

Managing Politics? Good conduct and ethics regulation in English local government.

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Abstract

In many countries, an important driver for concern about public values arises from falling trust in public institutions. One widely identified explanation has been the conduct of politicians, to which governments around the globe have responded by creating systems of ethics regulation and reform. This includes England, where measures instigated by the 2000 Local Government Act took a particularly centralised approach to improving conduct in local government, consisting of a standardised and formalised code of conduct with which councillors must comply, and machinery for exercising and adjudicating complaints against the code. This paper draws upon research which assesses the impact of this ethical regulation on the conduct of councillors, using insights from Foucauldian perspectives on government and critiques of government 'modernisation'. As will be shown, the uneven effects of the framework can be interpreted from the extent to which the 'technologies of power' and 'technologies of self' have translated effectively into practices across local government. Our research found that resistance to ethics regulation often arose where councillors resisted the models of political identity and behaviour it was perceived to promote. Particular concentrations of complaints and misconduct were identified where councillors believe that recent changes in political management – including moves to cabinet executives under the auspices of 'political modernisation' – have caused a widespread loss of voice among elected representatives. The paper concludes with reflections on the near total abolition of the ethical framework in 2011 - itself the culmination of mounting resistance - and the extent to which political conduct can be managed by such practices of modernisation.

Introduction

Across the globe, we have witnessed a growing interest in the promotion of high ethical standards in public institutions. This is reflected in the massive arsenal of administrative machinery now being deployed in this direction, including codes of conduct, statements of values, and various processes for addressing claims of misconduct. In many countries, this is driven by the urge to address serious cases of corruption and dishonesty which makes effective, legitimate government all but impossible. However, this enterprise often goes much wider, to cultivate an array of ethical behaviours among our public servants – officials and elected representatives - in their dealings between themselves and the public. Such activities are often motivated by the desire to arrest and reverse declining levels of trust in public institutions that has been widely identified across democracies. Much of this activity has centred on the ethical standards of public officials, but an important strand has considered the behaviour of politicians and this is the focus of this paper.

The UK is an interesting context for the analysis of efforts to promote positive public values in political conduct. The Labour government of 1997 embarked on a programme of reforms for local government in England, which included an intensification and centralisation of efforts to regulate the conduct of elected councillors (or ‘elected members’ as they are also commonly known). Major components of what has become known as the ‘ethical framework’ were the introduction of a code of conduct and processes for assessing, investigating and adjudicating on complaints of misconduct. Elements of these arrangements can be observed in other countries (see for example Fording et al. 2003) and, in England, the ethical framework for local government needs to be seen in the light of parallel debates about how the conduct of national politicians might be regulated (Allen and Birch, 2011). A core feature of UK practice, and of much current ethics regulation around the world, is the assumption that good conduct can be achieved by codifying what is regarded as acceptable behaviour, and thereon taking steps to ensure that conduct is progressively aligned with these codified standards. In its emphasis on order and control, it might thus be said to exemplify key features of ‘modernisation’ in the governmental sphere.

For all that ethics regulation has become pervasive, a key question – and one that drives this paper – is whether good conduct can actually be promoted by such mechanisms. Whether and in what conditions ethics regulation achieves the desired effect is already widely debated (see for example Pattison and Pill, 2004). Our particular concern is whether the conduct of *politicians* can be steered effectively by ethics regulation. Can political conduct – whether that is treating others with respect, not working for self-interest, or using institutional resources appropriately – really be changed by the codification and policing of behaviour? Or are there facets of political conduct, as an exercise in the representation of interests and mobilisation of power, that make it especially resistant to such regulation, or which at least generates ongoing tensions for such endeavours? These are our key questions.

The theoretical basis for our analysis draws on the work of Foucault, whose investigations of government, power and resistance seem eminently appropriate for an analysis of the regulation of conduct. On the one hand, practices for codifying and regulating acceptable conduct exemplify the exercise of coercive state power. Yet, the practical reality of ethical governance – as many government and academic commentators recognise – is that promoting patterns of conduct cannot be realised purely by regulatory compliance. The ethical framework might usefully be seen as an ‘advanced liberal’ process (Rose, 1999) through which central government is ‘steering and regulating rather than rowing and providing’ (Rose, 2000: 324). Moreover, the (supposed) sharing of ethical values, through which individuals are meant to be self-regulating – governed through the ‘self-steering forces of honour and shame, of propriety, obligation, trust, fidelity, and commitment to others’ (*ibid.*) – is what many would hope to see among councillors in local government. However, and this is a further value of Foucauldian insights, it has been clear from English local government practice that the ethical framework has been resisted (or even subverted); indeed, this resistance culminated in the virtual abolition of the ethical framework by the coalition government, as one of its first acts on entering office. By looking at this resistance, and what it says about political conduct, we can thereby identify not just the immediate, managerial problems of ethical governance, but also reveal more fundamental difficulties in modernising politics by such means.

