A Question of Standards

Prescott's Town Hall Madness

A Cornerstone Paper

by Owen Paterson MP and Gerald Howarth MP

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Executive summary

In the past few years local government in England and Wales has been through an extraordinary revolution. Instigated by John Prescott and the Office of the Deputy Prime Minister, local councillors have become subject to a draconian new system of regulation through a new "Code of Conduct". This is enforced at national level by the lavishly paid officials of the Standards Board and at local level by "monitoring officers" employed by each council.

This new regime has drastically curtailed Councillors' right to free speech and their ability to represent the views of their electors. This undermines principles and practice of local democracy more than any previous act of central government. Its effect has been to:

- deprive councillors of the right to speak for the communities which elected them
- create a climate of fear in our town halls and council chambers
- transform the relationship between councillors and officials
- poison relations between councillors and within councils generally
- cut off councillors from their electors to a degree unprecedented in the history of local government.

In this report we record some of the bizarre and highly damaging effects of this revolution. These were first drawn to our attention by councillors in our own constituencies. As soon as these were made public, we were amazed by the deluge of cases brought to our attention by other MPs and Councillors throughout the country.

We find that not only is the Code of Conduct having a malevolent effect, but that the Standards Board has since amplified it, invoking a Common Law provision of "predetermination" which is preventing Councillors from expressing their opinions, or even campaigning properly during elections. Such is the effect of this provision that we and many of colleagues in the House have remarked that if the House Commons were to be "monitored" like local councils, it would soon be empty.

In our view, this report provides ample evidence that the new system for monitoring the standards of elected officials in local government is not working. Councillors and other elected representatives are uncertain what they can do; their public duties and responsibilities are heavily and wrongly circumscribed. They are no longer able properly to represent their constituents.

We recommend both the abolition of the Standards Board and monitoring officers. John Prescott's system is a technocratic response to a democratic system in decay. Instead, local Councillors must be responsible for raising a far higher proportion of what they spend locally which will galvanise people to vote. John Prescott's powers to bully and cajole local government from the centre have been wholly malign and thankfully, now that he has departed, we have an opportunity to reenergise local democracy.

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Our work is important to everyone who cares about the maintenance of an open and honest system of local governance.

From the Standards Board website.[1]

Introduction

In the past few years, almost unnoticed by the public at large, local government in England and Wales has been through an extraordinary revolution.

At the instigation of John Prescott and the Office of the Deputy Prime Minister, local councillors have become subject to a draconian new system of regulation which has drastically curtailed their right to free speech and their ability to represent the views of their electors.

Mr Prescott's system involves subjecting councillors to a new "Code of Conduct", enforced at national level by the lavishly paid officials of a Standards Board and at local level by "monitoring officers" employed by each council, which has done more to undermine the principles and practice of local democracy than any previous act of central government.

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- deprive councillors of the right to speak for the communities which elected them
- create a climate of fear in our town halls and council chambers
- transform the relationship between councillors and officials
- poison relations between councillors and within councils generally
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The bizarre and highly damaging effects of Prescott's revolution were first drawn to our attention by councillors in our own constituencies.

[1] http://www.standardsboard.co.uk/

In the Hampshire constituency of Aldershot one of us, as the local MP, called together a meeting of councillors with a developer to discuss an exciting proposal for the redevelopment of the town centre. The councillors were told by officials of Rushmoor Borough Council that their presence at the meeting would disbar them from taking part in any discussion of the issue in the council chamber. In 2005, a member of the same Council, representing a part of the area called North Camp, was disbarred from taking part in a discussion on the redevelopment strategy in his ward simply because he was a member of 'North Camp Matters', an association involving a wide range of local people. As this gave him an alleged 'prejudicial interest' he had to leave the room.

In Shropshire in 2005, North Shropshire District Council proposed to withdraw from running swimming pools in Ellesmere and Wem. Although these proposals provoked uproar in the towns affected, the councillors for the two communities, one Conservative, one Liberal Democrat, were told by council officials that new legislation on "prejudicial interest" would prevent them from taking part in any debates on the issue. This was despite the fact that they were so steeped in their communities that they both sat locally as Town, District and County Councillors. This particular incident was resolved when Owen Paterson sent the full text of the Statutory Instrument to the two Councillors, urged them to ignore the official advice and to speak on the topic which affected so many of their constituents.

Then, in September 2005 an enthusiastic young professional and mother, was elected as Conservative Councillor for Oswestry Borough Council, representing the village of West Felton. Shortly afterwards this village became involved in a planning dispute following the erection by Orange of a 50 foot tall telephone mast on the edge of the village which blocked the views of a number of residents.

The Parish Council and the villagers did not object to the idea of a mast in the village but did object to the chosen site which blights the view of the Berwyn Mountains and devalues their properties. These were not the only grounds for objection. Of the ten procedures set down in the planning rules, nine had not been complied with. She was approached by the Parish Council and asked to intervene.

She duly raised the matter with Oswestry Borough Council and was astonished to be told by senior officials at the council that because of the new legislation she was unable to speak up for the very people she was elected by, as the act of representing the views of her community gave her a "prejudicial interest". As a Councillor, they said, it was for her to support the council and not express the opinion of her electors.

When in the spring of 2006 each of these cases were reported in *The Sunday Telegraph*, by the columnist Christopher Booker, who was running a lengthy series of articles on the havoc being created by Prescott's "Code of Conduct", we were astonished by how many other MPs approached us at Westminster to report similar cases in their own constituencies. Mr Booker himself received

dozens of letters giving further examples from councillors in all parts of the country.

