

**The Implementation of the New Ethical  
Framework in English Local Authorities: a  
process evaluation**

**ELG Evaluation Team**

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## About ELG

Evaluating Local Governance: New Constitutions and Ethics (ELG) is the name of a research project which is conducting a five year evaluation of the new council constitutions and ethical frameworks for the Department for Communities and Local Government (formerly ODPM).

The project involves a collaboration between Government International Politics and Philosophy, University of Manchester with Goldsmiths College and the SURF Centre at Salford University. The members of the research team are Professor Gerry Stoker, Professor Peter John, Dr Francesca Gains and Dr Stephen Greasley (University of Manchester), Professor Nirmala Rao (Goldsmiths College) and Professor Alan Harding (Salford University).

Further details about the project, publications and current activities can be found on our website [www.elgnce.org.uk](http://www.elgnce.org.uk)

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The findings and recommendations in this report are those of the author(s) and do not necessarily represent the views or proposed policies of the Department for Communities and Local Government

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## **1. Introduction**

Along with reforms to the structures of political management the Local Government Act 2000 also introduced a ‘new ethical framework’ to be applied to the 388 English principal local authorities, and over 8,000 parish and town councils. The first two ELG annual reports dealt with the implementation of parts II and III of the 2000 Act and the processes adopted in local authorities. Due to the delay in regulations for some elements of part III of the Act, the new ethical framework was not considered in great detail in those reports. This issue paper has been produced to report in more detail about the adoption and operation of the new ethical framework in principal local authorities for the three year period from the adoption of new codes of conduct in 2002 to early 2005. The framework also covers a variety of other types of organisation (see Appendix 1) but the ELG research only considers the parts which operate in principal local authorities, including those parts concerned with parish and town councils.

### *Background to the New Ethical Framework*

The framers of the legislation were concerned with what they saw as a lack of public trust in local government (DETR, 1999: para 4.1). A certain level of public mistrust in authority may play an important positive role in regulating political leadership but there was a clear concern that the extent of distrust in local government was damaging local democracy.

Public trust in a local authority may be affected by many factors in addition to actions within the authority and as a result there is no simple link between public perception of conduct and actual standards of conduct. Although it is an extremely difficult empirical judgement to make, the Nolan Committee’s report on standards in local government concluded that levels of probity were generally high (CSPL, 1997) and this conclusion was echoed eight years later in the tenth report of the committee now chaired by Lord Graham (CSPL, 2005: 51). Research on public perceptions carried out for the committee’s investigation found that when asked whether local councillors can be trusted to tell the truth more people replied negatively than positively, although some groups of public actors fared worse – government ministers, MPs in general, senior managers in local councils and top civil servants (CSPL, 2004: 5).

The Nolan report on standards of conduct in local government (CSPL, 1997) was influential in the development of the new ethical framework for local government. It found that the then system was confusing, ‘despite the profusion of rules, the lack of clarity persists’ (CSPL, 1997). A number of other factors may also have shaped the agenda:

- A few high profile examples of unethical conduct in local government in the 1990s (Skelcher and Snape, 2001: 75).
- A general increase in the attention given to public service ethics over the 1990s in a number of western democracies (see Ridley and Doig, 1995; OECD, 1996; 2000).
- Potential new challenges to standards of conduct posed by the political management reforms and the overall direction of the modernisation agenda. The delegation of decisions to individual councillors was a potential challenge because it offered fewer opportunities for peer monitoring – ‘... the new ethical framework with its emphasis on external regulation can thus be seen as the inevitable corollary of the creation of executive decision making in local government’ (Doig and Skelcher, 2001: 106, see also Skelcher and Snape, 2001: 83-86).

The new framework introduced ‘strict codes of conduct’ and ‘effective enforcement and disciplinary arrangements’ (DETR, 1998: 49). An attempt was made to clarify the national members’ model code and two independent national bodies were set up, the Standards Board for England to investigate alleged breaches of the code and the Adjudication Panel of England to adjudicate cases. In addition, each principal local authority was required to establish standards committee which would deal locally with cases passed to them by the Standards Board’s ethical standards officers and would play a wider role in supporting an ethical environment in the council.

Key elements of the reforms are summarised in Figure 1. The ELG team is evaluating those elements operated by local authorities and will only consider the processes and actions of the two new national bodies to the extent that they affect local

implementation and outcomes. The delay in passing regulations to allow local determination and investigation has contributed to two problems in the early operation of the system - the national bodies have had difficulty in dealing with the level of cases they have faced, and the local standards committees have in some instances struggled to define a role. In addition there were specific problems with the drafting of the legislation which initially required all decisions on which cases to investigate to be made by the board of the Standards Board for England, and problems were also identified with the regulations for granting dispensations (Stoker et al., 2004: 90). The reforms also proposed a code of conduct for local government employees. This was consulted on in Autumn 2004 but has as yet not been implemented.

#### *The ethical framework: three dimensions*

One of the main criticisms of the new system as it has operated is that it is too centralised with not enough responsibility for local authorities (CSPL, 2005). With the passing of regulations to allow local investigation and adjudication the balance of the system is in a period of change. The national-local balance is one of three dimensions to the system. A second dimension is the extent to which the system emphasises self-regulation as against independent regulation. This is not only a question of local versus national, for example, in arguing for a majority of independent members on local standards committees the Graham Committee report advocated a solution which was intended to be both local and independent (CSPL, 2005). A third dimension is the extent to which the system emphasises member compliance with rules as against preventative action to support an ethical culture, whether the system takes the 'low road' or the 'high road' (Lawton and MacCaulay, 2004).