The evidence for our analysis is drawn from in-depth qualitative research conducted into the ethical framework in English local government in 2008, in which we examined the effects of the ethical framework on the cultures and processes of local councils, the conduct of councillors and the implications for public trust (Cowell et al. 2011). In this paper, we focus on the relationship between the ethical framework and councillor conduct and the patterns that emerged from the data. While in some councils, we found that the assumptions embedded in the ethical framework chimed with existing norms of political conduct; for others it did not. As some analysts might have expected, we saw allegations of misconduct being made for political purposes; some councillors perceived the ethical framework to be a way of suppressing voices, while others saw it as a tool to get their voices heard. Ironically, this type of (mis)use of ethical framework might be regarded as a by-product of the programme of political modernisation that has unfolded across English local government, and the perception that it has caused a loss of ‘voice’ for certain ‘backbench’ politicians.

The next section of the paper outlines the evolution of the ethical framework in English local government in more detail, before locating it in wider accounts of local government ‘modernisation’. Following this, we explain how Foucauldian ideas are used to interpret its operation. Turning to the empirical material, first we expand on the methodology used in our research, then set out our findings. Here we sketch very briefly the generality of perceived impacts of the ethical framework before tracing in more depth the forms and consequences of some of the resistance that we observed. In our concluding section, we reflect on the implications of our findings, both for the practice of ethics regulation and the entire enterprise of trying to promote good conduct among politicians through such practices.

Ethics regulation and local government modernisation

The ethical framework for local government in England has been the product of considerable contestation, as what hitherto had been a comparatively informal approach to local government ethics (Doig and Skelcher, 2001) became supplemented and directed by a more centralised set of arrangements. The framework which was set out under the Local

Government Act 2000 (Pt III) as part of Labour’s modernisation agenda for local government and has been described by the Committee for Standards on Public Life (CSPL) as ‘arguably the most extensive and comprehensive statutory framework for standards of conduct of any group of public office-holders in the UK’ (2005: 51). The Act required all local authorities to introduce a model code of conduct for councillors, establish a register of members’ interests, and set up local standards committees. It also resulted in the establishment of the regulatory bodies - the Standards Board for England (in 2009 renamed Standards for England¹) and the Adjudication Panel for England (the functions of which, since 2010, have been taken over by First Tier Tribunal) – with, initially, the Standards Board taking on the prime role in assessing and investigating complaints.

In setting up such a structured, centralised system, with strong investigatory and disciplinary powers, the Government faced down the considerable support for a more self-regulatory system to continue (CSPL 1997), in which local government took prime responsibility for regulating conduct. It also set aside arguments that the proposed arrangements were excessive, given that local government in the UK has generally displayed relatively good conduct (CSPL, 2005; EU, 2007). Rather, the system that emerged in 2000 reflected the government’s calculation that it needed to respond to high profile examples of misconduct in councils such as Labour-run Doncaster, and the belief that only such an arms-length system could promote public confidence in local government (Macaulay and Lawton, 2006). Nevertheless, criticism of *inter alia*, the backlog of complaints being dealt with by the Standards Board prompted some decentralisation of these arrangements. With the 2008 Local Government and Public Involvement in Health Act, the role of assessing, investigating and taking appropriate action on most complaints was passed from the Standards Board to local standards committees. Meanwhile, the Standards Board switched to becoming a ‘strategic regulator’, monitoring and advising on the overall implementation of the framework, and only investigating the most serious cases.

In various ways, the ethical framework can be seen as consistent with the post-1997 Labour government’s wider ‘local government modernisation agenda’ – a set of policies designed to

¹ In this paper, for convenience, we refer to it as the Standards Board.

achieve transformational change in local government (Downe and Martin, 2006). Such programmes of modernisation tend to be ambitious in their depth and scope, placing considerable faith in universal ethics and progress, in the belief that 'transformational change is ... not only self-evidently necessary but also achievable' (Geddes and Martin, 2000, 392).

What seems especially problematic is this extension of modernisation into the realm of the political, and the application of universalising ethical norms to political conduct. For all that recent changes to local government may serve to produce a 'managerialised state' where 'well-managed organisations provide the framework within which political manoeuvring over the mixed economy of welfare can occur' (Clarke, 1998: 178-179), those very practices of political manoeuvring can prove more difficult to contain. Such containment is arguably made more difficult by the breadth of principles that fall within the ambit of the ethical framework. The code embraces practices that might be perceived as corrupt (on Selflessness and Openness, for example). Although there is significant social consensus in the UK that councillors should not be corrupt, and instances of genuine corruption are rare, it has been less easy to specify the practices required to avoid a suspicion of corruption. Moreover, the code also seeks to regulate the more open-ended categories of behaviour of treating others with respect and not bringing the local authority into disrepute, which unavoidably permeate debates about legitimate political argument.

This clash may well be exacerbated in the UK when one considers another dimension of the local government modernisation agenda which, like the ethical framework, is trained on elected representatives. The introduction of cabinet executives aimed to deliver more accountable and streamlined forms of decision-making whereby there is an executive/backbencher split amongst politicians and a clearer concentration on powers being invested in either cabinets or elected mayors. Whatever the intention, this led to a series of conflicts about the exercise of power. In some councils, there have been divisions between those in the cabinet and others: backbenchers felt that these changes reduced the opportunity for political debate and their chance to influence decision-making (Davis and Geddes, 2000), which has led to frustration and complaints of voicelessness. The modernisation process has also tended to promote councillors as detached, professional,

almost managerial figures, working collaboratively with others to steer positive change for their area as a whole (Entwistle et al. 2005). This sits uneasily with the identity of councillors that may see themselves as activists or community advocates. As we shall explain below, part of the problems in promulgating specific notions of good conduct arise out of the effects on the identities of councillors.