Almost the most startling instances of all came to light during the 2006 local council elections when senior council officials in Chester as well as Reigate and Banstead, wrote to all the candidates standing for election telling them that they must avoid mentioning any controversial local issues during their election campaigns. This was because, if they were elected, not only would it disbar them from taking part in any discussion of these issues in council but it might even lead to legal action against the council.

From this nationwide flood of evidence it is abundantly clear that the establishment of the Standards Board to enforce Prescott's Code of Conduct has had a devastating effect on our local democracy.

Although neither of us has been involved in local government recently and neither of us has a front bench responsibility for it, constituency cases have led us to take an interest. Correspondence, attending meetings and tabling Parliamentary Questions have encouraged us to expose the mayhem that Prescott has caused. As the Conservative Party has embarked on a wide review of its policies, we hope that those who finally decide the party's policies on local government will find this paper a useful contribution to their discussions. We believe that this has become a national scandal which has proved to be one of the most damaging blunders for which the present Government has been responsible.

Historical Background: Mr Prescott's Revolution

Although little noticed at the time, one of the most far-reaching provisions of the Local Government Act 2000, introduced by John Prescott at the time when he headed the huge department known as 'the Office of the Deputy Prime Minister' (ODPM), was the setting up of what was to be known as the Standards Board for England. This was formally established in March 2001 (and a similar system was set up by the Welsh Assembly).

Although created by an Act of Parliament, the Standards Board claims that it is completely independent of government and that its function is to maintain confidence in local democracy, as "a cornerstone of our way of life". This "can only be achieved when elected and co-opted members of local authorities are seen to live up to the high standards the public has a right to expect from them."

The Standards Board for England is thus responsible for promoting high ethical standards in local government and for investigating allegations that councillors' behaviour may have fallen short of the required standards.

With the Board came a new breed of officials known as 'Ethical Standards Officers' (ESOs). These were to become the chief enforcers of the new

system, working through the newly formed Adjudication Panel for England, an "independent judicial panel" to which the ESOs could refer complaints.

This system was reinforced by a network of "local standards committees", to which less serious complaints could be referred, while local enforcement was undertaken through "monitoring officers" appointed by each local authority.

In fact these officials had already been called into being under Section 5 of the Local Government and Housing Act 1989. This Act had provided for every principal authority to designate one of its officers as a monitoring officer whose task was to report to the authority on any proposal, decision or omission by the authority which has given rise to, or is likely to give rise to, a breach of the law.

The monitoring officers' function was also to give advice to councillors about 'personal or prejudicial interests', to conduct investigations into misconduct allegations and to present their findings to the local standards committee for its determination.[2]

Nevertheless this already existing system was given immeasurably more prominence and power by the 2000 Act, which required every authority to adopt a Code of Conduct, based on the statutory model, setting out rules which must govern the behaviour of its members. All elected, co-opted and independent members of local authorities, including parish councils, fire, police and National Parks authorities, are covered by the Code.

The Code of Conduct was set out in the Local Authorities (Model Code of Conduct) (England) Order 2001. This is, effectively, the executive instrument which the Standards Board ultimately enforces. Authorities were allowed to add their own local rules to the Model Code if they wished, although most adopted the Model Code without additions. They had until 5 May 2002 to adopt their own codes, after which the Model Code was automatically applied to those who had not adopted their own codes.

The Code of Conduct covers areas of individual behaviour such as members not abusing their position or not misusing their authority's resources. In addition there are rules governing disclosure of interest and withdrawal from meetings where members have relevant interests. Members are also required to record on the public register their financial and other interests.[3]

To a certain extent, the provisions of the Codes are unexceptional. Paragraph eight of the Statutory Instrument, for instance, deals with "Personal Interests", stating:

> A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be

[2] This is a summary of an answer to one of Owen Paterson's Parliamentary Questions. See: http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060309/text/60309w32.htm
[3] http://www.standardsboard.co.uk/TheCodeofConduct/IntroductiontotheCodeofConduct/

> given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend …

This, on the face of it, is exactly the sort of provision which might apply to Members of Parliament, as indeed is paragraph 10, on "Prejudicial Interests". This states:

> … a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

With these provisions in place, the Standards Board, with a budget just short of £10 million, rising to above that in 2007, believes that "independent scrutiny of the behaviour of members of local authorities contributes to public confidence in local democracy."

To back it up, it was able to preside over a system that could apply a range of sanctions to the elected officials who it or the local monitoring officers called to task. The local standards committees can suspend members for up to three months, partially suspend members for up to three months, restrict their access to resources or censure them. It can also require members to take training on the Code of Conduct, take part in conciliation or apologise for their behaviour.

The Adjudication Panel for England has an even greater range of sanctions. It can disqualify members for up to five years or suspend them for up to a year. These penalties are, however, reserved for the cases involving the most serious misconduct, while most are referred to the local level.

The Board is also proud of its work. In its 2005-8 Corporate Plan,[4] it declares:

> In 2003/04 we handled over 3500 allegations; referred 1105 for investigation; raised our assessment threshold to focus on more serious cases; passed cases to tribunals which imposed sanctions on over 200 members who had breached the Code of Conduct; increased the number of our staff with local government experience; supported the work of standards committees in the first 43 local hearings; advised government on draft regulations for the conduct of local investigations; and appointed a new chief executive. In addition, our Board was reappointed by the ODPM.

