Local Government Standards Regime

[Mr Philip Hollobone in the Chair]

2.30 pm

Mr Philip Hollobone (in the Chair): As a local borough councillor myself, I am very interested to know what Mr Bob Neill is going to say about the operation of the new local government standards regime.

Robert Neill (Bromley and Chislehurst) (Con): Thank you, Mr Hollobone. I am delighted to see you in the Chair, not least because you were a borough councillor in my constituency before you moved to your current constituency. Most of us have had direct personal experience of local government over a number of years.

I sought a debate on this subject because the coalition agreement set out clearly the Government's intention to remove what, by common consent, I think, had become regarded as a top-heavy and excessive standards regime. It was debated at some length when the Localism Act 2011 went through Parliament—a process in which I had a certain personal involvement, if I might put it that way.

The Government's intention was crystal clear: although transparency in councillors' dealings and behaviour is rightly important, and should always remain so, and although it is important that every council has in place a code on members' conduct that is cognisant of the Nolan principles of public life, there should be flexibility within those parameters, with a view to councillors no longer being subject to the degree of inhibition that, intentionally or unintentionally, had grown up under the old regime through a mixture of the operation of the then standards regime and what many regarded as a gold-plating of the interpretation of the common law on matters such as predetermination. That was the objective; Parliament's intention in removing those inhibitions from councillors was crystal clear. It was in the interests of greater democratic involvement at local level and greater transparency. In fact, by and large the objective was uncontroversial on both sides of the House. We had disagreements over some details and means, but the objective was broadly supported.

My remarks today are not partisan. I want to put before the House certain concerns, which have come to my attention over the past few months, about how in some places the regime operates in a way that does not always reflect the intentions the House expressed when the Act and subsequent

secondary legislation went through. Those concerns arise from local authorities of all political complexions; this is not a political issue.

Mr Peter Lilley (Hitchin and Harpenden) (Con): I congratulate my hon. Friend on securing the debate on an issue that deserves far more attention. He is bringing his great expertise to bear, so may I ask for his view on one of the many instances of heavy-handed interpretation of the rules that have arisen in my constituency? Councillors have been advised that if they attend a meeting held to protest about plans for redevelopment of the city centre in Hitchin, they may be deemed to have fettered their discretion, even if they announce when attending that

meeting that they will not allow it to do so. Could he confirm that is absolutely not the intention of the legislation?

Robert Neill: I am grateful to my right hon. Friend for raising that case, which I have also come across. When I was the Minister responsible for signing off the regulations and the code, it was absolutely not the Government's intention that the code should be construed in that way. With respect to whoever gave the advice, it is frankly nonsense to interpret the legislation in that manner.

My right hon. Friend highlights one of my principal concerns, of which the House needs to be aware: the varying quality of interpretation of the code from one authority to another. He gives an example of a situation that most people with common sense would regard as nonsense. Rather than supporting local democracy, such cases undermine it. I am grateful to him for raising it, and I hope that my hon. Friend the Minister can restate the Government's clear view that they do not intend the code to lead to that form of inhibition.

My right hon. Friend's case parallels an instance I came across involving a councillor who was coming up for election. The big issue in their ward was whether a golf course in that ward might be subject to development. All the candidates were effectively advised that should they be elected, if they had turned up to a residents' meeting to consider that concern, they would be regarded as having predetermined any application that subsequently came before the council. It was the green lungs of that community—it was the big issue. People wanted to know where those standing for election from all parties stood on it, but the monitoring officer was giving advice inhibiting them from doing so. That was never the intention of a proper standards regime.

Exactly the same advice seems to have been given in my right hon. Friend's example, and it is worth dwelling on it, because I see that the councillor went back to say, robustly, "I've got my own legal advice, and it comes nowhere near that construction." We seem to be getting into a very dangerous state of affairs, where monitoring officers, perhaps through an abundance of caution—I put that charitably—come up with an interpretation of the law that clearly inhibits councillors from expressing a view. My right hon. Friend is right that the councillor was making it clear that they would go along, perhaps as an observer, and say, "I have come with an open mind." The monitoring officer came back and said, "Even if going as an observer, you will be taken to have predetermined the issue," because the title of the meeting started "Hitchin against" or "Save Hitchin from". Such stretching of the rules and the interpretation of the common law concept of bias brings the regime into disrepute.

