enable the Commissioner, where an appointment has not been made, to direct Ministers to delay making an appointment until Parliament has considered the case.

Permanent secretaries

2.124 The role of the permanent secretary as guardian of propriety is critical. We heard clear consent from those permanent secretaries who gave us evidence that this is a role that they did not shirk [David Normington 15.07.04 3425-6; Sue Street 15.07.04 3428]. This acceptance of responsibility was underlined by Sir Andrew Turnbull who told us that "The role of the permanent secretary is not just the guardian of the financial propriety as accounting officer but of the reputation of the department for integrity. And if there is a problem, even if it is an appointment that the permanent secretary is not involved in, which will probably be the majority, people on that panel should certainly involve the permanent secretary"[Sir Andrew Turnbull 14.09.04 4299-4303]. We welcome this clarification, and think that the role set out in **The Responsibilities of an Accounting Officer** and reflected in the **Ministerial Code** [**15**] should be adjusted accordingly.

RECOMMENDATION

R10. We recommend that The Responsibilities of an Accounting Officer and the Ministerial Code be amended to make reference to the explicit responsibility of permanent secretaries, as accounting officers for the propriety of public appointments made by their departments.

Independent assessors

2.125 We consider the role and operation of independent assessors following the publication of the *Government Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003* [**16**]. In this Response, the Government noted that the Committee "may wish to consider whether to include the role of independent assessors" as part of the present inquiry [**16**, para 11, pp.3-4].

2.126 Dame Rennie Fitchie provided comprehensive written evidence on the role and operations of independent assessors [Dame Rennie Fitchie 22/57/14-17]. The presence of an independent member at public appointment interviews was a recommendation of the Committee's First Report in May 1995. Adding an independent element would increase the breadth and depth of the advice Ministers receive, allow a range of community interest to be reflected in that advice, and enhance public confidence in the integrity of the process [CSPL First Report, paras 4.47-8, pp.75-6].

2.127 Independent scrutiny was established by 1996, and was reviewed by the Commissioner in 1999 following questions about the real independence and merit of assessors appointed in *ad hoc* fashion and paid by the departments they served [Dame Rennie Fritchie 22/57/15]. Although she concluded that independent assessors should be recruited and trained by her own Office, a 'half-way house' compromise emerged in which:

- Departments continued to have responsibility for selecting, appointing and managing independent assessors subject to quality assurance measures laid down by OCPA; and
- A small OCPA central list of independent assessors would be established for smaller departments and for larger departments who wanted to use independent assessors outside their own department for other reasons (for example, for high profile appointments where they wished particularly to demonstrate independence).

2.128 There are over 220 independent assessors in England appointed by departments. The OCPA central list of 22 independent assessors was recruited and subsequently appointed through open competition in January 2002. In Northern Ireland, Scotland and Wales, arrangements are now in place for the central recruitment of all independent assessors [Dame Rennie Fitchie 22/57/10; 22/57/16; 16-17].

2.129 We heard evidence from across the spectrum that independent assessors play a critical role in safeguarding the independence and rigour of the process.

Dame Rennie Fritchie commented:

"I think they are absolutely essential in both reality and perception. They are the hands-on eyes and ears. In advisory bodies they are there to oversee the process and in executive bodies they are there to take part in the process. I said a moment ago I endeavour to be a reasonable regulator, helping people get it right rather than catch them doing it wrong. That is what I expect of independent assessors" [18.05.04 117].

2.130 Karen Carlton, Commissioner for Public Appointments in Scotland, noted that independent assessors bring essential consistency to the appointments process. They are "there to ensure that appointment is made exclusively on merit and they do that across the appointment system in Scotland" [17.6.07 1410].

2.131 Sue Street, permanent secretary in the Department of Culture, Media and Sport added:

"I think the independent assessors are a critical and valuable part of the process. They are involved at every stage. In a sense they are the representatives of OCPA with us…. They bring an external perspective and they bring a guarantee of impartiality and fairness to bear and they are entirely valuable and crucial in my view" [15.07.04 3449].

2.132 These views were shared by John Elvidge, Permanent Secretary of the Scottish Executive who found independent assessors "enormously valuable" [17.06.04 1590], and Nigel Hamilton, Head of the Northern Ireland Civil Service, for whom they were "absolutely essential to the integrity of the process" [26.06.04 1789].

2.133 Sir Jon Shortridge, permanent secretary of the Welsh Assembly Government, noted that independent assessors have a fundamentally important role in providing assurance: "I think you could say that where you have got a substantial number of elected members involved in the appointment process, who may not have had the same degree of training in appointment matters that officials may have had, that having an independent assessor sitting alongside to help them through this process and to draw their attention to things as they are going through the process is particularly important" [Sir Jon Shortridge 07.07.04 2347].

2.134 While other witnesses concurred with this predominantly favourable view, we also heard that, occasionally, some independent assessors did not display the "proportionate pragmatism" necessary for their role. In addition it was suggested that the quality of independent assessors varies widely: "Many are excellent. Some should not, in our view, be filling the role" [Saxton Bampfylde Hever 22/28/07; Odgers Ray & Berndtson 22/81/06].

2.135 As far as the suggestion of variable quality is concerned, Sir Brian Bender made the important point: "I am afraid in our case the experience is anecdotal. We are actually planning to introduce some sort of light appraisal system so that we can actually get to the bottom of that" [Sir Brian Bender 15.07.04 3453].

The role of independent assessors

2.136 The role of independent assessors is set out clearly in *A guide for independent assessors in the public appointments process* [**17**]. The main duty is to "play a full and active part" in the appointments process to provide an assurance that procedures employed by the department comply with the Commissioner's Code of Practice. This is to ensure that appointments are made on merit after a fair, open and transparent process and that they command public confidence.

2.137 We received evidence which demonstrated to us that this is exactly what they do. For Karen Carlton, the Commissioner for Public Appointments in Scotland, independent assessors are not there to present any specialist knowledge or expertise: "If they bring specialist knowledge it is specialist knowledge of the Commissioner's Code" [Karen Carlton 17.06.04 1412]. Clive Gowdy, permanent secretary in

Northern Ireland of a department commended for its public appointments practice by the Northern Ireland Commissioner's auditors, noted "the independent role is …quality assuring the process, it is making sure that everything is done according to the rules" [Clive Gowdy 29.06.04 1999].

2.138 In this sense, the independent assessor is "the representative of regulation in the front-line" who should expect to have to make judgements that cut through to the substance, in a practical situation, of good regulation [Saxton Bampfylde Hever 22/28/07]. In similar vein, Dr Roger Moore, Chief Executive of the NHS Appointments Commission commented that independent assessors "are present to ensure the fairness and transparency of the process when we are not [present]." They are present as "expert in the process, and in recruitment and understanding selection techniques". If subject expertise is needed experts can be brought in additionally [Dr Roger Moore 15.07.04 3196]. And they have responsibility to keep panel members up to date with best recruitment practice [Tom Frawley 29.06.04 2072].

2.139 In all of this the independent assessor is "a fully fledged member of the panel regarded *pari passu* with all of the other members" [Rhodri Morgan 07.07.04 2350]. And to ensure the integrity of the outcome, assessors need to be involved throughout the process, not just at sift and interview but, in the case of NHS Appointments Commission, when decisions are ratified by the Commission itself [Bill O'Brien MP 15.06.04 677-9].

Recruitment of independent assessors

2.140 In its Fourth Report of Session 2002-03, the House of Commons Public Administration Select Committee recommended that "as soon as is practicable, the Commissioner for Public Appointments should be made solely responsible for appointing and supporting all independent assessors". This was because assessors should be "truly 'independent' …entirely separate from the appointing department" with no vested interest in the outcomes [**10**, paras 81-2, p.27].

2.141 In rejecting this recommendation the Government noted that there were "significant costs" attached and this is a matter of "serious concern". The arrangements should be judged by whether they contributed to the objective of the best possible appointments using an open, transparent and proportionate process [**16**, pp.3-4].

2.142 We agree with the criteria set out above, though we would add that appointments on merit using an open, transparent process must be seen to have a strong independent element to them if they are to have any chance of generating public confidence. This point was made repeatedly in the evidence we heard and read. It was made by those (in England) advocating that assessors should be appointed centrally, and by those (in Northern Ireland, Scotland and Wales) explaining why a decision to appoint assessors centrally had already been made:

"One of the strong arguments I believe for bringing independent assessors under the control of this office is the perception of independence. It is important that independent assessors are not seen to be closely aligned with departments. They must feel free, and be seen to be free, to challenge constructively any part of the appointments process. There is a danger that, if the independent assessors are appointed by a department, they may feel reluctant to 'rock the boat' in case the department does not use them again" [Dame Rennie Fritchie 22/57/09-10; 18.05.04 120-127].

"The thinking is quite clearly that this is an independent office and independent assessors need to be independent of the departments for whom they are conducting independent assessments" [Karen Carlton 17.06.04 1415].

"We believe that this approach will improve the public perception of the independence of external assessors" [Nigel Hamilton, Northern Civil Service 22/94/04].

"We need.. to have a very clear amount of blue water between those people [assessors] and the bodies that we are asking them to get involved in the appointments process for" [Clive Gowdy 29.06.04 1997].

2.143 The advocates of a central appointments process for independent assessors also believed that it was important for the public perception of an open process [Sir Jon Shortridge 07/07/04 2349], and that central appointments of assessors led to higher quality appointments. This was because the central selection process was more rigorous and standardised than *ad hoc* departmental arrangements [Dr Lily Segerman-Peck 22/78/08].

It also led to the appointment of assessors who would have or would develop necessary comparative experience across government departments [Dame Rennie Fritchie 18.05.04 124]. Additionally it would help create a necessary collegiality for assessors when they were confronted with difficult judgements [Douglas Board 15.07.04 3557].

2.144 The criticisms of a central appointments process were more circumspect and conditional, but the points made were valid. One concerned the danger of centrally-appointed assessors knowing too little about the particular sector relating to a specific job. As the permanent secretary of the Department of Culture, Media and Sport explained:

"I just think it helps to have, certainly not a cosy body of people – these are people of great stature and great independence – but people who are just genuinely interested in the sectors, know something about them" [Sue Street 15.07.04 3451].

2.145 The need to address this point was reiterated in evidence we received from both the Audit Commission [Audit Commission 22/85/08], and the Northern Ireland Ombudsman who emphasised that it was important that "qualified assessors in particular sectors are prepared and trained not only for their role as an assessor, but they also must be up to date and familiar with the dynamic and complex changes that are part and parcel of modern public service" [Tom Frawley 22/103/05].

2.146 In addition, we were warned about the dangers of a disproportionate outcome inherent in a newly made centralised system under the Commissioner:

"There is always a tendency in government to centralise everything and, on the whole, I am not really in favour of it. I can see why you would do it in this case but the idea that OCPA would run this vast number of independent assessors, I am not very keen on but I would not mind. If it adds something in terms of the independence and assurance of the process, fine" [David Normington 15.07.04 3459].

2.147 Given the continuing concern about the overall independence and professionalism of the public appointments process and the key role of independent assessors in it, the case we heard for the central recruitment of independent assessors by the Commissioner is very strong indeed.

RECOMMENDATION

R11.

(a) The Government should actively review the experience of setting up and running central lists in Northern Ireland, Scotland and Wales, the NHS Appointments Commission, and the Commissioner's own Central List of 22 independent assessors with a view to producing proposals in conjunction with the Commissioner within one year for a proportionate, cost-effective, centrally-run system.

(b) In the meantime, only independent assessors recruited to the Commissioner's Central List should be used for starred appointment competitions involving Ministers. Departments should continue recruiting and managing their own lists of independent assessors, on condition that they use an accreditation system run by OCPA which accredits assessors to be employed.

Training and appraisal

2.148 The issue about central appointments is made more sensitive by the lack of consistency in the training, development and appraisal of independent assessors across central departments in England. A standardisation of these processes is important for developing high quality assessors [Wendy Mason 22/46/06; Margaret Elliott 29.06.04 2222].

2.149 In its Fourth Report of 2002-3, the Public Administration Select Committee recommended that, pending the introduction of the central recruitment of independent assessors, the Commissioner for Public Appointments should assume responsibility for the training of newly appointed and existing independent assessors [**10**, para 83, p.27]. The Government accepted this recommendation without prejudice to its response on central recruitment:

"It will be a mandatory requirement of the Commissioner's revised Code of Practice that all new assessors must undertake OCPA training before they can participate in the selection process. Any existing assessors who have not undertaken this training will be invited to do so" [**16**, para 12, p.4].

2.150 While the OCPA Code of Practice was revised along these lines, Dame Rennie Fritchie's written evidence makes it clear that not all existing independent assessors attend the twice-yearly seminars to keep them up to date on Code revisions, policy developments, human rights and data protection [Dame Rennie Fritchie 22/57/16].

2.151 Despite this obvious anomaly (which needs to be addressed) we were encouraged by the evidence we received of the steps taken to accelerate both training and appraisal by OCPA and the NHS Appointments Commission. The Northern Ireland Ombudsman paid tribute to the work done by Dame Rennie to encourage the assessment of assessors [Tom Frawley 26.06.04 2071]. The NHS Appointments Commission told us that "given the level of their [independent assessors] responsibility we intend to introduce both an accreditation process to 'license' them to practice and an evaluation process so that they can be regularly assessed by other panel members. Both these steps will be taken after the introduction of competency-based recruitment and the appropriate training. This would facilitate greater quality control' [22/88/18].

2.152 We were also encouraged by the appetite for this sort of development among permanent secretaries who gave us evidence. For example, Sue Street told us:

"We have found that there is an advantage in them having an understanding of the culture, media and sport sectors, but they are all OCPA-trained and I would be quite attracted to a sort of OCPA accreditation. That seems to me a very pragmatic, good way forward. I am confident that since they are OCPA-trained, I imagine OCPA would notify us if they were ever uncertain" [Sue Street 15.07.04 3451].

There is room for the acceleration of some cross-sector learning and development here.

RECOMMENDATION

R12. We recommend that OCPA and the NHS Appointments Commission should work together to produce integrated, competency-based, induction and development programmes for independent assessors, together with a model, light appraisal system. This should be the basis of an accreditation or 'kite-mark' without which an independent assessor would be unable to act.

2.153 There have been suggestions made that the presence of an independent assessor at every upper-tier appointment is simply not necessary or proportionate. Is there a case for the reduction of their use, either on a wholesale or tightly controlled basis?

2.154 We heard from Douglas Board on this issue:

"It did not seem to us that it would be absolutely necessary and would be more in line with current thinking on various types of regulatory and audit mechanism. It must be possible to devise a threshold of performance above which departments who were performing well could make a risk-based case saying, 'We would like to now reduce our use of independent assessors and do it in the following way. On these appointments we will always use an independent assessor as now. On these we will use one in 25 per cent of cases on a random basis' etc. And there might be the case of an independent assessor joining right at the beginning, check the specification… but then not actually take part in the assessment" [Douglas Board 15.07.04 3552].

2.155 We agree that there is a need for a clearer connection than presently exists between proven performance by individual departments and the regulatory control exercised by the Commissioner. We set out above (para 2.53 – 55) proposals for the introduction of annual, departmental Public Appointment Plans. We believe these will facilitate a more strategic relationship between departments and the Commissioner and give incentive for proven exemplary performance with the reward of reduced oversight. This might include reduced operational involvement for independent assessors. However, we should emphasise the point made to us by Dame Rennie Fritchie that a key test of any change to the existing process is the impact that such a change would have on public confidence in the appointments process [Dame Rennie Fritchie 03.09.04 4024-6].

The political activity questionnaire

2.156 Political activity questionnaires are used to ask applicants for OCPA-regulated appointments to give information about political activity within the last five years.

2.157 In its First Report, this Committee recommended that candidates should be required to declare any significant political activity (including office-holding, public speaking and candidature for election) which they had undertaken in the last five years. The Report made it clear that this information should be collected by the Public Appointments Commissioner "to monitor the success rates of candidates of different political persuasions". Published results "could act as a discipline against abuse as well as helping to restore public confidence in the system" [CSPL First Report 4.68].

2.158 The Commissioner has interpreted the intention of the questionnaire in this way, and candidates are told that this is the case and the information will not be used as part of the selection process [Dame Rennie Fritchie 22/57/11].

2.159 At present, practice as far as appointment panels are concerned is variable. The vast majority of panels in England, Scotland and Northern Ireland do not have access to the information about political activity. In Northern Ireland even where there is a statutory requirement for representative-ness, panels do not have access to the information [Northern Ireland Office 22/94/05]. This is also true for the NHS Appointments Commission [22/88/19]. However, panels dealing with sponsored bodies in Wales do [Sir Jon Shortridge 07.07.04 2371] as do some central departments in England. Additionally, and by exception, in the handful of cases where there is a requirement for political balance on boards, then panels will have access to information about political activity. Just over 85 per cent of those appointed and reappointed to OCPA-regulated boards in 2003-4 declared that they had not been politically active during the previous five years [**18**].

2.160 The advantages of not letting the panel see the questionnaires are:

- They were designed for monitoring purposes only to provide objective evidence that the appointments process has not been politicised. Annual aggregate returns are published by the Commissioner. In this sense they constitute, as monitoring information only, a degree of public assurance about the integrity of the system [Dame Rennie Fritchie 22/57/11]. This could be eroded if it was perceived that a panel's access to the questionnaire informed its judgement [Karamjit Singh 22/41/04].

- Political activity is not in itself a criterion for appointment [Scottish Executive 22/83/06]. Keeping questionnaires away from the panel precludes the possibility that a panel might slip into political considerations [Dr Lily Segerman-Peck 22/78/10]. Giving access to questionnaires could lead to claims of bias and create problems where none would have occurred [Audit Commission 22/85/08]. As the Scottish Commissioner, Karen Carlton put it, "One of the things that my office has been set up to achieve is appointment based on merit and free from any form of personal or political bias" [Karen Carlton 17.06.04 1448].

- Some candidates are still reluctant to complete the political activity questionnaire: "we would be concerned that any change to the process allowing selection panels to see political activity information could have a negative affect on some people's willingness to put themselves forward for a public appointment" [Northern Ireland Civil Service 22/86/09; Dame Rennie Fritchie 22/57/12].

2.161 The advantages of letting panels see the political activity questionnaires are:

- There is no information divide between the Minister who is briefed on any political backgrounds of appointable candidates and the panel.

- The danger of a panel being inadvertently compromised by political information of which it was not aware is reduced, as is the risk of public concern [Wendy Mason 22/46/07].

- In Wales, the judgement is made that it is "totally unrealistic…to try and pretend that people either would not know or would not seek to guess political affiliations of the candidates. So, you might as well be open about it. I think that is the difference between a small country and a big country" [Rhodri Morgan 7.7.04 2374; Sir Jon Shortridge 22/79/05-6].

- Appointments panels "have a duty to explore potential conflicts of interest in any appointment. The Political Activity Questionnaire is an essential element of being

able to discharge this responsibility"[Robin Jordan 22/04/02].

2.162 On balance, we are clear that the advantages of not showing appointments panels the political activity questionnaire considerably outweigh the advantages of letting them have access to them. The questionnaire was designed and intended for monitoring purposes only. Political activity is not, in itself, a criterion for appointment.

RECOMMENDATION

R13. The political activity questionnaire was designed and intended for monitoring purposes only. We recommend that the Commissioner's Code of Practice should set out clearly that the questionnaire should not be shown to anyone involved in the selection process.

Diversity

2.163 We heard from Dame Rennie Fritchie of the uneven progress made in making public appointments more representative of the wider community. In 2003/04 there were 1,024 women ministerial appointments and re-appointments, which is 35.6 per cent of the total. This is a fall of 3.4 per cent on the previous year. There were 241 appointments and re-appointments in 2003/04 from minority ethnic groups. This accounts for 8.4 per cent of the total, a decrease from 8.9 per cent in the previous year. There was a slight increase in those appointed who declared a disability from 3.2 per cent in 2003/04 against 2.8 per cent in 2002/03 [Dame Rennie Fritchie 22/57/10; **18** pp 19-22].

2.164 It would be difficult to find a Commissioner more dedicated to promoting greater diversity than Dame Rennie. In her evidence she told us of her continuous attempts to make public appointments more visible to the communities they serve by a comprehensive programme of speaking to a wide range of community groups [18.05.04 59-60].

2.165 A central challenge in making public appointments more representative is the creation of real and organic links with communities across the country. There is no quick way to achieve these links and the difficulty of establishing them should not be underestimated. There are a number of avenues to pursue. One is about effectively communicating the availability of appointments. A second is about using inclusive language in drafting specifications. For example, we heard from Tom Frawley, the Northern Ireland Ombudsman, of examples of non-inclusive language in advertisements which acted as a barrier to the development of community interest [Tom Frawley 22/103/04]. A third avenue is about having a greater understanding of the communities themselves. Here, we were fortunate to take evidence from Kashmir Singh, the General Secretary of the British Sikh Federation and his colleagues Ranjit Singh Srai, Dal Singh Dhesy and Dabinderjit Singh who told us of the dramatic under-representation of Sikhs on the boards of public bodies in the UK. The reasons for under-representation were complex and included stereotyping, the absence of role models, and the lack of appreciation by public servants of which community organisations to target when undertaking outreach work [15.06.04 941-1047].

2.166 We are reluctant to propose new initiatives to promote diversity in public appointments given the extent of activity we have already reported. We would however make these central points. Firstly, recent success in promoting diversity in the civil service was achieved only with the demonstrable leadership of the Cabinet Secretary and his senior colleagues. It also required a properly understood system of indicative targets (different from quotas) to concentrate the activities of departments in promoting diversity. We note that targets have not been used in this way for increasing diversity in public appointments. Secondly, we heard encouraging evidence from the NHS Appointments Commission about the proactive steps they have taken to increase diversity in health service public appointments [22/88/12]. We note that indicative target-setting has been used effectively by the NHS Appointments Commission in its appointments process and believe this practice is well worth sharing more widely. We were concerned however at the dangers encountered by the active pursuit of this policy in rubbing up against the risk of illegal discriminatory behaviour. The pursuit of greater diversity is not to be put at risk by the possibility of acts of positive discrimination which in this country are outside of the law.

Convergence of the roles of the Commissioner for Public Appointments and the Civil Service Commissioners

2.167 Seen as a whole, the implications of Recommendations 4,6 and 9 in this chapter (on the involvement of ministers in short-listing, on the removal of ministerial choice for senior public appointments, and on equipping the Public Appointments Commissioner with reserve powers) are the beginnings of what we consider to be a necessary convergence between the regulatory requirements for public appointments and civil service appointments. We now set out an outline institutional framework to enable this to happen in a rigorous and ordered fashion.

2.168 The idea of close alignment between the two regulatory regimes is not new. It was raised in the Committee's First Report [CSPL First Report, para 4.54] and accepted in the Government's Reply, which trailed the path for the new Public Appointments Commissioner to become, *ex-officio*, a Civil Service Commissioner. Common elements to the work were envisaged, and it was anticipated that the Commissioner for Public Appointments and staff would have opportunities to draw on the experience of the Civil Service Commissioners [**1**, pp. 19-20].

2.169 The case for a degree of convergence (not merger) between the regulatory regimes of the Civil Service Commissioners and the Commissioner for Public Appointments is a strong one. In terms of outcomes, both are mechanisms designed to deliver consistently professional, merit-based appointments [Baroness Prashar 14.9.04 4239]. In addition, both constitute essential maintenance for effective governance and integrated public service performance. A degree of institutional convergence would also help to remove what is depicted as confusion amongst stakeholders and guard against excessive regulatory burden [Saxton Bampfylde Hever 22/28/05-06]. We also heard that, in Northern Ireland, Civil Service Commissioners deliver beneficial synergy by acting as independent assessors for public appointment competitions [Margaret Elliott 29.06.04 2249].

Establishing a Board of Public Appointments Commissioners

2.170 The Committee received important evidence from the First Civil Service Commissioner about the success of the Commissioners' collegiate approach to regulation and the impact of the decision to link Commissioners with individual departments as a way of promoting dialogue on key issues.

2.171 In the view of Baroness Prashar:

"the role of the regulator really is not just to ask people to comply, because we are expecting them to comply, and that standards are there for a reason and these should become part of the DNA of the departments…the approach is such that we encourage good practice and encourage them to take responsibility for what they are doing" [14.09.04 4218].

