

# The World Will Be Your Oyster?

Reflections on The Localism Act 2011

Chapter Eight

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Standards and Codes of Conduct  
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# **Reflections on the Localism Act**

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## **Standards and codes of conduct**

**Philip Whiteman**

### **Introduction**

Standards in public life have rarely been off the agenda especially at a national level. In Parliament, the political establishment has sought to halt errant behaviours of parliamentarians with varying degrees of success, but overall the system has been obvious and transparent. A politician wishing to abolish the system would probably rue the day in terms of likely public backlash and drop in confidence. Local government has had a longer history of establishing expected standards but has proved a very difficult nut to crack. Councils first became subject to standards through the creation of a voluntary code of conduct for members. This incrementally grew through the following decades to become an unwieldy beast often referred to by the pejorative term, 'standards regime'. Unfortunately, such a term has failed to reflect the requirement for maintaining standards in public life at the local level and has provided a convenient tool for those who seek a more laissez-faire approach to councillor conduct. It was the latter approach that recently landed the Coalition in hot water when it effectively decided to dismantle any effective means of maintaining standards of public life at the local level. Nonetheless, they changed course during the last weeks of the passage of the Localism Bill, when peers in the House of Lords successfully promoted a number of amendments supporting a standards system in local government. Many of these proposals will be open to question on their effectiveness or appropriateness.

### **A background to the codes of conduct**

The National Code of Local Government was first introduced in 1975 on a non statutory basis but it then became a mandatory requirement in 1989<sup>1</sup>. On a wider scale, the parliamentary sleaze and scandals of the 1990s rapidly produced a greater public awareness of the requirements of good moral and ethical standards of politicians in public life. The resulting Nolan Committee initially focussed upon the conduct of national politicians but their attention soon switched to local authorities. Following on from Nolan, the New Labour

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<sup>1</sup> *The Local Government and Housing Act 1989* s.31 gave statutory status to the National Code of Local Government Conduct

Government acted quickly (perhaps too quickly) to reinforce local government standards through the introduction of a new ethical framework that went far beyond the national codes of 1975 and 1989. Part III of the Local Government Act 2000 was arguably the most extensive framework for standards of conduct for any group of public office holders in the UK<sup>2</sup>. As well as establishing a statutory requirement for independently chaired local standards committees to oversee the framework, it also introduced a strategic regulator – the Standards Board for England and a quasi-judicial organisation for sanctioning serious infringements – the Adjudication Panel (later to be merged with equivalent tribunal bodies into the ‘First Tribunal’).

There has been a long history of pockets of corruption and poor practice, sometimes considered endemic, within local government. However, given the number of elected members, problems have not been as widespread as perhaps might have been expected, particularly in recent decades<sup>3</sup>. Codes of conduct have been a significant feature in attempting to deal with improper behaviour. Whilst in recent years local government may not have suffered repeats of corruption such as the Poulson scandal of the 1970s, where the investigations unmasked serious instances of bribery and corruption, the risk of councillor misconduct certainly still remains. The codes of conduct, whether in the pre or post 2000 form, have remained a backbone for dealing with errant behaviour. It is easy to cite high profile cases from recent history including the notorious case of Lady Porter, who as Leader of Westminster City Council, was found to have been gerrymandering the sale of council houses to bolster support for the ruling Conservative vote. There was also the so-called ‘Donnygate Scandal’ of the 1990s which involved corrupt behaviour amongst Doncaster councillors. Codes of conduct have made an important contribution to the restoration of acceptable councillor behaviour where authorities had suffered very poor and disruptive member-officer relations – most notably in Doncaster, Walsall and Bromsgrove councils. While proven cases of member misconduct are less easily recalled with few comparatively reaching the national headlines, the actual number has not been insignificant - during 2008/9, for example, some 41% (66 cases) of the complaints made to standards committees for local investigation resulted in a judgement that a councillor had indeed been in breach of the code<sup>4</sup>.