I hope that this debate gives an opportunity for the Government to restate what has always been our contention: proportionate standards do not require that degree of micro-management. It does no service to councillors of any political persuasion in any community. That is one of a number of examples we have found in this field, and I was going to take the opportunity to deal with some of them today. Equally, there have been examples of real success under the new regime, and it is right and proper to recognise that.

Wiltshire, a big unitary authority, has adopted a regime that is accurately described as strong on transparency but light-touch on participation and voting. That is a sensible approach; provided council members have stated what their position is, there should be no fall back to the old idea that they must automatically be excluded from consideration if they have declared any potential interest on the record. Wiltshire has made the regime work well. Other authorities seem to have adopted a much more prescriptive and old-fashioned approach, which gets in the way of council members representing their constituents. We all know that this is a long-running problem, and it was clearly the intention of this House and Parliament as a whole to rectify it. Perhaps the difficulty is that, in some cases, the mindset of some, but not all, monitoring officers has not changed to reflect the localism agenda.

For localism to succeed, as we all wish it to, it requires two things; first, political will on the part of elected members to carry out the mandate their voters gave them; and secondly, intelligent and informed co-operation from their officers—not obstructing council members from carrying out that political will, but assisting them to do so. Sadly, we have seen the growth of a risk-averse culture in monitoring standards and the way in which councils transact important areas of business. That risk-averseness needs to be addressed.

It is sometimes difficult for an individual councillor—perhaps newly elected to a small authority or a back bencher in a large authority—to stand up, as my right hon. Friend's constituent did, and say that they have access to advice that frankly brings the monitoring officer's view into question. It is therefore all the more important that we make it clear that that sort of gold-plating is needless and unhelpful. There have been many such examples around the country, and I am happy for hon. Members to raise others during this debate, because I know that they are important and pressing.

The problem relates not only to an overly restrictive approach to the interaction of the code and predetermination, but to the approach taken towards councillors who do their public duty. That duty may sometimes involve saying controversial things about the operation of the authority itself, but it is wrong—as it has been in some of the cases that I have seen—if, in effect, that is used to gag a member from speaking out. I will happily give a few examples.

The first example was raised by Lord Tyler in the other place during the passage of the Localism Act. A member of Cotswold district council who had acted as a whistleblower found himself the subject of a complaint. Ultimately, the complaint was dismissed, but it was a trying and difficult process for that member. Members often find themselves alone, and as Lord Tyler put it—describing exactly the vice that we sought to avoid—councils have

"catered for—even encouraged—persecution of whistleblowers".

That is strong language to use. I do not know whether the word he used is appropriate, but that is sometimes the effect. Of that case, Lord Tyler said that

"one assiduous councillor, doing precisely what electors expect of him, has been proved right in identifying potentially illegal activity".—[Official Report, House of Lords, 14 September 2011; Vol. 730, c. 830.]

Instead of the whistleblower being encouraged or supported to bring information into the open, it seems that the Standards Board regime was used to bring a complaint against him, albeit the allegation was ultimately ruled to be unfounded. That is exactly the type of behaviour that we intended to end, but unfortunately that has not happened in all councils. I have already given the

example of Wiltshire council adopting a proportionate and sensible approach, but there are examples of members having to fight very hard against the mindset of officers who want to retain, in effect, the whole of the old system, with the exception of the Standards Board for England regime, which has obviously gone.