2.172 The Commissioners are clear they have an educative role with departments to clear away "mythology" about the Civil Service Recruitment Code, to make sure it is understood, and to promote dialogue. This is achieved through a system of Commissioners 'linked' to individual departments. The response from departments has been "very positive" and has increased their commitment to the Civil Service Recruitment Code and stimulated a greater understanding of how the merit principle is important to the civil service reform agenda [Baroness Prashar 14.09.04 4219-4].

2.173 There is a workable model here for public appointments regulation. The Public Appointments Commissioner would greatly benefit from working with a small team of fellow Commissioners, appointed under an amended Order-in-Council, and drawn from a range of suitably qualified and experienced people perhaps including those who have acted as senior independent assessors.

2.174 While one advantage of a Board of Commissioners is the creation of a policy forum to share ideas [Sir Andrew Turnbull 14.09.04 4333-4] and resolve difficult regulatory issues, another advantage is that it would provide an entity from which individual Commissioners can be linked to a small number of departments to create a strategic dialogue. The vehicle for this dialogue should be the annual Public Appointments Plan. These plans should be the executive responsibility of the department and signed off by the Board of the Public Appointments Commissioner. Additionally, Public Appointments Commissioners should be available to chair selection panels for 'starred' appointments.

2.175 But greater alignment and convergence is not the same thing as merger, which we reject at this stage on strong policy grounds. There are significant differences between the functions of civil servants and board members of public bodies which justify separate regulatory arrangements. Civil servants are mostly full-time, permanent employees required to serve successive governments impartially. By contrast, appointees to boards of public bodies are mostly part-time, independent, holders of public office for a strictly limited period of time.

2.176 As a first step, it would be appropriate for the new Board of Public Appointments Commissioners to co-opt the First Civil Service Commissioner in the same way that the Commissioner for Public Appointments sits *ex-officio* on the Board of the Civil Service Commissioners. Since convergence is a process generated by the need for an increasingly strategic approach to regulation, it would be unwise to speculate how far or how quickly that process should go. We can envisage that, eventually, it could be helpful to merge the position of First Civil Service Commissioner with that of Commissioner for Public Appointments [Sir Andrew Turnbull 14.09.04 4333]. The tests of such a development would be the receptiveness of appointing authorities to first steps towards convergence, their impact on efficiency and effectiveness and the impact of change on public confidence in the integrity of the appointments process. For now, we are clear that the position of (First) Commissioner for Public Appointments should remain separate from that of First Civil Service Commissioner.

RECOMMENDATION

R14.

(a) The 2002 Public Appointments Order in Council 2002 should be amended to allow the creation of a Board of Public Appointments Commissioners. The Board should be chaired by a First Public Appointments Commissioner.

(b) Public Appointments Commissioners should each be linked to a small number of Departments, providing assistance to the Department in constructing and publishing annual departmental Public Appointments Plans. These plans should be the executive responsibility of the department and signed off by the Board of the Public Appointments Commission.

(c) Public Appointments Commissioners should be available to chair selection panels for 'starred' appointments.

Conclusion

2.177 In her evidence to the Committee, Baroness Prashar emphasised the importance of taking an holistic look at public appointments to make sure that what is achieved is a transparent process leading to the appointment on merit of people able to do the job [14.09.04 4253]. This is the approach we have adopted in this chapter. What is set out here is an integrated package which seeks to rebalance the principles of independence, appointment on merit, and Ministerial responsibility in a way which enhances public confidence in the process and the likelihood of excellent appointments as outcomes. This is not a 'pick and mix' approach.

2.178 Our recommendations are designed to build on the successes of the existing regulatory regime in a way which facilitates more strategic intervention and an even more explicit partnership between regulator and appointing authorities. The principal mechanisms to achieve this are the Board of Public Appointments Commissioners (Recommendation 14) and the annual Public Appointments Plans (Recommendation 2) for departments.

2.179 We have set out some significant and necessary changes to the appointments process in England

to take account of legitimate Ministerial interest in a small number of senior and strategic appointments to public bodies. In these 'starred' appointments it would be a requirement for Ministers to decide on the particular recruitment process to be adopted. Ministers would also be consulted at short-listing stage (Recommendations 4 and 5) in similar fashion to procedures for Civil Service open competitions. At the same time (and again in line with the Civil Service Recruitment Code) Ministers would no longer have a choice between appointable candidates (Recommendation 6), but would delegate the decision to the responsible panel. In this way, the overriding principle of merit is entrenched but without prejudice to the principles of Ministerial Responsibility, and Openness. Taken together, the proposals for a new, 'starred' appointments process constitute a first movement towards convergence between the regulatory regimes for public appointments and civil service appointments.

2.180 We have also set out to strengthen the independent and professional elements of the system with proposals to consolidate the positions of the Commissioner for Public Appointments and independent assessors. As far as the Commissioner is concerned, it is important to set out more clearly the procedures for resolving disputes with appointing authorities (Recommendations 7 and 8). We also propose that, in line with her Scottish counterpart, the Commissioner should be given reserve powers to halt appointments where she considers there has been a material breach to the Code (Recommendation 9). This would remove a loophole in the current arrangements which has encouraged some stakeholders to see the Commissioner as a 'watchdog' not a regulator. Independent assessors provide a critical independent element to the public appointments process. We believe their roles as guarantors of the process can be developed further by standardising the way they are recruited and trained (Recommendations 11 and 12).

References

1 *The Government's Response to the First Report from the Committee on Standards in Public Life*, Cm 2931, July 1995.

2 Public Appointments Order in Council, 16 July 2002.

3 Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies, OCPA, December 2003. 1.05

4 Commissioner for Public Appointments. First Report 1995 – 1996, OCPA, 1996.

5 Professor Anthony King, Sixth Report 17/50 and 18 June 1999 (morning session).

6 The Commissioner for Public Appointments' Code of Practice for Appointments made by the NHS Appointments Commission, OCPA March 2002.

7 Independent Regulators. Better Regulation Task Force. October 2003.

8 Public Appointments: Experiences of Recent Candidates, Creative Research 2004.

9 Making and Managing Public Appointments. Guidance for Departments, 3rd edition.

10 Public Administration Select Committee's Fourth Report of Session 2003-2003 'Government by Appointment; Opening Up the Patronage State" (HC165), July 2003.

11 Civil Service Commissioners Recruitment Code, 5th Edition, March 2004.

12 Annual Report of the Committee on Standards in Public Life, November 2002 - November 2003, 2004, pp.16-17.

13 The Public Appointments and Public Bodies etc (Scotland) Act 2003., S.7:
In any case where-
(a) it appears to the Commissioner that the code of practice has not been complied with in material regard;
(b) the Commissioner has intimated that fact to the Scottish Ministers; and
(c) the Commissioner considers that – (i) the code of practice is unlikely to be complied with within a reasonable time of that intimation; or (ii) after a reasonable time from that intimation, the code remains to be complied with, subsection (8) applies.
(8). Where this subsection applies, the Commissioner –
(a) must report the case to the Parliament (together with any information in relation to the case the Commissioner considers appropriate to include); and
(b) if the appointment or recommendation for appointment in question has not been made, may direct the Scottish Ministers to delay making the appointment or, as the case may be, the recommendation until the Parliament has considered the case; and the Scottish Ministers must comply with any such direction.

14 Government Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003 *Government by Appointment: Opening up the Patronage State*, HC 1653, Cm 6056, para 17.

15 Ministerial Code. A code of conduct and guidance on procedures for Ministers, Cabinet Office. July 2001.

16 The Government Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003 *Government by Appointment: Opening Up the Patronage State* (HC165), Cm 6056 December 2003.

17 A guide for independent assessors in the public appointments process, OCPA, February 2004.

18. The Commissioner for Public Appointments, Ninth Report 2003-2004, OCPA, July 2004, p.22.

CHAPTER 3
THE ETHICAL STANDARDS FRAMEWORK FOR LOCAL GOVERNMENT

Introduction

3.1 The ethical standards framework for local government, as set out in Part III of the Local Government Act 2000 [**1**], is arguably the most extensive and comprehensive statutory framework for standards of conduct of any group of public office-holders in the UK. The statutory framework covers some 100,000 elected members (councillors) in England and some 16,000 members in Wales (where certain aspects of the framework differ). Scotland has a separate and different statutory framework covering around 1,200 councillors. No comparable statutory framework exists to govern conduct of members of local authorities in Northern Ireland. The frameworks that exist for England, Wales and Scotland were developed following the Committee's Third Report in 1997 *Standards of Conduct in Local Government* [**2**]. A list of recommendations made in that report, that are relevant to this inquiry, are set out in Appendix A.

3.2 Because of its scope and relative newness it is not surprising that over 50 per cent of all the written evidence received as part of this inquiry concerned the ethical standards framework for local government. In our Issues and Questions Paper we posed a number of specific questions in respect of issues of concern, as well as some general questions about the operation and proportionality of codes of conduct across the public sector [**3**, page 15].

3.3 The volume and substance of the evidence received about the standards framework for local government, with concerns expressed forcefully and repeatedly, has caused the Committee to examine the operation of the framework in a detailed and comprehensive manner. This chapter is therefore devoted solely to local government. It is important to make clear that the evidence received during this inquiry supports the conclusion in the Committee's Third Report [**2**] that:

"Despite incidences of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct".

In the Committee's view, this evidence-based statement remains valid in 2004.

3.4 The existence of similar, but different, ethical frameworks in the devolved administrations has been immensely valuable to the Committee in considering the detail of the operation of the system in England, and was the subject of the research we commissioned from the Better Governance Forum of the Chartered Institute of Public Finance and Accountancy (CIPFA). The executive summary of this research is at Appendix D and the full report can be found on the associated CD-ROM of evidence. This is not to say that the Committee believes these are models that can be simply replicated in England. The specific circumstances and environment in each part of the UK has led to differing models deemed fit for purpose. Above all, issues of scale preclude direct comparisons with England. Nevertheless, the approach taken to address specific issues in the management and enforcement of the codes of practice in the devolved administrations has been particularly instrumental in forming our conclusions about the framework in England.

3.5 In this chapter, therefore, we summarise briefly the background to the introduction of the statutory framework(s) before analysing the evidence we received about the practical operation of the system(s) and our recommendations for improvement. In analysing the evidence we have adopted a structured

approach. This looks first at the overall legislative and policy framework. We then consider the management and enforcement of the framework and the provisions in the Code of Practice. After this we examine the guidance and training to support the effective implementation of the framework.

3.6 In our concluding section we attempt to pull these aspects together to propose a coherent package, covering each area, for changes to improve the effectiveness of the framework. We do this deliberately to emphasise our belief that it is a set of interrelated changes to different aspects of the framework that, over a specified period of time, will deliver the necessary improvements. In short, the Committee does not believe that its recommendations are easily divisible. 'Cherry picking' one or two recommendations, or even a selection, will not deliver the outcomes intended.

3.7 Finally, the evidence received and the breadth of our recommendations should not be seen as blanket criticism of government or of the institutions involved in implementing the framework. As noted above, this is the most extensive and comprehensive statutory framework for standards of conduct in the UK and represents a major development from the situation considered by the Committee in its Third Report in 1997 [**2**]. The Committee would therefore like to pay tribute to all those who contributed to the creation and implementation of the ethical framework for local government. Our aim remains as set out in our Issues and Questions paper [**3**]:

"*In short, in this inquiry, the Committee's intention is to enhance the effectiveness of these arrangements".*

3.8 In common with our assertion in Chapter 1 of this report, we have tried to form our recommendations in a way which bolsters a culture of continuous improvement in securing high standards, not a culture of blame. This has been done by emphasis on three key components identified in Chapter 1:

- **Proportionality** and strategic regulation;
- Improving **organisational culture**; and
- **Trust** and the public's perception of standards of conduct.

Background to the Local Government Ethical Standards Framework

3.9 In 1975, following the Poulson scandal and the two Royal Commissions [**4**] established as a result, a National Code of Local Government Conduct [**2**, Appendix 1] was issued as a guide to local authorities in England, Wales and Scotland. The Code covered in detail a range of conduct-related issues including disclosure of interests. Following recommendations made in the 1986 "Widdicombe" report for strengthening the democratic process at a local level [**5**] the National Code was, in 1990, given statutory backing and breaches of its provisions became *prima facie* evidence of maladministration.

3.10 By the time of the Committee's Third Report in 1997 "scarcely anyone had a good word to say about the present national code" as it had become a detailed and complicated document, impenetrable in parts and inconsistent in others. It had become "something that is done to local authorities; rather than done with them". [**2**, page 17].

3.11 As a result the Committee recommended a fresh start which would give greater responsibility to local government itself for devising and regulating standards of conduct, within a framework that would give consistency of standards and proper enforcement. Key elements of the proposed framework relevant to the present inquiry were:

- A clear code of conduct for councillors developed by each individual council within a framework approved by Parliament;
- That each council should have a Standards Committee to deal with matters of propriety and have powers to recommend to the full council that errant members should be disciplined; and
- The creation of new Local Government Tribunals to act as independent arbiters on matters relating to councils' codes of conduct and to hear appeals from councillors.

3.12 The Government responded to these recommendations in its 1998 White paper [**6**] which broadly accepted the Committee's proposals for a fresh start and a new ethical framework for local government. However, a modification to the Committee's

recommendations was a proposal to establish a new body 'The Standards Board for England' (Standards Board) as an independent national body to receive allegations of misconduct under the new framework. Investigations would be carried out by ethical standards officers who are employees of the Board, but have personal statutory powers as to how an investigation was conducted.

3.13 A draft Local Government Bill reflecting these proposals, and with further details of the new ethical framework, was published in March 1999 [**7**]. The draft bill was scrutinised by a Joint Committee of both Houses of Parliament [**8**]. In addition to other comments on the Bill, the Joint Committee expressed concern about the lack of local involvement in the operation and enforcement of the framework. As a result the Government added additional clauses to allow regulations to be made enabling the Standards Board to refer some completed investigations to local Standards Committees for determination. In addition some complaints were to be referred to local monitoring officers for investigation and subsequent determination by the local Standards Committee [**9**].

3.14 Following representations from their representative body, the National Association of Local Councils, town and parish councillors were also included in the scope of the ethical framework. This was a tier of local government that had not been considered in detail in the Committee's Third Report. The subsequent Bill received Royal Assent as the Local Government Act on 28 July 2000.

3.15 Once the Act was in place most, but not all, of the constituent parts of the framework were put in place fairly quickly:

- The Standards Board was formally constituted;
- The Adjudication Panel was established to hear, determine and decide penalties on complaints, on the basis of an investigation by ethical standards officers of the Standards Board;
- The General Principles Order [**10**], setting out the ten general principles to underpin the code of conduct (based on the Committee's Seven Principles of Public Life), was made; and
- The Model Code of Conduct Order [**11**] setting out the standards of conduct for members was also made. Councils were required to adopt a code of conduct reflecting the Model Code by May 2002.

3.16 The Standards Board began receiving allegations in early 2002. However the two remaining components of the framework took somewhat longer to be put in place:

- The Regulations [**12**] to enable ethical standards officers of the Standards Board to refer completed investigations into some breaches to local Standards Committees for determination (rather than the Adjudication Panel) did not come into effect until 30 June 2003; and
- The Regulations [**13**] to enable ethical standards officers to refer some complaints for local investigation by monitoring officers did not come into effect until towards the end of this inquiry – 4 November 2004.

In addition:

- The regulations to provide a national code of conduct for local government officials have yet to be made. A consultation document including a draft of such a code was published by the Office of the Deputy Prime Minister in August 2004 [**14**].

Devolved administrations

3.17 **Northern Ireland** is alone in the UK in not having a statutory framework to govern the standards of conduct of councillors. There is a code of conduct for councillors' [**15**] issued by the Department of the Environment under the Local Government Act (Northern Ireland) 1972 and revised to include the Seven Principles of Public Life in 2003. However this code is non-statutory and without any means of enforcement.

3.18 **Scotland** created its own statutory framework, which is very different from that in England and Wales, through The Ethical Standards in Public Life etc (Scotland) Act 2000 [**16**]. The Act established a Standards Commission for Scotland to regulate standards of conduct in both local authorities (but not Community (parish) councils) and devolved public bodies. The Scottish Parliament approved the Councillors Code of Conduct [**17**] and the Code of Conduct for Members of Devolved Public Bodies [**18**], both of which came into force in May 2003. The operation of the framework in Scotland is therefore in its infancy, some one and a half

years behind England and Wales, and so care must be taken in drawing conclusions about its effectiveness at this stage. In the local government context, however, it is interesting to note that there is no formal role for local Standards Committees (although many authorities have voluntarily set them up), and Community Councils are not covered by the Code of Conduct.

3.19 **Wales** is subject to the provisions of Part III of the Local Government Act 2000, but consistent with the devolution settlement, the Assembly is responsible for the supporting regulatory and institutional framework. This differs from the framework in England, in particular:

- An existing institution – the Local Government Ombudsman for Wales – was designated to receive and investigate complaints under a Model Code;
- The content of the Model Code [**19**], and rules on composition of Standards Committees differ from the English framework; and
- The supporting regulations to enable referral to local Standards Committees and monitoring officers for determination and investigation came into effect on 28 July 2001 [**20**] (therefore much earlier than in England).

Table 3.1 opposite summarises the various elements of each statutory framework with some details of their operation during 2003/04.

3.20 Having summarised the background and content of the various statutory (and non-statutory) frameworks throughout the UK, governing the conduct of councillors, we now turn to an analysis of the evidence received relating to the various elements of those frameworks.

The legislative and policy framework

3.21 Almost without exception, the evidence received during the inquiry supported the existence of (or, in the case of Northern Ireland, the creation of – see adjacent box) an overarching statutory framework to govern the conduct of councillors. Also that the introduction of the statutory framework in England, particularly the Model Code of Conduct, has provided a degree of clarity and consistency about the standards of conduct required of councillors.

Northern Ireland

The 26 district councils, which represent local government in Northern Ireland have less powers than equivalent authorities in the rest of the UK; as a whole they are responsible for only 5 per cent of public services compared to 35-40 per cent elsewhere [Heather Moorhead, Northern Ireland Local Government Association 29.06.04 1881]. However the ongoing review of Public Administration in Northern Ireland may result in an increase in their responsibilities [Nigel Hamilton, Head, Northern Ireland Civil Service 29.06.04 1824]. At present local councillors are subject to a non-statutory, voluntary code of conduct [**15**] which has no clear means of enforcement or of how to make a complaint [John Dempsey, Secretary, SOLACE Northern Ireland 29.06.04 1925-7]. This has caused some problems in dealing with misconduct, particularly against officers [29.06.04 1886-8]. Although standards of conduct were thought to be generally high, both NILGA and COSLA believed a statutory code of conduct should be introduced. Nigel Hamilton made clear that there was no objection in principle to introducing a statutory code but that this would be a matter for the restored Assembly [29.06.04 1833].

Dr Tom Frawley, Assembly Ombudsman and Commissioner for Complaints also supported the introduction of a statutory code. Dr Frawley went on to suggest that such a code should have, in the first instance, locally-based arrangements for enforcement (i.e. Standards Committees), with more serious cases dealt with by the Ombudsman, similar to the system in Wales. He thought it should also be part of an integrated standards framework also covering public bodies (as in Scotland) [29.06.04 2085-94]. The Committee believes this approach would have considerable merit: it is proportionate to the size of local government and public bodies in Northern Ireland; it would help embed good conduct into organisational cultures; and it makes best use of the experience in other parts of the UK.

RECOMMENDATION

R15. Following the review of public administration, and upon the restoration of the Assembly in Northern Ireland, a Statutory Code of Conduct for Councillors should be introduced with a proportionate and locally-based framework for enforcement, drawing upon experience of other parts of the UK.

Table 3.1

	SCOTLAND	WALES	ENGLAND
Principal Regulator	**Standards Commission**	**Local Government Ombudsman**	**Standards Board for England**
Statutory Framework	The Ethical Standards in Public Life etc (Scotland) Act 2000	Part III of the Local Government Act 2000	Part III of the Local Government Act 2000
Coverage	32 Local Authorities 125 Devolved Public Bodies	22 Relevant Authorities 736 Community Councils	477 Relevant Authorities 8,500 Parish Councils
Approved budget 2003/04	£400,000	£226,168[4] (02/03) (Indicative only – see below)	£8,945,000[2]
Number of complaints received 2003/04 Complaints investigated or referred for investigation	139[1] at 31 March 04 (Since 1 May 2003) 139	184[5] (since 1 April 2003 to 2/3) 76 (since 1 April 2003 to 2/3/04 26 to monitoring officer for investigation	3,566 (2,948 in 02/03) 1,212 (34% of total received)
Complaints referred for adjudication after investigation	3 (5% of cases investigated at 31.3.04)	2 to Adjudication Panel by Ombudsman 1 via monitoring officer	242 (12% to Adjudication Panel 8% to monitoring officer)
Average cost of investigation (Carried out by the Board, the Commission, and the Ombudsman respectively)	Not available at April 04 (78% of investigations completed within 3 months)	Not available at April 04	£3/4,000[2]
Number of Members covered	Estimated 1,200 (3,500 including devolved public bodies)	Estimated 16,000	100,000

1. *From 1 May 2003 to 31 March 2004: Standards Commission.*
2. *Standards Board for England: Annual Report – 2003/04.*
3. *Standards Board for England: Cumulative Statistics.*
4. *Estimated as a % of total approved budget of Ombudsman Services based on proportion of member conduct complaints received to the total of all complaints. Source Local Ombudsman for Wales.*
5. *An element of this is likely to relate to complaints against members of a single council involving the same circumstances.*

"The codes of conduct that have been adopted provide a clearer framework for people to judge how they should conduct themselves and for other people to judge that. I think to the extent that there now is a system for formally dealing with complaints, that there probably is greater confidence outside of local government that any matters will be properly investigated" [Sir Jeremy Beecham, Vice-Chair, Local Government Association and Leader of the LGA Labour Group: 13.07.04 2920].

3.22 Questions were however raised by many witnesses about the operation of the framework in England:

- Whether such a framework should cover all tiers of local government, and if so, should there be differing arrangements for enforcement;
- The lack of local involvement in the handling, investigation and determination of complaints and the impact this has on the proportionality and public perception of the system;
- The impact of this centralised system on embedding high standards of conduct into the organisational culture of individual local authorities; and
- The sheer volume of complaints (more than 3,500 per annum) and the time taken to complete investigations, the great majority of which result in a finding of no evidence of failure or no further action required.

Coverage of the framework

3.23 Parish and town councils were fully covered by the ethical framework in Part III of the Local Government Act 2000. At the early stages of implementation there was considerable vocal opposition from some parish councillors about the requirement (in the Model Code of Conduct) to register personal interests [Local Government Association 22/89/03]. Responses to the Committee's Issues and Questions Paper, however, indicate broad support to keep parish councils within the same ethical framework not least to ensure consistency and common standards for all councillors [e.g. The National Association of Local Councils 22/107/02; Audit Commission 22/85/10; Association of Council Secretaries and Solicitors 22/45/04; and the Office of the Deputy Prime Minister 22/109/05].

3.24 There is undoubtedly some evidence of individual parish councillors either stepping down or not seeking re-election in protest at the requirement to register interests. [e.g. Michael Green, The National Association of Local Councils 09.09.04 3814; West Berkshire District Council 22/21/02; Swale Borough Council 22/56/02; D. Shyrane 22/11/01]. However, the survey conducted by CIPFA as part of the research commissioned to support this inquiry, and exit surveys of councillors carried out by the Improvement and Development Agency for Local Government (IDeA) [18.05.04. 261], suggest that this was far less widespread than some commentators asserted at the time. What is clear is that the introduction of a new requirement for parish councillors to register interests and the fact that all complaints are handled by a national body did cause some initial resentment at the parish level. However this has died down somewhat as familiarity with the framework has increased.

3.25 This is not to say that the inclusion of parish councillors has not created practical problems for the operation of the new framework by the Standards Board which can appear out of all proportion to the relative spending by parish councils. As the research undertaken by CIPFA makes clear, while half of all complaints, and 55 per cent of all investigations undertaken by the Standards Board in 2003/4 related to parish councillors, the percentage total of spending by parishes compared to the whole of local Government accounts for only a fraction of a per cent (Appendix D, para 1.5).

3.26 These problems were, in the main, avoided in both Scotland and Wales, although for different reasons. In Scotland, community councils (the equivalent of parish councils) were not brought within the remit of the Standards Commission for Scotland or within the Code of Conduct for Councillors. In Wales, community councils are, as parish councils in England, covered by the framework. However a different system of registration of interests has been adopted which does not require community councillors to register interests in advance, only to declare them as and when a potential conflict arises. As we describe later, this has also been accompanied by a robust attitude from the Ombudsman in relation to minor and personal or politically motivated complaints. Together, these appear to have prevented the initial problems encountered in England.

