

## 8) Our findings and recommendations

The recommendations which follow are intended to bring a better match between the framework and the design principles set out in section 6 above.

They also set out to address particular criticisms of the current framework. It is suggested that:

- it's too easy to get on the investigative track and too hard to get off it
- the framework is too cumbersome
- trivial complaints clog up the system
- members should know as soon as possible when they have been the subject of a complaint.

We have found that making recommendations in one area, which might enable the framework to adhere to one design principle or address one criticism, has a potential impact on another area or another design principle. It follows therefore that our recommendations are interlinked and should be considered as a whole.

While based on research and taking into account the views of others, the recommendations are our own.

In some areas there are conflicting arguments for particular options. In the narrative below we set out options considered as part of the review, explain why we rejected some and provide a rationale for preferring others.

### 8.1) Improving the local handling of complains

A summary of how the local standards framework currently deals with complaints is set out within appendix 2, on page 35.

We found a general consensus that the current process beginning with the assessment of a complaint, and leading if necessary to its investigation and resolution, can be cumbersome, difficult to understand, resource intensive and slow.

Two broad alternatives were considered:

1. replacing the current investigation arrangements with an open hearing
2. streamlining and simplifying the process

It is worth noting that the two are not, necessarily, mutually exclusive, but for explanatory purposes, we can consider them as alternatives.

An open hearing would involve both the complainant and the member complained about, along with witnesses, coming together in a 'one-off hearing to present evidence, answer questions and argue the merits of their cases.

A key benefit, suggested by some consultees, would be that, on the face of it at least, it simplifies the process. It would remove some of the formal meetings currently necessary as part of the process and negate the need for a resource-intensive investigation.

At the same time it would be a transparent process, giving members the opportunity to face their accusers.

There are however, disadvantages:

- Compiling evidence for a hearing would not, in our view, necessarily require less work than carrying out an investigation. Evidence would still need to be collected and disclosed to the parties involved.
- An open hearing is potentially adversarial. We believe the onus on complainants to articulate their case would be intimidating for many members of the public and could deter them from making legitimate allegations.

For these reasons we preferred the alternative, looking to see how we could streamline and simplify the existing investigative process.

#### **8.1.1) Simplifying the local filter**

Currently, all allegations received by a local authority have to be considered by an assessment sub-committee. This means a meeting must be convened between one elected member, one independent member and, if the case involves a parish or town councillor, one parish/town councillor (with the likely inclusion of the monitoring officer for advice). Arranging this meeting takes time and incurs costs. Many complaints do not need such a formal mechanism.

We feel the current arrangements are unnecessarily resource intensive and slow down the process. Making a decision about whether or not an allegation is within the remit of the Code of Conduct is relatively simple and generally uncontroversial.

In the first instance, we recommend it is made much clearer that the monitoring officer acts as an initial filter, assessing which allegations fall within the remit of the Code and which do not.

#### **Recommendation 1:**

The law should say that monitoring officers, rather than standards committees, should receive all allegations and make a decision about whether or not they are within the remit of the Code of Conduct.

#### **8.1.2) Swift assessment by the independent chair**

Building on recommendation 1, we considered two alternatives to the current assessment sub-committee approach for dealing with those allegations which the monitoring officer has deemed as being within the remit of the Code of Conduct.

- The monitoring officer should be the person who decides what should happen to those allegations which are within the remit of the Code.
- The independent chair, with advice from the monitoring officer, should be the person who decides what should happen to those allegations which are within the remit of the Code.

We are aware that many allegations, although within the remit of the Code, are not sufficiently serious to warrant an investigation. The first option would have the benefits of ensuring that cases could be assessed more quickly and involving fewer resources than current arrangements. Many of the monitoring officers we spoke to favour this option.

We are concerned that such an arrangement has the potential for the monitoring officer, as a paid employee, to be subject to pressure from elected politicians seeking to influence his or her decision. The perception of independence is compromised in this option.

The second option better addresses these concerns as standards committee chairs are not employees, but instead are chosen to represent the public with political independence a key requirement.

We recognise it is not always possible for the chair to be available to make decisions. For example, they may be on holiday or may be conflicted, and therefore we recommend that the vice chair (also independent) can deputise in such cases.

In addition, we recommend that standards committees develop a wider range of reciprocal arrangements so that chairs can assess each others' allegations. This could be particularly valuable in helping those authorities which have high numbers of allegations.