A cabinet member of a district council in the home counties told me that they had been put under considerable pressure by officers to adopt a code that, in effect, simply transplanted the old regime and put it in place without any changes. It happens that that cabinet member is married to a senior partner in one of the leading local government law firms in this county, so they were able to go back to the monitoring officer and say robustly, "What you are advising me goes well beyond what is necessary. We are not obliged to rewrite all the old rules on predetermination and bring that into our code," but how many members would have been in a position to challenge the officer's advice, just as the constituent of my right hon. Friend the Member for Hitchin and Harpenden (Mr Lilley) did? That is a serious issue.

There is a serious question about the way in which monitoring officers sometimes operate. That job seems to have grown. Many monitoring officers—those in my local authority, for example—are excellent; they do a thoroughly good and professional job and it would be wrong to say otherwise. In other instances, however, the role is either amalgamated with other functions or, frankly, does not always seem to be held by somebody with any considerable degree of legal expertise, which is not satisfactory.

I have some examples from councils across the country. One councillor said that they suspect many monitoring officers are still attempting to control elected members—these are the member's words, not mine—and to frighten them into leaving the chamber on the very flimsy grounds of having interests to declare; and whenever important issues come up for debate, the councillor has found that a paper entitled "Monitoring officer guidance" is included with the agenda, and this tries to direct the members with veiled threats. Whether it is intended in that way, I do not know, but, inadvertently, heavy-handed guidance can certainly have the effect of inhibiting members who are confronted with it. It seems bizarre that every item of any significance should require monitoring officer guidance. That takes the regime well beyond the monitoring officer's real and proper role, which is to ensure that the council acts lawfully and intra vires, and appropriately to police whatever the code is.

It is worth looking at another county. South Norfolk district council adopted the very light-touch code that was issued, when I was still a Minister, by the Department for Communities and Local Government. That has worked well and entirely satisfactorily. Norfolk county council has adopted an extremely complex code, which is, in effect, the old-fashioned one by another name. We now have the bizarre situation of the leader of the county council being subject to a complaint from the district council leader about what is essentially a dispute

between county and district about the site of an incinerator. I do not make any comments on the merits of that dispute one way or the other, but the idea that a legitimate political debate should find itself up in front of the Standards Board is to use the old thinking and procedures, which it was the Government intention to remove.

Other councils have seen even more striking and worrying examples, and I particularly want to refer to the London borough of Tower Hamlets. That authority has a directly elected mayor. He is an independent, but it is well known that he has close connections with the Respect party. The mayor is supported by sufficient independent members to ensure that he has the blocking third to get the necessary budgets and mayoral policies through. However, throughout his time, there has been a history of vexatious complaints against members of the opposition Conservative and Labour parties—Labour is actually the largest party—made by members of the mayor's cabinet. Councillors appointed by the mayor to his cabinet have made complaints particularly against the leaders of the Labour and Conservative groups. Sometimes the complaints have not come to fruition; in other circumstances, they have. That causes real concern.

The monitoring officer of Tower Hamlets, Isabella Freeman, is also the assistant chief executive for legal services, and the monitoring officer is also the person who advises the mayor. There is now a situation in which the monitoring officer, who advises the mayor and polices the regime, regularly investigates complaints by a member of the mayor's cabinet. On the other hand, complaints against members of the group who support the mayor have not been taken forward for investigation, which inevitably raises concerns as to who monitors the monitoring officers in such cases. In that case, the monitoring officer is herself in dispute with her employer—the authority—and there is apparently an industrial tribunal case ongoing, but the monitoring officer still sits in and carries out her functions, even though they involve councillors who may be witnesses to those proceedings.

Tower Hamlets has reached the extraordinary stage of members from several parties passing a motion to have certain disciplinary steps taken in relation to the monitoring officer. We might have thought that the monitoring officer would have withdrawn from the meeting at that point; instead, she insisted on remaining, and noted what was said by every member, which hardly gives the impression of an unbiased, open and transparent approach. Freedom of information requests in relation to only two of the complaints have revealed that some £6,000 of public money was spent on investigating a complaint against the leader of the Conservative group and that some £12,000 was

spent in relation to a complaint alleged against the leader of the Labour group. No such complaints have been taken forward in the same way against the group that supports the mayor.