3.27 Evidence received about the operation of the framework in England suggests that a significant proportion of the complaints made about parish councillors are trivial, vexatious or politically or personally motivated [e.g. Professor Richard Chapman, Chair of the City of Durham Standards Committee 15.06.04 1073, 1140]. The newness of the Declaration of Interest regime for such councillors has given ample opportunity for the framework to be abused and used to try to settle old personal and political scores.

3.28 Suggestions have therefore been made that some sort of financial or other limit related to the size of a parish council could be imposed with the ethical framework applying only to those parishes above the limit (proposed by, among others, Tony Travers, Director of the Greater London Group, London School of Economics [15.06.04 770]). The Committee is not persuaded by this argument. As John Polychronakis President of the Association of Council Secretary and Solicitors put it [15.06.04 881]:

"Whatever threshold you put in is going to be entirely arbitrary and I do not think the electors or public generally should be expected to have different standards of behaviour just because they happen to be living in a smaller area with a smaller parish council".

3.29 We agree with the views of the Office of the Deputy Prime Minister (ODPM) [22/89/03] and of the National Association of Local Councils [22/107/01] that parish councils are an important part of local democracy; some spend significant amounts of public money; and all are statutory consultees in the planning process. The Committee believes therefore that there is a persuasive argument that the same standards of conduct should apply to all locally-elected representatives, irrespective of the size or levels of responsibility of their particular authority.

RECOMMENDATION

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

3.30 This is not to suggest that, in the context of strategic regulation, the operation of the current system is proportionate. Nor does it necessarily help embed high standards of conduct into the organisational culture of parish councils. The evidence received from parishes reflects many of the concerns and complaints about the current operation of the system and the lack of real local involvement, particularly as a filter for minor, vexatious and personal or politically motivated complaints [e.g. Local Government Association 22/89/02-4].

3.31 These issues are however common to all tiers of local government. We believe they can be addressed as part of our overall recommendations to improve the current operation and the move towards a more proportionate, locally-based system, which are set out in the following sections.

Local involvement in the handling, investigation and determination of complaints made under the Code of Conduct

3.32 This Committee's Third Report [**2**], and the Joint Committee's report on the draft Local Government Bill [**8**], recommended a more locally-based system (Standards Committees) to regulate standards within nationally prescribed principles and a national system of independent scrutiny, than the one subsequently brought into effect [**1**].

3.33 The Joint Committee, in particular, saw a role for local Standards Committees to sift out vexatious and trivial complaints before referral to a national body (the Standards Board). In the event, the Government introduced a more centralised national framework in order to "secure a more nationally consistent approach to complaints and to provide the degree of independence the public expects" [**9**, para 3.17]. This framework is, in the Committee's view, an unusual (if not unique) complaints handling system. In contrast to most frameworks where a complaint works its way up the system depending on its seriousness and validity, all complaints go straight to the national body, without any reference to the lower level or local elements of the system. As a result:

- All allegations must be referred to the Standards Board for a decision on whether to investigate or not;
- From commencement, decisions on all allegations had to be made by the Board of the Standards Board itself – i.e. it could not be delegated to a referrals unit. This was corrected in the Local Government Act 2003 [**21**];

- The ability of the Board to direct aspects of the investigation process was constrained by the statutory independence of ethical standards officers; and

- Any involvement of local Standards Committees and monitoring officers is confined to those cases referred down by the Standards Board and this was only enabled by the regulations in June 2003 for determinations [**11**] and November 2004 for investigations[**12**].

The diagram (Figure 3.1) shows how a complaint is dealt with under the current framework.

3.34 The practical impact of these arrangements is that the local elements of the framework, the monitoring officer and Standards Committee, are effectively excluded from considering complaints made about members within their jurisdiction until (only recently) either the case is referred to them for determination or investigation [e.g. West Berkshire Council 22/21/02; Herefordshire Association of Local Councils 22/14/02].

3.35 The fact that the regulations to enable this limited local involvement took up to fours years to be introduced after the passage of the Act, has compounded the centralised nature of the framework. In addition, as we shall consider later, the absence of these regulations placed significant pressure on the Standards Board who had to handle the 300 or so complaints made every month, without any ability to refer some cases to the local level.

"*The fact that they did not bring in s66* [**11**] *until last year in part – and the second part* [**12**] *still remains to be brought in – has enormously affected us"* [Sir Anthony Holland, Chair of the Standards Board 18.05.04 463].

3.36 The Committee welcomes the fact that, during the course of its inquiry the so called section 66 regulations to enable investigations to be referred to the local level have been introduced [**12**]. However, even the full and effective utilisation of these regulations within the current framework will not address the concerns expressed by a number of witnesses that the Standards Board's role in the initial assessment of complaints is disproportionate, given the nature of the majority of the complaints. [e.g. South Gloucestershire Council 22/69/01; Norfolk County Council 22/25/02].

This removes the primary responsibility for standards from local authorities. The impact this is viewed as having on the framework can be summarised as:

- Marginalising the role of monitoring officers and Standards Committees in managing issues arising from the ethical standards in their authorities and from being fully aware of 'live' standards issues;

- Unnecessarily elevating the perceived seriousness of many complaints by the fact they are considered by the Standards Board and removing the ability for monitoring officers and Standards Committees from using mediation and other informal methods to resolve minor complaints;

- Neglecting local information and context that may have an important bearing on the actual seriousness or validity of complaints; and

- Creating a significant workload for the Standards Board in terms of the assessment, and in some cases investigation of minor, vexatious and politically or personally motivated complaints, when its focus should be on more serious cases requiring well resourced, competent and timely investigation and determination by a national body.

3.37 The solution put forward by many witnesses, including the Local Government Association [22/89/02] and the Association of Council Secretaries and Solicitors [John Polychronakis 15.06.04 808] is to amend the framework to enable local Standards Committees to receive and sift complaints against nationally prescribed criteria. (i.e. to assess whether an investigation, locally or by the Standards Board depending on the seriousness of the allegation, is needed).

3.38 Such a change would enable Standards Committees to use mediation or other measures (e.g. awareness-raising, training or publicity) in response to complaints that may be minor, vexatious or politically or personally motivated. Some of these complaints, while not meriting the full panoply of a national (or even) local investigation can be resolved using these more informal measures. This is a key aspect missing from the current centralised system. [e.g. Local Government Association 22/89/02; Tim Ricketts, National Association of Local Councils 09.09.04 3855].

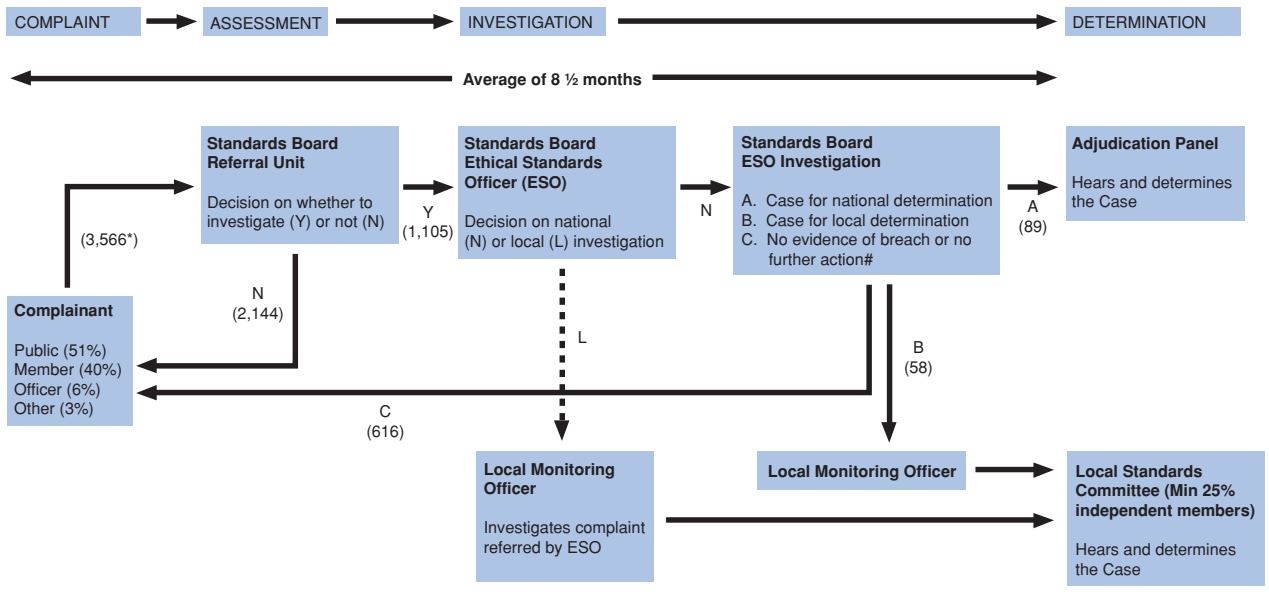


Figure 3.1 Operation of current local government ethical standards framework in England

3.39 The Chairman of the Standards Board, Sir Anthony Holland, indicated in his evidence to the Committee that this was an approach which could enhance the effectiveness of the framework, but only once the new regulations allowing referral for determination and investigation had bedded down properly [09.09.04 3681]. Sir Anthony and other witnesses also raised the issue of whether all local authorities had the necessary resources to manage this sifting role, particularly those with responsibility for a large number of parish councils [e.g. Cllr Chloe Lambert Deputy Chair, Local Government Association 13.07.04 2992].

3.40 The Office of the Deputy Prime Minister was concerned that any shift to local sifting of complaints would undermine consistency of standards and "that local investigation and determination of less serious cases should be only at the direction of the Standards Board" [22/109/07]. The Minister for Local and Regional Government, the Rt Hon Nick Raynsford MP, expanded on this point during his evidence:

"I think there is serious risk that it would not command the confidence of the public if there was any doubt about the integrity of the Standards Committee" [14.09.04 4376].

3.41 In summary, the concerns that have been raised about a move towards a locally-based sift of complaints are:

- A loss of consistency in the treatment of complaints currently provided by the Standards Board performing this role;
- A risk that monitoring officers or Standards Committees may not be impartial in their assessment of a particular complaint, either because of political affiliations or pressure or because the underlying culture is to 'keep problems in house';
- A risk to public confidence in the system if the assessment of whether or not to investigate is taken at a local level, rather than by the independent, national body (Standards Board);
- A lack of resources for some monitoring officers and Standards Committees to deal with the volume of complaints, particularly in areas with a large number of parish councils; and
- That a premature move to local sifting could undermine the current system and, in particular, the effective implementation of the new regulation allowing referral of some investigations to the local level.

3.42 These are legitimate concerns that require proper consideration. The concern about consistency is important. It is clearly undesirable and unfair for conduct in one part of the country to be treated radically differently from conduct in another part of the country. Consistency does not however mean blanket uniformity. There are numerous examples of effective judicial and quasi-judicial arrangements in this country which operate locally but within a clear national framework of how particular types of cases or complaints should be dealt with to ensure consistency, rather than uniformity of approach – (e.g. Licensing, Planning, PACE (Police and Criminal Evidence Act) Codes and the Magistrates Court system).

3.43 There do not appear to be any factors intrinsic to the ethical standards in local government that mean it is not possible to establish a clear framework within which local Standards Committees could operate that would provide a level of consistency to ensure fairness and confidence in the system. Indeed, the introduction of the two sets of regulations allowing some local determinations and investigations would in itself appear to undermine the argument that consistency can only be achieved by the Standards Board undertaking all decisions about complaints and investigations. In our view, it is fully consistent with a move towards being a strategic regulator to require the Standards Board for England to set and monitor a national framework by which local Standards Committees can decide:

(i) whether to investigate a complaint or not (and if not whether mediation or conciliation between parties or general action in relation to awareness and understanding of the code is appropriate);
(ii) which complaints are of such potential seriousness they should be referred for national investigation;
(iii) whether, following a local investigation, a complaint should be referred to the adjudication panel; or
(iv) to hear and determine the case, with an appropriate penalty where necessary; or
(v) accept that no breach has occurred; or
(vi) to instruct the monitoring officer and/or Standards Committee Chair to instigate mediation or conciliation between parties or general action in relation to awareness and understanding of the code.

The diagram (figure 3.2) shows how a complaint would be handled under this locally-based framework.

3.44 The concern about the risks to the impartial nature of Standards Committees is more well-founded. This Committee, in its inquiry into the system of standards regulation in the House of Commons [**22**] heard evidence of how the politicisation of the process for assessing complaints can undermine the credibility and fairness of the process. In the next section (para 353) we consider the composition of Standards Committees and make recommendations to strengthen their independence that will address these concerns and reassure public confidence that complaints will be dealt with impartially.

3.45 The Committee has also considered how to ensure there is sufficient independent scrutiny of the operation of this locally-based framework, particularly the initial sifting of complaints. Firstly, we believe that any authority to handle the initial sifting of complaints at a local level should be a delegated power rather than an absolute one. The Standards Board should then be under a duty to delegate responsibility to local Standards Committees but that this should be subject to satisfactory operation of the system within the framework prescribed by the Standards Board and outlined above.

3.46 Secondly, Standards Committees should be required to produce an annual report on their handling of cases which would be presented to both the full council and to the Standards Board. The Standards Board should then have the power to audit the arrangements for handling complaints in that particular authority. Other appropriate indicators might also trigger an audit, for example:

- A low Comprehensive Performance Assessment score on governance arrangements or other adverse Audit Commission reports related to governance;
- Concerns raised by the Commission for Local Administration in England; or
- Concerns raised by the Adjudication Panel following appeals from councillors.

3.47 In the event of an unsatisfactory conclusion to that audit, the Standards Board should have the power to remove the delegation from the Standards Committee, until the necessary

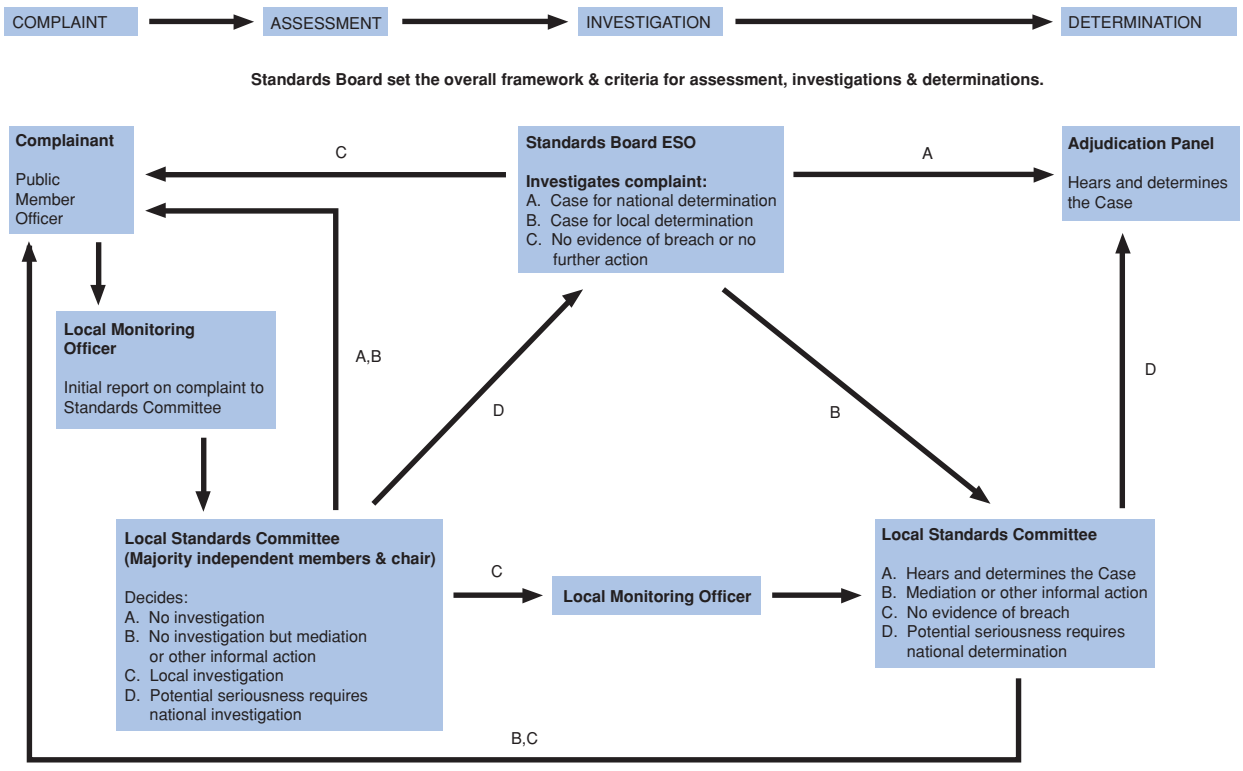


Figure 3.2 Operation of proposed local government ethical standards framework in England from 2007

remedial action has taken place. This should, in the Committee's view, provide sufficient independent oversight of the operation of local sifting to further reassure public confidence that complaints will be dealt with impartially and in line with a national framework. Furthermore, there should be a requirement for each Standards Committee and the Standards Board to determine and publish targets for the completion of each stage of the complaints handling process they are responsible for (figure 3.2) and to report on these as part of their respective annual reports.

3.48 The ability of some monitoring officers and some Standards Committees, in terms of capacity and resources, to deal effectively with the responsibility of local sifting was raised by a number of witnesses. This is felt to be a particular concern in authorities with a large number of parishes, although Paul Hoey [Director of Policy, Standards Board for England, 09.09.04 3649] said that the Standards Board's research had indicated that the problem was not so much the number of parishes, as where there are one or two problematic parishes that generate a large number of complaints. Nevertheless, Mr Hoey went on to explain that the research had indicated that a significant minority of monitoring officers (around 37 per cent) say they do not have enough time to do their duties at present. The Committee also noted that local authorities already have a statutory duty to provide the necessary resources to enable monitoring officers to fulfil their functions (s5 of the Local Government and Housing Act 1989).

3.49 A lack of capacity and resources will clearly limit the effectiveness of any local sifting arrangements, despite the fact that in the Committee's view a move to local sifting will eliminate, over time, many of the minor and vexatious complaints currently clogging up the system. Later in this chapter, we make recommendations regarding a shift in resources at the Standards Board to support monitoring officers and Standards Committees better through training and guidance, in particular in preparation for the introduction of local sifting. Properly resourced monitoring officers, including deputies, should also be a part of the framework prescribed by the Standards Board to delegate the authority to sift complaints. Finally, a monitoring officer can already request the assistance of neighbouring monitoring officers to assist where the volume of complaints puts pressure on their local monitoring officer [**21**, s113]. This may be particularly useful in respect of parish councils. In two tier areas, County Councils (where the incidence of complaints is

particularly low) have no statutory role in respect of parish councils and the ethical framework and would clearly be in a position to respond to an invitation from a District Council whose parishes, from time to time, cause a high volume of complaints.

3.50 The timing and method of any move to local sifting is critical. As we make clear throughout this chapter, the introduction of the ethical framework, despite its flaws and teething problems, is a significant advance on the situation prior to 2000. We are conscious of the risk of disrupting the progress made and the effective introduction of the new regulations allowing some local investigations. However we also believe that the framework needs to move to a less centralised and primarily local system if it is to have credibility with councillors and the public and also help embed high standards of conduct into the organisational culture of individual local authorities.

3.51 In the Committee's view both these objectives can be met. The introduction of local sifting will require amendment to the primary legislation [**1**] and realistically this is only likely to be achieved during the 2005/06 parliamentary session, at the earliest. The preparation by the Standards Board of the national framework under which local sifting will operate can only be finalised after the amendments to the primary legislation are made. So an implementation date of January 2007 is a realistic estimate which should provide enough time for the s66 regulations fully to bed down. It will also allow aspects of our recommendations later in this chapter on the composition of Standards Committees and the programme of support to monitoring officers and Standards Committees to have been completed. However, if all the key players in the ethical framework are to prepare properly for local sifting and to begin aligning their procedures in readiness, then a commitment by the Government to introduce the necessary changes needs to be made now.

3.52 In summary, the Committee strongly favours a progressive move to locally-based arrangements for the sifting, investigation and determination of all but the most serious cases. This will require changes to the primary legislation, Part III of the Local Government Act 2000. In the Committee's view, only by progressively greater local ownership and involvement in the framework, can issues of proportionality and embedding an ethical organisational culture in local government be properly addressed.

RECOMMENDATION

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

RECOMMENDATION

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

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

  (i) whether to investigate a complaint or not (and if not whether mediation or conciliation between parties or general action in relation to awareness and understanding of the Code is appropriate);

  (ii) which complaints are of such potential seriousness they should be referred for national investigation;

  (iii) whether, following a local investigation, a complaint should be referred to the Adjudication Panel; or

  (iv) to hear and determine the case, with an appropriate penalty where necessary; or

  (v) accept that no breach has occurred; or

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

- **Introduce a requirement for Standards Committees to report annually to the Standards Board and full Council on the operation of the ethical framework;**

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

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

Wales. The difficulties encountered in England from the centralised nature of the framework have, in the main, been avoided in Wales because:

- Issues of scale – far fewer councils and councillors are covered;

- Use of an existing institution to regulate the code – Local Government and Health Service Ombudsman for Wales; and

- Approach taken by the Ombudsman, as far as the framework allows, to consult informally monitoring officers about complaints before deciding whether to investigate or not [Adam Peat, Local Government and Health Service Ombudsman for Wales, 07.07.04 2556-2561].

Nevertheless, the Committee believes that these changes to the statutory framework in England could also be beneficial in Wales and Adam Peat indicated that he would not be averse to a local sifting role applying to complaints from Community Councils [07.07.04 2573].

Scotland. As we explained earlier, the framework in Scotland is very different to that in England and Wales and its operation is also in its infancy. The framework does not have a formal role for Standards Committees and issues of scale (not least the exclusion of community councils) suggest that difficulties similar to those in England may be avoided or at least much reduced. Our recommendations for local sifting are therefore not applicable to Scotland, although we would suggest that, in light of experience in operating the system, consideration be given to formalising the role of Standards Committees to ensure greater local involvement in the enforcement of the framework.

Local Standards Committees

3.53 Standards Committees are a critical element of the ethical framework for local government and, to date, the potential benefits they offer have not been realised. In evidence, we received many good examples of well-established and respected Standards Committees playing a central role in the Corporate Governance arrangements of their local authorities [e.g. Professor Richard Chapman, Chair of the City of Durham Standards Committee 15.06.04 1066].

3.54 However, there is evidence of frustration in many of the well established Standards Committees that their role in the ethical framework has to date been peripheral. This is attributed primarily to their lack of a 'filtering role' for initial complaints and also the delay in bringing forward the regulations to enable referral of some determinations and investigations.

3.55 Although there are many examples of well established and functioning Standards Committees we also heard evidence that some were perceived as politically motivated and less effective [Sir Anthony Holland, Chair, Standards Board 09.09.04 3643]. In England all 'relevant authorities' (local authorities, police, fire and civil defence authorities but not town or parish councils) are required to establish Standards Committees with at least one independent member and two elected members (no more than one member of the executive but not the mayor or leader). A number of effective Standards Committees have, on their own volition, ensured that a majority of members are independent. We noted with interest that in Wales, the secondary legislation requires that at least half of the members of a Standards Committee should be independent and have an independent chair. The Standards Board have issued guidance that Standards Committees should have an independent chair and a majority of independent members when determining a case. However, it was estimated that only half of the authorities in England had even appointed an independent chair [Nick Raynsford 14.09.04 4376].

3.56 The Committee believes that the good practice in Wales should be enshrined into the framework in England. We believe this is necessary if both the recommended local

sifting role is introduced and the new referral regulations are to be implemented effectively. This would also, in our view, address the concerns raised [Nick Raynsford 14.09.04 4377] about public confidence in Standards Committees handling initial complaints and the risk of political influence on the consideration of standards cases. It should also reassure some parish councillors who may have concerns about the impartiality of some Standards Committees in considering complaints concerning parish councillors in their jurisdiction. We believe that Standards Committees so constituted would be able to command the confidence of elected members (who would continue still to have at least two elected members on the Standards Committee).