Section 2 of the issue paper discusses the initial implementation of the code and examines local additions to the code and additional protocols which have been adopted in local authorities. Section 3 looks at local standards committees and the role of the monitoring officer, and Section 4 discusses local adjudications. As well as returning to the three dimensions mentioned above, the conclusion gives an overview of current debates about the future of the new ethical framework.

**Figure 1: Key elements of the New Ethical Framework**

*Codes of Conduct*

The statutory member's model Code of Conduct was drafted by the Local Government Association based on a set of principles and approved by Parliament. By May 2002 each authority was required to adopt a Code of Conduct that at least incorporated the model code. All elected and co-opted members of a local authority must sign up to a commitment to follow their authority's code. Consultation on a statutory code of conduct for local government employees was carried out between August and November 2004.

*National bodies*

Two national bodies were established to oversee the system – the Standards Board for England and the Adjudication Panel for England. Initially all written complaints of a breach of the statutory code are passed to the Standards Board which decides whether an investigation is warranted. Prior to the relevant regulations being passed all investigations were conducted by Ethical Standards Officers from the Standards Board, and the case then passed on for adjudication if there was enough evidence of a breach. In the early stages of the reforms allegations could only be passed to the Adjudication Panel to rule on whether there had been a breach and to apply appropriate sanction. Since June 2003 Ethical Standards Officers have been able to pass allegations to local standards committees for local determination.

*Standards Committees*

Each local authority was required to establish a standards committee with at least a quarter of the members being 'co-opted'. These committees have a role in advising on and monitoring the operation of the code of conduct and may play a wider role in supporting an ethical environment in local authorities. They rule on whether members should have dispensations to participate in meetings where there is a prejudicial interest and as noted above they can now determine allegations passed down from an ethical standards officer. Standards committees of English district councils and unitary county councils act as the standards committees for parish or town councils within their boundaries. There is also scope for standards committees to take on a wider remit monitoring and influencing the ethical governance of local authorities.

*Extra Responsibilities for Monitoring Officers*

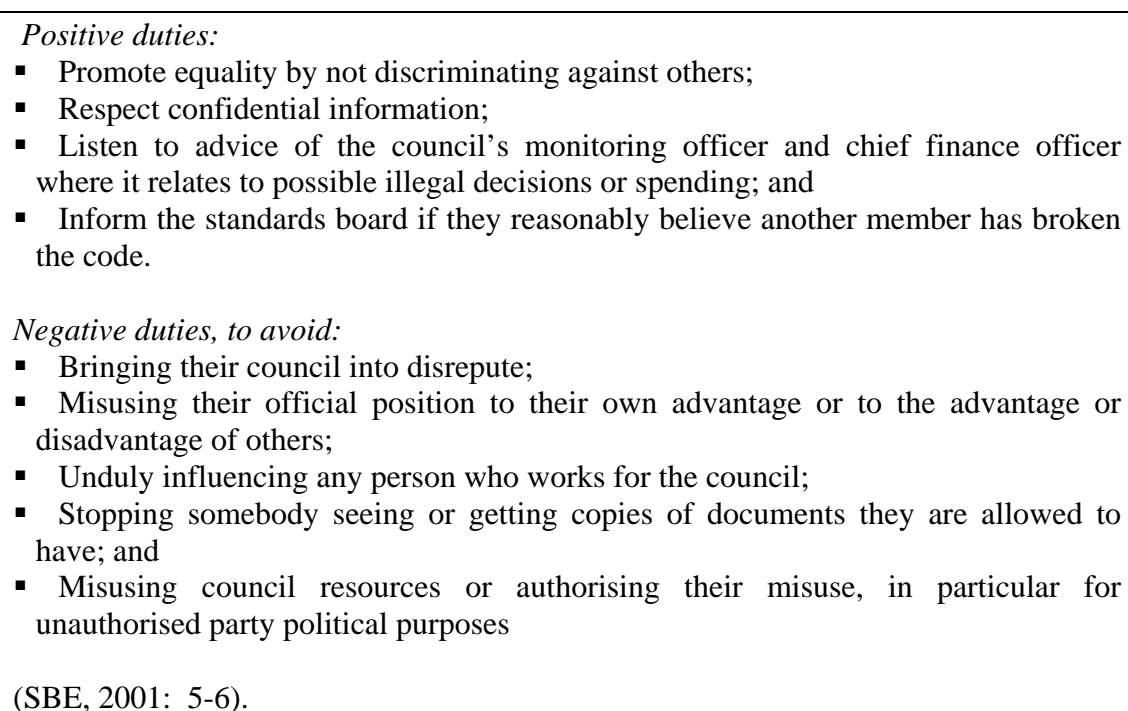
The monitoring officers in local authorities have a key role to play in supporting the standards committees and advising members on ethical issues. In November 2004 regulations came into force that allowed for the local investigation of complaints. In the first instance complaints are still sent to the Standards Board, where it is decided whether the investigation should be conducted locally or by an ethical standards officer.

## 2. The Implementation of the Code in Local Authorities

Prior to the 2000 Act councillors operated under the ‘National Code of Local Government Conduct.’ This set out guidance for members on standards of conduct such as disclosure of financial and non-financial interests, on when there may be a conflict of interest, and on the member-officer relationship and hospitality (Skelcher and Snape, 2001). The Nolan Committee report on local government found the rules on disclosure and conflict of interest to be particularly complex and ambiguous, and advised that the code be clarified (CSPL, 1997).