Interpreting the regulation of conduct

This likelihood of encountering struggle in the regulation of ethics in (local) government can fruitfully be explored through Foucault's discussions on 'government' which relate to the practices by which behaviour is shaped according to certain norms (Murdoch, 2000). Government in a Foucauldian sense can be seen as the 'conduct of conduct: a form of activity aiming to shape, guide or affect the conduct of some person or persons' (Gordon, 1991: 2). Although conventionally used to examine the constitution of society as a governable realm, the methodological emphasis on the practices of government seem equally relevant in understanding relations between different components of the state.

Importantly, the shaping of conduct is not merely a matter of domination (McNay, 1994). In the context of our research, it is not as simple as *telling* councillors how they should behave; government is performed more through the 'manipulation of conscience' (McNay, 1994: 122). Furthermore, the complaints system could be said to entail a 'relationship of power' i.e. a 'mode of action that does not act directly and immediately upon others [but] [i]nstead acts upon their actions...on possible or actual future or present actions' (Foucault, 1982: 342). Altogether then, the ethical framework can be seen as a mechanism by which the process of government has established a common goal of ethical behaviour (see for example Rose and Miller, 1992) which is tied in with other legislative, regulatory and discursive practices to work upon individual councillors' way of behaving.

The pertinence of this perspective is that it can be used to interpret the various ways by which ethics regulation is deemed to 'work'. Indeed, there is an echo here between the dominant explanatory themes of the analysis of ethics regulation and Foucauldian perspectives. Many analysts have complained that the 2000 Act instituted a move from an

integrity model in which councillors and local authorities are trusted to oversee their own behaviour to a *compliance* model of regulation (see Lawton, 2005), in which central government exercises greater surveillance and control. Such moves have been criticised as unlikely to be effective, because formal, regulatory mechanisms - in which misconduct is corrected *ex post* through the disciplining of transgressors – require a wider basis of support, in which a shared conception of what constitutes good conduct is actively embraced, routinised and pervasively reinforced through more informal, day-to-day interactions within a given organisational setting (Doig and Skelcher, 2001; Greasley, 2006). In line with this, organisational measures should foster active responsibility for ethical conduct rather than just passive compliance with rules (Bovens, 1998; Greasley et al. 2006). This entails, in effect, that councillors identify with and embrace responsibility for upholding the code of conduct. Concomitantly, achieving compliance requires that rules are not merely imposed upon councillors but that ethical behaviour becomes the norm – something that ‘appears – or claims – to emerge out of the very nature of that which is governed’ (Rose and Valverde, 1998: 544). As Foucault suggests, whereas ethics is a practice; ethos is a manner of being’ (1991: 377).

However, a Foucauldian perspective would take us beyond this counter position of integrity models and compliance models. After all, a core assumption of both models, is that through the careful combination of practices – be they more obviously coercive or more tacit – the alignment of conduct with a set of agreed principles can be achieved. An emphasis on the actual practices of government can highlight rather more fundamental problems with this aspiration. To create, reinforce and support norms of behaviour, ‘tends to be accompanied by an astonishing proliferation of legislation’ (Ewald, 1990, quoted in Rose and Valverde, 1998: 542). This can be observed in the almost inexorable tendency of the ethical framework to expand in complexity (CSPL, 1997), as seemingly straightforward principles like selflessness or respect for others are decomposed, hierarchically into operational requirements which then in turn become the subject of an ever-evolving and expanding suite of interpretive guidance to help local governments pursue ‘good conduct’. This growing complexity is driven by the almost inexhaustible difficulty of interpreting abstract principles in specific contexts, against which the state struggles to ‘catch up’. Despite

seeking to guide councillors in how they might balance potentially competing ethical principles (such as the widely examined tension between integrity and efficiency (De Vries, 2002)), this potential for tensions and inconsistencies does not disappear.

What most analysts of ethics regulation tend to miss is the ever-present risk of resistance. Such behaviour tends to be collapsed into 'non-compliance' with a set of values presumed to be agreed, but which demands the more careful analysis that Foucault's ideas can offer. Foucault suggests that in any power relation 'there is necessarily the possibility of resistance' (1996: 441). Certainly, if we see the implementation of the ethical framework as a power relation, the possibility of resistance clearly exists. Whereas a relationship of pure *domination* would ensure no alternative but to comply, in acting on norms and culture, the ethical framework offers opportunities for active or passive compliance or resistance.

One can posit a number of reasons why elected representatives may be particularly likely to resist certain facets of ethics regulation, and to do so effectively. On an immediate level, there is the competitive nature of politics, and the incentives this creates for securing short-term advantage rather than upholding principles of good governance (Mulgan, 2006). The unavoidable interpretive flexibility of ethics regulation is problematic where social contexts are competitive rather than collaborative. More fundamentally, even with the domain of state practices, ethics regulation is not the only basis of moral authority, legitimacy or the exercising of discipline for misconduct. The status of the ethical framework – and the agencies charged with promoting it – may be challenged where councillors draw moral authority from their personal judgement, their constituency, or the need to deliver on party policy. The electoral process may well be seen as the pre-eminent disciplinary process acting upon councillors, deference to which explains why although the ethical framework makes provision for a range of sanctions for misconduct, there is limited scope directly to demand that a councillor be expelled.