RECOMMENDATION

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

Code of Conduct for local government officials

3.57 The Committee received little evidence that standards of conduct in general among local government officials were a matter of particular concern nor that the situation had in any way deteriorated since the Committee's Third Report in 1997 [**2**]. It is clear that most authorities have adopted their own codes of conduct (part of the employment terms and conditions for officials) and many professional bodies involved in local government have their own codes of conduct that apply to their members. A number of witnesses commented on the fact that no regulations had (at that time) been brought forward and that this was a gap in the standards framework for local government. The Committee also sees benefits of a clear and simple national code that sets out the basic framework for officials' conduct, in much the way the Model Code of Conduct does for councillors.

3.58 The Committee therefore welcomes the consultation document issued by the ODPM [**14**] in August 2004, which includes a draft of such a code. We hope that this draft code can be brought into force as soon as the consultation has been completed and the views received incorporated into a final version.

Enforcement of the Code of Conduct for Councillors

3.59 A significant majority of the evidence received about the ethical framework for local government raised concerns about the way in which the Standards Board has enforced the Model Code of Conduct, in particular the handling and investigation of complaints. In summary, concerns have been made forcefully and repeatedly about:

- The volume of apparently 'minor' complaints investigated by the Standards Board;
- The time taken to investigate complaints and the subsequent backlog of investigations and impact on members being investigated;
- Abuse of the system for political/personal motives;
- The very high proportion of investigated cases where the conclusion is "no evidence of breach" or " no further action"; and
- Lack of local involvement, in particular in the initial assessment of complaints, to overcome these problems.

3.60 It is also clear from the evidence that there were a number of contributory factors, which have served to compound these problems [Sir Anthony Holland 18.05.04 450-478]:

- The challenge of establishing a new body (Standards Board) from scratch in a relatively short amount of time and difficulties in recruiting and retaining skilled investigators with an in-depth knowledge of local government;
- Flaws in the Local Government Act 2000, corrected in the 2003 Act, that required the Board of the Standards Board itself to assess every complaint to decide whether an investigation was justified;
- The large volume of complaints concerning parish councillors which were to some extent unexpected;

- The risk-adverse approach to early complaints and investigations under the new legal framework, mainly to avoid judicial review of individual cases being brought; and

- The delay in bringing forward the regulations to allow referral of determinations and investigations to the local level.

3.61 These factors have clearly hampered the Standards Board in enforcing the Model Code of Conduct in a proportionate, timely and effective manner. In addition to these factors, the Committee believes that the centralised nature of the complaints handling framework, as discussed in the previous section will, by its very nature, limit the proportionality of the enforcement of the Code, despite what may be the best efforts of the Standards Board.

3.62 It is also clear that some of the operational procedures used by the Standards Board, at least initially, have not contributed to the proportionality of the enforcement of the Code of Conduct. The arrival of a new Chief Executive of the Standards Board has provided impetus to resolve some of these operational difficulties. In his oral evidence to the Committee [18.05.04 527] David Prince, the new Chief Executive, outlined his operational priorities to address some of these issues and, on his return appearance before the Committee [09.09.04 3618], he was able to update us with the progress made. In the following sections we summarise the evidence received for each aspect of the enforcement process, the recent changes made by the Standards Board, and we explain the additional measures the Committee believe are necessary. These additional measures, alongside the considerable progress made by the new management of the Standards Board, should:

- improve the operation of the current system;

- fully utilise the new regulations allowing referrals to local Standards Committees; and at the same time;

- lay the ground for the effective operation of the Standards Board, Standards Committee's and monitoring officers in the new localised framework recommended in the previous section.

Complaints

3.63 The Standards Board received 2,948 complaints in 2002/03 and 3,566 in 2003/04 (Table 3.2 overleaf). Although it was initially thought that the volume would decline over time (not least as parish councillors in particular became more familiar with the Code) the Standards Board confirmed [09.09.2004 3676] that complaints are still running at around 300 per month and that this appears to be the steady rate. However, there does appear to be a welcome trend in the reduction of the proportion of member on member complaints. This suggests a gradual decline in politically and personally motivated complaints.

3.64 Of the 3,566 complaints received by the Standards Board in 2003/4, 1,105 (34 per cent) were referred for investigation by their ethical standards officers (see table 3.2) down from 45 per cent in 2002/03. Since the amendment to Part III of the 2000 Act by the 2003 Local Government Act, the Board of the Standards Board can now delegate the decision whether to refer an allegation for investigation to an officer of the Standards Board.

3.65 This has enabled the Standards Board to establish a referrals unit to sift complaints against revised criteria, a move which has speeded up the process of deciding whether a complaint merits an investigation or not. From a situation described by Sir Anthony Holland of decisions on whether to investigate or not "taking a long time" this has now been brought down to an average of 11½ working days which is well on the way to their target of ten working days [Sir Anthony Holland 09.09.04 3628]. The new referrals unit has also reduced further the proportion of complaints referred for investigation to 28 per cent. It is doing so using a clear set of criteria for assessing each complaint that could provide the basic model for local Standards Committees under the new localised framework we recommend. David Prince [09.09.04 3629] also indicated that the referrals team now consisted of people with very recent and wide experience of working within local government. These improvements are welcomed by the Committee.

3.66 However, a number of witnesses highlighted the significant proportion of complaints not referred for investigation as evidence of the framework generating minor, vexatious and/or politically or personally motivated complaints that were

Table 3.2 Breakdown of Complaints Handled by the Standards Board for England in 2003/04 [source: Standards Board for England]

Category	Figures from 1 April 2003 to 31 March 2004		
Number of allegations received	Total number of allegations for 2003/04 financial year		3,566
	Total number of allegations for 2002/03 financial year		2,948
Source of allegations	Fellow Councillor	40%	1,437
	Council Employees	6%	207
	Members of the public	51%	1,834
	Other	3%	88
Allegations received by type of authority	County Council	5%	156
	District Council	26%	932
	Unitary Council	8%	296
	Parish/Town Council	49%	1,754
	London Borough	4%	146
	Metropolitan Borough	7%	252
	Other	1%	30
Percentage of allegations referred for investigation	Percentage referred	34%	1,105
	Percentage not referred	66%	2,144
Nature of allegations referred for investigation	Bringing authority into disrepute	16%	205
	Failure to register financial interest	13%	163
	Failure to register other interest	14%	176
	Failure to disclose personal interest	12%	161
	Failure to treat others with respect	13%	165
	Prejudicial interest	13%	164
	Other	19%	258
Allegations referred for investigation by type of authority	County Council	4%	39
	District Council	25%	277
	London Borough	3%	38
	Metropolitan	4%	45
	Parish/Town Council	55%	605
	Unitary	8%	94
	Police Authority & National Parks	1%	7
Completed cases by final findings	No evidence of breach	60%	462
	No further action	20%	154
	Referred to Monitoring Officer	8%	58
	Referred to Adjudication Panel for England	12%	89

inappropriate to be dealt with under the current enforcement arrangements. We have already discussed the 'lost opportunity' for some local mediation to resolve relationship issues that might escalate into more serious breaches and damage the authority. It was also pointed out that, because the local Standards Committee would not necessarily be aware of all these complaints in any detail (particularly if they are not referred for investigation), then important information on the 'ethical health' of the authority was being denied from the very body established to oversee it.

3.67 There were also concerns raised about whether enough had been done to reduce the volume of minor and vexatious complaints that were inappropriate to be dealt with under the Model Code. In this respect the Committee was struck by the approach adopted by the Local Government Ombudsman in Wales who had clearly and robustly publicised in his annual report what, in his view, were inappropriate complaints. We also noted with interest that in Wales the Model Code of Conduct specifically prohibits members from making vexatious or malicious complaints [**19**].

3.68 Issues regarding the initial handling of complaints by the Standards Board, are of course, intrinsically tied into the current lack of local involvement in the initial assessment of complaints, which we considered in the previous section. Our recommendations to move to more locally-based arrangements, through amendments to Part III of the Local Government Act 2000 will, in our view, offer the opportunity for these issues to be better resolved.

3.69 However, the Committee also believes that there are measures set out below and in the next section that can be taken now within the current system, building on the good work already undertaken by the new Chief Executive of the Standards Board. These measures can help deliver some of these benefits and at the same time lay the ground for the introduction of a more localised framework.

RECOMMENDATION

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

(i) are fully aware of complaints made within their jurisdiction;

(ii) can become familiar with the criteria used to decide whether an investigation is justified or not; and

(iii) judge whether the complaints indicate that some informal mediation between members or parties might be required or general awareness raising or training.

RECOMMENDATION

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

Investigations

3.70 In the absence of the section 66 regulations to allow the Standards Board to refer some cases to monitoring officers for investigation, all investigations to date (1,105 in 2003-4) have been undertaken by ethical standards officers employed by the Standards Board. In the research conducted by CIPFA for the Committee it was estimated, from a sample of cases between January and November 2003, that the average time from receipt to completion of an investigation was around 8½ months. In its oral evidence the Standards Board [18.05.04 510] did not challenge this figure and indicated that the current backlog was running at "around 400 cases".

3.71 The length of time taken to complete investigations was one of the principal complaints about the enforcement of the Code by the Standards Board raised by witnesses in both

written and oral evidence. The theme of "justice delayed is justice denied" was strongly felt by many and a number of cases were brought to our attention that had taken well over the 8½ month average. While it is clear that there will be some cases whose complexity means that an investigation may take more than five months, there was particular concern expressed about seemingly straightforward and relatively minor cases which had taken an unreasonable amount of time to complete.

3.72 The impact of lengthy investigations on the member concerned can also be particularly damaging if this coincides with an election and the member has to seek re-election with an unresolved complaint about his or her ethical behaviour still outstanding. This could provide a political incentive that is too tempting for some, to make a politically motivated complaint in a run-up to an election to unfairly discredit a political opponent. Such delays, in particular those which reach a conclusion that exonerates the member, cannot be in the interest of the authority or local government in general and, most importantly, not of the public whose confidence in local government the ethical framework aims to promote. It is clear to the Committee that, if these delays and backlogs were to persist over time, then the very credibility of the ethical framework would be undermined.

3.73 It was therefore extremely welcome to hear of the improvements made to the backlog of investigations when David Prince returned to the Committee to give further evidence [09.09.04 3618].

"of the backlog that we talked to you about last time, which is about 400 cases, 77 per cent of those are now allocated and are being actively investigated by our investigators. Actually 10 per cent have been finalised and another 27 per cent are at draft report stage or nearing finalisation. So as Sir Anthony [Holland] said, we've only a relatively small number now of about 100 cases – just under 100 cases – that are in the backlog, and none of these are older than January 2004".

3.74 This reduction in the backlog of investigations was clearly achieved through decisive management action and the formation of a specific team to deal with the backlog cases (and hence ensure new cases were not adding to the backlog). The Committee was particularly pleased to learn from Sir Anthony Holland that this should mean that the backlog is cleared by March 2005, by which date the average time to complete an investigation should have come down to six months [09.09.04 3613]. Nevertheless, as an average and considering the relatively minor nature of some allegations investigated, this still appears to the Committee to be too long.

3.75 It is clear to the Committee that the delay in bringing forward the so called s66 regulations to allow referral of some investigations to the local level was a significant contributory factor in the long delays and backlogs in investigations by the Standards Board. It is worth noting that the average time to complete an investigation in Wales is around three months, where the s66 regulations were introduced at the same time as the Model Code. The coming into effect of these regulations [**13**] for England on 4 November 2004 therefore offers the Standards Board a real opportunity to refer appropriate investigation to the local level and focus its resources on speedier investigations of the potentially more serious cases. The Standards Board indicated that around 20-25 per cent of investigations could be referred to the local level under the new regulations. However, this would still leave the Standards Board investigating as many as 800 complaints per year, a figure which, considering the outcomes of many of the cases investigated (see *Determinations* below) may still be on the high side. The Committee would expect a steadily increasing proportion, from 20-25 per cent initially, to be referred leading up to the introduction of the locally-based system in 2007.

RECOMMENDATION

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

3.76 Finally, we did receive some written evidence from a number of councils and individuals who recounted unhappy experiences with ethical standards officers in their investigations. Clearly the experience of any individual subject to complaint about their ethical behaviour which is then investigated by a national body is likely to be an emotional one and affected somewhat by the perceived threat to that individual's reputation. The length of time taken to complete an investigation can also adversely affect the perceived professionalism of those doing the investigation. Sir Anthony Holland [18.05.04 517] did acknowledge the difficulties the Standards Board faced when it was established in recruiting and retaining, within the salary structure, the required number of officers with the necessary expertise and experience of both investigations and of local government.

3.77 We have already referred to the positive move by the Standards Board to bring in a team who have recent and wide experience of local government to deal with the referrals of complaints. We believe that this approach can be taken further, given the likely reduction in the volume of investigations carried out by the Standards Board. Ultimately, the credibility of the Standards Board as an organisation that can effectively manage the current ethical framework, and successfully manage the migration to a more localised system, will depend upon its ability to demonstrate its knowledge and experience of the local government context when handling complaints about individual members.

RECOMMENDATION

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

Determinations

3.78 The Adjudication Panel was established as part of the framework set out in the Local Government Act 2000 to hear cases referred to it by ethical standards officers. It has the power to impose a range of sentences against any member found guilty of a breach of the Model Code, including suspension and, at a maximum, disqualification for up to five years. Following an investigation it is for the ethical standards officer to decide whether the Code of Conduct has been breached and if so, whether the breach of such substance is that it should be referred to the Adjudication Panel for a hearing and determination. Despite some difference in the underlying frameworks, an Adjudication Panel fulfils this role for breaches of the codes of conduct for members in England and Wales.

3.79 In England the delay in introducing the regulations to enable ethical standards officers to refer some completed investigations to local Standards Committees meant that until June 2003 all hearings and determinations of breaches to the Code of Conduct had to be referred to the Adjudication Panel. Of the 6,070 complaints made to the Standards Board since its inception the Panel had adjudicated on 172 cases and had disqualified over 100 members for periods ranging from one month to five years. Since the introduction of the local determination regulations, local Standards Committees had heard 27 cases [all as at April 2004: Standards Board 22/39/06]. The remainder of the cases investigated by ethical standards officers (around 2,300) resulted in findings of either "no evidence of breach" or "no further action". The figures for 2003/04 in Table 3.2 illustrate this issue in more detail: only 7 per cent of all complaints and 20 per cent of all investigations resulted in a penalty being imposed on a member (assuming all referrals for determination result in a penalty) and 80 per cent of all investigations resulted in a "no evidence of breach" or "no further action" finding.

3.80 The small number of penalties imposed suggests that serious misconduct by members is a relatively infrequent occurrence or rarely detected. However, it does reinforce the concern that the centralised system of handling and investigating the large volume of complaints received under the Model Code is disproportionate. In the Committee's view this points clearly to the benefits of our recommendations for a more locally-based system for the assessment of complaints, within a national framework and, in the meantime, to the maximum use by the Standards Board of the regulations allowing referral of complaints for local investigation and determination.

Code of Conduct provisions and their operation in practice

3.81 In addition to the evidence about the overall framework and its enforcement, the Committee also received and heard evidence about the Model Code itself and how its provisions were operating in practice in England. We also heard evidence about the codes in Scotland and Wales. The research conducted by CIPFA for the Committee considered the impact of the variations between each of the codes in some detail.

3.82 In England and Wales the framework is similar with general principles which are to govern member conduct issued by Order [**10, 23**] and separate Orders issued setting out Model Codes of Conduct which prescribe the standards of behaviour expected from members [**11, 19**]. The Local Government Act 2000 allows for councils voluntarily to add provisions to the Model Code (which are consistent with it). In practice this does not appear to have been widespread. In Scotland, the key principles (again based upon the Seven Principles of Public Life) are part of the Code of Conduct which is wholly prescribed and does not offer the opportunity for local provisions to be added [**17**].

3.83 Overall, the Committee was impressed by the broad support for both the principle of a national Model Code of Conduct for Councillors and for the majority of provisions within the Code. The introduction and promulgation of the Model Code in England by the Standards Board was praised by a number of witnesses, and the awareness of the Code, if not for its detailed provisions, appears to be fairly widespread with councillors at all tiers of local government.

3.84 The Standards Board's own research conducted by MORI shows 85 per cent of members in principal authorities support the requirement for members to sign the Code of Conduct [Standards Board 22/39/05]. In their evidence, the Standards Board also made clear its intention to conduct a review of the Model Code of Conduct in England, beginning at the end of 2004. The Committee welcomes this review, which is in line with recommendations it has made previously about the need to keep codes of conduct under regular review [**22**]. The Welsh Assembly Government has also set up a working group to review the operation of the Code of Conduct and to make recommendations to the Assembly for amendments to the Code where they are considered desirable and in keeping with the underlying principles of conduct [Adam Peat, Local Government Ombudsman for Wales 22/87/4]. In this section we therefore highlight specific provisions within the model codes on which we received evidence and that the Committee believes should be considered as part of these reviews. We also point out where the experience of the differences in the codes between Scotland, Wales and England may have a bearing on these reviews.

Guiding principles and the Model Code

3.85 The Committee in its First Report [**24**] set out the Seven Principles of Public Life which have since been adopted, sometimes in a modified form, and included in codes of conduct applying to most public office-holders in the UK, including those for local government. The scope of the Seven Principles were extended in the Order setting out the general principles in England to include: the need to uphold the law; use resources properly; to reach decisions based on personal conclusions; and to have respect for others. The general principles issued by the National Assembly for Wales are broadly similar to those in England. The key principles which underpin the Code of Conduct in Scotland are also based on the Seven Principles and are also extended to include: duties to uphold the law; use resources prudently; and to respect fellow members and employees. The Committee welcomes the adoption of the Seven Principles within these frameworks and the extension of these to reflect the local government context. We were interested to note that, in Scotland, these principles had been included within the Code of Conduct, rather than in a separate Order as in England and Wales. This approach is perceived to have had some benefits:

"It seems to me that if these principles were not in the Scottish Code, then we might be doing a bit of a disservice, because a lot of the public might not be able articulate sufficiently the nature of the complaint. I think it is often the starting point for complainants that they look at the Code and say, 'Well, this behaviour was unreasonable or unacceptable because'...and then they see what the standards are meant to be" [Stuart Allan, Chief Investigating Officer, Standards Commission for Scotland 17.06.04 1349].

3.86 The survey carried out by CIPFA as part of its research also indicated some support in principal authorities for the inclusion of the

general principles in the Model Code of Conduct in England. Sir Anthony Holland, when the suggestion was put to him, was also broadly supportive of the idea [09.09.04 3701].

"*That is certainly going to be one of the questions we raise in the review of the Code. We personally think it would be helpful to do that, and would also bring the code into line with Scotland, for example, and the national parliamentary Code. So it is certainly something we want to raise as an issue, and we personally would be supporting that. But we await feedback on it".*

3.87 Adam Peat, the Local Government Ombudsman for Wales, also indicated that this suggestion was under active consideration by the working group established to review the Code in Wales [07.07.04 2585].

RECOMMENDATION

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

Official and private conduct

3.88 The relationship between standards of conduct by public office-holders acting in their official capacity, and conduct in their private lives has been a difficult and contentious issue over the years. The Committee in its First Report drew a significant difference between, for example, sexual misconduct and financial misbehaviour. We indicated that while rules could be usefully drawn up for the latter, they could not for the former [**24**, page 47]. This has remained the case in all of its subsequent reports and recommendations. The Committee has concentrated on standards of conduct in respect of public, rather than private life except where private interests, financial or otherwise could give rise to a potential conflict of interest with an office-holders' public role. The public attitudes research [**25**] published by the Committee indicated that the public place a lower priority on public office-holders setting a good example in their private lives than they do in respect of public conduct.

3.89 This issue is dealt with in different ways by each of the codes for councillors in England, Scotland and Wales. In Scotland the general rules of conduct apply to members only when they are acting as councillors including representing the council on official business. The general principles, which form part of the Code in Scotland, may have the capacity to apply to private life but it would appear that there would need to be a clear link between private conduct and the role of councillor. The reasons for this were explained by Stuart Allan, Chief Investigating Officer, Standards Commission for Scotland [17.06.04 1355]:

"..in Scotland the view has been taken that the misconduct must relate in some way to the activity of the person as a councillor. If there is a link then you can apply the terms of the Code. If the misconduct relates purely to the personal life of the councillor, then on the face of it there is a presumption that there is not necessarily a breach of the Code".

3.90 In England and Wales the codes largely apply to members acting in their official capacity but in part do appear to concern conduct in private life. In England a member must not "in his official capacity, *or any other circumstance"* [emphasis added], either conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute, or, use his position improperly to secure an advantage or disadvantage for any person". In Wales the Code applies only to official conduct save that as in England, conduct bringing the members' office or authority into disrepute or improperly securing an advantage or disadvantage for any person can also apply to private life. Additionally, in Wales a member must not in his official capacity or otherwise commit a criminal offence or cause one to be committed (no such specific obligation applies in England). Adam Peat indicated [07.07.04 2594] that the review of the Code in Wales might recommend deleting this and just focus on matters that may or may not bring the council into disrepute.

3.91 A number of witnesses felt that the broader definition in England of "or in any other circumstance" had introduced the potential for complaints to be brought against councillors for matters purely pertaining to their private life and wholly unrelated to their role as a councillor.

"I have some difficulties with the fact that some areas of the Code apply to whether that person is acting as a councillor or not. I think it is a fairly intrusive part of the Code….I think it leads to a waste of time and money when matters that are dealt with outside of the council chamber are brought to the Standards Board's attention and they end up saying this is not a matter for the Code" [Tim Ricketts, National Association of Local Councils 09.09.04 3867].

3.92 The Adjudication Panel for England has made it clear that it operates a higher threshold in relation to "any other circumstance" than might be implied by the Code. In their view the circumstance should be sufficiently proximate to, or reasonably capable of being linked to or have a bearing on, the official capacity.

3.93 This view was shared by Sir Jeremy Beecham (Vice Chair, Local Government Association and Leader of the LGA Group) [13.07.04 3034]:

"…I think one has to get to a position where there is a relationship between the personal and the official".

3.94 However, this distinction does not appear on the face of the Model Code and this has undoubtedly led to complaints being submitted, and possibly investigated by the Standards Board, in which the private conduct that is the subject of the complaint is wholly unrelated to the individual's official capacity. This may in turn have led to a perception amongst councillors that there is at least the potential for them to be treated more harshly than other elected office-holders.

RECOMMENDATION

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

Registration and Declaration of Interests

3.95 The Registration and Declaration of Interests by public office-holders that may constitute or may be perceived to constitute a conflict of interest is one of the cornerstones of probity in public life. The resolution of such conflicts of interest brings together all the aspects of the Seven Principles of Public Life. The central principles are clear:

"A person in public office must not take any decision in pursuit of a private interest, and must not allow any private interest to influence a pubic decision. Any relevant private interest must be declared, and if the conflict of interest is too great then the person concerned must either stand aside from the decision in question, or dispose of the private interest" [**2**, page 24].

3.96 The application of this principle in practice can be very difficult, particularly in the case of local councillors:

- No particular interest or decision will be identical to others – some judgement will always be required on a case by case basis;
- The increasing diversity and complexities of local service delivery and public-public and public-private partnership arrangements potentially increase the scope for conflicts of interest;
- Councillors perform a dual role in respect of planning and licensing – they determine applications by using prescribed criteria and (to some extent) by excluding all other considerations. However, they also act as representatives of public opinion in their communities; and
- Concerns that the common law on bias, may be in conflict with the intention in some parts of the Code.

3.97 Public life, our system of democratic representation and the quality of decision-making will all be damaged if the process of resolving conflicts of interest means that everyone with any relevant private or public interest in a public decision is excluded from participating in that decision. In this area, perhaps more than any other, the issue of proportionality and the principles of strategic regulation are paramount.

Registration of Interests

3.98 We have already seen how the system for registering interests, when applied to parish councillors in England for the first time, led to some initial resentment, although this appears to have receded as familiarity with the system has grown. This was less of an issue in Wales, where community councillors are not required to register interests beforehand, only to declare them as and when a potential conflict arises, and not a factor

at all in Scotland where community councils are not covered by the Code of Conduct. In our Issues and Questions paper [**3**] we also asked a specific question regarding the desirability or otherwise "of a requirement to register membership of any society which though not a charity or directed to charitable purposes might be perceived to constitute a conflict of interest". This arose out of a concern that there might be a gap in the registration rules that excluded registration of some societies that might potentially constitute a conflict of interest. In the absence of a requirement to register, the concern was that such membership might not then be declared in a specific situation where a conflict was likely.

