

AIMSce – Association of Independent Members of Standards Committees in England.

Into focus – the development of Independent Members.¹

By Bruce Claxton, Chairman of AIMSce.

Good evening Ladies and Gentlemen. Welcome to this our fourth consecutive Fringe Event.²

In making this presentation I wish to emphasise that all standards committees are different. They have different compositions, are located in areas of differing cultures both within the authority and within the community they serve. Some of the matters, issues or things dealt with by standards committees may be common sense or obvious to some but not to others. Some things may not at first appear to be ethical matters until you reverse the view point and ask ‘would the opposite be unethical’. I do hope that you may all take away at least one matter of interest and hopefully discuss it with others.

Some Background and why there are Independent Members.

To begin with let us look at some of the background.

In October 1994 the then Prime Minister, John Major, invited Lord Nolan to become the first Chairman of the Committee on Standards in Public Life.

The terms of reference were to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life. For these purposes, public life should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all non-departmental public bodies and of national health bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.

The Third report of the Committee on Standards in Public Life.

The Committee found local government to be far more constrained by rules governing conduct than any other part of the public sector it had examined. The Committee noted that attempting to enforce good conduct through detailed rules could itself contribute to wrongdoing, and that, as a result, it was unsurprising that a lack of clarity over standards of conduct persisted in local government. They noted, however, that despite some instances of corruption and impropriety, the vast majority of councillors and officers observed high standards of conduct.

The Report contained 39 recommendations calling for fundamental restructuring of the framework of standards and discipline for councillors and officers. The intention was to achieve clarity about

¹ A session focusing on the responsibilities and training of Independent Members of Standards Committees. Why are Independents required? How do they achieve leadership and assist in the development of the broader ethical agenda, within the structure and functioning of Local Authorities. How do they relate to the Officers and Elected Members.

² Monday 12th October, 2009 at the International Conference Centre, Birmingham.

standards of conduct at the same time as giving greater responsibility to local government itself for devising and regulating those standards.

The Committee considered a number of ways in which such a system might be structured and concluded that each council ought to have a Standards Committee. (para.175). The Committee said that it will often be sensible to have one or more co-opted members on such a committee. The presence of outside assessors, who will not have been involved in any animosity or argument within the council which may have preceded the use of the disciplinary procedure, will help to reassure all concerned that a just and impartial decision is being reached. Such co-opted members would normally be people of standing, with relevant qualifications or experience. (para. 179)

Local Government Act 2000.

The Local Government Act 2000 gave these recommendations statutory force; viz:-

Every relevant authority must establish a standards committee³

A standards committee must have at least one person who is not a member or an officer, of that or any other relevant authority.⁴

Tenth report of the Committee on Standards in Public Life.

The Committee, then under the chairmanship of Sir Alistair Graham, launched its tenth enquiry to examine the administrative procedures which flow from the implementation of the various recommendations of the Committee since it was established a decade earlier.

The Committee, in its recommendation no. 19, stated “The Government should introduce, as a matter of urgency, secondary legislation to require a majority of independent members and an independent chair for Standards Committees and sub-committees in England. This is a critical element of our proposals to improve the existing system and to lay the ground for the subsequent introduction of a locally-based system”.

The Local Government and Public Involvement in Health Act 2007.

This is, of course, the legislation which, broadly, reversed the previous order of dealing with complaints, requiring a bottom up approach, separate sub committees of Standards Committees for various stages of dealing with complaints, and that the chair of all such committees must be Independent Members.

Twelfth Enquiry by the Committee on Standards in Public Life.

The twelfth enquiry has, unfortunately, been interrupted by the need to examine parliamentary allowances and expenses.

Some of the aspirations of earlier reports are likely to become more firmly recommended when this work is completed.

Independent Members.

³ Local Government Act 2000, s. 53(1).

⁴ Local Government Act 2000, s. 53(4)(b).

‘Independent members are important in helping increase public confidence in local government. They provide a clear signal that the standards committee acts fairly and impartially. Independent members also bring a wider perspective from their outside experiences’.⁵

Therefore they need to be free to perform in a manner conducive to this concept in order to achieve these aspirations.