Also from the 2005-8 Corporate Plan, the Board was at pains to point out that it was not going to allow itself to be used as "a political football" and nor did it see its role as refereeing quarrels between members. Additionally, it declared:

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[4] http://www.standardsboard.co.uk/Aboutus/Plansandpolicies/filedownload,223,en.pdf

> The Board also recognises that members have a political platform from which to defend themselves against political attack. As a result, the referrals threshold for bad behaviour towards another member is higher than that for similar conduct directed at officers or members of the public. As a general rule, ill-considered or rude language between members and dubious or arguable claims in political leaflets are unlikely to be referred for investigation unless the alleged conduct is particularly offensive or forms a pattern of behaviour.

Nevertheless, the system has taken its toll on elected members. Between September 2003 and March 2005:

- members were found to have breached the Code of Conduct in 78 (93%) of the hearings
- most of the hearings resulted in some kind of sanction – standards committees recommended a penalty in 72 cases (86%)
- 31 members were censured for their misconduct (37%)
- 41 members were partially or completely suspended for between one week and three months (48%)
- eight members were suspended for the maximum period of three months, with another three members given conditional suspensions for three months
- three members were partially suspended for one, two and three months respectively

Some of the suspensions were conditional, dependent on whether members took action to remedy their misconduct. For example, four parish councillors were suspended for a month unless they agreed to take training within a six-week period. Another parish councillor was suspended for ten working days on the condition that the suspension would end if she provided a full written apology to the chairman of the parish council and the monitoring officer.

About one-seventh of the hearings involved alleged failures to treat others with respect. Just over a quarter included alleged disrepute but these often overlapped with other alleged breaches of the Code of Conduct. So some members who failed to treat others with respect also brought their offices or authorities into disrepute. Similarly, alleged attempts to secure an improper advantage or disadvantage and alleged failures to register interests were often considered alongside other allegations. A small number of cases involved the disclosure of confidential information, the misuse of the authority's resources and the withholding of information to which the public were entitled.

Theory versus Practice

From all the official documentation, it might sound as if Mr Prescott's new rules are working well, to enforce an eminently reasonable system. However, as always in politics it is wise to measure the theory behind any proposal against the realities of how it operates in practice.

The first complaints about the Code of Conduct began to be heard from councillors even before it came into force. These centred on the new rules defining what constituted a ‘personal interest’. Parish councillors up and down the land were affronted to discover that they were expected to declare any gift or hospitality they received of a value more than £25. Could it really be true that if they were innocently taken out to dinner by friends and the bill came to more than £25 a head, then this must be solemnly reported to the parish clerk?

So nitpickingly absurd and condescending did some of the rules drawn up by Mr Prescott’s officials seem, that hundreds of affronted parish councillors resigned rather than submit to what they considered to be a needless indignity wholly irrelevant to their conduct as honest and responsible servants of their community.

Once parish councillors had got over the shock of these initial difficulties, however, many soon discovered that the new rules on what constituted a ‘personal’ or ‘prejudicial interest’ had turned the everyday conduct of their council activities into something of a minefield. When, for instance, the chairman of Glen Parva Parish Council in Leicestershire proposed that a grant of £300 should be made to a village club for retired people[5], two members, Councillors Button and Pearce, “declared an interest” as club members. Consequently, they did not speak or vote on the matter. Simply because they had not then left the room, an anonymous complaint was made to the Standards Board that they and two other councillors were in breach of the rules.

The resulting investigation lasted nine months, culminating in a full hearing involving 15 people including lawyers, district councillors and a senior “enforcement officer” of the Standards Board (salary £61,000). The hearing lasted four hours, including a free lunch. All four Glen Parva councillors were found guilty and sentenced to a course of “training” in how to follow the rules. The whole charade cost tens of thousands of pounds.

The Standards Board had issued a pamphlet encouraging members of the public to complain about councillors’ conduct and reminding councillors themselves of their duty to report on misconduct by each other. The booklet twice underlined that complaints could only be made about councillors, not about officials, even those who thought it sensible to spend thousands of pounds of public money investigating a wholly innocuous grant of £300.

Later it emerged that the officials who policed the Code for the Standards Board, the army of “Ethical Standards Officers”, were each being paid a salary of £61,000 a year.[6] These officials, it seemed, were fuelling the considerable mayhem that was now developing in town and village halls, not least since one of its effects, contrary to the Standards Board assertions, was to incite councillors to complain about each other’s conduct.

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[5] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/05/09/nbook09.xml
[6] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/06/13/nbook13.xml

Not untypical of these was an incident reported in *The Coventry Evening Telegraph* on 16 May 2005, where Councillor Ann Lucas was accused of repeatedly swearing in a foul manner and making other rude remarks in three meetings of Coventry City Council. This triggered a complaint from Cllr Hunter to the Standards Board to the effect that Cllr Lucas had failed to treat her with respect, discriminated against her and had brought the council into disrepute. The ever-zealous Standards Board decided to investigate her claims.

More problematical was a three-year long drama which unfolded in Telford and Wrekin, Shropshire. A Conservative councillor, Lt Col Denis Allen, formerly chairman of Wrekin Conservatives, had publicly accused the Labour-dominated council of "double standards".