We recognise that some monitoring officers and elected members have concerns about both the skills and understanding of local government of independent chairs and the extent to which they are impartial. We address these concerns in recommendations 16 and 17.

#### **Recommendation 2:**

For allegations within the remit of the Code the independent chair of the standards committee, acting with the advice of the monitoring officer, should determine what happens to an allegation.

The chair would have a choice of five options

- to take no further action – (effectively determining that the behaviour complained about is not sufficiently serious, if proved, to warrant any sanction)
- to refer for local investigation
- to refer to SfE for investigation
- to refer to the monitoring officer for other action
- to refer to the standards committee to seek their advice in choosing one of the previous four options.

The standards committee chair should provide written reasons for each decision.

**Recommendation 3:**

The vice chair of the standards committee should be an independent member.

**Recommendation 4:**

If the chair is unavailable or has a conflict of interest in relation to an allegation then the independent vice chair should deputise. Standards committees should be able to develop reciprocal arrangements so that their chairs can assess each other's allegations.

**Recommendation 5:**

Standards committees should undertake retrospective periodic reviews of these decisions to ensure consistency and quality. The national body should also provide oversight via its regulatory role.

**8.1.3) Removing the right to review**

We know that the framework in many authorities gets 'clogged up' through having to deal with reviews of cases from those complainants not satisfied with the assessment decision.

Not only is this time consuming, it also has cost implications because a review committee or sub-committee of different members (one elected member, one independent member and, if the case involves a parish or town councillor, one parish/town councillor) needs to be set up. We also know that only around one review in 20 leads to a reversal of the original decision.

However if there is not to be a mandatory right of review, we need to make alternative arrangements to redress the perceived loss of fairness and the check and balance that the review procedure brings.

But on balance we do not believe there should be an automatic right of review built into legislation.

**Recommendation 6:**

The current statutory review arrangements should be removed but authorities should be given a discretionary power to allow for the review of particular decisions. This review could be undertaken by the standards committee or a sub-committee of it, by an independent member of the standards committee not involved in the initial decision or by any of these from another principal authority.

**8.1.4) Removing the need for a consideration committee**

The consideration committee is another committee or sub-committee that, currently, must be convened (one elected member, one independent member and, if the case involves a parish or town councillor, one parish/town councillor), following an investigation. It has to decide whether to accept a finding by a monitoring officer after investigation that there has been no breach of the Code or, if a breach is found, decide whether the

case should go to a standards committee hearing or to the First-tier Tribunal.

Again, we are aware of the time and cost involved in convening such a committee. We considered two alternatives to the current arrangements:

- The monitoring officer should determine what should happen.
- The independent chair or vice chair, advised by the monitoring officer, should determine what should happen.

The consideration committee was designed to avoid the risk of the monitoring officer being put under improper influence to bring a matter to an end by deciding there had been no breach. Hence for the same reasons as in 8.1.2 above, we decided upon the latter option.

As with recommendations 1, 2, 3 and 6, our recommendation here will enable a swifter response, and has beneficial cost implications when compared to the current arrangements.

**Recommendation 7:**

After completion of a local investigation the chair of the standards committee should decide whether to accept a finding of no breach, and where a breach is found, whether the case should go to a local hearing or to the First-tier Tribunal. Vice chairs should be able to deputise in this role.

Standards committees should be able to develop a wide range of reciprocal arrangements with other standards committees so that their chairs can assess each other's investigations in this way.

**Recommendation 8:**

The chair or the vice-chair should have a greater role in case management, making the pre-hearing decisions (For example, setting deadlines for responses to documents, deciding which witnesses should be called to give evidence and dealing with applications for an adjournment) with advice from the monitoring officer.

A consequence of recommendations 1 to 8 is that standards committees would be able to focus on the more serious matters demanding their attention including their role of promoting high standards (See 8.9), as well as their oversight role.

## 8.2) Detering trivial complaints

There is a set of related perceptions and misconceptions about trivial complaints: that the standards framework encourages them; that it is

clogged up with them; and that there are serial trivial complainants who waste authorities' time and cost them large amounts of money. We believe, based on our monitoring information, that such circumstances are very rare. Nevertheless these perceptions undermine the credibility of the framework. In those few local authorities where this is true it can be a drain on resources.