3.99 The responses to our consultation and the evidence received from witnesses suggest that:

- Many monitoring officers and Standards Committees are advising members to take a 'belt and braces' or 'safety first' approach to registering interests so as to ensure there is no risk of breaching the rules on which matters should be registered;
- Some authorities have, on their own volition, extended the code to ensure that membership of all societies, charitable or otherwise, should be registered [e.g. City of Durham 22/35/01]. In Wales this is already mandatory in the Model Code, and other aspects of the registration rules are being covered as part of the working group's review;
- The issue for one society in particular, Freemasons, has been resolved in England as membership now constitutes that of a charitable organisation and is therefore an interest that should be registered [Sir Anthony Holland 18.05.04 567]. The general registration rules will be covered as part of the Standards Board's review of the Code of Conduct; and
- In Scotland, there is not a general requirement to register membership of a charity or a society as such, but there is an objective test as to whether members of the public might reasonably think membership could influence a councillor's actions. If so then membership should be registered. A further safeguard is the requirement to declare a relevant interest (registered or not) for the purposes of an item to be discussed at a Council Meeting [Stuart Allan 22/75/09].

3.100 This Committee has in the past, and continues to place, considerable importance on publicly accessible registers of interest for elected members in local government. The purpose of registers is to make the public, officers and fellow councillors aware, in a timely fashion, of interests held by councillors which are likely to give rise to conflicts of interest. A register is an important supplement to a Declaration of Interest, because it is a standing document which can be consulted when and before an issue arises, and enables others to take a view on whether a conflict of interest may exist. It is therefore an important safeguard for councillors themselves.

3.101 Where the Committee does have concerns about the current ethical framework(s) is the extent to which an alleged failure to register an interest can generate enforcement action which, in our view, is disproportionate to the alleged breach. Where a failure to register an interest is alleged we believe that this is a matter that should normally be dealt with locally by the monitoring officer and the Standards Committee, not by a national investigation by the Standards Board and determination by the Adjudication Panel. Local enforcement, which might include a period of suspension for persistent or significant failure to register but is more likely to require registration with a warning to future conduct, is, in our view, more likely to establish a consistent and commonly understood registration system for members. It is only where there is an allegation that a councillor has **taken action** which puts private interest above the public interest (i.e. fails to make Declaration of Interest and act appropriately upon that declaration) that, in our view, may justify a national investigation and determination. Table 3.2 shows that in the last financial year a total of 339 allegations of failure to register an interest were investigated by the Standards Board.

RECOMMENDATION

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

Declarations of Interest

3.102 As we make clear in the preceding paragraphs, it is the declaration of interests, and actions taken

to resolve any potential conflict, that are actually at the heart of ensuring that **a person in public office does not take any decision in pursuit of a private interest, and does not allow any private interest to influence a pubic decision.**

3.103 There is no doubt in the Committee's view, from evidence it has received, that the system introduced as a result of the Local Government Act 2000 is a considerable improvement on the situation that existed before [**2**]. Where problems and confusion have arisen over what matters should be declared and what action taken as a result, the Standards Board has taken action and sought to clarify and resolve these issues, to the extent it can, through guidance to monitoring officers and Standards Committees. Both the Local Government Ombudsman for Wales and the Scottish Standards Commission have done likewise. The Committee regards this as a welcome approach by the principal regulators to what is a difficult issue to get the balance right in practice.

3.104 Nevertheless, the evidence we received about Declarations of Interest did raise concerns about whether the balance was being properly struck between the proper resolution of conflicts of interest and the democratic representational role of members. In England, two areas in particular appear to have caused concern and confusion: when a councillor also has a role in additional public bodies (so called 'dual-hatted roles'); and in planning decisions.

Dual-hatted roles

3.105 Our understanding is that one of the underlying intentions behind the registration and declaration of interests section of the Model Code was to ensure that membership of another public body would not *de facto* mean a councillor would have to withdraw from any Council discussion and decision that might be relevant to that public body. This intention was consistent with our Third Report [**2**, page 31] and supported by most witnesses to this inquiry:

"But the intention of the Code, and this was an improvement on where we thought we were, was to make clear that councillors could belong to an outside body, could act upon council business that affected that outside body provided they declared their interest, everyone was clear about what their interest was and that they were only one of a number of people making the decision anyway."

"I think this is really important because if you take away the ability of members to work with other organisations in the community then you destroy one of the things local government is trying to do more of, which is work in partnership with other bodies" [Brian Briscoe, Chief Executive Local Government Association, 13.07.04 3063].

3.106 The Model Code does, on the face of it, enable a member to regard an interest as not prejudicial (requiring withdrawal) if it relates to another relevant authority of which he is a member or another public body to which he has been appointed or nominated by the authority as its representative [**11**, para 10(2)]. However, evidence received as part of this inquiry suggests that this is not how the Code is operating in practice:

"Members are making a genuine effort to do the right thing, to seek advice and weigh up some difficult questions relating not to personal conflicts but conflicts that arise as a result of their membership of bodies with public functions. This is a particular problem in rural areas, where the school governor, parish, district, county, park authority, fire authority and police authority member may all be the same person…..Counsel felt that the Code was in conflict with the common law relating to bias" [Catherine Whitehead, Monitoring Officer, North Yorkshire County Council 23/30/02].

"In my own authority – which is also a local education authority – we have 72 elected members and 110 schools. Virtually every member is a governor of a school so where we are faced with a report which is of a general nature there is an argument which says that they must all declare an interest in that particular item, which again I think is rather a nonsense, especially when they are appointed by the Council itself" [John Polychronakis, President of the Association of Council Secretaries and Solicitors 15.06.04 917].

3.107 It appears that one of the reasons that this sensible exemption is not being applied in practice is a potential conflict with the common law on bias which has caused a risk-averse approach in advising councillors to declare a prejudicial interest in matters with only a general relevance to another public body, so as to avoid the risk of a legal challenge against the council's decision.

"It's not currently satisfactory that there's a conflict between the common law and what the code says. I won't go down into the minutiae of it, but it is actually very difficult for people who are acting on the ground as politicians" [Sir Anthony Holland 09.09.04 3705].

3.108 Working in partnership with other organisations in the community is a vital dimension in the role of local authorities. Elected members should not be discouraged from accepting appointments or nominations by their local authority to outside bodies by rules which unnecessarily restrict participation in their local authority in decisions which affect that outside body.

RECOMMENDATION

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

(i) the declaration of a personal interest;

(ii) the matter before the Council/ Committee does not relate to an application by the outside body for any licence, consent or an approval or any objection to such matters or to any statutory order or regulation to be made by the local authority; and

(iii) any representations must be made in an open and transparent manner.

Planning decisions

3.109 The operation of the Planning system and the means of ensuring that conflicts of interest are declared and resolved has long been a contentious and complex issue. In our Third Report we examined the whole planning system in some detail [**2**, Chapter 6]. The wide scope of this inquiry has meant that we are unable to examine the system again in this level of detail. However, we heard of concerns both about the clarity of the operation of the code in respect of planning decisions and of restrictions it appears to place on councillors' representative role.

"I think there are some issues around clarity, particularly when you sit on a planning committee. I have had colleagues express concerns, for example, that if you live in your ward – which we are encouraged to do as ward councillors – you will be often told that you live too near an area where there is a planning application, and the ability to represent the views of people in the ward is hampered, and very often you are told that you cannot and should not be involved in that" [Simon Milton, Conservative Member of Local Government Association and Leader of Westminster City Council 13.07.04 2930].

3.110 In common with problems concerning "dual-hatted" roles there appears to be some confusion between the Model Code and the need for councillors taking a decision on planning and similar matters to keep an open mind and to avoid fettering their discretion, a concept which is based on the common law concept of bias.

3.111 The Committee noted with interest that, in Scotland, the approach had been taken to include detailed provisions within the Code of Conduct for Councillors aimed at covering various foreseeable difficulties and situations in planning decisions. This appears to have aided clarity and understanding but even here local authorities have demanded further guidance, which has now been provided [Fiona Mackay, Secretary to the Standards Commission for Scotland 17.06.04 1362].

3.112 The Committee does not however believe that the Model Code itself in England should include detailed provisions about particular planning situations, as this may lead to a more complex and detailed Code which is less accessible to members and the public.

RECOMMENDATION

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

(i) a declaration of personal interest is made, including the nature of the interest;

(ii) the representations are made in an open and transparent manner; and

(iii) the member making the representations (whether a member of the Committee or not) withdraws at the completion of their representations.

Learning lessons

3.113 The research conducted by CIPFA on behalf of the Committee highlighted in some detail the significant differences in the rules contained in the codes of conduct in relation to declarations of interest between Scotland, Wales and England. Given that this issue is so central to probity in local government and has the potential to exert a tension between probity and democratic representation it is somewhat surprising that such differences have arisen in pursuit of what we assume is the same outcome. The Committee therefore welcomes the approach taken by the working group in Wales in seeking to learn lessons from England and Scotland as part of its review. For example, Ian Medlicott, the monitoring officer for Caerphilly County Borough Council and a member of the working group, outlined a probable recommended change to the Welsh Code, picking up the simpler categories of declarations adopted in England [07.07.04 2489].

3.114 The Committee does not believe that there must be identical approaches across the UK. We do believe however that there is considerable scope for the sharing of experiences and best practice between the three principal regulators (Standards Board for England, Local Government Ombudsman for Wales, and Standards Commission for Scotland) and, in particular, that the review of the Code of Conduct in England should include drawing upon the lessons learnt in Scotland and Wales.

RECOMMENDATION

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

Duty to report a possible breach of the Code

3.115 The Model Code of Conduct in England obliges members to report to the Standards Board any conduct of another member which they believe involves a failure to comply with the Code (in effect make a complaint). The Code in Wales has a similar provision but this is extended to cover conduct by "another person" which they believe involves or is likely to involve criminal behaviour. In addition, in Wales there is a prohibition on members making vexatious or malicious complaints. There is no similar duty to report a possible breach by another member in the Councillors Code of Conduct in Scotland.

3.116 Although the principle of the provision in the English and Welsh Codes was supported by most witnesses and those providing written evidence, there were some significant concerns raised about the impact this provision had had on the volume of member on member allegations in England.

3.117 Despite having similar and potentially wider provisions, the problems raised by witnesses in England seem to have been more or less avoided in Wales. The Committee was naturally interested to understand why this was the case, and in particular whether the additional prohibition on members making vexatious or malicious complaints had discouraged Welsh councillors from using the duty to report possible breaches to score personal or political points. However, it became clear to the Committee that the principal reason why this provision had not caused similar problems in Wales was the approach of the Local Government Ombudsman in both publicising inappropriate complaints received and in using local monitoring officers to resolve some potential complaints in an informal manner, as we described earlier.

3.118 The Committee remains unconvinced that this provision should be removed despite the evidence that it has caused problems in the operation of the framework in England. The principle that the Code should support an organisational culture that encourages the reporting of possible wrongdoing by others is at the heart of ensuring high standards of conduct in public life. Many other codes of conduct for public office-holders include a duty to report suspected breaches of that code by others. We can see nothing intrinsically different for local government that suggests such a duty is

inappropriate or disproportionate. It is, in our view, the failure of the operation of the complaints-handling system to quickly and locally resolve inappropriate complaints made under this provision that lies at the root of the problem. As such we believe that our proposals to move to a more locally-based system of complaints-handling will achieve in England what Adam Peat has done more informally (helped also by the smaller number of members covered) in Wales.

RECOMMENDATION

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

Guidance and training for Councillors, Standards Committees and monitoring officers

3.119 Guidance and education is one of the three "common threads" the Committee set out in its First Report [**24**] to ensure that the Seven Principles of Public Life were properly understood. The importance of this common thread, in respect of ethical standards, was recognised in Part III of the Local Government Act 2000 which placed statutory duties on:

- The Standards Board for England to issue guidance on the Code of Conduct and to promote high standards across the local government community; and
- Local Standards Committees to train members on the Code of Conduct and help them follow it, and to monitor the effectiveness of the Code.

Similar guidance and training materials have been provided by the Local Government Ombudsman for Wales and the Standards Commission for Scotland.

3.120 The view of most witnesses is that the Standards Board has been successful in meeting this duty, particularly given the significant challenge of the introduction of the new ethical framework and model code across all tiers of local government.

"I think the Standards Board [for England] ought to be commended for the national training programmes they have promulgated on the ethical framework. I think these are very good. I think their annual conference is very good and well attended. I think the workshops they organise regionally are very well attended and I think a self-assessment tool for local authorities to apply would be very welcome" [Mike Kendall, Immediate Past President, Association of Council Secretaries and Solicitors 15.06.04 932].

3.121 This view is supported by the Standards Board's own research, carried out by MORI, which found high levels of satisfaction with monitoring officers and Standards Committees with the published information and guidance produced by the Standards Board. Examples of the work undertaken by the Standards Board include [22/39/11]:

- Publication of a Case Review – a guide to the Code of Conduct based on case examples;
- A guide to Part III of the Local Government Act 2000;
- Guidance on the roles and responsibilities of Standards Committees;
- Video guides for parish clerks on key issues around the Code of Conduct;
- Guidance on how to conduct a local hearing;
- Programme of external presentations on the Code if Conduct;
- The creation of six regional forums for independent Standards Committee members; and
- An annual national conference for monitoring officers and Standards Committees.

3.122 Local Standards Committees and monitoring officers have been active in training councillors in increasing awareness and implications of the Code more widely [e.g. Mid Beds District Council 22/05/02, Gateshead Council 22/08/03 and Conway Borough Council 22/26/01 among others]. Representative organisations have also

conducted their own training programmes for monitoring officers, Standards Committees members and councillors, often utilising material produced by the Standards Board. The National Association of Local Councils, the Improvement and Development Agency and the Institute of Public Finance (IPF) have all run training and development programmes which have contributed to the successful initial capacity building programme around the introduction of the ethical framework.

3.123 The Committee welcomes all of this activity which it believes has had an overall positive impact on the understanding and awareness of ethical issues in local government. This will need to continue as new councillors are elected and particular effort will need to be given following elections where a number of new councillors may be elected to a particular authority.

3.124 Many witnesses recognised that the challenge now was to support authorities in ensuring that the principles and behaviour enshrined in the ethical framework were properly embedded into their organisational culture. This can require innovative experience-based learning techniques to be effective and the Audit Commission has developed some self-assessment tools that, in the Committee's view, can go some way in meeting this requirement. In particular, the Audit Commission has developed three voluntary self-improvement aids to support local public bodies in their efforts to embed the key elements of good governance into their organisational cultures [Audit Commission 22/85/13]. Of particular relevance to local authorities is 'The Ethical Governance Audit' tool designed to help local authority councillors and senior officers to improve their knowledge and understanding of the ethical framework and how it impacts on them in their work with the Council. It is supported by a facilitated workshop which explores awareness and understanding on ethical issues. Derek Elliot, Head of Good Governance and Counter Fraud Network, Audit Commission, explained the reasoning for producing such tools in the context of strategic regulation [18.05.04 351]:

"Over many years' experience of auditing we have firmly come to the view that actually if you can help organisations reach their own determinations of their strengths and weaknesses it is a much better foundation for improvement. It is very easy for auditors, or it was in the past, to say 'Oh, there is something wrong here. Go out and have better conduct. Go out and improve your culture'. I think we became determined that if we were going to make a real impact it was to help people reach those determinations and to work with them to help them actually identify their strengths and weaknesses and then to actually act appropriately in accordance with those arrangements."

3.125 This is an approach that the Committee fully endorses and we were pleased to learn that the Standards Board are now working with the Audit Commission to jointly badge the Ethical Governance Audit tool and also with the Improvement and Development Agency on a follow-up diagnostic tool [David Prince, Chief Executive of the Standards Board 09.09.04 3716]. We believe that all local authorities should be encouraged to make use of this tool and that the use and any action taken would form part of the annual report from the Standards Committee to the full council and the Standards Board.

RECOMMENDATION

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

3.126 The introduction of the s66 regulations for local investigations and determinations, allied to our recommendations for a move to a more locally-based framework will also present a new challenge for both the Standards Board and Standards Committees in fulfilling their statutory duties for guidance and training under the Local Government Act 2000. It will also require those representative bodies involved in guidance and training in this area to modify the focus of their programmes. The Committee therefore welcomed the comment by David Prince, Chief Executive of the Standards Board for England, that supporting the introduction of local investigations was the second most important priority for the Board, after improving complaint handling and the backlog of investigations [09.09.04 3715].

3.127 The Committee believes that the role the Standards Board needs to play in meeting this new challenge is consistent with its view that the Standards Board should move towards a strategic regulator, enabling the handling and

enforcement of complaints to be done, in the main, at a local level. This will require a shift in resources at the Standards Board from complaint-handling and investigations towards the provision of more guidance and training, particularly training materials. It will also, in the Committee's view, require a shift in focus towards the direct support of monitoring officers and Standards Committees in operating the new framework. The ongoing, and equally important work, in inducting new councillors and refreshing the understanding of existing councillors should be undertaken primarily by Standards Committees and monitoring officers themselves, utilising Standards Board material. And, all this can only be achieved through a partnership with other regulators (i.e. the Audit Commission) and other local government bodies (i.e. the Improvement and Development Agency).

3.128 The Committee heard evidence and examples of good practice which may provide some useful pointers to the most effective approach the Standards Board might adopt for this strategy. A number of witnesses highlighted the importance of accessible case studies, role play and audio-visual material in supporting learning by monitoring officers and Standards Committee members in how to sift, investigate and determine complaints made under the framework [e.g. Professor Richard Chapman, Chairman of the City of Durham Standards Committee 15.06.04 1108; Simon Milton, Local Government Association 13.07.04 3129-31].

RECOMMENDATION

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

RECOMMENDATION

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

Conclusion

3.129 The ethical standards framework for local government is arguably the most extensive and comprehensive statutory framework for standards of conduct of any group of public office-holders in the UK. Despite some flaws and problems with its operation it is, in the Committee's view, a significant improvement on the situation prior to its introduction in 2000 and when the Committee last examined the area in its Third Report in 1997. Now, as then, it is possible for the Committee to conclude on the evidence it has received that **despite incidences of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct.**

3.130 However, the highly centralised method for handling complaints under the Model Code of Conduct, as prescribed in the Local Government Act 2000, is at the heart of the many, and in our view justified, complaints about the proportionality of the system. This approach, where all complaints must first go to the national body – the Standards Board for England – runs contrary to the advice given by this Committee in 1997 [**2**] and of the Joint Committee which scrutinised the draft legislation in 1999 [**8**].

3.131 In terms of the two principal legs of our inquiry [**3**], **proportionality** and **culture**, this approach has had unintended negative consequences for both.

3.132 **Proportionality**. The system has generated a large number of apparently minor, vexatious and politically motivated complaints that have created a significant backlog of national investigations, leaving many members with accusations hanging over their heads for long periods of time.

3.133 **Culture**. The centralised system has arguably removed primary responsibility for standards from individual authorities (and members). Local Standards Committees, critical in our view to embedding high standards in each local authority, are under-used and in danger of falling into disrepair.

3.134 These problems have been compounded by some teething problems in the introduction of a model code of conduct (mainly resistance from parish councillors to the requirement to register interests). There have also been serious and ongoing operational difficulties at the Standards

Board in managing the centralised system, and delays by the Office of the Deputy Prime Minister in producing regulations to allow limited local involvement in the investigation and determination of cases.

3.135 These problems have, in the main, been avoided by the devolved equivalents in Scotland (although the framework there is only one year old) and Wales from whom some lessons can be learnt but where issues of scale make some other comparisons inappropriate. Northern Ireland is alone in not having a statutory framework for the conduct of local councillors and we recommend that this be addressed following the review of public administration, and upon the re-establishment of devolved government.

3.136 A number of positive developments to the operation of the framework in England occurred during the Committee's inquiry:

- The new Chief Executive of the Standards Board is committed to try and address some of the operational problems (i.e. a reduction in the time taken to complete investigations, the clearing of case backlogs and improved initial complaints handling);
- The Standards Board has already begun a review of the Model Code of Conduct to be completed in early 2005;
- The Office of the Deputy Prime Minister has introduced the long awaited regulations to allow the referral of some cases for investigation and determination to local monitoring officers and Standards Committees (these complement the 2003 regulations that enable referral of completed Standards Board investigations of some cases for determination by local Standards Committees); and
- The Office of the Deputy Prime Minister has also produced a draft of the long awaited Code of Conduct for local government officers for consultation (issued in August for comment by November 2004).

3.137 The challenge for the Committee has therefore been to judge:

- Whether these recent developments to address some of the problems in the operation of the framework in England, possibly backed up with further recommendations to fully utilise the new regulations and improve the Model Code of Conduct, will be sufficient to meet the significant concerns raised; or
- Whether the centralised approach is inherently flawed and that it should move to a system that enables locally-based handling of complaints, within a national framework where only the most serious cases are investigated and determined by national bodies.

3.138 **The Committee has concluded that, although improvements can and should be made to the existing system, the framework must move to locally-based arrangements for the initial handling, investigation and determination of all but the most serious cases. Only by local ownership and involvement can issues of ethical organisational culture be properly addressed and the overall regulatory framework for standards in local government made proportionate and strategic.**

3.139 In this respect the Committee is echoing its conclusions in our Third report which said [**2**, page 3] *"Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity about standards has grown.* ***We believe that the key reason for this is that responsibility for the maintenance of standards has moved away from local government".*** (emphasis added)

3.140 The recommendations we have made are a package of interrelated changes to different aspects of the framework that, over a specified period of time, will in our view deliver the necessary improvements. The framework should move to a more locally-based system by January 2007. We have also made a number of recommendations that will improve the operation of the current system while at the same time laying the ground for the introduction of locally-based arrangements. Taken together these will enable the Standards Board to transform into a strategic regulator able to:

- Establish and maintain the elements of a national framework within which monitoring officers, Standards Committees and councillors can manage ethical issues primarily at a local level;
- Provide independent scrutiny of the operation

of this framework, auditing performance and where necessary intervening until improvements have been made;

- Support and enable monitoring officers, Standards Committees and councillors to deliver high standards of conduct in local government through self-assessment tools, training materials and programmes and regional networks;

- Work collaboratively with other regulators both in England and in the devolved administrations to improve standards of governance in local government; and

- Investigate those most serious complaints that pose a high risk to the reputation of local democracy.

3.141 The Standards Board in 2007 will therefore need to be very different to the Standards Board in 2004 if it is to achieve these aims. Its focus and the mix of skills and experience of its employees will need to change. The shift from a primary purpose of handling and investigating a large volume of complaints to the strategic approach described above will require a different allocation of resources. In the Committee's view this should in principle enable significant savings to be found from the current £9m annual budget of the Standards Board.

References

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CHAPTER 4
EMBEDDING THE SEVEN PRINCIPLES OF PUBLIC LIFE INTO ORGANISATIONAL CULTURES

Introduction

4.1 In this chapter we review the evidence we received on the steps being taken to embed the Seven Principles of Public Life into organisational cultures across local government, NHS bodies and other public bodies**.** We examine whether public boards have rigorous arrangements for the governance of propriety. We also look at the key elements of good practice likely to deliver effective whistleblowing, and examine the impact of the Public Interest Disclosure Act 1998 on whistleblowing. We make some general recommendations designed to assist public bodies in embedding further the Seven Principles of Public Life into organisational cultures and we make some general recommendations related to the governance of propriety in public bodies.

Organisational culture

4.2 In our Issues and Questions Paper we noted that organisational culture, which concerns the basic assumptions and beliefs that are learned, shared and often taken for granted in an organisation, is an often overlooked key to understanding decision-making. [**1**, page 8]. Embedding the right culture as well as the right processes are the keys to achieving long-lasting improvements in the governance of public services [Audit Commission 22/85/04]. Organisational culture is difficult to change but it can be changed through the behaviour of leaders at all levels [**2**]. This explains why awareness about mechanisms protecting employees in making a disclosure concerning fraud and corruption varies between organisations [Audit Commission, 22/85/04].

4.3 A key challenge is therefore not simply establishing frameworks and codes for governance, but ensuring that they are 'lived out' within our public bodies [Frawley 22/103/01]. Good practice exists to embed the Seven Principles of Public Life into organisational culture and we review this in the following sections.