This had so upset the council leader, Phil Davis, described as "a considerable luminary in Labour local government circles", that he had formally complained to the Standards Board, alleging that Cllr Allen had brought his council into disrepute. After a year-long investigation, the Board's officials referred the judgement of Councillor Allen's behaviour back to the same Council he was accused of defaming.

The drama had begun in 2001 when two Telford and Wrekin Councillors had been caught breaking the law. One, a Labour councillor, was found to have been regularly making fraudulent expense claims, amounting to more than £1,000. The other, a Conservative councillor, had been found, after voting on the Council's annual rate, to have unwittingly been £37 in arrears with his council tax.

Councillors and officials did not formally report the Labour councillor to the police, who agreed that it was acceptable for the council to deal with the crime internally. Eventually the miscreant resigned but as soon as the Tory councillor's offence came to light, Telford and Wrekin called in the police. Only after investigation by the Crown Prosecution Service was the matter dropped.

When a Tory councillor then asked Cllr Davis to explain what procedures had led to the decision not to report the Labour councillor for criminal investigation, he was subjected by several of the Labour group to ridicule. Cllr Allen then wrote a letter to *The Shropshire Star*, pointing out that the contrasting response to the two cases seemed to show the Council to be operating "double standards".

His letter, according to a first hand report, provoked "mayhem". First, Telford and Wrekin's chief executive was so incensed that the letter mentioned his name in connection with the affair that he ordered Cllr Allen to sign a five-page "grovelling" apology. When Cllr Allen said he was only prepared to apologise for a technical breach of protocol in naming him and then wrote a further letter to the press, Cllr Davis lodged a formal complaint with the

Standards Board that Cllr Allen had brought the council and himself into disrepute.

On 16th June 2003, Cllr Allen was interviewed by Emmanuel Acquaah of the Standards Board for England. A transcript of their exchanges reveals an almost comical lack of mutual understanding, as Cllr Allen tried to explain what he meant by "double standards", while the official solemnly tried to explain how the council had correctly followed all the required procedures.

After considering the case, the Standards Board ruled that Cllr Davis's complaint against Cllr Allen had to be ruled on by Telford and Wrekin Council's own local standards committee which meant that Cllr Allen was to be judged by a tribunal of his fellow-councillors.

As Cllr Allen put it in a letter to the Ethical Standards Officer who heard his case, he could not understand why it rested with a group of councillors, rather than the police, to decide whether or not one of their own number should face prosecution for committing a crime.

"I am aware," he wrote, "that the Deputy Prime Minister can assault a member of the public and be immune to prosecution. It would now appear that the immunity to prosecution bestowed by membership of the Labour Party applies to councillors as well."

By 12th September 2004, the situation had developed to the point where another report[7] was pointing out that it had become "increasingly baffling" for those prepared to serve their communities in this way to know what it is safe to say.

Members of South Cambridgeshire District Council, for instance, had been told by their monitoring officer, Chris Taylor, that they might be disqualified from discussing the siting of a mobile phone mast if they themselves used a mobile phone. Neither could they pronounce on a park-and-ride scheme if they drove a car nor speak out against a proposed wind farm if they had previously made known their doubts about wind power.

This had sparked serious concern among South Cambridgeshire Councillors (five of whom were then currently the subject of complaints to the Standards Board), following an incident involving a long-serving member of the council, Robin Page, a farmer and writer who runs the Countryside Restoration Trust.

No issue was more sensitive in South Cambridgeshire then than the pressures for new development, not least through pressure from the ODPM's house building policy. The area faced the prospect of over two thousand new homes a year, including a new town of up to ten thousand homes.

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[7] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/09/12/nbook12.xml

When Mr Taylor, as the council's legal officer, told councillors that they must not hesitate to voice the faintest suspicion that any of their colleagues might be allowing themselves to be unduly influenced by developers, Councillor Page echoed his concerns. "In my opinion," he told a committee, "the relationship between some councillors, some officers and some developers is far too close." Even if no money changed hands, "this could be interpreted as a form of corruption". Mr Page therefore indicated that a certain councillor might have been reckless in attending a "soiree" given by a local developer which was planning a controversial scheme that he had opposed.

When the councillor objected, pointing out that it had not been a "soiree" but merely a private meeting at the developer's office, Mr Taylor himself complained about Mr Page's conduct to the Standards Board. Their investigations have now lasted for more than a year. Aware that more of his fellow councillors are now the subject of complaints, Mr Page asked Mr Taylor for a clearer definition of what councillors are permitted to say.

Mr Taylor then set out his guidelines in a memorandum, including the suggestion that members with a mobile phone may consider themselves ineligible to discuss the siting of phone masts which he equated with using influence to get a relative on to the housing list. So convoluted were these guidelines that councillors were more baffled than ever as to what they could or could not say, although it appeared that Mr Taylor was arguing that they must remain "open-minded" even on issues on which they campaigned for election.

One councillor, who has asked not to be identified, declared: "In the old days this sort of thing was sorted out by councillors themselves. Now it is getting so Orwellian that we no longer know, if we speak our minds, whether we will be risking a year-long investigation or not."

The South Cambridgeshire saga was to continue into 2006 when the ODPM announced plans for a new town of 8-10,000 homes, Northstowe,[8] on land owned by English Partnerships, a body run by his department. It was to be the biggest single planning application ever submitted in the UK.