Training of Independent Members.

We believe that Standards for England is considering introducing a curriculum for the training of members of standards committees. However the training needs of independent members can be different from the training needed by Elected Members and Parish/Town Council Representatives because they may have no prior experience of Local Government. In my view there are three different parts to the training of independent members.

Induction training.

This needs to explain the Structure of Local Government; Who’s who and who does what; and how local government works compared with the manner of working in the organisation(s) in which the independent members have spent their careers. One very practical way of experiencing the council in action is to attend the full council meetings and a range of committee meetings. Find out how the chairs of the committees go about their tasks and ask the committee services officers how they administer their committees and provide the reports etc for the meetings.

Code of Conduct.

Understanding the code of conduct, to which all members, including co-opted members have committed themselves, is at the very core of the standards agenda. The training for this will also encompass members of Parish and Town Councils for those authorities which have them.

The next part of the code of conduct training includes the work of the Sub-committees for Assessment, Review etc.

Advanced Training.

Here I want to focus on the chair and the statutory duty ‘to promote and maintain high standards of conduct by the members and co-opted members of the authority’.⁶ The advanced training should cover chairing the Committee and its meetings. Why do I make this distinction? For an authority, through its members to develop and maintain a high standard of conduct, it must develop a high ethical culture. Many standards committee chairs have established a routine of a continuing series of meetings with the Leader or Mayor, the Chief Executive or Head of Paid Service, the Leaders of other political groupings and the Monitoring Officer. These meetings are usually separate and the intervals may vary. For example the meetings with the Monitoring Officer may be monthly but with the Chief Executive quarterly. It is a strongly held belief that high standards lead to good governance, which is much more than just the observance of the code of conduct.

Such advanced training – some may not recognise this as training but good practice – should also help a Chair of a Standards Committee not only to promote the positive aspects of high standards but also

⁵ Standards for England Guidance – the role and make up of standards committees page 10.

⁶ Local Government Act 2000, s. 54(1)(a).

to try to avoid pitfalls which might otherwise lead to expensive litigation such as Judicial Review of the Standards Committee decisions.

Achieving Leadership in the Ethical Agenda.

Let us now look at how we might achieve leadership in the ethical agenda.

Firstly the authority needs to select appropriate people. They will need to measure up to a well described job description. The selection criteria need to be robust and focused on the statutory requirements of the standards committee. The short listing and interview process should be by senior unbiased persons including, if already in post, the chair of the standards committee.

The standards committee needs to be built into an effective team which will lead, encourage and promote high standards of conduct. Through that team the council needs to create an ethical culture which will pervade throughout the council. This is not easy because it means that others may need to be persuaded to accept the importance of the issue and then to act upon it to achieve it. We must remember that we must achieve this by getting others to take the action.

This can be done by ensuring that the Leader of the Council, the Chief Executive as well as the Monitoring Officer and Chair of the Standards Committee thoroughly understanding of the Ethical Framework and be committed to the ethical culture. Regular meetings help to develop and maintain this.

The Select Committee on Office of the Deputy Prime Minister has said

“We advocate an approach whereby training on the Code of Conduct and ethical governance for newly elected members becomes embedded within the culture of the local government organisations”⁷

And this too is a means of ensuring that the culture is developed.

It can also be achieved by reviewing aspects of the Authority’s activities to discover if they comply with ethical standards. Then, recommending necessary changes and effective implementation strategies. Further, just as the Committee of Standards in Public Life in its tenth enquiry reviewed the implementation of its first decade, the Standards Committee should in due time call for reviews of its topics and re-examine them; wherever relevant make recommendations for necessary changes and effective implementation strategies.

The basis for this could be an ethical audit using an established toolkit.

Developing the broader ethical agenda.

In previous annual assemblies we have heard of the analogy of standards committees being one of a range of dogs. I do not know which dog is appropriate for this scenario but a forward looking standards committee that may want to win the annual LGC Award in the Standards and Ethics category might look at:-

- What are the concerns and perception of the public?
- Does the public think the planning process is suspect?
- Do the licensing practices give rise to public disquiet?