Recommendations 1, 2, 3 and 6 will, we believe, enable local authorities to deal more swiftly and more appropriately with trivial or less serious complaints.

We have received suggestions for dealing with serial, trivial complainants. The following ideas were considered:

- sanctions against trivial complainants
- all complaints by a person deemed as 'a serial trivial complainant' to be dealt with by the national body
- the cost of 'failed' complaints to be met by the complainant
- the cost of complaints to be covered by the 'loser'.

All these would be likely to deter trivial complainants. However, they would also deter justified complaints. Even 'serial trivial complainants' may still, on occasion, have justified complaints.

The second option would be contrary to the principle of 'local ownership'. The fourth option could also be a deterrent to members standing for election as they would, justifiably, be concerned about incurring costs. We have decided, therefore, against any new specific recommendation to address such complainants. Instead we believe recommendations 1, 2, 4 and 7, will prevent them from using up resources and clogging up the system.

We do, however, want local authorities and standards committees in particular, to be more robust and public in discouraging trivial complaints generally and serial trivial complainants specifically.

**Recommendation 9:**

Standards for England should produce guidance that urges chairs to be more robust in their decision letter and highlight when they believe an allegation to have been trivial.

### 8.3) Closing down an investigation

A criticism of the standards framework is that it is very difficult to stop an investigation, even when it is agreed that there is little or no benefit in continuing. Examples from our own experience include when a member who had been the subject of a complaint had died, when a member has resigned and when an apology has been received, and accepted, by the complainant.

Enabling a complaint to be closed down at any time would prevent resources being unnecessarily expended. We considered the following options on who might close down a case:

- monitoring officer
- chair of the standards committee
- the full standards committee

We have referred earlier to our concerns about a paid employee being placed under political pressure and we believe that the potential for such a situation also arises here.

Our concern with the chair undertaking this role is that they may be 'too close' to the case – the chair will have been the one who made the decision to investigate in the first place and may be reluctant to overturn this decision.

We think it best if the full standards committee take this decision, based on a recommendation from the monitoring officer.

#### **Recommendation 10:**

The monitoring officer should be able to recommend to the standards committee – at any stage and for any reason – that an investigation be stopped. The standards committee should decide whether or not to accept such recommendations by considering how the public interest is best served.

### 8.4) Enhancing members' 'right to know'

A frequently heard criticism of the current assessment process is that members who are the subject of a complaint only find out that they have been complained about after an initial decision has been made on whether or not the allegation merits an investigation.

At present the legislation requires the standards committee to notify a member. However in order to do that they have to meet, which introduces a delay. Our guidance says members should be told as quickly as possible, but the law needs to be clarified.

However, members feel they have a 'right' to know. Potential complaints are often discussed openly and sometimes publicised, and members can find themselves the subject of rumour or press interest which they are unprepared for as they are unclear about the precise nature of the allegation.

Importantly, we feel the current situation is contrary to the design principle of transparency. On balance we think the current situation is

unsatisfactory. The framework should be as transparent as possible and members who are the subject of an allegation have the right to know, as soon as possible, about that allegation.

**Recommendation 11:**

On receipt of an allegation the monitoring officer should inform a member that they have been the subject of a complaint unless there are compelling circumstances not to (for example, a risk of prejudicing an investigation by intimidation of witnesses or destroying or compromising evidence).

### 8.5) Publishing decision notices

Currently, notice of a decision about the outcome of some investigations and most hearings has to be published in a local newspaper. The intention is laudable in that it facilitates transparency.

It does, however, have a cost impact for local authorities. The current economic climate, coupled with increasing use of the internet, leads us to conclude that a better alternative is for decision notices to be published prominently on council websites. This will keep to the design principle of transparency, yet mean an easy cost saving for local government.

**Recommendation 12:**

Local authorities should no longer be required to publish decision notices in the local newspaper. Instead they should be publicised on the local authority's website.

### 8.6) The composition of standards committees

One of our design principles is 'independence'. Recommendations 2, 4 and 7 ensure that there is an independent element in key decisions in the investigative process, and recommendation 16 will ensure independent overview of the local standards framework and its application.

We considered increasing the mandatory number of independent members on standards committees or having standards committees composed entirely of independent members. A key benefit of this would be to give the public greater confidence that local arrangements were truly impartial and that local government was not simply 'investigating its own'.