Yet the councillor for the community most immediately affected by these plans was told that, under the Code of Conduct, he could not in any way represent the views of his electors. He must leave the room whenever the plans were discussed and it would be an offence for him even to discuss the subject with other councillors.

This could not have been a clearer example of the way the Code of Conduct was being used to suppress democracy in local government, not least because Councillor Alex Riley was elected to South Cambridgeshire council in 2004

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8 http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/03/05/nbook05.xml&sSheet=/news/2006/03/05/ixhome.html

specifically to voice the concerns of the villagers of Longstanton over the proposal for a new town next to their village.

Cllr Riley was astonished to be told that he would in no way be permitted to put the views for which his neighbours elected him. This was repeatedly made clear to him by Colin Tucker, now the council's monitoring officer.

Mr Tucker ruled that, because Cllr Riley lived near the site of the new town and has made his concerns about it known, this gave him a "personal and prejudicial interest", which not only excluded him from any discussion of it in the council but barred him from even mentioning it to fellow councillors.

A series of complaints were then lodged with the Standards Board, not only against Mr Riley but other councillors. Councillor Riley's latest "offence", for which he had been threatened with disqualification to act as a councillor anywhere in the country, was to e-mail other councillors asking them for help in rectifying an inaccurate entry in the minutes of a council meeting relating to Northstowe, from which he had been barred.

So concerned had Councillors become about this issue that, in January 2006, South Cambridgeshire's chief executive, John Ballantyne, sought advice from David Prince, the chief executive of the Standards Board. He explained that many people felt Mr Tucker's interpretation of the Code of Conduct had been "over-zealous" and were troubled by the fact that Mr Riley was not being allowed to represent the views of his electors. He enclosed a QC's opinion, commissioned by Mr Tucker, which supported Mr Tucker's view and suggested that one option would be for Cllr Riley to resign.

Mr Prince conceded that similar concerns about "over-zealous interpretation" had been expressed "up and down the country" but confirmed that Mr Tucker's reading, "far from being over-zealous", was fully supported by the Standards Board.

Ironically, Mr Prescott's department then took to boasting on its website that the new town will contain 10,000 homes. The Office of the Deputy Prime Minister was taking it for granted that its scheme would be approved by its own inspector, while the councillor chosen by the local community to oppose it had to remain silent.

The controversy struggled on until May 2006,[9] when Cllr Riley was taken by the Standards Board for England before an independent tribunal; after listening to a long list of charges, they decided not to impose any punishment other than that he should attend a "training course" on Mr Prescott's code.

The issue was raised in the Commons by his MP, Andrew Lansley, leaving the minister, Phil Woolas, to read out forlornly what he supposed to be the law barring councillors speaking on issues in which they have a "prejudicial

[9] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/05/07/nbook07.xml

interest". All he could find was a passage disbarring anyone who supports or assists a planning application. There was nothing to disbar a councillor from opposing a proposal.

In other words, try as he might, the minister only seemed to confirm that all his hundreds of "monitoring officers" had not even understood the law they were meant to enforce.

The most extraordinary case has recently arisen in Shropshire. North Shropshire District Council suggested imposing parking charges in car parks in three of the main market towns. This was a matter of huge interest to nearly all local people and has provoked a lively debate. Some claimed that the fragile economies of the towns would be damaged by parking restrictions, some worried that cars were being dumped all day blocking space and others argued that valuable funds could be raised for public transport.

Councillors had widely differing views, reflecting the vigorous discussions amongst their constituents. However, public debate was discouraged. Councillors were encouraged to attend a training session given by a monitoring officer from Milton Keynes, arranged some time earlier. This outlined the dangers of making decisions prior to meetings without all the relevant information. Councillors were also sent a circular letter by a senior official explaining how the new legislation affected the local debate on car parking:

> When the Council is making a decision on whether to impose charges on its car parks and if so which ones and how much it should charge, it is exercising a discretion. Whenever the Council does this you as a Member of the Council should under no circumstances reach a final conclusion on the matter before you come to a decision on it. This is the common law concept of predetermination that has always applied to local authority decision-making and is also enshrined in guidance on Members Code of Conduct issues by the Standards Board for England.
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> Members of the District Council should therefore resist making comments in public forums that could be interpreted as your having already committed to making a particular decision about the introduction of the revised car parking enforcement regime. If this could be interpreted from the comments you have expressed and you subsequently speak at a Council meeting at which the decision is being taken, I do not believe that the decision would be flawed. However should you then proceed to vote on the matter the decision could be open to a legal challenge.

However, Shropshire councillors were not alone in being exposed to this type of absurdity; they were now sharing the problem with hundreds of others, many of whom had written to us and other Members of Parliament. By 12th March 2006,[10] we were remarking that if the House Commons was "monitored" like local councils, it would soon be empty.

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[10] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/03/12/nbook12.xml

Perversely, the Standards Board was also proving that it was far from perfect itself. As early as 2002, it had responded to a complaint by a Labour member of Islington Borough Council against the conduct of five Liberal Democrat councillors. This turned out to be the board's longest ever and most expensive investigation costing £1.1 million. After three years the five councillors were cleared of all charges but only after their efforts to defend themselves had landed them with personal legal bills totalling £350,000. Eventually in 2006 the Standards Board offered them a formal apology.

This exposure to financial peril was underlined by another case involving the leader of West Norfolk council John Dobson. He had been forced to take legal advice which enabled him to reverse a Standards Board ruling in favour of a complaint made against him, also by a political opponent. This left him with a bill for more than £23,000.