Through elections, political parties and constituency networks, councillors also have strong connections to the 'external environment' of local government, from which norms and legitimation might be derived, that weigh against measures introduced within the council as

an organisation (Maesschalck, 2004). As Flyvbjerg (1998) notes, the techniques of modernisation and rationality – including devices like a code of conduct – tend to be relatively new, and unlikely swiftly therefore to displace relationships of loyalty, affiliation and identity which have bound certain actors together for long periods of time, and which are deeply implicated in the political culture of places. Indeed, this is often promoted as a positive feature of local councillors: the fact that they come from a variety of backgrounds means that therefore they ‘not only bring a range of voices directly into the council chamber but also enable a myriad of networks to be connected with council members’ (Councillors Commission, 2007: 15).

The problem, then, is not simply that the complexities of governing conduct in a myriad variety of social settings, with potentially conflicting values, means that codified norms are never sufficient. One can also begin to see how politicians may construct reasons for transgressing the norms set out in codes of conduct. More fundamentally, one might doubt whether politics could be subject to (and thereby ‘outside’) the striving for ethical universals to which ethics regulation aspires. As a result, one may expect resistance to the technologies of power and self through which it is enacted. Such resistance may be overt, and directed at the code, to specific misconduct allegations, to the sanctions imposed or to the entire authority of the ethical framework. As Scott (1985) and others have noted, sometimes resistance can be more hidden. For those that might feel themselves otherwise powerless, Scott ‘describes a repertoire of choices that highlight noncompliance as a form of dissent with the new status quo’ (Levi, 1997: 17, referring to Scott 1985). Bound up with resistance is also the possibility of unintended consequences, as the ethical framework is used to exercise power in ways and directions beyond the straightforward promulgation of good conduct, as actors use the moral charge and high profile of misconduct allegations to act on those that they oppose.

The task, then, is to see whether we can identify a normalisation or shaping of conduct through the ethical framework, or a resistance to the rules, and what we can learn from the contexts in which resistance has emerged.

Methodology

The research project on which this paper is based was a longitudinal evaluation of the effectiveness of the ethical framework. It is structured around nine case studies of local authorities from across England. The prime data for this paper is drawn from interviews we conducted with 119 individuals between June and October 2008. The interviews were semi-structured and designed to elicit views on the practices of ethics regulation in each council, and the participants' own views of the ethical framework and the effectiveness of the standards system. We conducted interviews with local authority chief executives; with monitoring officers (responsible for overseeing the operation of the ethical framework), and other senior officers; with council and party group leaders; chairs, elected and independent members of standards committees; other elected councillors; parish councils, representatives from partner bodies such as Local Strategic Partnerships, and journalists with experience of covering local government.

We were careful to ensure that our case studies met a range of criteria (see Table 1). In particular, we specifically selected councils experiencing many and few complaints under the code of conduct. Political context was also a consideration (see, for example, Fording et al., 2003), and we selected councils controlled by different parties, those which have been relatively political stable over a period of time as well as those which had seen changes in control. In order to examine whether implementation of the ethical framework may be affected by the quality of the management more widely, we included authorities which had scored 'excellent' or 'good' in the Audit Commission's assessment of performance (CPA), as well as those which fared less well.

Table 1 about here

A key facet of our research is that we took a dual approach to the interviewing. Some of the questions sought to test the impact of a whole suite of variables identified by the literature on ethics regulation as likely to be important in promoting change (such as the actions of leaders, the skills of the monitoring officer, and the interventions of local standards committees) – this element of the research is written up more comprehensively elsewhere

(Cowell et al. 2011). However, we took great care at the start of our interviews to get people talking about the nature of politics in their local authority as they saw it, and whether and why they felt there were issues with conduct, without imposing the prior assumption that formal ethics regulation could be a significant factor. The analysis presented below draws very heavily on the narratives that emerged from these accounts.

Turning to the analysis, we first outline ways in which the ethical framework shapes the conduct of councillors in the direction intended by its proponents, in broad terms, before focusing more closely on ways in which the framework has been resisted or subverted. Throughout we draw on Foucault's work on 'government' and on power/resistance.

The shaping of conduct

Our research provided much to support the findings of extant research that, since the introduction of the ethical framework, councillor conduct has improved to some extent. Cross-national surveys have suggested that there has been a reduction in serious forms of misconduct (BMG, 2007; 2008), with some respondents feeling that there had been a dramatic improvement overall. Our qualitative research identified similar perceptions. What it also identified were indications of the causal mechanisms at work, which echo Foucault's work on government in terms of the ways in which individuals' conduct is 'shaped' according to certain norms. We were able to examine the ways in which, through the inculcation of a particular perspective, councillors learn to see one way of behaving as 'right' and another as 'wrong'. For example, the leader of one of our case study councils (Case Study A), actually suggested that any effect of the ethical framework on the conduct of councillors was '*unconscious*'. The framework was not something which members actually considered on a day to day basis but as the Monitoring Officer from the same council said, although '*they keep forgetting the rules. But that's not to say they don't apply them okay ... and they're aware of it [the ethical framework]*'.