However, we believe that such a move would have negative consequences which outweigh this benefit:

- Political groups may be less likely to take ownership of standards issues, and buy-in to the importance of high standards, as it would be perceived as something outside of their remit and something that is 'done to them'.
- The credibility of standards committees, and standards issues, would be undermined as standards committees rely on elected members for their knowledge and guidance of 'how local government works'.



- We know that some standards committees already struggle to attract sufficient independent members.

On balance we believe the current approach is right.

## 8.7) Parish and town councillors and the Code

The inclusion of parish and town councils in the standards framework divides opinion.

There is a view that it is a disproportionate mechanism for parish and town councils, particularly those which have few resources and few powers

On the other hand we believe that parish and town councils should be included within the standards framework and our reasons echo those of the CSPL<sup>18</sup>; parish and town councils are part of the fabric of local democracy, and many do spend significant sums of public money.

All national parties have plans to increase the significance of this sector and such councils are statutory consultees in the planning process. We think that it is beneficial if there is a consistency of standards to which all elected members have to adhere.

The National Association of Local Councils (NALC) supports this position.

Parish councillors in fact make up around three quarters of all members covered by the Code. They account for just under half of all complaints; 2,557 between May 8 2008 and 31 December 2009.

An advantage of their exclusion would be a resource one – this would significantly reduce the number of allegations and so the amount of resources used to deal with them. However we remain convinced that parish and town councils should be included in the framework for the reasons set out above.

## 8.8) The cost of the local framework

It became clear during our review that quantifying the cost of the standards framework was problematic<sup>2</sup>. Costs are calculated on a different basis by different authorities.

Elements of cost include the cost of convening meetings and remuneration for standards committee members, the cost of investigations and costs associated with other action and sanctions. Case costs vary depending on volume of cases, case type and methodology of investigation. Currently there is little transparency in these costs, nor consistency in the way they are calculated.

We recognise that we need to do more work to be able to offer better information on reasonable costs, both to allow authorities to better judge their expenditure and to allow the public and stakeholders to better assess proportionality and effectiveness of the framework.

The cost of investigations is of particular concern – we are interested in seeing the cost of investigations contained while maintaining natural justice.

We have been mindful of actual and potential costs to local government and the public purse as we have carried out this review. Many of our recommendations would result in reduced costs to local government.

For example, a local filter and reducing the number of sub-committees involved in case handling would result in lower administrative costs. Similarly, not having to publish decision notices in a local newspaper would result in cost savings.

We are also committed to providing training, guidance and support in effective and efficient investigation, to help authorities avoid unnecessary expenditure in this area.

**Recommendation 13:**

Standards for England should assist local government by developing a clear and consistent understanding of the costs of the local standards framework and, through working with local authorities, identify and promote ways of ensuring those costs are reasonable and that excessive and wasteful expenditure can be avoided.

## 8.9) The local framework and promoting high standards

The focus of the review has been on the process aspects of the framework, for example the complaints, assessment and investigative processes and the roles of the various individuals involved. We also recognise that standards committees have a statutory role to promote high standards of behaviour, and that there are many ways in which local government can engage to demonstrate high standards.

For example, engaged political parties, strong identification with the council and supportive political and managerial leadership all contribute toward good ethical governance<sup>7</sup>.

These duties under the framework should be encouraged. This is the promotion of ethical principles, as well as rules, which features in the design principles. The regulator should play a lead role in co-ordinating and disseminating good practice which leads to good ethical governance.

In this way local authorities will be encouraged to observe the spirit as well as the letter of the law. It also encourages local solutions, and an emphasis on prevention rather than reliance on the more costly formal elements of the framework.

**Recommendation 14:**

Local authorities should be encouraged to develop local solutions. Good practice in local solutions should be shared so local authorities can benefit from each other's experiences.

## 8.10) The members' Code of Conduct

The Code of Conduct has been subject to relatively regular review and a detailed study was not included within the scope of this work. That said, a review of the framework will inevitably include some comment on the Code.

We believe that a Code is the right way to regulate the behaviour of members of local authorities. However, the climate in which it operates changes over time, making regular review important. Reviews should, for example, take account of how the Code is being interpreted by the First-tier Tribunal (formerly the Adjudication Panel for England) and by the higher courts.

We believe future reviews should look for opportunities to simplify the Code.

**Recommendation 15:**

The next review should look for opportunities to simplify the Code and ensure that it is readily understood by members, and remains fit for purpose.

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