The outcome of Dobson's reversal demonstrated clearly that the Code was being used to enable politically and maliciously inspired complaints, bringing in the Standards Board's highly-paid Ethical Standards Officers to intervene in petty local squabbles.

Predetermination

The part played by these national officers was only part of the problem. Causing just as much confusion and dismay were the "bizarre" rulings by over-zealous local monitoring officers, that councillors could not even remain in the room during discussions of issues on which they are judged to have a "personal and prejudicial interest", even though these may well be the very issues on which they were elected.

When this began to attract unfavourable attention from MPs and journalists, the Standards Board came up with an ingenious new defence of the system over which it presided. In the summer of 2005 one of us (Gerald Howarth) had an exchange of letters with David Prince, the board's chief executive, over one of the cases cited in our introduction.

Several Rushmoor councillors had been instructed that they could not take part in debates on local planning issues because their participation in meetings on these issues outside the council chamber was ruled to have given them a "personal and prejudicial interest". When Mr Howarth persisted in questioning this, as undermining the principles of local democracy, Mr Prince insisted that the Board was "strongly of the view that councillors perform a vital role in representing people in their area". But he went on to claim that it was a "well-established principle of the common law" that "decision-making by public bodies should be approached with an open mind'.

What was remarkable was that his statement that this "rule against predetermination and bias", was quite "independent of the Code of Conduct". So, if they had previously given an impression that they had a view on an

issue, this in itself would be enough to prevent councillors taking part in a discussion of that issue, irrespective of the Code.

This was entirely endorsed by Sir Anthony Holland, describing himself as "Chair" of the Standards Board. In a letter to *The Sunday Telegraph* on 19 March 2006,[11] he insisted that, although the Code governed the conduct of council members, the Board also relied on "predetermination" as "a separate issue". Again he emphasised that this stemmed from common law, not the Code or the Standards Board. According to Sir Anthony, "It simply means that decisions shouldn't be made if people are not willing to consider the alternatives, i.e., they must not have closed minds."

The extraordinary aspect of this new tack was its assumption that it would be an offence under the common law for any local politician to express a view on an issue before it came up for debate in the council. Yet if this same principle was applied to MPs, who are supposed to be elected precisely because they have declared their "predetermined" view on a whole gamut of policies set out in their party's manifesto, not one of them would be allowed to enter the Commons Chamber.

A *reductio ad absurdum* of the Board's argument came during the 2006 council elections, when all candidates for election to Chester council were sent a letter by the city's monitoring officer Charles Kerry. This stated that any prospective councillor who had expressed a 'pre-determined' view on any issue could not, 'as a matter of law', take part in any decision relating to that issue. This covers 'any expression of opinion in any election material, newsletters, letters of press coverage'. The only way a candidate could refer to contentious issues, Mr Kerry advised, must be along the lines of "From what I know at the moment, I am concerned by...".

During the same campaign in Surrey there was much local anger over a plan by Reigate and Banstead council to close the local swimming pool and sports centre in order to sell off the land for housing. All the candidates were sent a letter by the council's chief executive, Nigel Clifford, warning them that they must not express any view on this proposal during the campaign because this would indicate that they had "closed their minds". They must wait until they had seen a report on the plan being prepared by Mr Clifford's officials.

The Borough of Rushmoor includes the Farnborough aerodrome, home of the famous air show. When the Ministry of Defence decided it was surplus to their requirements there was a proposal to turn it into an executive jet centre. Patrick Kirby stood for election as an independent at the local elections on a platform hostile to the proposition. He won but was promptly told that his predetermined position on the issue would debar him from membership of the key planning committee and indeed, from voting at full council. Although disagreeing profoundly with Cllr Kirby's view, Gerald Howarth has been

[11] http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2006/03/19/dt1901.xml

highly critical of the Board and its agents for their shameful denial of Cllr Kirby's right to speak out on the very issue which won him his seat.

Closing down the debate

An even more serious example of how Mr Prescott's Code and the associated regime were giving unelected officials power to clamp down on legitimate political debate was one raised at this time in letters from councillors in many parts of the country. This was the charge that both officials and senior councillors were applying the new rules to operate a system of 'double standards'.

It was noticeable how the rules were all too often being used to exclude from debates councillors who opposed official policy because this supposedly gave them a "prejudicial interest", while members supporting their council's policy or ruling establishment seemed curiously immune.

One of many cases that came to light was when the North-East Regional Assembly earmarked a ward represented on Derwentside Council as suitable for more wind turbines, in addition to six wind farms already allowed in the area. John Pickersgill, the ward councillor, decided to organise a local referendum. Faced with the prospect of 17 more turbines, 80 percent of the residents voted, more than 80 per cent of them opposing the proposal.

Despite this exercise in local democracy, when Councillor Pickersgill tried to raise this in a debate on the assembly's regional planning strategy, he was excluded from the room as having a "prejudicial interest". However, it was deemed quite acceptable for the council's leader, Alex Watson, to speak in favour of the assembly's policy, even though he did not even think it necessary to declare that he was himself also the regional assembly's chairman.

When Mr Pickersgill raised this with the council's "monitoring officer", he was told that the leader had done nothing wrong. This seemed so anomalous that he reported the case to the Standards Board. An independent inquiry ruled that Councillor Watson was in breach of the Code after all. Sadly, Mr Pickersgill had become so disillusioned by the demoralising effect of the Code on his council that he nevertheless resigned in disgust.