Training and development

4.4 Standards Committees in local government, which are required to promote and maintain high standards of conduct for members are an important initiator of workshops, seminars and training sessions for elected members [e.g. Gateshead Council 22/08/03; West Sussex County Council 22/69/01]. They are able to draw on issues contained in the Model Code of Conduct for elected members. The Chartered Institute of Finance and Accountancy (CIPFA) has produced case studies to 'bring alive' ethical dilemmas which their members might encounter in the course of their employment. These are contained in the CIPFA Standard of Professional Practice on Ethics [CIPFA 22/90/05]. In public bodies, while there are induction programmes for board members, periodic refreshment in relation to applying the Seven Principles of Public Life is often missing [Occupational Pensions Regulatory Authority 22/66/02]. Training for board members of public bodies in Northern Ireland is delivered through the Chief Executives Forum which seeks to promote excellence in the public service and to develop its leaders. In partnership with CIPFA, the Forum produces an annual revised edition of *On Board – A Guide for Board Members of Public Bodies in Northern Ireland* [Northern Ireland Civil Service 22/86/14]. CIPFA collaborates with the Scottish Executive to produce similar guidance and training opportunities [Scottish Executive 22/83/09].

4.5 It is important to establish frameworks and codes for governance, while ensuring that they are

'lived out' within our public bodies. This means not seeing ethics as a ring-fenced boundary, "a set of esoteric and mechanical rules, to be wheeled out and applied to some abstract circumstance. Rather, a mature and considered perspective on ethics requires us to appreciate the impact of our behaviour." To do this requires more than 'training', but working with colleagues so that they can understand and deal appropriately with "the ethical conflicts that are now so much part of everyday organisational life" [Frawley 22/103/01].

4.6 The Audit Commission has produced a number of self-improvement aids which incorporate these qualities (and to which we have already referred in Chapter 3 in relation to local government). For example, the Changing Organisational Culture Audit has been especially designed to help embed a good governance culture. It assesses knowledge, awareness and perceptions of key governance controls, such as registers of gifts, interests and hospitality and whistleblowing arrangements to test out the strength of organisational culture and promote a good governance culture [Audit Commission 22/85/14]. Information relating to the outcomes from these audits is now available for use to enable public bodies to benchmark their own cultures with counterparts within the same sector.

Encouraging the challenge of inappropriate behaviour at all levels of the organisation

4.7 A culture which encourages the challenge of inappropriate behaviour depends upon and reinforces a rigorous set of arrangements for the governance of propriety. Allowing inappropriate behaviour to go unchallenged affects the ability of public bodies to serve their customers and can diminish reputation and public trust. And it is also important that board members or councillors are able to challenge executives when necessary [Audit Commission 22/85/14].

4.8 For example, leaving aside the merits of the substantive issues that divided non-executive directors from colleagues on the CAFCASS board, it was hardly best practice for those dissenting board members to be denied access to either the Minister or the permanent secretary of the sponsor department [Judy Weleminsky, 18.05.04 408-11]. It is important that public bodies should have appropriate systems whereby board members can raise an issue and feel that these will be addressed properly. It is fundamental to the operation of these organisations that such procedures exist and are 'real' when called upon in practice.

4.9 In the context of this particular case (which was the subject of a report by the Standards and Privileges Select Committee [**3**] and whose recommendations were accepted by the Government [**4**]) it was suggested to the Committee that there is a conflict between the collective responsibility of an appointed member of a Board, including a requirement for confidentiality, and the *Openness* Principle of Public Life [Judy Weleminsky 22/06/02]. While we do not accept that there is a conflict, we agree that there need to be clear principles for board members to take forward serious criticisms or concerns which they do not think have been effectively dealt with by the board itself.

4.10 A board member's primary responsibility is to the board to which he or she has been appointed. There will often be differences of view on important issues. Indeed, in a diverse board of independent-minded people, this is desirable. When a board has arrived at a decision after full and open discussion, individual board members who dissent from the decision should normally accept the majority view.

4.11 There may be exceptional circumstances in which a board member believes there has been systemic and sustained failure either in board processes or in strategic decisions of the board. Normally, a dissenting board member should raise their concerns with the chair or with the board as a whole. In those rare circumstances where the board member continues to think that concerns have not been properly dealt with, he or she should have the right of direct access to the appointing body and this right should be written into the board procedures.

4.12 We were reminded by the Audit Commission that "Many of the serious governance problems identified in England and Wales would have been avoided or rectified at a much earlier stage if managers had carried out their responsibilities properly and acted appropriately, or reported, concerns and weaknesses." The problem "is often that the controls are overridden or not applied, not that they do not exist". This puts a premium on the integrity of internal mechanisms for the governance of propriety, external safeguards such as public audit, ombudsmen, and standards regulators, and also on general

good management practices such as performance management frameworks that reflect ethical values as well as task performance [Audit Commission 22/85/14]. None of this is likely to be effective without the recognition that the ethos for challenging inappropriate behaviour has to emerge from the leadership of public bodies both elected and appointed [Occupational Pensions Regulatory Authority 22/66/02]. We consider best practice in fostering a culture for challenging inappropriate behaviour in the section on whistleblowing (para 4.31).

Attempts to measure changes in the culture of public bodies

4.13 In their evidence to us, the Audit Commission emphasised the connection between leadership, organisational culture and the performance of public bodies [Audit Commission 22/85/14]. Drawing on recent research into policy and operational failure, Steve Bundred noted that "successful authorities are open learning organisations so they are characterised by good relations at the top between members and officers and an open learning culture throughout the organisation. Correspondingly, poorly performing local authorities are often very inward looking, they often have rules in place but do not have mechanisms in place to ensure compliance and they are very often characterised by dysfunctional politics and dysfunctional relationships between senior members and senior officers" [18.5.04 346].

4.14 Attempts to measure changes in the culture of public bodies meaningfully were viewed with certain scepticism in a number of submissions. But because of the recognition of the link between organisational culture and performance, we heard of real and creative attempts to measure these changes. These included confidential staff attitude surveys [Association of Council Secretaries & Solicitors 22/45/02], an analysis of the gaps between rules and how people behave [Gateshead Council 22/08/03], and the self-assessment tools being developed by the Audit Commission. Successful measurement follows from the rigorous repetition of these mechanisms over a period of time to capture opinion shifts and cultural change.

RECOMMENDATION

R34. Boards of all public bodies should, in their procedures, provide for a right of access for individual board members to a senior official in their sponsor department, and through them to the permanent secretary and Minister if necessary, to raise concerns about systemic and sustained failures in either the board's processes or strategic decisions. Before exercising this right of access, a board member should raise their concerns with the chair or the board as a whole.

RECOMMENDATION

R35. The boards of all public bodies should commit themselves to the adoption and use of the Audit Commission's self-assessment tool, Changing Organisational Culture Audit, which is especially designed to help embed a good conduct culture.

Arrangements for the governance of propriety

4.15 This subject is important not only because the effective governance of propriety is a safeguard against wrong-doing and costly fraud, but also because "there is a substantial body of research, including from our own work, that draws a link between the governance of organisations and the quality of the services we provide" [Bundred 18.05.04 260].

The key issues raised in evidence include:

(i) Whether there should be a public sector equivalent of the private sector's *The Combined Code: Principles of Good Governance and Code of Best Practice* setting out the principles of good governance [Independent Commission on Good Governance in Public Services, 22/91/05-6]; and

(ii) Whether procedures are in place for the effective management of conflicts of interest in the selection of board members and during their period of office.

A 'combined code' for the public sector?

4.16 At the outset of this inquiry the Committee anticipated that the issue of a combined code of conduct/governance for the public sector, similar to that produced for publicly listed companies [**5**], might be a topic of some debate. In the event, although the issue of consistency across different public bodies (in particular the problems this can cause in cases of cross membership) were raised by a number of witnesses [e.g. Audit Commission 22/85/10], there was surprisingly little demand for an overarching 'combined code' [although see Judy Weleminsky 22/06/09].

4.17 We did receive evidence from the Independent Commission on Good Governance established at the beginning of our inquiry and whose initial objective was to produce just such an overarching set of good governance principles across all public services [22/91/03]. Sir Alan Langlands (Chairman of the Commission) and colleagues gave oral evidence to the Committee following their first round of consultations. Interestingly, they reported some resistance to the concept of a 'combined code':

"Our original remit was to produce a code. There is some resistance to that from the stakeholder community and the people we have consulted and we are busily discussing whether we should settle around a detailed set of principles or whether we should go one step further and try for a code" [Sir Alan Langlands 13.07.04 2793].

4.18 The Commission is due to report at around the same time as this report is published and the Committee will examine it's proposals with interest. As we have seen throughout this report there are a number of different codes of conduct in operation across the public sector, each tailored for the specific group of public office-holders and their responsibilities. Given the very wide range of responsibilities for public sector 'board members' – from school governors to the board of the BBC – this is understandable and fully consistent with the desire for each group to develop codes which are fit for purpose. The common thread in all of these codes is the Seven Principles of Public Life as recommended in our First Report [**6**].

4.19 However, the Committee does believe that there may be merit in considering the case for a second tier of more detailed principles of how to deliver the Seven Principles in practice that could apply across the public sector. Such a set of principles could adopt the successful 'comply or explain' approach of the Combined Code [**5**] to avoid over prescription and a 'box-ticking' approach. Indeed this could form part of what appears to be an emerging trend for a more holistic approach to governance in public bodies. Scotland has already brought together devolved public bodies and local government into the same framework [**7**] and similar proposals for the Ombudsman functions in Wales have recently been announced [**8**]. Following the publication of the report of the Independent Commission on Good Governance and this Committee's planned review of the Seven Principles of Public Life during 2005 [**9**], we may return to consider the issue of a combined code for the public sector in more detail.

Management of conflicts of interest

4.20 There is no shortage of written guidance as far as conflicts of interest in public bodies are concerned:

- There is the *Code of Practice for Ministerial Appointments to Public Bodies* [**10**];
- The Cabinet Office has recently revised its *Guide for Departments on Making and Managing Public Appointments* [**11**];
- There is also *Cabinet Office guidance for board members of public bodies* [**12**]**;** and
- Separately, the Office of the Commissioner for Public Appointments in Northern Ireland has produced a guide for candidates.

The existence of this guidance, however, is not a substitute for rigorous induction and periodic briefing for board members on conflict of interest issues [Sue Street 15.07.04 3496].

4.21 There are, therefore, both strategic and operational issues to address. On the strategic front, the difficult dilemma for officials, Ministers and public bodies (in this case scientific advisory committees) was clearly set out by Professor Sir David King, the Chief Scientific Adviser to HM Government and Head of the Office of Science and Technology [22/04/05]:

"On the one hand, advice must not be biased (nor believed to be biased) by vested interests, financial or otherwise. On the other hand, a scientific advisory committee must include people

who are experts in the specialism if its advice is to be worthwhile, and such people may often have links about which questions could be asked."

4.22 Stated more generally, appointing highly qualified people with relevant experience to non-executive board positions often brings with it increased likelihood of conflicts of interest. A number of submissions drew our attention to this dilemma and we considered how it might be resolved [e.g. Sue Street 15.07.04 3493; Judy Weleminsky, 22/06/02].

4.23 The risk of conflict of interest can lead to a defensive approach which involves the appointment of those without interest conflicts but also (sometimes) with less understanding and experience of the key issues to be addressed [Judy Weleminsky 18.05.04 422-4]. However, it is also true that where the judgement is made that a public body's credibility depends upon its leadership having direct and active experience of a particular sector, and the appointment and oversight of non-executives takes place without a documented risk-assessment and handling strategy for resolving emerging conflicts of interest, then public confidence is endangered [**13**].

4.24 The resolution of the dilemma between active expertise and independence in the make-up and profile of boards of public bodies is not easily achieved. It depends upon an appropriate balance arrived at through due process and a continual monitoring of public perception. Space and thought need to be set aside at the beginning of the appointments process for a proper assessment and documentation of risk of interest conflict associated with the type of job to be advertised. In line with general good practice set out in the Commissioner's Code of Practice, a job should be properly scoped very early in the planning stage so that there is agreement on the selection criteria, and the way the process is to be handled [**10**]. This process should include an outline risk analysis documenting the risks of and handling strategies for candidates likely to have conflicts of interest as a result of the agreed selection criteria. The risk analysis should be agreed between the sponsor department and the sponsored body concerned. Where the risks are judged unmanageable, the profiles of chair and board positions should be changed. This risk assessment should be retained and developed as part of the appointments and reappointments process [**13**].

4.25 The context of this assessment must be the continual monitoring of public perception of the public body concerned. In Chapter 1 we pointed out that aligning governance arrangements with public expectations of good conduct is a key requirement in the regeneration of trust. Monitoring public perception in the light of cumulative changes to the interests of board members and candidates for board positions is a necessary part of this wider challenge.

4.26 On the operational front, an audit report, *Conflicts of Interest*, produced for the Office of the Commissioner for Public Appointments in June 2004 [**14**], during the evidence-gathering phase of our inquiry, examined existing departmental practice in handling potential and real conflicts of interest in the selection of board members of OCPA-regulated public bodies. The report revealed departures from Cabinet Office guidance in the processes of a number of departments. These included:

- Not including guidance to all candidates completing application forms on what constitutes a conflict of interest, and not providing the reassurance that it is possible to resolve conflicts of interest at interview so that they are not normally a barrier to employment [paras 14-15,19-20];
- The absence of specific questions on conflicts of interest on non-standard departmental application forms [paras 16-17];
- The failure of some departments to ensure appropriate arrangements are in place to investigate, document and resolve conflicts of interest during the appointments process [para 45];
- A reluctance to use referees and various public information sources when asking about candidates' potential conflicts of interest. Here, it was recommended that referees should be suitably briefed with relevant guidance [paras 21-24];
- A lack of clarity about whether conflicts of interest are raised as a matter of course at interview, or only when a particular interest conflict has been identified. Here, the auditors recommended the development of policy to ensure a consistent and informed approach to the way in which the conflict of interest issue is raised at interview [para 26, paras 28-31]; and

- The absence in some departments of formal arrangements for panel members to declare their independence from the candidates selected for interview and vice-versa [paras 34, 36-9].

4.27 There are also lessons to be learned following the *Audit of Conflicts of Interest of the Chairman and board members of the Commission for Architecture and the Built Environment (CABE)*, published in June 2004 [**13**]. This was discussed at our public hearing on 15 July 2004. CABE was established in 1999 as a non-departmental body, sponsored by the Department of Culture, Media and Sport (DCMS). Its remit is primarily to promote architecture and good design in the built environment. At the time of publication of the report, ten of the existing sixteen Commissioners, including the chair, had professional interests directly related to the activities of CABE. This arose from the judgement in DCMS that the establishment of a "credible" organisation required the involvement of "active experts across CABE's business". In the opinion of the inquiry report this resulted in higher risks of potential for interest conflict. Indeed, the cumulative effects of the chair's interests were becoming "too great and may be perceived as being contrary to Nolan principles" [**13** para 5.1-2].

4.28 We heard from the permanent secretary in DCMS that the department had accepted all the inquiry recommendations. The key learning lesson for the department concerned better formal documentation of the risks of conflicts of interest. This particularly concerned reappointments, where the nature of both the sponsored public body, and the commercial interests of the incumbent chairman had changed considerably since CABE's inception [Sue Street, 15.07.04 3492].

4.29 The inquiry report accepted that there was "a higher risk of conflicts of interest within CABE through the nature of its business and also the desire to include industry experts within the Commission, than would be the case for many other NDPB's" [**13**, para 8.2]. Nevertheless, the general recommendations have wider currency than the governance of CABE, and are of relevance to any sharpening of good practice in public bodies seeking to manage conflicts of interest effectively. We draw attention, in particular, to the following good practice proposals:

- Regular, formal reviews of members' interests should be tabled for board discussion on a regular basis. These should focus on the perceived or potential risks to the organisation's reputation and the impact that cumulative interests may have on the position of board members [**8**, paras 5.3 and 8.9];

- In line with the principle of Openness, Declarations of Interest (including potential or perceived conflicts) should be registered formally at the time a commitment is undertaken, not after that event, and in a way that interests are clearly identified and understood [**13**, paras 8.4, 18.4, 18.5 and 18.10]; and

- Registers of interests should be extended beyond direct and indirect pecuniary interests, to include the commercial links between board members as well as familial interests [**11**, 8.10, 18.2.3, 18.5 and 18.6]. Current guidance to board members states that "The register should, as a minimum, list direct or indirect pecuniary interests which members of the public might reasonably think could influence board members' judgement". Board members are "strongly encouraged" to register non-pecuniary interests which relate closely to the body's activities, and interests of close family members [**12**].

4.30 A proportionate approach requires that where there are higher risks of potential interest conflict, the systems of internal control used to vet candidates and monitor appointed board members should be correspondingly greater. We recommend that with this principle in mind, the sections in the OCPA Code of Practice and Cabinet Office guidance dealing with conflicts of interest should be reviewed and revised.

RECOMMENDATION

R36. The Commissioner's Code of Practice on Public Appointments should be reviewed and revised as a matter of urgency to reflect and incorporate the principal recommendations of Pricewaterhouse-Cooper's audit report, *Conflicts of Interest*, produced for the Office of the Commissioner for Public Appointments in June 2004 and the general recommendations in the report by AHL Ltd, *Commission for Architecture and the Built Environment, Audit of Conflicts of Interest*, HC 678, 17 June 2004.

Whistleblowing

4.31 Whistleblowing is the "pursuit of a concern about wrongdoing that does damage to a wider public interest" [Public Concern at Work, 22/96/05]. It is therefore part of the continuum of the communication process which begins with raising a wrongdoing with a line manager, but goes beyond that if the line manager does not deal with it or is not the appropriate person to be approached [Guy Dehn 15.06.04 508]. As the Committee noted in its Third Report [**15**, page 48], the essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course. Effective whistleblowing is therefore a key component in any strategy to challenge inappropriate behaviour at all levels of an organisation. It is both an instrument in support of good governance and a manifestation of a more open organisational culture.

4.32 This is the first time the whistleblowing issue has been examined by this Committee since the Public Interest Disclosure Act became law, giving protection from victimisation to those who have raised issues of concern.

4.33 The Public Interest Disclosure Act 1998, which came into force in 1999, provides whistleblowers with statutory protection against dismissal and victimisation. The Act applies to people at work raising genuine concerns about crime, civil offences, miscarriage of justice, and danger to health and safety or the environment. It applies whether or not the information is confidential and extends to malpractice overseas. The Act distinguishes between **internal disclosure**s (a disclosure in good faith to a manager or the employer is protected if the whistleblower has reasonable suspicion that the malpractice has occurred or is likely to occur), **regulatory disclosures** and **wider disclosures**. Regulatory disclosures can be made in good faith to prescribed bodies such as the Health and Safety Executive, the Inland Revenue and the Financial Services Authority. Wider disclosures (e.g. to the police, the media, and MPs) are protected if, in addition to the tests for internal disclosures, they are reasonable in all the circumstances and they meet one of three conditions. Provided they are not made for personal gain these conditions are, that the whistleblower:

- reasonably believed he would be victimised if he raised the matter internally or with a prescribed regulator;
- reasonably believed a cover-up was likely and there was no prescribed regulator; or
- had already raised the matter internally or with a prescribed regulator.

4.34 In the first three years of the Act, employees lodged over 1,200 claims alleging victimisation for whistleblowing. Two thirds of these claims were settled or withdrawn without any public hearing. Tribunals reached full decisions in 152 cases [**16**]. This has raised issues about whether it should be necessary for there to be legal protection for those raising concerns, or whether this should be tackled beforehand in the form of creating an organisational culture which promotes openness in the work place, so that these concerns are raised before it becomes necessary to invoke legislation.

4.35 Firstly, it is important to reiterate that the Act is a statutory 'backstop' to ensure that employees who follow prescribed procedures for raising concerns are not victimised or suffer detriment as a result. Where an individual case reaches the point of invoking the Act then this represents a failure of the internal systems in some respect. Either the employee has failed to follow the procedure (for whatever reason) or the procedures themselves have failed. In our view, therefore, any case where the Act is invoked should initiate a review of the whistleblowing procedures in that organisation.

4.36 Secondly, it is important to distinguish between the popular media-driven definition of a successful 'whistleblower' taking his or her 'story' directly to the press or other (non-regulator or non-prescribed) external bodies and 'real' internal whistleblowing. Successful whistleblowing, in terms of a healthy organisational culture is when concerns are raised internally with confidence about the internal procedures and where the concern is properly investigated and, where necessary, addressed. During the course of our inquiry there were a number of high profile 'so called' whistleblowing cases involving government departments. It is not for this Committee to comment on individual cases. However, just as where the invoking of the Act should trigger a review of whistleblowing procedures in an organisation, so should the unauthorised disclosure of information by those who cite public interest reasons. Such reviews should in

no way be seen or taken as any admission of culpability by the organisation involved. A review is critical in such circumstances to demonstrate to other employees the commitment to 'living out' effective whistleblowing procedures and to learn whether there were issues of organisational culture which may have contributed to the unauthorised disclosure.

"What I tend to see, obviously from a journalist's point of view, is what reaches the media. It is when the whistleblowing arrangements do not work within an organisation then they sort of explode into the public domain" [Douglas Fraser, Political Editor of the *Sunday Herald*, 17.06.04 1262].

4.37 The evidence the Committee received indicates that public service leaders do recognise the importance of proper whistleblowing procedures and the integral part this plays in a healthy organisational culture:

"*We have not gone so far as to teach Welsh schoolchildren the declension of, 'I brief, you leak, he, she or it blows the whistle'. I think the issue is that we believe that whistleblowers, without being artificially stimulated or encouraged to blow the whistle, have adequate protection if they do see something that they believe should have the whistle blown on it, to do what they should do at that point, which is to blow the whistle"* [The Rt Hon Rhodri Morgan AM 7.07.04 2426].

"*Perhaps I should just say that I think – and would like to say unambiguously – that the right of people to whistleblow, using the appropriate channels, is fundamental and absolutely important… …Anyone working in the public sector who has a problem of this nature must feel that they can make their point known in an appropriately protected and safeguarded way*" [Sir Jon Shortridge 7.07.04 2427]

"I think the existence of whistleblowing will often highlight a lack of maturity in an organisation in terms of being able to deal with contentious issues in an effective, straightforward and sensible way. I do feel with other things that this [your] Committee has promoted that the focus on whistleblowing and the approach that has been developed over the last five/ten years has resulted in good progress" [Sir Alan Langlands, 13.07.04 2877].

4.38 Public Concern at Work, the leading campaigning charity in the whistleblowing area, provided the Committee with comprehensive evidence, which repays careful reading [Public Concern at Work 22/96/01-15; Guy Dehn, Anna Myers, 15.06.04]. They warned of the dangers of a prescriptive 'one size fits all' approach to whistleblowing policies because of the wide differences in the size, function, and constitution of public bodies and because the uncritical adoption of model procedures can lead to an unwitting tick-box approach to governance.

4.39 Public Concern at Work drew our attention to variable practice on whistleblowing, both among regulators and across the public sector. We were told that "There are a lot of differences" in the way in which regulators regard whistleblowing. While some, like the Audit Commission and the Financial Services Authority, have embraced the concept and communicated it very effectively, others have not [Guy Dehn 15.06.04 605].

4.40 This differential approach can be confusing and where the concept is not effectively communicated, disadvantageous to the challenge of inappropriate behaviour. It underlines the importance of our recommendation for public bodies to share good practice across organisational and sector boundaries. Regulators are not exempt from this. Indeed, as we pointed out in Chapter 1, cross-fertilisation is one of the principles of strategic regulation.

RECOMMENDATION

R37. All regulators should review their procedures for handling whistleblowing by individuals in bodies under their jurisdiction, drawing upon best practice (for example the Audit Commission and Financial Services Authority).

4.41 There is also a differential approach across the public sector. A key determinant of the effectiveness of the whistleblowing arrangements in a public body is the willingness of the board to demonstrate leadership on this issue. This means reviewing procedural arrangements, the extent to which they are trusted, awareness levels throughout the organisation, and reviewing how people who used the procedures were treated [Guy Dehn 15.06.04 630].

4.42 It is therefore of concern that the Audit Commission has found that only 50 per cent of the employees in the local government and

health bodies which have used the Commission's self-assessment tools were aware of the Public Interest Disclosure Act, and the protection this affords an employee making a disclosure concerning fraud and corruption [Audit Commission, 22/85/04].

4.43 Public Concern at Work emphasised key elements of good practice for organisations to ensure their whistleblowing arrangements are fit for purpose and integral to their organisational culture. This Committee emphatically endorses this good practice which can be summarised in four key elements:

(i) Ensuring that staff are aware of and trust the whistleblowing avenues. Successful promotion of awareness and trust depend upon the simplicity and practicality of the options available, and also on the ability to demonstrate that a senior officer inside the organisation is accessible for the expression of concerns about wrongdoing, and that where this fails, there is recourse to effective external and independent oversight.