Part III of the 2000 Act brought in a model code of member’s conduct, local additions to the code were permitted but discouraged by the Standards Board for England and ODPM (e.g. SBE, 2001: 2; ODPM, 2002). The positive and negative duties of members under the code are summarised in Figure 2.

**Figure 2: Members’ duties under the new code**



There are rules for registering interests and gifts, and for the appropriate response when a members has an interest in a matter under discussion in the authority.

*Personal interests* in a matter have to be declared but a member can stay in a meeting to discuss and vote on the matter. Where a member has a *prejudicial interest* in a matter its existence must be declared and, unless a dispensation has been granted, the member must not stay to discuss or vote on the issue. The test for a prejudicial interest is whether a member of the public informed of the relevant facts, would think that the councillor's interest was so important that it would affect the councillor's decision. It is the responsibility of the councillor in question to make this judgment.

#### *Adopting and adapting the code*

All relevant authorities were required to adopt the new code by May 2002. The majority adopted the model code unchanged. Out of 287 authorities that responded to ELG's 2002 census survey 85 per cent adopted the national model code and 14 per cent (38 councils) adopted it with optional or additional provisions. In addition, two councils had the code applied by default, and one revised its existing code.

In this section ten members' codes of conduct that have local amendments are examined in more detail. Most of the amendments were technical and limited. Some involved the changes to wording, for example adding 'seek to' or 'threaten to' to clauses proscribing councillors preventing rightful access to information or compromising officer neutrality. A number of the additions that were found had identical or very similar wording which suggests the amendments had a common source.

In one case the 10 principles of good conduct that were approved by Parliament (see appendix 2) were added to the code. A number of the codes made amendments to widen the obligations to promote equality and treat others with respect. Four of the ten codes added more detail about appropriate use of authority's resources and facilities.

Some of the authorities added more about the working relationship between members and officers. For example, the model code required that, when making a decision, members must have regard to relevant advice provided by the authority's chief finance officer and monitoring officer. One of the amended codes added the head of

paid services to that list, and three codes expanded this clause to include relevant advice from any officer of the authority.

There were examples of changes to the rules on declaring and registering interests. The list of 'other interests' to be registered was expanded in two local codes to include clubs 'characterised by the admission only of members' and also, as one of the two codes put it, 'any private club or society characterised by the taking of an oath of allegiance or similar procedure where rules, membership or conduct are normally secret'. Two authorities also required members to register any offer of a gift a member of the public might reasonably regard as intended to influence or reward a councillor for the discharge of official responsibilities.

A more encompassing characterisation of those council meetings where interests must be declared was found in two of the codes, with the requirement to declare interests where one or more members meet with an officer or officers of the Council. One of these codes also required declarations of interest in party group meetings, whereas the other explicitly excluded party group meetings from the requirements.

The introduction of executive structures in local government was reflected in two of the ten amended codes. These two codes were stricter about the meaning of a personal interest and the consequences of declaring a personal interest when considering a delegated executive decision. In these two codes 'if a member of the public might reasonably perceive a conflict between the member's role in taking that decision on behalf of the authority as a whole and the member's role in representing the interests of constituents in the member's ward' then a personal interest exists in relation to a specific delegated decision. Both these constitutions also added that where a member has a personal interest in a matter which that member has delegated authority to decide the member must disclose the existence and nature of the interest, withdraw from involvement in the decision, and refer it to the Cabinet or another member having power to take the decision.

Also relating to conflict of interests an amendment in two codes of conduct stated that 'a member should not seek, or accept, a position of leadership within the authority....

...if he/she, or any body with which he/she are associated has a substantial financial interest in, or is closely related to, the business or affairs of the authority’.

Finally there are some ‘regulatory’ additions to the codes that were examined. Five codes required a member who was making a complaint to the Standards Board regarding member misconduct to inform the monitoring officer as well. One code prohibited ‘vexatious or malicious’ complaints about persons. An obligation to co-operate with the monitoring officer, the chief finance officer and the standards committee in their regulatory functions had been added to four of the ten codes, in three of these there was also an obligation to co-operate with overview and scrutiny committees.

#### *Additional protocols and codes*

Authorities had the option of producing related non-statutory codes of behaviour such as member-officer protocols and protocols for planning committees. These non-statutory codes are not policed by the Standards Board and the Adjudications Panel. The new constitutions typically have a separate section which contains codes and protocols adopted by the council.

Of the twenty ELG case studies visited in 2004, one authority did not publish its protocols on the internet, the results of an internet search of the constitutions of the other nineteen authorities are presented in Figure 3. The figure is not a comprehensive picture of the formal rules governing the authorities as some may have adopted protocols without writing them into their constitutions. However, giving constitutional status to a protocol affords it more prominence and means it must be approved by full council. See Stoker et al. (2004) for more details on how these case authorities were selected.

The first section of Figure 3 lists those codes and protocols that the modular constitution issued by ODPM indicated should be included. All the constitutions that listed their codes and protocols on the internet included a members’ code of conduct. As noted earlier in this paper the 2000 Act proposed a statutory code of conduct for local government employees to be applied across the English local authorities but this has yet to be implemented. Of the 19 constitutions 12 included a code of conduct for

officers. These varied from a one page statement of the general principles of officer conduct to longer documents. Some councils adapted their officer code from the LGMB 1994 ‘Code of Conduct for Local Government Employees.’ Figure 4 shows the areas which are commonly covered by the officer codes in the 19 authorities. The modular constitution also indicated that a member-officer protocol should be included and 17 out of the 19 constitutions included one.