In yet another example from South Cambridgeshire, one prominent councillor failed to declare a prejudicial interest or to leave the room during interviews with representatives of five charities funded by the council, even though she herself was chairman of one of the charities. The monitoring officer ruled that a complaint to the Standards Board would be "inappropriate" though no fewer than 11 complaints had been lodged against other councillors.

In Dorset, Richard Thomas, a town councillor in Shaftesbury known for frank criticism of the council's establishment, was driven to ask whether having had ten complaints about him lodged with the Standards Board by fellow councillors constituted a record. One investigation, which cost council taxpayers more than £20,000, was eventually found to be based on a false allegation and all the remaining complaints were eventually rejected or dropped.

Yet what was now being called "the reign of terror" continued. In Hastings, on 2nd April,[12] it was reported that a row had arisen when Councillor John Wilson chaired a discussion and voted on a planning application for a site only 80 yards from his home. Another councillor, David Hancock, protested that he should have declared an interest. This was because, the previous year, Councillor Hancock himself had been found guilty of breaching the Code of Conduct by failing to declare an interest when the planning committee was discussing an application for a site 700 yards from where he lived. The council's standards committee was obliged to consider Councillor Hancock's complaint, but voted, seven to one, that the hearing should be in secret. Only when the minutes were leaked to the local press did it emerge that Councillor Wilson had been cleared of any offence.

In Somerset, Paul Crossley, the leader of Bath & North East Somerset council, was a prime mover in a highly contentious plan to allow the University of Bath to extend over 55 acres of open space above the city, which are not only part of Bath's green belt but are also included in its World Heritage Site and an Area of Outstanding Natural Beauty. Yet it was Councillor Crossley who, in 2002, suggested that the university should be allowed to build on this site and who was now urging local residents to write in support of the plan.

Under the Code, this clearly constituted a prejudicial interest. Members of the Campaign to Preserve the Green Belt at Claverton Down lodged a complaint, pointing out that if the rules were applied consistently, he should have been barred from any discussion of the scheme. The council's monitoring officer refused to take any action against his council leader.

Towards the end of May 2006 a number of councillors were directly rebelling against the imposts of their monitoring officers. Councillors in South Hams, Devon and in County Durham voted unanimously that they deplored the Code of Conduct; they demanded their right to freedom of speech and to represent the views of their electors.

The most senior representative of local government in the country, Sir Sandy (now Lord) Bruce-Lockhart, chairman of the Local Government Association (LGA), the influential cross-party body representing 500 local authorities in England and Wales, chose to express the LGA's serious concern over the issue.[13]

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[12] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/04/02/nbook02.xml
[13] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/05/21/nbook21.xml

In a report entitled "Closer to People and Places", Sir Sandy and his colleagues, including his Labour predecessor Sir Jeremy Beecham, called on the Government "to ensure that councillors are not legally restricted from speaking out for their communities" on issues such as planning.

The LGA fell short of calling for the outright scrapping of the Standards Board. At least it called for an end to the pernicious anomaly whereby councillors were being forbidden to speak for their communities and even to express the very views they had been were elected to represent.

A system gone mad

The functioning of local authorities depends on two clear elements, the elected councillors who determine policy and the officers who implement it. The councillors also approve the budget, monitor the performance of their officers and approve their actions, especially where powers are delegated and the officers are permitted to make certain decisions without prior reference to the elected members.

The councillors themselves therefore perform two functions. First and foremost, they are elected representatives, voted in to carry out the wishes of their electorate. Secondly, but with equal force, the councillors are part of the management of a corporate body, jointly and severally liable for its conduct and its compliance with the laws which determine the powers and responsibilities of local authorities.

What is clear from the narrative is that the system set up by John Prescott and enforced by the Monitoring Officers and the Standards Board, has ignored the first function and concentrated entirely on the second. Councillors under the Prescott regime are corporate managers and must represent the Councils in much the same way as directors represent their companies.

Furthermore, the system introduces an anomalous situation where Councillors, who are theoretically in charge of their officers and accountable to their electorates for their actions, are now effectively held to account by officers who claim a higher precedence than the electorates. No longer are the voters in any way the arbiters of Councillors' behaviour. Their masters are the monitoring officers.

Here also, there has developed an insidious and unwelcome flaw in the system. The monitoring officers are appointed not by the Council as a whole but depending on the council, either by the chief executive alone or with the approval of one or other of the committees responsible for senior appointments. Evidence has been given by a number of councillors that appointments have been "rigged" and are quite often politically biased.

In some cases, the appointments have been made to suit the Chief Executive, whose politics are not necessarily the same as the ruling body on the council, or have been made by a "cabal" of senior councillors who have ensured that "their man" is in place to do their bidding. That this is the case is evident from the many accounts of partisan monitoring officers offered by councillors. What the system does not consider therefore is the ancient question, "*Quis custodiet ipsos custodes?*"

Then there is the issue of "predetermination" which is not in the Code but is invoked by the Standards Board and enthusiastically taken up by monitoring officers throughout the country. This would appear to negate the very basis of representative democracy. Voters, it would appear, cannot expect a councillor to hold fixed views on anything or to represent their views in the debating chamber.