⁷ Seventh Report of the Select Committee on Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions at para 58.(Recommendation 15).

- One practical example is a review of the appointments of Councillors to outside bodies. Questions to be raised are whether appropriate councillors are appointed to each body appropriately?

Are such appointments made to benefit the Council or the Public Body? Are the Councillors selected because they are suited to the role, prepared for the office with the right documents (governing document/constitution/memorandum and articles of association likewise the latest accounts and report) and briefed so they understand that in the role loyalty is to the outside body not to the Council. Care should also be taken to ensure that any indemnity, directly or by insurance, (e.g. directors or officers insurance) must be provided by the outside body not by the Council except where the appointment is clearly as a representative of the Council – e.g. on a joint committee. If the appointment is to a charity, checks should be made to ensure that the charity has power to procure such insurance.

- Other activities might include:

Carrying out surveys of public concerns and perceptions; followed by in depth studies of the matters which result from the surveys and holding public meetings to evaluate the resulting study reports.

Following up at appropriate intervals the outturn and impact that any recommendations implemented from such reports and scrutiny have had.

Independents place in the structure and functioning of Local Authorities.

Independent members are important in helping increase public confidence in local government.

They provide a clear signal that the standards committee acts fairly and impartially.

Independent members also bring a wider perspective from their outside experiences.

They must be appointed to Standards Committees by law but they can be appointed to other committees as well. (12th Report of the Committee on Standards in Public Life may have more to say on this)

The committee to which they are appointed will be constrained by its terms of reference, the authority's constitution, local authority law and the law in general.

They are constrained by the terms of their appointment. They must be aware that their appointment may conflict with their personal interests or their duties as members of the standards committee - and may particularly undermine the perception of their independence, - and therefore a major reason for their being appointed.

How Independent relate to Officers in the local authority.

Independents will have had their applications reviewed by officers.

They may have been interviewed by officers.

Upon appointment they will become aware of the officers concerned with the administration of the standards committee.

They will have dealings with the Monitoring Officer and deputy/deputies.

They will begin to build a relationship with officers through induction and more advanced training.

They will become aware of the role of officers if they attend meetings of the authority and its committees.

They will find that there is a code of practice or protocol governing the relationship between officers and members. This applies equally to independents. [If they do not, they can press for the introduction of such codes].

They will realise that the authority itself or through committees or by delegated powers develops the policies of the authority.

Officers advise and implement the policies of the authority. The Statutory Officers have certain legal responsibilities they must exercise personally.

Whereas Independent Members (including the chair) do not have any individual powers their powers are to act collectively as full members of the standards committee. There is sometimes conflict between the committee, which does not have any officers as members, and the officers that are its advisers and administrators. If a committee wants to examine a particular topic which is within its terms of reference then officers should not block the work or persuade the committee not to proceed. There are a number of enquiries that members of the committee can carry out without a heavy commitment by officers. Working parties of some members of the standards committee can be set up to do such work.

How Independents relate to Elected Members.

Independent members should have been selected on the basis that they do not have any relationship with members of the authority.

Independent members must be impartial. (They can be members of political parties but not active).

Unlike the majority of committees, the standards committee does not have to follow political proportionality. Moreover, Independent Members have powers to vote.

In an authority with parish and town councils there are two groups of elected members – those elected to the authority and those appointed as parish representatives.

Independent Members will treat all elected members equally. They will treat them with respect but not build any special relationship other than that appropriate for carrying out the responsibilities required by the committee's terms of reference and letter of appointment. They need to be what they are intended to be, all as indicated earlier. They must not become subsumed into the authority and then be prevented or perceived to be prevented from being independent and bringing skills and experience from outside. Thus their training to carry out their role needs to focus not only on the role within the code of conduct but also in developing the broader ethical agenda.

In conclusion, I hope that what I have said has provoked thoughts and questions so that we can share experiences and ideas and from which we can all benefit in our various ways according to our circumstances.