In other respects, the effects of the ethical framework have been markedly uneven. While evidence suggests that Monitoring Officers, for example, see it as exerting a positive effect on conduct others, notably 'backbench' councillors (i.e. those outside cabinet structures),

felt that levels of conduct had remained the same or even become worse (BMG, 2008). It appears that people 'inside' the ethical framework, with some capacity to influence its implementation, appreciate it more than those subject to it; and it is appreciated least, in relative terms, by those who may already perceive themselves to have been marginalised by local government modernisation. Impacts also differed markedly between local authorities.² In some councils, good conduct is normalised, being very much part of the local ethos. This was exemplified in Case Study A, where the leader of the council described local councillors as follows:

'I would say that the large majority of the members... are retired. They've come into it in my view for the right reasons. They're not on the make any more. [...] I know it sounds a bit smug and I don't mean it that way, but [they] are actually here to serve a purpose...As far as I'm aware they're coming to make a difference, but not to make a difference to themselves' (Leader of the Council, Case Study A).

Selflessness and impartiality is thus represented as intrinsic to councillors' identity in this authority and complaints under the code have been very few in number. The ethical framework also seemed to be operationalised most effectively where the identities it fostered were already strongly reflected in political practices. Thus, in Case Study G, the council was a product of a relatively recent reorganisation (in 1996) which had replaced the former, smaller district councils, with their strong attachment to place-based communities and a reputation of bullying, with a larger council, in which politics was said to be more detached and professionalized but also more friendly. Key officers and councillors thus felt themselves to be operating within a modernising local authority. The Leader of the Labour Group explained that:

'I made it very clear to the Conservative group leader at the time that our position would be not opposition for the sake of opposition, it would be a case of where we agree we would support, and where we disagree we would firmly oppose'.

² Of course, our case studies were selected precisely to capture these differences, rather than represent a singular 'typical' local authority experience.

In Case Study B, not only did we find most key figures, officers and councillors, supporting the council's reputation of *'doing good by doing right'*. Individual councillors also saw their role as essentially achieving the best outcome for the council as a whole, even to the extent of explaining tough, distributive decisions that could not benefit everybody: *'my job as councillor essentially is to bring bad news'* (Councillor, Case Study B). This council had participated actively in many of Labour's local government modernisation agenda reforms. Here too, cases of misconduct had been very few in number.

Our findings suggest a culture of ethical behaviour in line with the code has already, or is in the process of being developed within some local authorities, and that the various 'technologies' of the code – such as training – act to reinforce a prevailing ethos rather than via coercive regulatory practices. However, this has not been the experience of ethics regulation everywhere. In some councils, changing the prevailing norms of conduct proved difficult because of the institutionalisation of certain types of behaviour (Doig and Skelcher, 2001). We found councillors resisting the ethical framework in a variety of ways, but also evidence of deliberate subversion of the framework.

Resistance to identities

As we have discussed, modern forms of discipline (in a Foucauldian sense) are not simply about domination but, in terms of governmentality, about subjectification, yet it is this very 'process [...] through which individuals are regulated [which] also provide[s] the basis from which resistance to such government can be articulated' (McNay, 1994: 123). Our research supports this suggestion, in that we found a resistance to the identities being placed upon councillors, as detached from their communities, and primarily loyal to the council as a collective entity of value in its own right. Moreover, some individuals sought not only to resist what they saw as over-bearing examples of imposed norms but also, in some instances, to capitalise on this politically by asserting their own independence and individuality and, in some cases, to make statements about what they saw as their roles as elected representatives of their local communities. Several councillors pointed out that they had been elected by their local communities and thus should act with this conception of the public interest in mind – even if this meant behaving in ways seen by other councillors as

unethical or not in keeping with the concerns of their own party groups (see Copus, 1999: 312).

These identities and affiliations shaped the extent to which the ethical framework – as a series of normalising and disciplinary practices – actually exerted any influence. One councillor in case study C explained that there are some councillors in their authority who have been reported to Standards for England on a number of occasions but

‘Their attitude to life, which is negative and aggressive, will be not be changed by the Code of Conduct. They don’t respect it. The ethical framework has made no difference to them’.

One of the ‘accused’ claimed that he was told that he was being suspended because he was damaging the public perception of the council, but he argued that the public were totally behind him. He used people coming up to him in the pub as the evidence for this position and the fact that he continues to be re-elected: *‘I’m a man of honour. My standards are far higher than those in the council’*. Similarly, in case study D, a district council in an affluent part of rural southern England, the council lacks a significant urban focus or spatial identity. In this context, representing village parish interests takes pre-eminence, and again councillors may pay more attention to whether they keep getting elected than the practices of ethics regulation.

