Research Report

How proportionate is the standards framework?

Prepared for: Standards for England

bmg research

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Table of Contents

1 Introduction

This report provides the results from the qualitative research conducted for Standards for England [SfE] that was commissioned to evaluate how proportionate the framework is. There is an accompanying 'Research Appendices' report to this one that outlines the full background and methodology, as well as the topic guides and stimulus material used within the groups.

There are a number of considerations that need to be realised prior to reading this report:

1. As different questions were asked to each group and respondents had various levels of knowledge, not all sections have responses by all groups. Additionally, for the majority of subject areas, there is consensus across groups; in these instances the group opinions have been collated and reported as such.

2. Whilst we appreciate that Monitoring Officers [MOs] are also stakeholders for SfE, for the purposes of this report, when we refer to 'stakeholders' we are not including MOs; this group is often reported separately.

3. In the report, all quotations are marked in italics along with an indication of whether the respondent was a member of a public, stakeholder or MOs group, and the type of authority in which the group was held. With quotations from members, where possible, their status is also provided as follows:

EM	Elected member
EM, SC	Elected member and member of Standards Committee
LOC	Leader of Council
IM	Independent member of Standards Committee
IM, CSC	Independent member and chair of Standards Committee
FA	Member of Fire Authority
PA	Member of Police Authority
NP	Member of National Park Authority

   Where it is not possible to identify a particular respondent from the transcription, elected or independent members are referred to only as 'Member'.

4. Quotes are for illustrative purposes only; not all available quotes are represented within the report.

5. Please note that to aid discussion scenarios based on past cases that have been through the framework were provided to the stakeholder and public groups. The details of these scenarios are not mentioned in the findings as they were to aid discussion as opposed to evaluating past cases. As such findings are provided in view of opinions expressed from analysing those scenarios, in the case of the public and many stakeholders [except MOs and SC members] the scenarios are the only example and knowledge base they

have to refer to in matters regarding SfE. Therefore, their answers cannot be assumed to express tacit knowledge of SfE or the framework.

2 Executive Summary

2.1 Introduction

In May 2009 Standards for England [SfE] commissioned BMG Research to undertake research that would determine the extent to which the general public, stakeholders and officers view the standards framework as proportionate.

Qualitative research, using a focus groups format, was commissioned as a way of obtaining detailed, contextual and discursive information from residents and stakeholders, in an informal setting. It provided an opportunity to ascertain awareness and perceptions as well as suggestions for future change.

In total, 13 focus groups were undertaken with three different audiences: general public, monitoring officers [MOs] and other stakeholders [elected members; Standards Committee independent members and members of Standards Committees for the Police; Fire and National Parks].

Because of their disparate locations, an on-line group was convened for the monitoring officers.

With stakeholders and the general public, research took place in six different areas, with a stakeholder and public group undertaken in each locality. The six locations were selected to reflect a range of types of authority [1 London, 1 Unitary, 1 County Authority, 1 Parish Authority and 2 District Authorities], political control and also geography [north, midlands, south, London]. Stakeholders and MOs were given assurances that in the research report, geographical locations would be anonymised.

2.2 How workable and easy to comply with is the Code?

Both MOs and other stakeholders are broadly in agreement that the Code is reasonably easy to comply with and much is based on 'common sense', with the notable exception of the sections on the registration of interests. There are several reasons for this:

1. The definition of personal and prejudicial interests can be a problem amongst District and Parish Councillors because of the small and tight-knit nature of the communities;

2. There are issues with the dual role of twin-hatters and more generally issues which fall across the tiers of local government, particularly planning; and

3. Councillors feel that the declaration of interests affects their ability to speak in meetings, stifling the democratic process.

MOs widely stressed that the workability of the Code depends, to a considerable degree, on members' willingness to undergo the necessary training.

Stakeholders [with the exception of MOs] raise further concerns to do with issues around procedures and application, these include:

1. The belief that the Code is open to interpretation both on procedure and content;

2. That there is a view that there is a widespread 'variability in toughness' of individual Standards Committees [SC];

3. There is also considered to be a variability in the frequency of the application of the Code;

4. There is deemed to be a lack of clarity in the terminology, particularly in regards to vexation litigants; bringing the Council into disrepute and prejudicial interests;

5. The Code is too long, as is the detail – they expressed a need for clarity and a more succinct Code;

6. The constant fear that the Code is creating 'a legal investigation machine' that curtails democracy; and

7. There are mixed views about the Code applying to the private, as well as the public life of Councillors.

2.3 Acceptable and unacceptable behaviour

Generally, all groups agreed that Councillors should display behaviour that was seen to be 'beyond reproach'; gaining the trust of the public and conducting their actions with integrity; honesty and common sense. There is a division between Councillors and the public as to whether Councillors should be accountable to the Code in their private as well as their public lives; something the public feels very strongly about but that many Councillors abjectly disagree with.