**Figure 3: Codes and protocols written into constitutions**

<b>Codes in the modular constitution issued by ODPM</b>	<b>(N= 19)</b>
<i>Members’ code of conduct</i>	19
<i>Officers’ code of conduct</i>	12
<i>Protocol on member/officer relations</i>	17
<b>Optional and Additional codes and protocols</b>	
<i>Further protocols relating to member and officer probity</i>  <i>including:</i> regulatory committees (planning and licensing); member representation on external bodies; email and internet use; protocol on gifts and hospitality	12
<i>Protocols on the working of the ethics regime</i>  <i>including :</i> whistle blowing procedure; duties of Monitoring Officer; anti fraud and corruption policy; standards committee media protocol; procedure for dealing with complaints against members	5

**Figure 4: Common areas covered by officer codes**

Use of the authority’s resources
Hospitality and gifts
Neutrality and political activity
Treating the public with respect
Tendering and dealings with contractors
Declaring and registering interests
Work and personal relationships within the authority
Equality issues
Disclosure of information and confidentiality
Corruption
Appointments
Outside employment and commitments
Sponsorship

Authorities also have the option to write additional protocols. Based on their titles relevant local protocols have been sorted into two groups in Figure 3: those that primarily deal with probity issues for members and officers; and those that describe the workings of the standards regime in an authority (in addition to Standards Committees' terms of reference). Some authorities also included other protocols dealing with wider issues of governance but they are not considered here. Their omission is not because they have no relevance to 'ethics', but because it is not clear whether the authority in question makes the link between ethics and governance.

In the first of these categories additional protocols for regulatory committees were common. Planning is a contested area in local government ethics particularly around whether members' role should be quasi-judicial or representative (CSPL, 1997; Stott, 1998). Excluding the county councils which do not have planning powers, eleven out of the remaining fifteen authorities had a protocol specifically for the role of members and officers in planning or licensing written into their constitution. The protocols linked to the ethics regime in the council included anti-fraud and corruption policies, whistle blowing procedures and specific procedures for the operation of standards committees.

Extensive codification of rules to govern an authority will not necessarily improve its functioning. In fact one of the criticisms of the previous members code was that it was too long and confusing (CSPL, 1997), and too illustrate one interviewee during a site visit described members as 'drowning in protocols'. Detailed rules and regulations may also undermine the extent to which individuals feel 'ownership' of moral codes and may have the effect of clearly defining what an individual can get away with. But the data on additional protocols and codes does give some indication of how much extra effort has been put in by authorities on issues of good conduct and the ethical management of the political process.

Although the members code of conduct has been largely adopted unchanged, the constitutions of the authorities examined here indicate local variation in the number and type of additional protocols adopted although it is difficult to say to what extent these additional protocols are disseminated, understood and policed. The repeat

sample survey of members in 40 local authorities will ask a question about awareness of the ethical agenda.

### *Signing up*

Research carried out for the Standards Board for England found that the vast majority of respondents supported the requirement for members to sign the code of conduct. The group that least supported the requirement to sign the code was Parish and Town Councillors, but still two thirds of that group supported the requirement, whilst 26 per cent were opposed (SBE, 2004a).

Our first year research found that there had been some difficulty in signing parish councillors up to the new codes and registering their interests. In some parish councils there appears to have been a collective decision not to register interests.

Of the first 100 cases considered by the Adjudication Panel of England<sup>1</sup> 91 concerned parish councillors not completing the register of interests. These 91 cases came from 34 parish councils, 17 parishes had one case each and at the other end 2 parish councils had 8 cases concerned with failure to complete the register of interests. 80 of the 91 cases resulted in disqualification for a year. A number of the parish councillors unsuccessfully argued that the requirement to register was not consistent with the Human Rights Act, and there were also complaints that the requirement to register interests had for some come into force in the middle of their term in office. Mitigating factors that were taken into account in applying lesser penalties included unclear advice from the monitoring officer and registering interests after the investigation had started. The Graham Committee's report on the operation of the new ethical framework concluded that parish councillors should remain within the code of conduct but it is likely that other elements of the code will change.

At the time of writing the Standards Board for England is consulting on the operation of the code of conduct with members and other interested parties, with a view to making alterations if required.

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<sup>1</sup> Data from the Adjudication Panel's online database <http://www.adjudicationpanel.co.uk/>

### **3. The Work of Standards Committees and Monitoring Officers**

#### *The Local Standards Committees*

The legislation required the establishment of a standards committee in each local authority to oversee the standards of conduct of its authority's members and, where relevant, the conduct of parish or town councillors.

Prior to the legislation a large minority of authorities had already established standards committees in response of the third report of the Nolan committee and perhaps in anticipation of the reforms. Just under half of these pre-legislation standards committees were chaired by a co-opted member. They performed four roles: reviewing and developing a local code of conduct; promoting good standards of conduct; monitoring the implementation of the local code; hearing complaints about member behaviour in relation to the previous national code (Skelcher and Doig, 2001: 96-97). The ELG 2002 census survey found that after the legislation over 50 per cent of standards committees were chaired by the independent members (for more details see Stoker et al., 2003).