(ii) Provision of realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity. While requests for confidentiality and anonymity should be respected, there may be cases where a public body might not be able to act on a concern without the whistleblower's open evidence. Even where the whistleblower's identity is not disclosed, "this is no guarantee that it will not be deduced by those implicated or by colleagues".

(iii) Continual review of how the procedures work in practice. This is a key feature of the revised *Code on Corporate Governance*, which now places an obligation on the audit committees of listed companies to review how whistleblowing policies operate in practice. The advantage of this approach is that it ensures a review of action taken in response to the expression of concerns about wrongdoing; it allows a look at whether confidentiality issues have been handled effectively and whether staff have been treated fairly as a result of raising concerns.

(iv) Regular communication to staff about the avenues open to them. Creative approaches to this include the use of payslips, newsletters, management briefings and Intranets, and use too of Public Concern's helpline, launched in 2003 and available through subscription.

RECOMMENDATION

R38. Leaders of public bodies should reiterate their commitment to the effective implementation of the Public Interest Disclosure Act 1998 and ensure its principles and provisions are widely known and applicable in their own organisation. They should commit their organisations to following the four key elements of good practice i.e.

(i) Ensuring that staff are aware of and trust the whistleblowing avenues;

(ii) Provision of realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity;

(iii) Continual review of how the procedures work in practice; and

(iv) Regular communication to staff about the avenues open to them.

Conclusion

4.44 Embedding the Seven Principles of Public Life into organisational culture is a common thread that runs through this report. Our analysis and recommendations in Chapters 2 and 3 are specifically designed to introduce proportionate arrangements to do just this in the area of public appointments by government departments and in the conduct of councillors in local government.

4.45 In this final chapter we have reviewed some of the key generic components that can be applied more widely in all public sector bodies to enhance their governance arrangements in an effective and proportionate manner. Inevitably much of this concerns learning and drawing upon good practice in specific areas for more general application across the public sector. This is not always straightforward. While it appears that many of us can readily recognise a healthy organisation with ethical behaviour at the heart of its culture (i.e. part and parcel of everyday operations) we all find it more difficult to

describe the constituents parts which have made it so.

4.46 However intangible the issue of culture appears, the Committee believes that it is critical to delivering high standards of propriety in public life in a proportionate and effective manner. Learning from good practice must play a central role and we have identified three key areas for improvement:

- Training and development. We were particularly impressed with the innovative experienced based learning techniques pioneered by the Audit Commission which help organisations reach their own determinations of their strengths and weaknesses and allow the solutions to come from within rather than imposed from outside. The tools have the added benefit of allowing benchmarking against similar organisation and, if widely used, will provide useful aggregate data on ethical culture across the public sector.

- Governance of propriety in managing conflicts of interest. A very real challenge faces public bodies in how to involve people with current and relevant expertise in non-executives roles, while at the same time ensuring no conflict or perception of conflict between public and private interests. Continual vigilance, openness and a risk based approach can help organisation achieve this balance. Two recent reports [**13** and **14**] have wide applicability and we recommend that the best practice so described should be adopted by all public bodies; and

- 'Whistleblowing' – or more accurately – a culture that encourages the challenge of inappropriate behaviour at all levels. We have sought to distinguish between the 'media' driven definition of whistleblowing and the role it can play internally in a healthy ethical organisational culture. Here, more than in any other area we have considered, the principle of Leadership is paramount if organisations are to truly 'live out' the procedures that all have in place. The statutory framework (Public Interest Disclosure Act 1998) is a helpful driver but must be recognised as a 'backstop' which can provide redress when things go wrong not as a substitute for cultures that actively encourage challenge of inappropriate behaviour. We have recommended that leaders of public bodies should commit themselves to follow the elements of good practice developed by Public Concern at Work, the leading organisation in this field.

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APPENDIX A

FIRST, SECOND, THIRD, FOURTH AND SIXTH REPORT RECOMMENDATIONS

Relevant recommendations from the First Report of the Committee on Standards in Public Life (Cm 2850, May 1995)

Appointments

33 The ultimate responsibility for appointments should remain with Ministers.

34 All public appointments should be governed by the overriding principle of appointment on merit.

35 Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds. The basis on which members are appointed and how they are expected to fulfil their role should be explicit. The range of skills and background which are sought should be clearly specified.

36 All appointments to executive NDPBs or NHS bodies should be made after advice from a panel or committee which includes an independent element.

37 Each panel or committee should have at least one independent member and independent members should normally account for at least a third of membership.

38 A new independent Commissioner for Public Appointments should be appointed, who maybe one of the Civil Service Commissioners.

39 The Public Appointments Commissioner should monitor, regulate and approve departmental appointments procedures.

40 The Public Appointments Commissioner should publish an annual report on the operation of the public appointments system.

41 The Public Appointments Unit should be taken out of the Cabinet Office and placed under the control of the Public Appointments Commissioner.

42 All Secretaries of State should report annually on the public appointments made by their departments.

43 Candidates for appointment should be required to declare any significant political activity (including office-holding, public speaking and candidature for election) which they have undertaken in the last five years.

44 The Public Appointments Commissioner should draw up a code of practice for public appointments procedures. Reasons for departures from the code on grounds of 'proportionality' should be documented and capable of review.

Propriety

45 A review should be undertaken by the Government with a view to producing a more consistent legal framework governing propriety and accountability in public bodies, including executive NDPBs, NHS bodies and local government. This should involve all relevant departments and be co-ordinated by the Cabinet Office and the Treasury.

46 The adoption of a code of conduct for board members should be made mandatory for each executive NDPB and NHS body.

47 It should be mandatory for the board of each executive NDPB and NHS body to adopt a code of conduct for their staff.

48 Board members and staff of all Executive NDPBs and NHS bodies should be required on appointment to undertake to uphold and abide by the relevant code, and compliance should be a condition of appointment.

49 Sponsor departments should develop clear disciplinary procedures for board members of executive NDPBs and NHS bodies with appropriate penalties for failing to observe codes of conduct.

50 The role of NDPB and NHS accounting officers should be redefined to emphasise their formal responsibility for all aspects of propriety.

51 The Audit Commission should be authorised to publish public interest reports on NHS bodies at its own discretion.

52 The Treasury should review the arrangements for external audit of public bodies, with a view to applying the best practices to all.

53 Each executive NDPB and NHS body that has not already done so should nominate an official or board member entrusted with the duty of investigating staff concerns about propriety raised confidentially. Staff should be able to make complaints without going through the normal management structure, and should be guaranteed anonymity. If they remain unsatisfied, staff should also have a clear route for raising concerns about issues of propriety with the sponsor department.

54 Executive NDPBs, supported by their sponsor departments, should:

- develop their own codes of openness, building on the Government code and developing good practice on the lines recommended in this report;
- ensure that the public are aware of the provisions of their codes.

Sponsor departments should:

- encourage executive bodies to follow best practice and improve consistency between similar bodies by working to bring the standards of all up to those of the best;

The Cabinet Office should:

- produce and periodically update guidance on good practice for openness in executive NDPBs and NHS bodies.

55 New board members should on appointment make a commitment to undertake induction training which should include awareness of public sector values, and standards of probity and accountability.

Relevant recommendations from the Second Report of the Committee on Standards in Public Life: *Local public spending bodies* (Cm 3270, May 1996)

We set out two fundamental propositions:

> Where a citizen receives a service which is paid for wholly or in part by the taxpayer; then the government or local authority must retain appropriate responsibility for safeguarding the interests of both user and taxpayer regardless of the status of the service provider.
>
> Central control of autonomous but centrally-funded local bodies should be limited as far as possible to setting policy guidelines and operating boundaries, to ensuring an

effective audit framework, and to the effective deployment of sanctions. Government and Parliament should aim to ensure that local mechanisms to influence the activities of local bodies exist, and should give them the support necessary to ensure accountability.

We also make two general recommendations:

R1 The principles of good practice on appointments, training, openness, codes of conduct and conflicts of interest, set out here and in our First Report, should be adopted with suitable modifications across the sectors covered in this report.

R2 Local public spending bodies should institute codes of practice on whistleblowing, appropriate to their circumstances, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation.

Common themes

R44 The principle of unpaid voluntary service by board members of local public spending bodies should be retained, but the scope of eligibility for out-of-pocket expenses should be widely drawn.

R45 The Government should seek to ensure broad consistency and adequate protection in respect of the personal liability of all appointed or elected members, directors, trustees or others responsible for bodies providing public services.

R46 Regulators and funders should seek to reduce detailed monitoring and collection of information; to make fewer changes in their requirements and to give adequate notice of such changes; and to place more reliance on audit reports.

R47 The Government should consider promoting and studying pilot schemes, involving local authorities and others, designed to increase the local accountability of non-elected bodies providing local public services.

R48 Terms of office, which should be renewable, should not normally exceed four years, and reappointment for third or subsequent terms should be the exception rather than the rule.

R49 Where mechanisms for external adjudication on customer complaints do not exist, or do not incorporate basic requirements of publicity and access, they should be introduced or improved.

R50 Organisations should consider the merits of making provision in their rules for external advisers to assist in resolving internal disputes, and the regulatory bodies and trade associations should consider providing general guidance and assistance on this topic for their organisations.

R51 Where a citizen receives a service which is paid for wholly or in part by the taxpayer, then the Government or local authority must retain appropriate responsibility for safeguarding the interests of both user and taxpayer regardless of the status of the service provider.

Relevant recommendations from the Third Report of the Committee on Standards in Public Life: *Standards of Conduct in local government in England, Scotland and Wales* (Cm 3702, July1997)

R2 The present National Code of Local Government Conduct should be replaced by a statement of the 'General Principles of Conduct for Local Councillors.' This should be a Great Britain document, issued by the Secretaries of State for the Environment, for Scotland, and for Wales, and approved by affirmative resolution of both Houses of Parliament.

R3 The Secretaries of State should take powers to approve 'Model Codes of Conduct for Local Councillors' prepared by the local government associations and ombudsmen, provided that any Model Code which is approved incorporates and reflects the 'General Principles'.

R4 Each local authority should be required to adopt a local code of conduct which incorporates and reflects the 'General Principles' and achieves at least the same effect as the approved model code.

R5 Every new councillor, and every councillor on re-election, should be required to state that they had read, understood and would observe their local code.

R6 The appropriate Secretary of State should be able to make a formal request to a local authority that it should make changes in its local code or standing orders if he or she considers that it does not achieve at least the same effect as the model code. If the local authority does not comply, the Secretary of State should be able to refer the code to the relevant Local Government Tribunal, (see R24) which would have the power to order changes.

R7 The Commissioner for Local Administration (the local ombudsman) should be able to recommend changes to a local authority's code, and if necessary refer the matter to the relevant Local Government Tribunal for a final decision.

R8 Every council should have to maintain a public register of councillors' interests, listing their pecuniary interests; those non-pecuniary interests which relate closely to the activities of the council and associated bodies, or which members of the public might reasonably think could influence a councillor's judgement; and pecuniary interests of close family members and people living in the same household as the councillor.

R9 It should no longer be a criminal offence to fail to register a pecuniary interest.

R10 Unless they have a dispensation, councillors who have a direct pecuniary interest in a matter under consideration should have to declare that interest, withdraw from the meeting or discussion, and take no further part in the business in question.

R11 Councillors should have to declare any interest which is not of a pecuniary kind, and which members of the public could reasonably think could influence their actions, speeches or votes.

R12 Unless they have a dispensation, councillors should withdraw from consideration of matters where they have an interest whose existence creates a real danger of bias, that is where they or their close family are likely to be affected more than the generality of those affected by the decision in question.

R13 All the existing primary legislation on conflicts of interest in local government should be repealed and be replaced by a provision giving effect to the common law principles set out above.

R14 Regulations under the statute should be confined to requiring councils to have public registers of interests, to setting out the framework of interests which must be included in those registers, and to requiring councils to have rules covering declaration, withdrawal, and disciplinary procedures.

R15 Councils should set up a Standards Committee composed of senior councillors which should have the power to examine allegations of misconduct by councillors and to recommend disciplinary action to the full council, including the punishment of an individual councillor.

R16 A meeting of the full council (open to the public and press) to consider a report of the Standards Committee should be held as soon as possible after the Standards Committee has reported.

R17 The Standards Committee should have powers to propose the withdrawal from decisions of a member whose interests it considers are such as to create a real danger of bias, and to recommend disciplinary action against members who breach the council's code.

R18 The Commissioner for Local Administration in England should cease to issue general guidance about conflicts of interest.

R23 The Standards Committee should be able to recommend the suspension of councillors for up to three months, as well as the imposition of lesser penalties.

R24 There should be Local Government Tribunals in England, Scotland, and Wales with the power to hear appeals from councillors who have been subject to a penalty imposed by a council; and to require an authority to alter its code of conduct, standing orders, and other procedures when necessary.

R25 The Local Government Tribunals should hear appeals from councillors against disciplinary action by their councils following a recommendation of the Standards Committee; and should have the power to disqualify councillors from office.

R26 Every local authority should institute a procedure for whistleblowing, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation. The Standards Committee might well provide an internal destination for such complaints.

Relevant observations from the Fourth Report of the Committee on Standards in Public Life: *Review of Executive NDPBs, NHS Trusts and local public spending bodies* (Nov 1997)

Executive NDPBs and NHS Trusts

O1 Departments and executive NDPBs should exercise some discretion so that advertisement of posts complements other methods available to identify a wide field of candidates: advertisement should not be the only vehicle for appointments.

O2 It is essential that departments and executive NDPBs should apply the principle of proportionality to the appointments procedure. Any advice and guidance the Commissioner for Public Appointments can give in this respect would be most welcome. It is, nevertheless, important that correct procedures are adhered to, and that appointments are made on merit. Proportionality should not be an excuse for sloppy procedures.

O3 We would like to see greater consultation between executive NDPBs and their sponsoring departments when defining the task and qualities sought for all public appointments.

O4 The Commissioner for Public Appointments should look again at the definition of 'political activity' to see whether it includes all 'significant' political activity.

O5 It is important that all departments, executive NDPBs and NHS bodies should institute codes of practice on whistleblowing, appropriate to their circumstances, so as to enable concerns about malpractice to be raised confidentially inside and, if necessary, outside the organisation.

O6 NHS Trusts should have a degree of flexibility to appoint candidates who work within the area served by a particular NHS Trust, but who live outside that area, provided the appointment can be justified in public.

O7 The rule that reappointments to the same post should not be automatic should be clarified so that departments and executive NDPBs are aware that candidates for reappointment do not have to undergo the whole appointment process.

O8 All executive NDPBs and NHS Trusts should consider holding an annual public meeting.

Local public spending bodies

O9 The funding and regulatory bodies should monitor and report on the ways in which good standards of conduct are communicated to staff, and understood by them.

Common themes

O17 Representative bodies should ensure that whistleblowing procedures are in place within institutions and allow staff appropriate external avenues in which to raise concerns about malpractice.

O18 Responsible departments should disseminate guidance on good practice about payment of expenses to board members.

019 All members of boards, whether elected or appointed, should be appointed for fixed terms, and such terms should not normally exceed four years.

O20 It is important that rules governing conflicts of interest are introduced across all sectors considered in this report.

O21 The funding and regulatory bodies should standardise governance information within annual reports in all sectors covered by this report.

O22 All organisations should re-examine their arrangements for publicising codes of practice, and whistleblowing arrangements, to ensure that staff are left in no doubt about these.

Relevant recommendations from the Sixth Report of the Committee on Standards in Public Life: *Reinforcing Standards* (Cm 4557, Jan 2000)

Chapter 9: Public Appointments and Proportionality

O1 We welcome the announcement of the Commissioner for Public Appointments, Dame Rennie Fritchie, that she intends undertaking a review of the operation of the tier system and look forward to the report of her findings and conclusions.

O2 We also welcome the Commissioner's indication that she is to consider whether it would be appropriate to introduce a special category of appointments, designated 'expert' posts, to which different appointment rules should apply.

R37 The Secretary of State for Health should review the procedure governing reappointments to NHS bodies with a view:

(a) to re-introducing a system under which those seeking reappointment for the first time, who have been assessed as performing satisfactorily in their posts, can be reappointed without being compared to an external candidate;

(b) to ensuring that those seeking reappointment are kept fully informed about the progress of the reappointment process at all stages; and

(c) to ensuring that the reappointment process is undertaken at the appropriate stage and a decision on reappointment is made reasonably in advance (say, two months) of the end of the post-holder's term of office.

R38 The Secretary of State for Health should reconsider, with the advice of the Public Appointments Commissioner and following the Commissioner's scrutiny of the NHS appointments system (see O3 below), the appointments procedure in relation to NHS trusts and authorities with a view to setting up, if practicable, a less centralised appointments system than the present register system, subject to the need to maintain standards of performance and delivery across the NHS system.

O3 We support the announcement of the Commissioner for Public Appointments that she intends undertaking a scrutiny of the appointment procedure used for NHS appointments and look forward to the report of her findings.

O4 We welcome the work of the Commissioner for Public Appointments on developing measures to improve the balance of representation on the boards of public bodies and look forward to the report of her conclusions. As part of the objectives of her work, we invite her to consider:

- how to improve the range of candidates from which public appointees are drawn, and
- how the concept of 'merit' can be reconciled with the need for a balanced and appropriately qualified representation.

APPENDIX B

LIST OF SUBMISSIONS

The following individuals and organisations submitted evidence to the Committee as part of its consultation exercise. Copies of all the submissions can be found on the CD-Rom which accompanies this report. Evidence which concerned individual cases, or which has been found to contain potentially defamatory material, has been excluded. All the evidence we received (including unpublished submissions) was given due consideration in our work.

Dr Rick Alexander

Mr D Stuart Allen, Chief Investigating Officer, The Standards Commission for Scotland

Association of Council Secretaries and Solicitors (ACSeS)

Audit Commission

Badsey and Aldington Parish Council

Sir Brian Bender, David Normington, Sue Street (Permanent Secretaries)

Binfield Heath Parish Council

Blaby District Council

Blackburn with Darwen Borough Council, Standards Committee

Breckland Council, Standards Committee

Cambridge City Council, Standards Committee

Mr Duncan Cameron (Parents Against Lethal Addictive Drugs)

Karen Carlton, Commissioner for Public Appointments in Scotland

Professor Richard Chapman

Charfield Parish Council

Church Lench Parish Council

CIPFA

CIPFA/OPM for the Independent Commission on Good Governance in Public Services

COSLA

Councillor Paul Coley, Wychavon District Council

Commission for Local Administration in England

Conwy County Borough Council, Standards Committee

Mr Simon Coulter

Coventry City Council, Standards Committee

The City of Durham, Standards Committee

East Dorset District Council, Standards Committee

East Riding of Yorkshire Council

Mr John Elvidge, Scottish Executive

Environment Agency, The

Epping Forest District Council, Standards Committee

Dr Tom Frawley, Northern Ireland Assembly Ombudsman and Commissioner for Complaints

Dame Rennie Fritchie DBE, Commissioner for Public Appointments

Dame Rennie Fritchie DBE, Commissioner for Public Appointments for Northern Ireland

Gateshead Council

Mr Clive Gowdy CB, Department of Health, Social Services and Public Safety

Halton Borough Council, Standards Committee

Herefordshire Association of Local Councils

Herefordshire Council, Standards Committee

Mr Noel Howard

Humberside Police Authority

Institute of Chartered Accountants in England & Wales

Councillor Martin Jennings, Wychavon District Council

Mr Robin Jordan

Kidmore End Parish Council

Kettering Borough Council, Standards Committee

Professor David Lewis and Stephen Homewood

Local Government Association

London Borough of Barking and Dagenham

Luton Borough Council

Mr Ian Marshall, Wychavon District Council

Mrs Wendy Mason

Mid Bedfordshire District Council

National Association of Local Councils

Mr P A Newham

Norfolk County Council, Standards Committee

North Yorkshire County Council, Standards Committee

North York Moors National Park Authority, Standards Committee

NHS Appointments Commission

Northern Ireland Civil Service

Occupational Pensions Regulatory Authority

Odgers Ray & Berndtson

Office of Science and Technology

Parish Council Watch

Adam Peat, Local Government Ombudsman for Wales

Perth and Kinross Council, Standards and Scrutiny Committee

Public Concern at Work

Rt Hon Nick Raynsford MP, Minister for Local and Regional Government, Office of the Deputy Prime Minister

Redditch and Bromsgrove PCT

Mr Stephen Rickitt

Ms Joan Ruddock OBE, Chairman, Belfast City Hospital HSS Trust

Councillor (Mrs) J E Sandalls, Wychavon District Council

Saxton Bampfylde Hever plc

Mr Ian Scott

Scottish Executive Health Department Public Appointments Unit

Dr Lily Segerman-Peck

Selby District Council, Standards Committee

Sir Jon Shortridge KCB, Welsh Assembly Government

Mr Karamjit Singh CBE, British Sikh

Federation

Mr Kashmir Singh, British Sikh Federation

Mr D Shryane

Professor Lord Smith of Clifton

South Gloucestershire Council, Standards Committee

Standards Board for England

Standards Commission for Scotland

Stockton-on-Tees Borough Council, Standards Committee

Swale Borough Council

Susan Tovey

Sir Andrew Turnbull KCB CVO, Cabinet Office

Universities UK

Wallingford Town Council

Ms Judy Weleminsky

West Berkshire District Council, Standards Committee

West Sussex County Council

Ms Catherine Whitehead

White Ladies Aston Parish Meeting

Wigan Borough Council, Standards Committee

Worcester City Council, Standards Committee

Worcestershire County Council, Standards and Ethics Committee

Wrexham County Borough Council, Standards Committee

Wycombe District Council, Standards Committee

Wyre Borough Council, Standards Committee

APPENDIX C

LIST OF WITNESSES WHO GAVE ORAL EVIDENCE

A
Stuart Allan, Chief Investigating Officer, Standards Commission for Scotland (17/09/04, am)

B
Stephen Bampfylde, Chairman, Saxton Bampfylde Hever plc (15/07/04, pm)
Sir Jeremy Beecham, Vice-Chair, Local Government Association and Leader of the LGA Labour Group (13/07/04, pm)
Sir Brian Bender, Permanent Secretary, Department for Environment, Food and Rural Affairs (15/07/04, am)
Sandy Blair, Director, Welsh Local Government Association (07/07/04, am)
Douglas Board, Deputy Chairman, Saxton Bampfylde Hever plc (15/07/04, pm)
Sir Brian Briscoe, Chief Executive, LGA (13/07/04, pm)
Steve Bundred, Chief Executive, Audit Commission (18/05/04, pm)

C
Karen Carlton, Commissioner for Public Appointments in Scotland (17/06/04, am)
The Rt Hon Lord Justice Carnwath CVO (13/07/04, am)
Professor Richard Chapman, Emeritus Professor of Politics at the University of Durham and Chairman of the City of Durham Standards Committee (15/06/04, pm)
Cllr Chris Clarke OBE, Deputy Chair of the LGA and Leader of the LGA Liberal Democrat Group (13/07/04, pm)
Professor Lorne Crerar, Convener, Standards Commission for Scotland (17/06/04, am)

D
Guy Dehn, Director, Public Concern at Work (15/06/04, am)
John Dempsey, Secretary, SOLACE Northern Ireland (29/06/04, am)

E
Alan Edmunds, Editor, Western Mail (07/07/04, pm)
Derek Elliott, District Auditor and Good Conduct and Counter Fraud Network, Audit Commission (18/05/04, pm)
Margaret Elliott CBE, Civil Service Commissioner for Northern Ireland (29/06/04, pm)
John Elvidge, Permanent Secretary, Scottish Executive (17/06/04, pm)

F
Douglas Fraser, Political Editor, *Sunday Herald* (17/06/04, am)
Dr Tom Frawley, Assembly Ombudsman for Northern Ireland and Commissioner for Complaints (29/06/04, am)
Adrienne Fresko CBE, Co-Secretary to the Commission on Good Governance and Public Services and Head of the Centre for Public Governance at the Office for Public Management (13/07/04, am)
Dame Rennie Fritchie DBE, Commissioner for Public Appointments (18/05/04, am, 09/09/04, pm)
Dame Rennie Fritchie DBE, Commissioner for Public Appointments for Northern Ireland (29/06/04, pm)