However, all groups were very clear on what was deemed to be unacceptable behaviour, which was behaving in any of the following ways:

1. Failing to declare a personal and/or prejudicial interest;

2. Displaying personality or behavioural traits that showed poor judgement and did not display common sense; particularly if such behaviour brought the Council or another person's reputation into unnecessary disrepute;

3. Compromising another authority or organisation's work, particularly the police or fire department's;

4. Instances where the public [a 'normal person'] would have suffered a severe penalty for conducting the same action; and

5. Anything that displayed intention to, or did, provide a false or misleading impression to the public.

2.4 Dealing with unacceptable behaviour

In broad terms, the majority of respondents addressed discipline issues under the following three categories:

1. If the behaviour did not fall under the aforementioned 'unacceptable behaviour list' and did not cause harm to an individual or organisation, then that situation should be dealt with 'internally' outside of the framework [by Leaders; Chief Executives, mediation and training etc]. For example, dealing with instances of

petty, trivial and childish behaviour that many considered to be 'the cut and thrust' of politics;

2. If the behaviour was on the list **and** did not cause any harm to an individual, then it should be dealt with by the framework; and finally

3. If the behaviour harmed an individual then it should be dealt with by the police.

2.4.1 Issues within the framework

There were two main issues with the framework, aside from the issues around disproportionality [detailed later]. The first was that many stakeholders felt that the Code makes it too easy for complainants to trigger an action; there are too many complaints and this is costly. MOs felt that by providing a local determination of cases alongside the ease of triggering an action, there have been more, not less cases. It was felt that alternative courses of action were needed such as providing them with the ability to review the complaint in the first instance.

The second issue was that not all respondents were convinced about the objectivity of Standards Committees given the perception that duty to party politics over-rode common sense and objectivity. Further, a few mentioned how hard it can be to find suitably qualified, able and interested independent members for committees.

2.5 Sanctions

Generally MOs and Standard Committee members view sanctions available to the framework as fair. However, public respondents and elected members view investigation to be fair or not according to whether the outcome and sanction meet with their own judgement on the case. There is agreement amongst the public, and many stakeholders, that in the cases and examples which they judged as serious, the Code is too lenient and the sanctions inadequate.

The public want to see far tougher sanctions and there is support for a more graduated sanctions regime from 'real' sanctions for more minor breaches of the Code [such as mediation and training as opposed to providing an apology] to really serious ones at the other end of the scale [e.g. ban for life as serving as a Councillor or a criminal sentence or community service].

2.6 Does the framework provide Value for Money?

Amongst all three groups there is broad agreement on the general principle that it is important to spend time and money 'policing' the Code. However, when considering costs of specific cases many are shocked by the costs and do not feel that they represent value for money. Further, for stakeholders and MOs, the commitment to accountability is weighed against the conviction that local determination has significantly increased costs for local authorities and that these are now often disproportionate to the severity of the alleged breach and the frequency with which significant breaches occur. As such, many find it hard to justify the costs of the required permanent infrastructure – despite it still being 'early days'.

In order to evaluate and provide value for money, it was suggested that the following be implemented:

1. Public access to detailed breakdowns of costs for cases to be provided;

2. Wherever possible alternative approaches to using the framework should be used;

3. The use of external legal representation should be limited; and

4. More information about SfE should be made available to the public, for example, its remit and the costs it incurs.

2.7 How proportionate is the framework?

Overall, all respondents clearly believe that the standards framework is worthwhile. They all see it as an important 'safeguard' which is vital to public accountability. However, they feel the framework is out of all proportion to the number and severity of the cases that arise in their areas. Many stressed the need to see the system be made more robust and streamlined. Additionally, respondents often felt that the sanctions applied were disproportionate to the error or mistake made and that the timescales for conducting a case were inexcusably long.

2.8 Taking the framework forward

As respondents generally believe that the framework is worthwhile but that it needs improving, they suggested a number of tactics to streamline the system and make it more effective in their view:

1. Someone needs to play a more significant role in vetting and filtering trivial or minor cases so that they do not reach Standards Committees;

2. There needs to be a greater codification of the standards to make them clearer so there would be less need for investigation;

3. More issues should be dealt with by group leaders or whips;

4. Standards Committees should invite another, more experienced Standards Committee to investigate the allegation [unpopular with some, particularly independent members];

5. The imposition of sanctions for bringing vexatious complaints;

6. SfE should provide more guidance on how they reach their decisions/sanctions;

7. Some would like to see Standards Committees be able to hand out harsher sanctions rather than having to go to SfE or the Adjudication Panel for England; and

8. Standards Committees should examine their Council's protocols before passing an issue up to SfE.