This resistance can be observed in the face of disciplinary sanctions, including suspensions for misconduct, as well as the more routine application of information and training on the code of conduct and its meaning:

‘You’ve got people that are quite willing to take on advice and listen and take on the training. People that naturally just respond to it. And I suppose we’ve got other councillors who were more antagonistic towards it. So I think initially probably they didn’t take on board the training. It’s almost like they weren’t interested in listening’ (Deputy Monitoring Officer: Case Study C).

Many previous commentaries on the implementation of the ethical framework have identified declarations of interest as the element which has proved particularly difficult to translate into practices, especially at the parish level (Macaulay and Lawton, 2006). Viewed through the managerial lens of the ethical framework, and of political modernisation more widely, this might be seen essentially an issue of learning the new demarcations of acceptable conduct – of councillors registering their personal interests correctly, then recognising when they may have a personal and/or prejudicial interest which would prevent them from taking part in a particular council decision. This is a sphere in which the Standards Board issued additional guidance. But the problems arising from this part of the code are not simply attributable to councillors deliberately using their position to promote a personal interest (though we would not deny that this happens). Rather, councillors have difficulty conforming to the idea that being a councillor means ‘abstracting’ oneself from interests that tie them to particular places, issues and social groups, when they see representing those interests as intrinsic to their identity as a councillor. In some instances, the resistance is to the idea that what are regarded as ‘private’ interests should be re-categorised as legitimate public knowledge.³ As one Monitoring Officer reflected:

‘We’ve had difficulties with a particular parish, a particular councillor of [name of parish] who doesn’t seem to understand what declarations of interest mean. [It’s] like an ingrained sort of refusal to accept the code...they say “well you know we can’t possibly operate like that because everybody in this ... it’s such a small place everybody knows everybody else. It doesn’t work like that, you know”....They think that it’s almost optional for them’ (Monitoring Officer: Case Study E).

This problematising of the ability of councillors to act on behalf of their interests is one way in which resistance to the ethical framework is entangled with the exercise of power. We now turn to ways in which resistance to the ethical framework was connected to the way in which politics was being (re)organised. In line with Philp’s observations (2001, 365), this can

³ Throughout its period of operation there was a struggle to define how far the ethical framework should apply to politicians for conduct on their ‘private life’ rather than their ‘public life’. The case surrounding Ken Livingstone (the former Mayor of London) hit the national newspaper headlines, though such issues were less prominent in our case studies.

entail not just explicit rejection of the rules, as observed above, but the tactical deployment of those rules.

Resistance, subversion and the exercise of power

The potential for the code of conduct to be used as a tool for individual councillors' own ends rather than simply as a means of ensuring compliance with a set of imposed standards, materialised in some of our case studies. Councillors made misconduct allegations about opponents but, in many instances, this was portrayed as little more than a tit-for-tat playing out of personal animosities. Thus, for example, a local councillor told us that *'the code of conduct offers people the ideal way of levelling scores'* (Case Study D). In another council, we were told that the ethical framework has *'given weapons to people to cause mischief where mischief shouldn't really be made'* (Case Study F). Other researchers too have noted that the machinery had become *'a focus for vexatious complaints and personal vendettas'* (Macaulay and Lawton, 2006: 487). Although the 2008 Act introduced filtering processes within local authority standards committees to weed out such vexatious complaints (see Doig and Skelcher, 2001), some still got through the process.

Rather than dismissing such behaviour as simply aberrant, if we view the complaints system from a Foucauldian perspective as a *'relationship of power'* (Foucault, 1982) – as a mode of action that acts upon the present or possible future actions of others – we can begin to see how some complainants have been attempting to have a bearing upon the potential future actions of those they have complained about. In certain instances, people perceived that ethics regulation was used by those in power to curtail the political activities of others. According to some interviewees, such attempts at dominating the actions of others were not just confined to local councillors. In some cases, a similar relationship of power was wielded by senior officers – as illustrated by this councillor:

'The monitoring officer is not averse to threatening...people that they could be in breach of the code of conduct if they aren't very careful. And you think ... well I refuse to be cowed by all this, but it's very bad. And again of course it does nothing whatever to enhance the reputation of the code of conduct ... cos you think it's just

there as a big stick to be used against anyone who dares ask tough questions'
(Councillor, Case Study D).

What might be presented by one person as a helpful reminder of the rules is interpreted by another as a 'threat'. Councillors from other case studies, too, expressed concern at the ethical framework being used to provide a system of control, curtailing their freedom to question or challenge officers by categorising such conduct as 'bullying', or 'bringing the council into disrepute'.

If this much might be expected, what was surprising was that so many interviewees would relate the incidence of problems or complaints under the code to wider changes to the political management arrangements, and to the resulting reallocation of power. Thus case study D has experienced a long tradition of independents (i.e. of councillors that were not members of political parties), but this had shifted through the 1980s and 1990s to a situation where independents were just one part of a multi-party government. What brought issues of conduct to a head was the ending of the long tradition of political parties and independents being represented proportionately on committees to a 'modernised' system of executive powers centred on a cabinet constituted solely by members of the dominant party. It is in this context that complaints proliferated, and it was suggested that the ethical framework provided a further means of curtailing the influence of minority groups and individuals:

'What we have seen is one group just get a majority and then actually behave as if the whole council is its own property, and it's been disastrous ... and that group is now starting to use the code of conduct...to keep people in line if they displease it, which is even worse' (Councillor, Case Study D).