G
Ian Gordon, Director of Service Policy and Planning, Scottish Executive Health Department (17/06/04, pm)
Clive Gowdy CB, Permanent Secretary, Department of Health (29/06/04, am)
Michael Green, Policy and Parliamentary Affairs Manager, National Association of Local Councils (09/09/04, am)

H
Nigel Hamilton, Head, Northern Ireland Civil Service (29/06/04, am)
Nick Hanley, Public Appointments Unit, Department of Health, Social Services and Public Safety (29/06/04, am)
Paul Hoey, Director of Policy, Standards Board for England (18/05/04, pm, 09/09/04, am)
Sir Anthony Holland, Chair, Standards Board for England (18/05/04, pm, 09/09/04, am)

J
Sir Simon Jenkins, former Editor of *The Times* (09/09/04, am)

K

Ruth Kelly MP, Minister for the Cabinet Office (21/10/04, am)
Mike Kendall, Immediate Past President, Association of Council Secretaries and Solicitors (ACSeS) (15/06/04, am)

L

Cllr Chloe Lambert, Deputy Chair of the LGA and Leader of the LGA Independent Group (13/07/04, pm)
Sir Alan Langlands FRSE, Chair, Independent Commission on Good Governance in Public Services, Principal and Vice-Chancellor University of Dundee, and former Chief Executive of the National Health Service in England (13/07/04, am)
Ann Lloyd, Director for Health and Social Care, Welsh Assembly Government (07/07/04, pm)

M

Ms Fiona Mackay, Secretary to the Commission, Standards Commission for Scotland (17/06/04, am)
Mrs Wendy Mason, OCPA Central List Independent Assessor (14/09/04, am)
Ian Medlicott, Monitoring Officer, Caerphilly County Borough Council (07/07/04, am)
Cllr Simon Milton, Conservative Member of LGA and Leader of Westminster City Council (13/07/04, pm)
Dr Roger Moore, Chief Executive, NHS Appointments Commission (15/07/04, am)
Heather Moorhead, Chief Executive, Northern Ireland Local Government Association (29/06/04, am)
The Rt Hon Rhodri Morgan AM, First Minister, Welsh Assembly Government (07/07/04, am)
Anna Myers, Deputy Director, Public Concern at Work (15/06/04, am)

N

David Normington, Permanent Secretary, Department for Education and Skills (15/07/04, am)

O

Bill O'Brien MP, Labour Member of Parliament for Normanton (15/06/04, am)

P

Adam Peat, Local Government and Health Service Ombudsman for Wales (07/07/04, pm)
Baroness Usha Prashar CBE, First Civil Service Commissioner (14/09/04, am)
David Prince, Chief Executive, Standards Board for England (18/05/04, pm, 09/09/04, am)
John Polychronakis, President Association of Council Secretaries and Solicitors (ACSeS) (15/06/04, am)

R

The Rt Hon Nick Raynsford MP, Minister for Local and Regional Government, Office of the Deputy Prime Minister (14/09/04, pm)
Tim Ricketts, Head of Legal Service, National Association of Local Councils (09/09/04, am)
Joan Ruddock OBE, Chairman, Belfast City Hospital HSS Trust (29/06/04, am)

S

Tavish Scott MSP, Deputy Minister for Finance, Public Services and Parliamentary Business (17/06/04, pm)
Dr Lily Segerman-Peck, Independent Assessor (14/09/04, am)
Sir Jon Shortridge KCB, Permanent Secretary, Welsh Assembly Government (07/07/04, am)
Dabinderjit Singh OBE, Sikh Secretariat (15/06/04, pm)
Dal Singh Dhesy, Chairman, Sikh Community & Youth Service UK (15/06/04, pm)
Kashmir Singh, General Secretary, British Sikh Foundation (15/06/04, pm)
Ranjit Singh Srai, British Sikh Federation and member of the all-party parliamentary group Punjabis in Britain (15/06/04, pm)
Professor Lord Smith of Clifton (09/09/04, am)
Vernon Soare, Policy and Technical Director for the Chartered Institute of Public Finance and Accountancy (13/07/04, am)
Sue Street, Permanent Secretary, Department for Culture, Media and Sport (15/07/04, am)
John Swift, Head of Public Appointments Unit, Scottish Executive Health Department (17/06/04, pm)

T

Keith Thomson Chief Executive, North West Wales NHS Trust (07/07/04, pm)
Tony Travers, Director, Greater London Group, London School of Economics (15/06/04, am)
Sir Andrew Turnbull KCB CVO, Secretary of the Cabinet and Head of the Home Civil Service (14/09/04, pm)

W

Judy Weleminsky, former board member of the Child and Family Court Advisory Support Services (CAFCASS) (18/05/04, pm)
Sir William Wells, Chairman, NHS Appointments Commission (15/07/04, am)
Peter Wilkinson, Managing Director, Strategy and Resources, Audit Commission (18/05/04, pm)
Dr Tony Wright, MP, Chair of the House of Commons Public Administration Select Committee (18/05/04, am)

APPENDIX D

EXECUTIVE SUMMARY OF CIPFA BETTER GOVERNANCE FORUM RESEARCH

A COMPARISON OF AND OBSERVATIONS ON DIFFERENCES IN CODES OF CONDUCT IN LOCAL GOVERNMENT

PREFACE

CIPFA Better Governance Forum

The Forum was delighted to be commissioned by the Committee on Standards in Public Life to prepare a report comparing and making observations on the differences in the codes of conduct for members of local authorities across the UK to assist the Committee in its Tenth Inquiry. In particular the inquiry will examine the procedures adopted in the various codes to see whether the burden of them has become "...disproportionate or ill-adapted to the outcomes desired…" The Committee has also raised the question as to whether the local government Model Code of Conduct should apply to all tiers of local government.

The Better Governance Forum was well placed to undertake this task being able to draw upon its experience over the last three years in its advisory and training programmes delivered in regional locations across the country.

The Forum was launched in May 2000 and has gone from strength to strength over the last two years and now has an impressive membership of over 200 organisations from across the public sector. The Forum operates by focusing on key themes within the arena of corporate governance namely, countering fraud, risk management, ethical standards, and information governance. It aims to positively influence and support the drive to achieve better governance in public services.

The report, which was considered and welcomed by the Committee in May 2004, highlights some major differences in approach between the Scottish Executive, the National Assembly for Wales, and the Government in relation to England. By way of example, it may not be widely appreciated that, unlike England and Wales, in Scotland there is no whistleblowing obligation to report alleged breaches of the code. There are also significant differences in the extent to which the codes apply to private life as opposed to official conduct. The rules on declaration of interests vary between the codes not the least in Scotland where a much stricter code applies specifically to planning meetings.

The cost of each investigation at national level is estimated to cost £3/4000 and half of all investigations relate to parish councils whose spending is estimated to represent 0.375% of the total local government spending in England. No doubt the Committee will be examining these issues, which are set out in more detail in the attached report.

The Committee's and the Forum's websites are www.publicstandards.gov.uk and www.ipf.co.uk/governance respectively.

Richard Lester

1. EXECUTIVE SUMMARY

1.1 In announcing the Tenth Inquiry in January this year the Committee made clear its determination to examine the operation of a range of codes of conduct, including Local government, in Scotland, Wales and England. The Committee's primary concern was to test the practical operation of the codes against the principle of proportionality i.e. a reasonable balance between propriety, accountability and efficiency and the outcomes intended. The Committee posed a further question as to whether the codes should apply to all tiers of local government.

1.2 This report commissioned by the Committee, makes both broad and detailed comparisons between the three local government codes, makes observations and formulates questions which the Committee should pursue reflecting its objectives. It identifies significant differences in the operation of the codes.

1.3 The attached table shows the primary differences between Scotland, Wales and England in terms of costs, volume and outcome on the information available. The differences are examined in the body of the report and a range of questions formulated.

1.4 In testing the operation of the codes against the principle of proportionality the Committee will wish to bear in mind that in England in particular:

- 2/3rds of all complaints (3,566 in total received in 2003/2004) are rejected by the Standards Board for investigation;
- Less than 7 per cent of all complaints result in any penalty; and
- It can take a year from receipt of a complaint to final adjudication and sometimes longer.

1.5 The Committee will wish to bear in mind on the one hand there is significant support in our survey for parishes remaining in the ethical framework but on the other should also take the following factors into account. There are over 8,500 parish councils whose spending nationally represents 0.375 per cent of total local government spending in England yet half of all complaints received and over half of all investigations relate to parishes. In addressing the issue of proportionality and the application of the codes to all tiers of local government the Committee should pose the following questions:

- Should smaller parish councils (say with a budget of less than £20,000 pa or a population of less than 1,000) be excluded from the ethical framework?
- Could a simplified code (with compliance by sample audited by principal councils) be made for larger parish councils?
- If parishes are retained fully in the ethical framework could the responsibility for receiving, investigating and determining complaints be dealt with locally exclusively?

1.6 Bearing in mind only one in five of complaints following investigation are referred for determination, is there a case for considering either a local filtering system under rules set by the Standards Board and audited by them or a national filtering system which involves preliminary enquiries locally to establish whether the complaint is supported by real evidence.

1.7 In England and Wales in certain respects the codes of conduct for members cover conduct in private life contrasting with the position of other elected or appointed members, e.g. members of Parliament. In addressing whether the codes are overburdensome the Committee should consider the following questions:

- Is there any need to refer to conduct in the private life of elected members? Should this be regarded as a local matter for personal consideration, the party political group, and ultimately the ballot box?

- Is there any need as in Wales to require members not to commit criminal offences?

1.8 Members are obliged in Wales and in England (but not in Scotland) to report to the Standards Board any conduct by a colleague which they believe is a failure to observe the code. The Committee should satisfy itself that on balance there is a clear need for this provision and why in Scotland it was considered unnecessary.

1.9 Concerns have been expressed that the operation of the new codes has the effect of diminishing the representational role of members whose constituents expect them to advocate their views at council meetings. This concern relates particularly to planning issues. The Committee should consider whether the operation of the codes, aimed at high standards, also has the effect of diminishing the ability of the elected member to discharge his democratic mandate and whether, as in Scotland, the position of members in these circumstances should be defined in the code.

Richard Lester Solicitor, Legal Adviser to IPF
Keith Stevens Solicitor, Legal Adviser to IPF
7 May 2004

	SCOTLAND Standards Commission	**WALES Local Government Ombudsman**	**ENGLAND Standards Board for England**
Approved budget 03/04	£400,000	£226,168[4] (02/03) (Indicative only – see below)	£8,130,000[2]
Number of complaints received 03/04	139 [1] at 31 March 04 (Since 1 May 2003)	184[5] (since 1 April 2003 to 2/3)	3,566[3] (2,948 in 02/03)
Complaints investigated or referred for investigation	139	76 (since 1 April 2003 to 2/3/04 26 to Monitoring officer for investigation	1,212 (34% of total received)
Complaints referred for adjudication after investigation	3 (5% of cases investigated at 31.3.04)	2 to Adjudication Panel by Ombudsman 1 via monitoring officer	242 (12% to Adjudication Panel 8% to monitoring officer)
Average cost of investigation (Carried out by the Board, the Commission, and the Ombudsman respectively)	Not available at April 04 (78% of investigations completed within three months)	Not available at April 04	£3/4,000[2]
Number of Members covered	Estimated 3,500	Estimated 16,000	100,000

1. *From 1 May 2003 to 31 March 2004: Standards Commission.*
2. *Standards Board for England: Corporate Plan – Annex 2 – 2002/03.*
3. *Standards Board for England: Cumulative Statistics.*
4. *Estimated as a % of total approved budget of Ombudsman Services based on proportion of member conduct complaints received to the total of all complaints. Source : Local Government Ombudsman for Wales.*
5. *An element of this is likely to relate to complaints against members of a single council involving the same circumstances.*

APPENDIX E

EXECUTIVE SUMMARY OF CREATIVE RESEARCH REPORT PUBLIC APPOINTMENTS: EXPERIENCES OF RECENT CANDIDATES

1.1 Introduction

This section provides a summary of the main findings of the research and considers these in the light of its objectives. It also includes our interpretation of the findings and how the detail of the process might be improved to increase levels of satisfaction among candidates.

1.2 Awareness and evaluation of the process

Most of those interviewed had some appreciation of the various stages of the appointments process based on their own experience of public appointments or assumptions they made from wider experience. A number were more knowledgeable because they had been appointed to public bodies and had since been involved in the process themselves.

While the principal stages of receiving applications, filtering out the most promising for interview, interview and selection were commonly identifiable, the detail of how decisions were made at each stage or the number of interviews involved were generally not known. The fact that, for most of the appointments covered, the Minister was responsible for the final decision was widely known, though again, the basis on which this was done did not seem to be well understood. Respondents were overwhelmingly of the view that the appointments process should be rigorous, open and fair and many felt that their experience had suggested that it was. On occasion, the process was compared with the more 'patronage' style of appointments of past years or operating currently in other spheres. The feeling was that the responsibility inherent in public appointments meant that the best person had to be found and (except in exceptional circumstances), this required that the process should be followed.

Regarding proportionality, respondents did not perceive this as an issue. Firstly, they did not regard the process that they went through as unnecessarily burdensome; indeed, for a few it seemed rather lightweight especially in terms of the length and conduct of the interview. Secondly, they did not recognise that some appointments warranted a simpler and less rigorous process than others on the grounds of the level of remuneration or time commitment required. The majority referred again to the responsibility of the position and how only a proper trawling of the field could result in the right choice of candidate.

Moreover, for positions requiring more general skills for which the field was likely to be wider, it was suggested that the process could be made fairer and more rigorous if all those meeting the specification were invited to a first round of interviews. This would ensure, it was hoped, that candidates with potential were not screened out too early.

1.3 Experience of the process

The experiences of candidates are summarised in some detail in the body of the report. For the most part, the components of the process seemed to work well, the overall process ran smoothly and the timescales were felt to be acceptable, sometimes even highly efficient. Many of those who had been interviewed but not appointed were satisfied with how they had been treated and that, though unsuccessful, for them it had been a worthwhile experience from which they had learnt something.

In terms of the stages of the process, there were those who would prefer that things had been done slightly differently e.g. options for the format of the application or where interviews are held. These views are set out in the report and referred to below where we consider possible improvements.

More important perhaps, are the instances where the steps of the process are acceptable but the way in which they have been applied has been less so. This was where we found greatest cause for concern among candidates and highest levels of dissatisfaction. While some of these incidents might seem trivial and an explanation available, they gave rise to, or served to fuel suspicions that there was something awry in the process and it was not being applied fairly and rigorously.

These suspicions revolved around the operation of bias in the selection process so that candidates who were male, older, from outside London (to

name but a few traits) were disadvantaged, or were based on the belief that there was already somebody in the frame for the appointment and therefore other candidates were not being considered seriously. These suspicions were reinforced by the underlying feeling (voiced by a broad range of candidates) that those who were part of the 'inner circle' of those who already held a public appointment of some kind were more likely to be appointed again.

The circumstances in which these concerns might arise were principally when a candidate felt he or she had met all the elements of the specification for the position to a high degree but was not even granted an interview or when candidates were interviewed but suspected they were there to make up the numbers or as 'token' members of a certain group. Timing issues could also be relevant, for example, where applications were permitted after the deadline or the interview period extended.

The resentment that these suspicions could evoke should be seen in the light of the time and effort that candidates often put into their application and a feeling that it had simply been a waste of their time.

1.4 Conclusions

This research provides an input into the tenth inquiry of the Committee on Standards in Public Life which sets out to consider whether existing processes for public appointments are appropriate and proportional to the required outcomes. It particularly wishes to establish whether there is any evidence that good candidates have been discouraged from applying. With respect to the first and broader issue, we would conclude that a rigorous and fair process is expected for all public appointments regardless of the demands and rewards associated with them, and most of the competitions covered by the research involved steps that should have resulted in this. It was in the application of the process that perceptions were sometimes undermined.

With respect to the second objective, this research can only comment on whether potential candidates, as exemplified by those in the sample who registered an interest in a position but did not apply, were discouraged because of the process. It can also report on what candidates felt about their own future applications or on whether people 'like them' were likely to apply and if not, why not.

Candidates' views on these issues are described in some detail in the body of the report. Rather than repeat them here, the next section attempts to summarise the key factors that seem to determine satisfaction with the process and how these might be applied in operating the process to increase satisfaction and thereby, hopefully, to increase applications from relevant, high calibre candidates.

1.5 Key drivers of satisfaction for candidates

From candidates' comments about the process and why it was a more or less satisfactory experience for them, four factors seem to dominate. These are outlined below:

Management of expectations

Respondents who felt more positive about the process had a good idea of what the process was, they knew what to expect and when, and seemed to have a fairly realistic evaluation of their chances.

This compares with those respondents who had not been kept informed or who chose not to read the information they were given and therefore only had a vague sense of what was going on. They often had a poor understanding of the likely numbers and calibre of those applying and therefore may have had a poor appreciation of their chances of success. In the absence of a clear picture, they may suspect that things are happening behind the scenes that they do not know about.

Quality of communication

Managing expectations depends to a large extent on the quality of communication between those involved in running the 'competition' and the candidates. To ensure higher levels of satisfaction, this needs to be accurate, courteous and friendly, meaningful and understandable, timely, personal and ideally, proactive (e.g. when candidates are kept informed about outcomes or changes).

Those who are less happy with the process have often been recipients of communications that are abrupt and standardised and lack personalisation. Where the communication in question is feedback about why they have been unsuccessful, this may have not have been offered or if sought, may have been unforthcoming.

Recognition

Candidates understandably wish to feel that the level of consideration given to their application recognises the effort that they have put in and that someone has looked seriously at what they have to offer especially if this is a little different. They want to feel that their interest is valued and that even if they are not right for the position in question, there is an opportunity for their potential for other positions to be identified. Typical symptoms of a perceived lack of recognition would be an apparent lack of serious consideration of an application because the rejection letter seems to be sent out by return post. It might also be about wasting candidates' time in interview because 'tokenism' has dictated their inclusion.

Two-way

Candidates want to feel that the selection process works both ways i.e. in addition to being evaluated for their suitability for the position, they also need to reassure themselves that they want the position and are confident in their ability to perform in it. Promoting this two-way dynamic is also part of according candidates the respect and recognition they desire. It was made tangible for those reporting a more positive experience by, for example, being given options for interview dates and, at interview, feeling that there has been a productive and worthwhile exchange of views and an opportunity to ask questions.

Those with a more negative stance can only see that the process has worked in one direction. They have had to do a great deal of work to complete an application and may have had a very dry and formal interview experience. They are left with a sense of gaining nothing from the experience.

(November 2004)

APPENDIX F

PREVIOUS REPORTS BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Committee has published reports on the following subjects:

- *Members of Parliament, Ministers, civil servants and quangos*
  (First Report (Cm 2850)) (May 1995);
- *Local public spending bodies* (Second Report (Cm 3270)) (June 1996);
- *Local government in England, Scotland and Wales* (Third Report (Cm 3702)) (July 1997);
- *The funding of political parties in the United Kingdom* (Fifth Report (Cm 4057)) (October 1998);
- *Standards of Conduct in the House of Lords* (Seventh Report (Cm 4903)) (November 2000).
- *Standards of Conduct in the House of Commons* (Eighth Report (Cm 5663)) (November 2002)
- *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service* (Ninth Report (Cm 5775)) (April 2003)

The Committee is a standing committee. It can therefore not only conduct inquiries into new areas of concern about standards in public life but also, having reported its recommendations following an inquiry, it has can later revisit that area and monitor whether and how well its recommendations have been put into effect. The Committee has so far conducted two reviews, and in 2001 published a stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994:

- A review of recommendations contained in the First and Second Reports relating to standards of conduct in executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and local public spending bodies (Fourth Report) (November 1997);[1]
- A review of recommendations contained in the First Report relating to Members of Parliament, Ministers, civil servants and 'proportionality' in the public appointments system (Sixth Report entitled *Reinforcing Standards* (Cm 4557)) (January 2000);[2]
- A stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994 (*The First Seven Reports – A Review of Progress*) (September 2001).

[1] This report was not published as a Command Paper.
[2] 'Proportionality' is a term used to describe the principle that the length and complexity of appointment procedures should be commensurate to the nature and responsibilities of the post being filled.

LIST OF ABBREVIATIONS AND ACRONYMS

ACSeS	Association of Council Secretaries and Solicitors
AM	Assembly Member
BBC	British Broadcasting Corporation
BRMB	British Market Research Bureau
CABE	Commission for Architecture and the Built Environment
CAFCASS	Child and Family Support Services
CB	Order of the Bath
CBE	Commander of the Order of the British Empire
CIPFA	Chartered Institute of Public Finance and Accountancy
Cm	Command Paper
CSPL	Committee on Standards in Public Life
CVO	Commander of the Royal Victorian Order
DBE	Dame Commander of the Order of the British Empire
DCMS	Department for Culture, Media and Sport
DEFRA	Department for the Environment, Food and Rural Affairs
DETR	Department of Environment, Transport and the Regions
DNA	Deoxyribonucleic Acid
Dr	Doctor
ESO	Ethical Standards Officer
FRSE	Fellow, Royal Society of Edinburgh
HC	House of Commons
HMSO	Her Majesty's Stationery Office
HRM	Human Resource Management
IDeA	Improvement and Development Agency for Local Government
IPF	Institute of Public Finance
KCB	Knight Commander of the Order of the Bath
LGA	Local Government Authority
MORI	Market & Opinion Research International
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NDPB	Non Departmental Public Body
NHS	National Health Service
NHSAC	NHS Appointments Commission
NILGA	Northern Ireland Local Government Association
OBE	Officer of the Order of the British Empire
OCPA	Office of the Commissioner for Public Appointments
ODPM	Office of the Deputy Prime Minister
PACE	Police and Criminal Evidence Act
PASC	Public Administration Select Committee
PCT	Primary Care Trust
PIDA	Public Interest Disclosure Act
Plc	Public Limited Company
Rt Hon	Right Honourable
SOLACE	Society of Local Authority Chief Executives and Senior Managers
UK	United Kingdom

ABOUT THE COMMITTEE

Terms of Reference

The then Prime Minister, the Rt Hon John Major, announced the setting up of the Committee on Standards in Public Life in the House of Commons on 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.*
>
> *For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; 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.*
> (Hansard (HC) 25 October 1994, col 758)

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997 the terms of reference were extended by the Prime Minister:

> *"To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements."*

The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for up to three years. Sir Alistair Graham succeeded Sir Nigel Wicks as Chairman on 26 April 2004. Sir Nigel succeeded Lord Neill as Chairman on 1 March 2001. Lord Neill succeeded Lord Nolan, the Committee's first Chairman, on 10 November 1997.

Sir Alistair Graham
Chairman (from 26 April 2004)
Sir Nigel Wicks GCB, CVO, CBE
(Chair to 25 April 2004)

Lloyd Clarke QPM (from 1 November 2004)
Rita Donaghy OBE
Professor Hazel Genn CBE
Dame Patricia Hodgson DBE
Rt Hon Baroness Jay of Paddington
(from 1 November 2004)
Baroness Maddock

Baroness Neuberger of Primrose Hill
(to 30 April 2004)
Rt Hon Gillian Shephard DL MP
Rt Hon Chris Smith MP
(to 31 October 2004)
Dr Elizabeth Vallance (from 26 April 2004)
Dr Brian Woods-Scawen DL

The Committee receives policy advice and administrative support from a small Secretariat: Rob Behrens (Secretary), Dr Richard Jarvis (Assistant Secretary), Andrew Brewster, Stephen Barnes (to 18 November 2004), Victoria Williams, Victoria Ouzman (from 15 November 2004) and Bridget Powell (from 14 June to 10 September 2004).

Advice and assistance to the Committee for this study was also provided by: Radio Technical Services Ltd for the provision of sound recording; Smith Bernal WordWave for the provision of transcription services during the public hearings; and Giles Emerson of Words for editing the draft report.

Expenditure
The estimated gross expenditure of the Committee on this study to the end of December 2004 is £260,810. This includes staff and administrative costs; the cost of printing and distributing (in January 2004) 9,000 copies of a paper

setting out the key issues and questions which the Committee would address; costs associated with public hearings which were held at the Thistle Westminster, London on 18 May, 9 and 14 September 2004, One Great George Street, London on 15 June, 13 and 15 July and 21 October 2004, the Menzies Belford Hotel, Edinburgh on 17 June 2004, Ramada Jarvis Hotel, Belfast on 29 June 2004 and the Thistle Cardiff on 7 July 2004; and estimated costs of printing, publishing and distributing this report.

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