The retention of a local standards framework is an important inclusion within the Localism Act and should be welcomed. However, the inclusion of parish and town councils into this process remains questionable. Bearing in mind the limited scale of local or ‘third tier’ council activities, the costs and benefits of a standards regime at that level are to be questioned. This point of view was strongly made

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<sup>2</sup> Committee for Standards in Public Life 1997, *Third report on the Committee for Standards in Public Life: Getting the Balance Right Implementing Standards of Conduct in Public Life*. Cmnd 6407. The Stationary Office.

<sup>3</sup> Chandler, J. 2009. *Local Government Today*. 4<sup>th</sup> Ed. Manchester University Press.

<sup>4</sup> Standards for England. 2009. *Local Standards: National Perspectives*. Annual Review. SFE: Manchester.

in a paper published by Michael Macauley and Alan Lawton in 2006, who commented that, 'the first, and perhaps most contentious problem, is one of scope rather than content.'<sup>5</sup> They critically challenged whether the application of the Code of Conduct was entirely appropriate for such small units of local government. Typically, many of the complaints made against parish and town councillors were regarded as trivial and, at their very worst, vexatious. Whilst the abolition of the Standards Board may remove the 'parish problem', the work load generated by handling of complaints against parish councillors may be disproportionate to their public influence and responsibility as well as unwieldy, expensive and unnecessary.

### **The Localism Act – a new code**

The Localism Act places a duty on local authorities to have a code of conduct. In summary:

- i. The statutory model code is abolished. However, all relevant local authorities must adopt a code of conduct for their members. Although the provisions of local codes are not specified, any local code must when viewed as a whole, be consistent with the Nolan Principles of standards in public life.
- ii. The code must include appropriate provision with regard to the registration of pecuniary and non-pecuniary interests. A councillor will be committing a crime if, without reasonable excuse, they fail to declare or register a pecuniary interest, or if they knowingly or recklessly provide false or misleading information about pecuniary interest. The Police and CPS will therefore become responsible for handling serious abuses.
- iii. Local codes will be binding upon elected and co-opted members of relevant authorities.

The original Localism Bill outlined the abolition of the so called 'standards regime', a term coined by the Government. Such a move, if it had been successful, would have been retrograde in terms of promoting high standards in the conduct of local politicians. However, the code amongst a number of other amendments, returned to statute following amendments made by the House of Lords. When moving one of the amendments to the House of Lords, Lord Bichard saliently observed that:

“At a time when the public’s trust in politicians is at a low ebb, it is important that all public bodies have explicit standards of conduct, which

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<sup>5</sup> Macauley, M & Lawton, A. 2006. 'Changing the Standards? Assessing the Impact of the Committee for Standards in Public Life on Local Government in England', *Parliamentary Affairs*. Vol 59(3). 474-490

make transparent how they will carry out their business and provide benchmarks against which they can be held to account.<sup>6</sup>

The move to secure a standards framework has removed the risk of local authorities deciding to opt out of all forms of monitoring standards. Anecdotal evidence gained by INLOGOV, suggests that some authorities were actively considering the option to abandon their codes of conduct and standards committees. This would have been a backward move in terms of the public's confidence in their elected politicians.

A fascinating feature of the new Act is the inclusion for the first time, of the Nolan Principles of Standards in Public Life, something not previously seen in local government legislation. From April, all local authorities, including parish councils will have to enshrine the following Nolan Principles into their codes, which are:

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

These seven principles are welcome but not without their own problems as some of the requirements set out in previous legislation have been dropped in their place. Duties to 'uphold the law' and 'stewardship' are not included in the Act. There is no rational explanation as to why these features are no longer extant but it does raise rhetorical questions including; are councillors no longer required to act lawfully in their decisions and behaviours and are they no longer stewards? These questions could be considered ridiculous but bearing in mind the problems caused by poor officer-member relations, discrimination or offensiveness, they are significant. There will be no effective means of handling these problems directly through the code unless explicitly incorporated into the locally determined code.