This was not the only power dynamic we observed. Perhaps the most interesting unanticipated pattern of responses that we encountered in some of our cases was the suggestion that using the code to make complaints provided a way of ensuring that the voices of those members who believed themselves to be disempowered were heard by the ruling group (see also Smulian, 2009) or by the public more widely. In Scott's terms, it might

be seen as a 'weapon of the weak' (Scott, 1985). Sometimes this was characterised in dismissive terms, viz:

'I think they use the code of conduct occasionally as an opportunity to flex their muscles and to cause some disruption' (Chair of Standards Committee, Case Study H).

'I think my initial reaction [to the ethical framework] was that it was a charter for the politically weak to make difficulties for the ruling party. If you do an analysis of the number of complaints made and who by and against whom and do an analysis of the political parties involved, you will find that not only were many of them spurious, but they were in my view politically motivated' (Councillor, Case Study H).

But others, and not just the perpetrators, recognise the rationale:

'...They [independent members] have realised that the way to shall we say force co-operation from people who don't have any other control is to challenge them through the standards. And they're using standards as a weapon ... Nobody likes having to explain themselves in great detail and depth, which is what the standards committee is looking at; 'why did you do that?', 'what's happened here?' So they use it as an alternative means of debate, if you want to put it that way. And good luck to them. It's very clever' (Councillor, Standards Committee Member: Case Study C).

As Levi suggests, it is entirely possible for individual acts of noncompliance or subversion of the rules to result in changes in both policy and institutional arrangements (1997: 33). Not only are the powerful forced to account for themselves, as in the quote above, but the 'misuse' of the ethical framework complained about in case study C, above, resulted in the constitution being changed to allow more debate in council. There is a wider context to some concentrations of complaints in that, in various parts of the UK, councils have seen the emergence of 'independent' parties, specifically in response to the belief that the mainstream parties do not represent a particular social or spatial constituency, often sparked by oppositional views on a particular topic. In this context, challenging 'the council'

- the civic entity perceived to be the source of the problem - is a common strategy. Clearly, such actions are unlikely to enhance the reputation of local government, as architects of the ethical framework might have wished.

Such acts of 'non-compliance' did not always target just other councillors and officers directly. In some instances, this subversion of the intended use of ethics regulation also appears designed to attract and channel public attention. For those without conventional means of exercising influence, some form of denunciation of those in power offers a simple device for attracting attention and undermining authority (Scott 1985). Thus the existence of the ethical framework, in some instances, has allowed its deployment as a 'scandal weapon' (Belzak, 2008) – a means of discrediting opponents through recourse to the moral authority of a national code of conduct, and triggering what may then be a high profile assessment and investigation process. For example, in case study H we were told that the leader of one of the opposition parties carefully examined the register of members' interests in council meetings, to identify scope to making complaints – a pointed illustration of how the technologies of the ethical framework, in problematising certain categories of behaviour and making them actionable, can then be used for purposes other than those intended.

Another dimension of this pattern of behaviour links back to our earlier discussion of political identities, and concerns the wider importance of being a *public* figure. There is very little public knowledge or understanding of the role of councillors, of how they get selected and what they do (Councillors Commission, 2007). This might explain why some councillors are prone to making more of a noise, in order to raise their own profiles and make their work more obvious to the public. For example:

'there was a time when I felt that unless you'd had three or four complaints made against you, you could hardly call yourself a local politician of any standing' (Case Study H, councillor).

In one council (Case Study C) we found comparatively little media coverage of standards issues, yet there was a history of contentious behaviour that violated the rules of the ethical

framework. Respondents suggested there was almost an escalation of poor behaviour in a bid to be complained about. The first referral to the Standards Board was a councillor using inappropriate language - '*you're a load of crap*'. This was regarded as being 'political banter' and there was no sanction, so the councillor concerned 'ratcheted' up the bad language, which provoked further complaints but there was still no sanction. According to one councillor,

'The judgments of the Standards Board have encouraged the attitude - they didn't find me guilty, so I'll carry on. There is no shame in being taken to the Standards Board anymore – it is like a badge of honour' (Councillor, Case Study C).

This situation hasn't been helped by the accusation from a councillor of the Monitoring Officer promoting the ethical framework as a way to try and resolve problems within the council ('it's there, so use it').

Conclusion

Our findings provide a vivid illustration of the diversity of effects that the ethical framework has exerted across English local government, and of the merits of using ideas from Foucault to interpret the changes. The ethical framework brings together an array of 'technologies of power' and 'technologies of self' to encourage behaviour that is aligned with the code of the conduct. While there is evidence that the machinery of the ethical framework has served to promote certain norms and practices, our analysis also shows the tendency for resistance, notably to the political identity of a councillor embodied in the code, and to the deployment of the code in ways which seek to influence the actions of others. Three sets of findings follow from these patterns of resistance.