Where the problem seems to lie is in a fatal confusion where councillors, as a collection of individuals, are taken to be the "Council". Thus, they are expected to behave in a corporate manner. In our system, however, it is only through the synthesis of a debate that a view can be reached and it is the adversarial system where opposing sides argue out an issue that allows decisions to be reached where the best way forward is often a matter of opinion.

The effect of "predetermination" applied to the Council as a whole, is that it must not take a fixed view on any issue until such time as it has been aired and voted upon through the democratic process. Without councillors taking fixed positions and arguing their cases there can be neither democracy nor good governance.

Furthermore, there has now arisen a fear of challenge by the Board and its agents which has had the effect of creating nervousness among councillors and officers. In Rushmoor, those councillors nominated by the authority to sit on the Board of Pavilion Housing Association have been disbarred from speaking, let alone voting, on matters to do with Pavilion when anything to do with the housing association comes before the council. So disillusioned have the council become that they have removed their councillors from the Pavilion board, thereby depriving the council of valuable input into the association.

A Resolution

This report provides ample evidence that the system for monitoring the standards of elected officials in local government is not working. Councillors and other elected representatives are uncertain what they can do; their public duties and responsibilities are heavily and wrongly circumscribed. They are no longer able properly to represent their constituents.

The central resolution to what is a crisis of local democracy, must be both the abolition of monitoring officers and the Standards Board. There can be no

place for a system whereby officials are able to hold elected councillors to account.

That leaves the need for a system to deal with Councillors who do break the rules. It is pointless expecting the electorate to sanction misbehaviour. Most times, voters will be unaware of the details of what are, in many cases, breaches of arcane rules and in any case elections are decided more often by issues unrelated to the performance of individual councillors.

There remain criminal sanctions for corruption and law-breaking, with investigations carried out by the police. The local government ombudsman has a vital role in bringing to the fore cases of maladministration and perhaps its remit could be strengthened, with less reliance on ex-local government investigating officers, to give it greater intellectual independence.

There is always provision for the councillors themselves, as a body or individually, to make representations through their political groups to the chief executive of any council, asking for one of his senior officers to carry out *ad hoc* investigations of the conduct of any councillor. The findings could then be dealt with through the normal political process. When it comes to sanctions for conduct which is not contrary to law, the electorate must be the final arbiter.

The central problem is that as long as voters are not engaged in the local political process, electoral sanctions are meaningless. The problem of checking councillors' behaviour, therefore, is the problem of local government as a whole. Such issues as reforming local government financing, with far greater local tax-raising powers and much less reliance on central funding, undoubtedly need to be re-examined.

Mr Prescott's system is a technocratic response to a democratic system in decay. It is addressing the symptoms and not the disease, in a system that requires more profound and fundamental reform. Abolishing monitoring officers and the Standards Board, therefore, will not solve whatever problems there are but then they were never the solution to the problem in the first place and have created even more problems. The supposed cure, if not worse than the disease, has not made it any better.

Local Government will breathe a huge sigh of relief now that the blundering John Prescott is tantalisingly close to the exit door. His natural instinct to bully and cajole local government from the centre has had a wholly malign impact. He has had his powers to interfere in local democracy removed and now is the time to unwind his legacy. We look forward to a full debate on the way local government should go, in which councillors themselves can take full part, unhampered by unaccountable monitoring officers and the machinations of Mr Prescott's Standards Board.

Part of that debate must be a means by which the process of local democracy can be re-energised, for that is really where the problem and the solution lies.

For instance, with our example of the Coventry councillor who swore in the chamber at her colleagues, would she survive in a system where the public took a keen interest in the proceedings of their local council and voted on the performance and behaviour of their representatives? Do we really need some vast apparatus of state to control such behaviour?

At the heart of the problem are two issues. Firstly that so much of local government finance is provided by central government, so that there is no direct relationship between the performance of councils and the amount of local tax charged. Secondly, so many of the duties and functions of local government are dictated by central government that local authorities at all levels are little more than paid agents of central government.

As a result, most people tend to the view that local elections are of little consequence and that not much will change, whoever is voted in. The feeble turnout in recent local elections is directly related to the reduction in the influence a local vote will have on local taxation and the performance of the local council. This continues through the terms of the local representatives, where little interest is taken of the day-to-day proceedings of councils and even local newspaper reporting is spasmodic and incomplete. Such is the situation that in our constituency post bags many of the complaints addressed to us should be more properly directed to local councillors, as they concern local authority issues. Yet, such is the lack of confidence in the local government system that many people make their MPs their first, not last, port of call.

If this is to change, local authorities must be given much more autonomy in how and to what level they provide services. Even where there are statutory provisions such as education and social services, local authorities must be allowed to determine the nature and scale of provision so that they are then answerable to their local electors rather than central government for delivery.

Changes such as these, in themselves, will not alter anything overnight but would certainly stop the slow death of local democratic government. It would also stop the steady haemorrhaging of high quality councillors who are fed up with the central interference, overregulation and lack of autonomy in local government. It is most certainly the case that fewer fresh people of high calibre are being attracted to local government service, not least because there is so little of importance to decide and little opportunity to have a real influence on local policy.

A return to true localism where local authorities have a large degree of autonomy and are responsible to local voters for their performance would transform local government.

The Standards Board and all it represents has been a disastrous move in the wrong direction. It is a centralising agency which diminishes rather than strengthens local government and puts far too much power in the hands of unelected officials. It is a drain on the taxpayer. It should be abolished without delay.