The constitutional terms of reference for a standards committee give an indication of the role which a local authority expects it to play, where they are wider than the statutory minimum this may indicate that local authorities are engaging proactively with the standards agenda rather than expecting it to be fully defined by national government. In the modular constitution published by ODPM the terms of reference for local standards committees include: promoting high standards of conduct, assisting councillors to observe the code, monitoring the code and advising on its adoption, arranging for training on ethical issues, granting dispensations and dealing with cases.

Standards committees also exercise the above functions in relation to parish councils wholly or mainly in their area. As well as these specific tasks a wider role was envisaged creating and maintaining ethical organisations (SBE 2002). There are four broad arguments for expanding the role of standards committees beyond functions related to the code and breaches of it. First, the code is a narrow prescriptive document which identifies what members should not do. The principles of public life

are wider, more aspirational and there may be a role for standards committees in supporting them – taking the ‘high road’ to ethical management. Second, actual breaches of the code may be a culmination of poor conduct which might have been avoided with earlier ‘softer’ interventions – mediation, advice, or persuasion. Third, it is plausible that in some conditions a poor organisational culture can develop and the standards committee may be able to act as an independent force to challenge that culture. Fourth, the overall aim of the new ethical framework was to support public trust in local government, the standards committee may then play a role in publicising its authority as an ethical organisation.

In the 20 ELG case authorities 12 of the constitutions give functions to standards committees over and above the statutory minimum role. The number of constitutions which included each of the functions is given in Figure 5. Figure 6 shows the distribution of the number of extra functions across the case studies.

**Figure 5: Additional functions given to standards committees in terms of reference**

<b>Function</b>	<b>Number of constitutions (out of 20)</b>
Overview of Internal and External Audit	3
Overview of whistle blowing	5
Responding to Ombudsmen investigations (including making payments in compensation for maladministration)	4
Overview of constitution	3
Functions relating to authority’s complaints procedure	2
Representing the council to other organisations with respect to standards issues (e.g. advisory role on probity issues to LSPs and community forum)	3
A role in employees’ conduct (e.g. in appeals against disciplinary action)	1
Approval and review of anti-fraud procedures	1
Determining disputes over special payments to Members (e.g. dependents allowance)	2
Removal of members of Independent Remuneration Panel	1

**Figure 6: Distribution of additional functions**

<b>Number of additional functions</b>	<b>Number of councils</b>
0	9
1	4
2	3
3	1
4	2
5	1

A small majority of the twenty authorities had written at least one function in addition to those required in the guidance into the terms of reference, which does suggest a certain level of active engagement with the standards agenda. Based on inspections in the 150 non-district principal local authorities the Audit Commission found two thirds of standards committees had taken wider roles (Audit Commission, 2003: para 81).

Terms of reference can give some idea of the potential role of standards committees within an authority but they do not demonstrate that wider roles have been successfully adopted. The ELG team conducted case visits at forty authorities in Autumn 2002 and Spring 2003, and returned to 20 of these authorities a year later, in most of these visits we interviewed the monitoring officer and we also spoke to a number of standards committee chairs. With the caveat that the interview data is now a year or two years old, the general picture of early implementation was a relatively limited development of standards committee work with a moderate minority of committees being more active. Comments such as ‘a bit of a backwater’, ‘minimalist’, ‘low key, not taken seriously’ were typical.

One of our case study authorities is a good example of these problems. The first year of the standards committee was relatively low key, and its role appeared to have weakened further by our second visit. One interviewee indicating that it had not met for a year and was not taken seriously – as one interviewee put it ‘members are not serious about standards, and won’t resource the process.’ In a number of other authorities the standards committee had met only once in the year prior to our visit.

Positive comments about standards committees often included reference to strong chairs, whose views were respected. One committee had a high profile, met relatively

frequently, and had been involved in defusing some contentious issues as well as overseeing the authority's complaints procedures. A more active role was also exemplified by the chair of the standards committee in a northern town. The chair was concerned with embedding good governance and trying to take a broader view - reviewing the constitution, looking at audit functions. The chair also recognised the importance of the public perception of the authority and was working to increase public awareness of the ethical agenda in local government. Two other standards chairs in our sample had also attempted to address public perceptions, for example one had arranged a series of special focus articles in the local press about the work of the standards committee.

A common activity for standards committees was writing and reviewing the additional protocols in the constitution. Clearly this is an important role however reviewing protocols alone will have limited impact, the protocols have to be understood, accepted and integrated into the working of an authority. This implies a wider set of dissemination and advocacy activities for standards committees.

There was also some reference to the intention to develop a more central role for standards committees. One interviewee described the authority as 'genuinely serious' about standards, but said that the standards committee had been tied up in trying to prepare for the processes of adjudications and had difficulty recruiting independent members as a result. Similarly a number of monitoring officers and independent chairs who we interviewed were thinking of ways to increase the profile of standards.

A number of those chairing and supporting the standards committees want to enhance its role but there are other factors that have affected their capacity to achieve this aim. Firstly, the delay in the Section 66 regulations was repeatedly raised as one of the factors that stymied local standards committees. These regulations are now in place and cases can be passed down locally for investigation and adjudication.

A second factor that appears relevant is the level of engagement from elected members and the council's leadership. Low turnout at training is one indicator of this. On the other hand there were a small group of cases where support from the councils leadership and members had been associated with a more central role for the

standards committee. There was also, in some instances, unwillingness to resource standards committee activities, for example in one authority the monitoring officer was unable to undertake an 'ethical governance audit'. Of course, one of the roles of the standards committees is to raise the salience of ethical issues within an authority so the problem is to some extent circular, but this is a difficult task without help from advocates in the organisations' leadership.