### **Standards Committees and Independents**

The Localism Act makes some significant changes to the provision of standards committees and the handling of cases. In summary:

- (a) principal authorities will be required have a system of dealing with standards within the authority. In practice, that is most likely to be through the use of a standards committee.
- (b) there will no longer be a requirement for an independent person to be co-opted to be a member of, or to chair the standard committee,

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<sup>6</sup> Hansard HL Deb. 14<sup>th</sup> September 2011. Vol 720. Col 791.

(c) co-opted members will no longer have a right to vote,

The original Localism Bill would have rendered standards committees toothless tigers. Instead, their important role in developing the code for consideration and dealing with cases is likely to remain but subject to the new role of an independent person.

The 'independent person' is an interesting feature and raises several significant questions about the role of co-opted members on the standards committee. As it stands, the Act states that the authority must seek the views from the independent person where an allegation has occurred and it has been decided to investigate (s28(7)). However, the independent person must not be a member or an officer for that authority or any other local relevant authority for at least a period of five years from the becoming that independent person. The motivation behind the independent person is clear but it does raise the assumption that existing co-opted independent members are politically motivated in their actions. Baroness Hanham suggested in a statement to the House of Lords:

"...we have provided that a person against whom a complaint is made may also seek the views of the independent person. This will ensure that if a councillor feels victimised or pressured by a member or members of the council of the authority, he or she can have access to the independent person for a view"<sup>7</sup>.

So, the coupling of a five year period of grace, the pressure on members of a council dealing with a case and a bar on independent members from chairing or voting at committees, will doubtlessly reduce the significance of their role. The bar will also have significant consequences, for it will result in authorities losing the benefit of the input of suitably experienced and independent minded people from the process.

In terms of hearing cases, whilst the future of standards committees is likely to be assured in many cases - especially for the purpose of developing and overseeing their locally determined codes - their role in sanctioning errant councillors is far from clear. Baroness Hanham raised a further interesting prospect where councils may seek a sanction greater than in minor cases where a letter or training would be the required remedy:

"Where a case involved a bigger breach of the rules, a council might conclude that formal censure – for example, through a motion on the floor of the council – was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time."<sup>8</sup>

This proposal is paradoxical and runs counter to the view that dealing with complaints against councillors should be de-politicised. Rather than achieve that objective, the possibility of full council debating a case is more likely to generate

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<sup>7</sup> Hansard HL Deb. 31<sup>st</sup> October. C 1028 .

<sup>8</sup> *ibid*

politicised complaints associated with partisanship rather than circumvent the problem.

### **The Parish Difficulty**

The Government had previously been disposed towards abolishing the standards regime for towns and parishes when the Localism Bill was first introduced. However, they soon realised that leaving local councils to manage their own misconduct and complaints would be unworkable. Yet more amendments to the Bill saw district and unitary councils assuming responsibility for such complaints.

Retaining parish and town councils within the new standards regime may be a move that Government come to regret, for it does not actually address the cause of the original problem that was criticised in the past, as discussed in Background to the Code, (above). Government could have simply removed local councils entirely from the equation. Bearing in mind the limited scale of local or 'third tier' council activities, the costs and benefits of a standards regime at that level are open to question. Rather curiously, whilst unitary and district councils will be charged with overseeing implementation at the local council level, the Act fails to equip districts and unitaries with any form of sanction over local councils nor do the latter have to pay any due regard to the former's opinions.

### **Conclusion**

The standards regime over the last decade has been problematic and it is quite understandable why the coalition government amongst others were so critical although their initial reaction lacked forethought. It would have been irresponsible to abolish all forms of dealing with poor standards of councillor conduct. The proposals outlined within the Act will ensure that standards will remain at the forefront of decision makers minds and that sanctions will occur where councillors over step the mark in terms of ethical or legal behaviour. However, the proposals are from ideal. Many of the amendments and government's recommitment to the standards were rushed through the legislature at the eleventh hour. The amendments were well meaning but not thoroughly considered in terms of what will happen at the point of implementation. It is doubtful that the new Localism Act will be the last piece of legislation to deal with the standards of conduct in local government. We can probably expect a return of anxieties about standards in forthcoming years.

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