As highlighted earlier the case study data we have on standards committees refers to early implementation, since then standards committees, with new powers of local determinations and investigations, may have become more active. In addition, the Audit Commission has indicated that an element of the new CPA will address ethical issues.

### *The Monitoring Officer*

The new ethical framework added further dimensions to the role of monitoring officer in local authorities. Monitoring officers are now responsible for supporting standards committees in advising and training members on ethical conduct, conducting local determinations and carrying out local investigations although in practice the latter two functions may have to be carried out by another person due to conflicts of interest. In those authorities where standards committees are also responsible for parish councils the increase in workload may be that much greater.

This section summarises some of the results of a research project on supporting monitoring officers conducted by the University of Teeside for the Standards Board for England (SBE, 2004b). That research sent questionnaires to all of the authorities covered by the Standards Board and carried out case studies in 7 authorities. A number of different types of authority were included in the Teeside research - including police, fire and national parks, but the vast majority of responses to their survey came from principal local authorities, so the broad conclusions of their work are likely to hold.

The majority of monitoring officers were content with the amount of support – bureaucratic and personal regard – which they received from their local authorities. There was a significant minority who were less happy. Time constraint was the most

common concern, followed by inadequate financial resources, feeling isolated and not being involved in decision making enough. The majority of the respondents to Teeside's survey spent less than twenty per cent of their time on monitoring officer activities.

Monitoring officers from metropolitan and unitary authorities were more likely to say they are valued when compared to those from district councils. The researchers judged that political control made little difference and that more important were individual factors such as time at council, time in the role, age and gender. The most important factor in accounting for whether monitoring officers felt valued in their ethics role was whether they sat on their authority's corporate management team in the role of monitoring officer. Around 40 per cent of the respondents did not sit on the corporate management team.

The research found very positive relations between monitoring officers and their standards committees, although if the committee included a cabinet member (28 per cent of responding authorities) then it was more likely for some difficulties to be reported in dealing with senior members of the authority and members from the majority group.

Dealing with parishes was confirmed as a problem in some cases. Monitoring officers tended to think the task was relatively unimportant compared to how much time it cost. In one of the case studies the standards committee had had to deal with several determinations from one Parish, arising from bad feeling in the parish that had existed for some time.

#### **4. Determinations and Investigations**

A concern with the new ethical framework as it has worked in the early years is the time taken to deal with complaints. The regulations to allow local investigations, together with the power to adjudicate locally, are potentially crucial to relieving some of the pressure of cases on the national regulatory bodies. A Standards Board target of 50 per cent of cases to be handled locally has been reported, (LGC 29/10/04 p. 8).

A small number of monitoring officers in the ELG case visits, conducted prior to the regulations being passed, expressed concern about local responsibility for cases. In three cases monitoring officers had dealt with difficult adjudications prior to the legislation being implemented and were anxious about having to deal with many more cases, and others were concerned about the time demands of the function. But the majority of monitoring officers did not raise concerns about this aspect of the role.

The regulations allowing local standards committees to determine cases were passed in June 2003. Because of the delay in the second set of the regulations all of the early local determinations were of cases investigated by the national ethical standards officers. The type of case likely to be referred will be those not requiring the heavier penalties available to the Adjudication Panel and those without broad national significance.

Hearings should be held within three months of a case being submitted but at least 14 days after the member who is subject to the complaint has received a copy of the investigation report. It was expected that most hearings could be completed in one sitting. There are three findings available to the standards committees – that the member has not failed to follow the code, that the member has failed to follow the code but no action needs to be taken or the member has failed to follow the code and should be penalised.

A range of penalties are available from censure to suspension of up to 3 months. In one case a committee applied a sanction that was not available (censure plus a requirement to undertake training), the member concerned appealed to the national Adjudication Panel which upheld the censure but removed the requirement of further

training, subsequent regulations modified the legislation to allow a wider selection of sanctions.

After the hearing a summary of the committee's decision and its reasons is required to be published in one or more newspapers, if no breach is found the member is entitled to ask that no summary of the decision be placed in newspaper. Appeals to the Adjudication Panel of England can be made within 21 days following notice of the decision.

The Standards Board has an online database which can be searched for cases that have been passed down for local adjudication. In November 2004 this database was used to collate a list of cases that had been completed by local authorities since the regulations allowing local determinations were passed. A questionnaire was sent to the monitoring officer and another to an independent member of the standards committee in those authorities that had completed a hearing. Questionnaires were sent to 40 authorities with 30 responses received from monitoring officers and 28 from independent members. The survey then gives a fairly comprehensive picture of the early local adjudications process.

The data collected was supplemented by information publicly available through the Standards Board for England's online database, it will be indicated in the text where this source is used, the rest of the data in this section comes from the survey. Appendix 3 discusses methodology.

#### *Time and resources*

Under the regulations standards committees should complete a determination within three months of it being passed down by ethical standards officers. In some cases due to unforeseen circumstance this may not be possible, but a recent local determination was overturned by judicial review because it took seven months to complete and this was to some extent a result of processes not being put in place by the responsible authority. The case reports on the Standards Board website identifies the date on which a case was passed down locally and the date on which it was completed. These are summarised below for the 58 cases completed by the end of 2004 (Table 1). The

majority of cases are completed within the three month time frame (79 per cent), with a further 14 per cent completed within four months.

**Table 1: Time from referral to monitoring officer to completion**

	<b>Number of cases (% in brackets)</b>
<i>Under 1 month</i>	(0)
<i>1-2 months</i>	7 (12)
<i>2-3 months</i>	39 (67)
<i>3-4 months</i>	8 (14)
<i>4-5 months</i>	2 (3)
<i>More than 5 months</i>	2 (3)
<b>Total</b>	<b>58 (100)</b>

There was also a concern that devolution of the adjudication process would put increasing pressure on monitoring officer time and other authority resources. This point was made over the telephone by one monitoring officer, she also highlighted a difficulty in getting a quorate committee to hear the case - councillors were not keen to sit in judgement on colleagues. The survey gives us some information on the time needed to complete a determination.

Respondents were asked how long the adjudication took to hear out of 35 cases where we had responses, 27 were completed in half a day and the longest took one and a half days.<sup>2</sup> The monitoring officer had main responsibility for supporting the adjudication in most cases, 26 out 30, in three of the other cases it was the deputy monitoring officer and in one a solicitor. On average the main officer dedicated just over 4 days to the whole process, the highest response was 10 days. Other officer support dedicated on average two and a half days to the nearest half day. In addition to time spent in the actual hearing independent members reported spending an average of one and a half days preparing for the determination.

There was broad agreement that authorities had dedicated enough officer time to ensuring that determinations would run smoothly (see Table 2). Four officers expressed concern about the potential resource implications of multiple cases ‘it is not clear that we have the resources to deal with this type of case on a regular basis’.

<sup>2</sup> From the 30 responses of officers, plus 5 independent members from authorities where we received no reply from the officer survey.

Although two did highlight that the first case they dealt with would inevitably be more demanding. Over the next year as more cases are passed down the ability of authorities to deal with the workload will become clearer.

**Table 2: The amount of officer support provided for the determination was not adequate**

	<b>Strongly Agree/ Agree</b>	<b>Neither</b>	<b>Strongly Disagree/ Disagree</b>
<i>Officers</i>	7	5	18
<i>Independent members</i>	0	0	28
<i>Total (% in brackets)</i>	7 (12)	5 (9)	46 (79)

### *Procedures*

A recent Standards Board bulletin pointed out that a number of the appeals of local standards committee decisions made to the Adjudication Panel of England concerned perceived unfairness in the procedure. The local determinations are new processes that are likely to experience some difficulties bedding down, but because they are concerned with issues of probity early problems can have serious impacts on members.

We asked both monitoring officers and independent members whether they felt that the procedures for the determination were clear. Only one response out of 58 was negative with 29 answering very clear and 28 clear.

In the majority of cases the accused members attended the hearing, in 6 out of thirty the member also had a representative. Witnesses were called in 18 out of 30 hearings, in 8 the member called witnesses, the Ethical Standards Officer in 3 and the standards committee also called witnesses in three hearings.

In the responses to open questions members and officers were concerned to try to make the process less elaborate and time consuming, two responses specifically mentioned the need for the standards committee to withdraw on occasions during the

hearing. Another concern was that there was inadequate support for the member facing the determination, and for third parties who may be involved or discussed.

### *The Cases*

The type of case faced by local standards committees reflects the referral process in the national standards board rather than the nature of conduct in local government. The SBE's own research indicates that monitoring officers spend considerable time dealing with Parish issues but see this as a relatively unimportant part of their role.

From the SBE database 59 per cent of the completed cases passed down were concerned with parish councillors alone and in 20 out the 30 survey responses the case was about a parish councillor, 4 were about executive members or committee chairs in principal local authorities and the rest were about other members.

A number of the hearings dealt with multiple allegations of breaches although they referred to the same actions of the same person. Failure to declare a personal interest and failure to withdraw with a prejudicial interests was a common combination. Of the 58 cases from the SBE database 37 (64 per cent) were concerned with conflict of interest.

From the same source, 5 out of 58 cases found no breach, another 4 found a breach with no further action required. Of the others, 24 ended in suspension, although some were deferred conditional on members apologising or undertaking extra training, 2 members were removed from their planning committee for a limited period and in 23 cases the standards committee censured the member. Part of the justification for local determinations is that they would be able to understand the context of the alleged breach and judge whether the member was likely to repeat the mistake. As a result it makes little sense to cross tabulate allegations against penalties to check for consistency.

In an email submission an independent member who had been involved in a determination emphasised the usefulness of the Standards Board's case review. We asked respondents whether they had looked at reports of other comparable cases when deciding on a penalty of 28 independent members 10 replied that they had. As one

respondent pointed out there had been few comparable cases conducted at the time of their determination.

### *Fairness*

Monitoring officers and independent members were asked to assess the outcome of the the determination process. Of the thirty hearings 83 per cent were chaired by an independent member, and only 2 out of 57 respondents (members and officers) felt the influence of the independent members was weak or very weak. In addition the vast majority of respondents described the influence of party group as weak or very weak.

A high proportion of respondents were satisfied with the way the determination was conducted only one response was negative. The vast majority thought the adjudication unbiased and the sanction fair.

One monitoring officer highlighted the importance of the chair in keeping the atmosphere of the hearing non-confrontational. There were a few complaints that the Ethical Standards Officers were overly prosecutorial and two of the independent chairs reported intervening to ask that they be less aggressive.

### *Investigations*

We have no data on the local investigatory function but the responses to consultation (ODPM, 2004), guidance issued by the Standards Board (SBE, 2004c) and coverage in the local government press suggest that there are two key concerns.

One concern is with the investigatory powers available to monitoring officers to conduct investigations. These are weaker than available to the Standards Board's ethical standards officers (and weaker than those available to monitoring officers in Wales who have able to conduct investigations since 2001) (LGC, 2004). If they do feel that investigations have been blocked monitoring officers have the option to refer back to the ethical standards officer.

The second concern is the cost to local authorities, especially as an external person may need to be appointed to conduct the investigation if there is a conflict of interest

for the monitoring officer. However, in response to the consultation the Government indicated that it intended to clarify that the cost of supporting monitoring officers investigations should not be borne by parish councils.

One of the provisions of the regulations also supports what we have called the high road ethics. This allows an ethical standards officer to direct a monitoring officer to take action other than an investigation in response to a case. These directions might include making recommendations to a committee to examine some element of the authority's governance or to act as a mediator between parties (ODPM, 2004), and the guidance indicates that such directions to monitoring officers are most likely where 'the ethical standards officer considers that a case has broad relevance for the ethical governance of an authority' (SBE, 2004c: 2).

## 5. Conclusions

Three dimensions to the ethical framework were identified in the introduction to this issue paper. On the national-local dimension, the passing of relevant regulations to allow investigation and adjudication is likely to increase the work demands of the local standards committees and support staff, and may make financial demands on the authority. The impact that the increasing demands of the quasi-judicial work on other (statutory and optional) elements of the standards committee role is unclear. On the one hand the determinations and investigations may crowd out the wider role for the standards committee, on the other hand they may increase the committees profile and allow committees to develop a greater understanding of the organisational conditions which support good conduct or encourage poor conduct.

The Graham committee and the ODPM select committee drew opposite conclusions about whether cases should be sifted locally or nationally. The Graham committee argued that local standards committees should have responsibility for this function whilst the ODPM committee concluded that it should remain a national function.

On the dimension from self to independent regulation, evidence indicates that the early local adjudications have been robustly independent. Over 80 per cent were chaired by independents and attitudinal data showed little indication of lack of independence. The Graham committee argued that at least half of standards committees should be made of independent members, but one monitoring officer forcefully made the point that recruiting independent members was increasingly difficult.

On the final dimension – from rules based system to ethical culture - there is less evidence. The Graham committee, the ODPM and the Standards Board all recognise the potential of the ‘high road’ strategy for embedding principles of good conduct in local democracy. The Graham report highlights some general principles – the importance of challenge, whistleblowing and transparency - but there is not a great deal of clarity on how to achieve these goals.

The evidence in this issue paper is that the core statutory rules associated with code have been implemented consistently across local authorities, and that there is some variation between authorities in the non-statutory protocols and guidance. The early work of standards committees was limited whilst waiting for regulations to be passed, but there have been examples of more active committees. The early evidence on local determinations is that they are operating in an independent manner. Monitoring officers and chairs have taken care to ensure they work smoothly.

The new ethical framework will continue to evolve over the near future, the system as a whole has been subject to review by the CSPL and the DCLG Housing, Planning, Local Government and Regions select committee, the Standards Board for England is consulting on a redrafting of the statutory code of conduct and there is a possibility of an officer code being implemented.

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## **Appendix 1: Organisations covered by the new ethical framework**

- 386 local authorities
- 8,350 parish councils
- 31 fire and civil defence authorities
- 43 police authorities
- 6 passenger transport authorities
- 7 national parks authorities
- the Greater London Authority
- the Corporation of London
- the Broads authority
- the Council of the Isles of Scilly

## **Appendix 2: Principles of conduct in local government**

Selflessness

Honesty and Integrity

Objectivity

Accountability

Openness

Personal Judgement

Respect for Others

Duty to Uphold the Law

Stewardship

Leadership

### **Appendix 3: Methodological note**

Authorities that had completed a determination were identified in November 2004 using the Standards Board's online case database. The data base identified 50 completed cases altogether but a number of authorities had completed more than one. In total there were 40 different authorities identified, in each of these a questionnaire was sent to the monitoring officer and an independent member of the standards committee at the start of January. Reminders were sent at the end of January to those who had not responded. A number of these determinations had occurred a considerable time ago and at least two of the targeted respondents were not in position when the determination was conducted. In all some response was received from 35 out of 40 authorities, the response rate for monitoring officers was 75 per cent and for independent members it was 70 per cent.

- Responses from both monitoring officer and independent member were received from 23 out of 40 authorities.
- Responses from only the monitoring officer were received from 7 out of 40 authorities.
- Responses from only the independent member were received from 5 out of forty authorities.
- No response was received from 5 out 40 authorities.

Because of the relatively small size of the sample we decided not to pilot the survey, the questions were developed from the academic literature and official publications.

Section 4 also uses the database available on the Standards Boards website (for example Table 1). At the time of writing this database includes details of 58 completed local tribunals up to the end of 2004 and gives details about the case, the dates it was received, referred and completed.

There is some discrepancy between the number of cases found in the database and the number actually completed. So for example, the ODPM committee report states that 68 local cases had been determined by the end of August 2004, whilst the database shows 58 completed at the end of 2004. This may be because summaries of cases that have been completed have not yet been sent to the Standards Board, or the website has not been updated.