Firstly, the experience of ethics regulation in England provides us with another example of how centralised policies predicated on key facets of modernisation like clear, rational codified norms and practices run into 'contrasting sets of political values and priorities' at the local level, and 'very different approaches to dealing with the tensions' (Geddes and Martin, 2000: 386). Importantly, our research encountered very little overt resistance to the

basic ethical principles of public life (honestly, accountability, selflessness, etc); indeed, survey research conducted by government bodies has generally reaffirmed widespread support for these values. Even those who subverted the ethical framework for political ends tacitly draw on the social power of its misconduct categories in their denunciation of others. However, what survey research does not reveal, but which we are alerted to by a Foucauldian perspective, is the ways in which the governmental *practices* designed to align behaviour with these values can still be subject to intense dispute. The ten years of the ethical framework for local government witnessed something of a struggle to specify, through guidance and decisions, the operational meaning of these values, but which could never reduce the scope for interpretive flexibility at local level, as these values were applied to practical situations.

Our second set of findings is that the appropriation of the ethical framework to influence the actions of others was not, as might have been hoped, confined to those seeking to maintain good conduct. We also found concerns that dominant individuals or groups were using the ethical framework to preserve their positions and damage challengers. We also found that in some of our case study areas, councillors who were (or who considered themselves to be) more marginalised were also making deliberate use of the system try and ensure that their concerns and issues were heard. Perhaps this is unsurprising: after all the use of complaints systems as a means of exercising voice, is a particularly powerful tool for those who may have no other means of empowerment (Dibben and Bartlett, 2001). What is a particular irony is that in a number of our case studies, such a use of the ethical framework can be linked to programmes of political modernisation, designed to achieve clear lines of accountability and executive power, but which – by concentrating executive power - had the side effect of marginalising others. To the extent that ethics regulation, like wider programmes of political change, are caught on enduring dilemmas of political authority and openness, we should not expect codes of conduct straightforwardly to resolve such issues.

These patterns inform our third finding, which is that the practical challenges (and political repercussions) of seeking to regulate councillor conduct from the centre have rendered the ethical framework rather unstable. As noted in the introduction, the 2008 Act reforms were

designed to roll back central control in favour of greater local management of the ethical framework. This new regime barely had time to bed in before the May 2010 general election, which brought into power a coalition government committed to abolishing significant components of the ethical framework. This move was driven by a number of factors, not least the need to slash public spending, but can be seen as the culmination of resistance by a section of local government over the previous decade, echoed by decidedly ambivalent press coverage of ethics cases. The ethical framework was seen, variously, as unnecessary, complex, ineffective (in sanctioning and changing patterns of conduct), and heavy-handed (in pursuing what were seen as minor failings of conduct) (Macaulay and Lawton, 2006). Opponents of abolition ensured that councils must still have a code of conduct, but there is as yet no national prescription as to content. Ethics regulation in English local government is now a radically more localised affair.

We suggest that these findings about the recent English experience have wider implications for the project of ethics regulation, especially in the political sphere, but there are some caveats. Although in this paper we have focused on patterns of resistance and subversion of ethics regulation, it is not our suggestion that ethics regulation is inevitably subverted or resisted, or that this is the dominant response of most councillors. As others have noted (CSPL 1997), the large majority of councillors confirm to widely accepted norms of good conduct most of the time. Also, in drawing attention to acts that might be seen analytically as 'resistance', we do not wish to imply that all misconduct and misuse of the ethical framework represents some kind of 'heroic' resistance, based on positive, public-spirited intentions. Even allowing for subjective interpretation, many cases hinge simply on mistakes, errors of judgement, instances of bullying and the promotion of personal interests. The language is not entirely neutral here, insofar as we may associate 'resistance' with entirely positive responses to monolithic, myopic modes of government (Scott, 1985) – Foucault himself was, of course, more ethically neutral about his analytical approach (Gordon, 1991). By their very nature, however, post-structuralist perspectives problematise our capacity for forming ethical judgements about what might, in the case of ethics regulation, be interpreted as a positive struggle for ethical universals.

One implication that arises from our research is the need to question the scope for regulating the conduct of *politics* – or at least, frame carefully our aspirations for what it can achieve. As we have seen, politicians themselves legitimise their actions through an array of relationships – with the goals of their party, with their constituency, as well as to the council as an organisation - in which effective compliance with a code of conduct is not necessarily the most important. Moreover, the construction of a particular kind of councillor identity – predicated on a particular understanding of selflessness and objectivity, detached from local interests – risks cutting through the various ties between councillors, constituency and place: ties which many politicians believe to be the basis of their support. Insofar as the ethical framework is a component of constituting particular councillor identities, resistance to it can usefully be read as *part of* the struggle to define the ethical principles on which this should be based, and the extent to which these can or should be universalised. Further research could usefully examine what local authorities have learned from their experiences with the ethical framework, even as mandatory requirements are rolled back.

More broadly, there is merit in seeing ethics regulation as *constitutive of* struggles to promote ethical universals and civilise political conduct, which is bound up with the exercise of power, rather than a rational, external managerial process that flows logically from agreed principles. The problem lies not with the concept of ethics – or the use of values in justifying action – but the aspiration that all of the relevant ethical principles can be contained in a specific set of governmental technologies and practices. In our own research, while we were made aware of numerous misconduct cases, these very rarely stemmed from reasons of corruption or apparent self-gain, but rather because of an appeal to other principles over the ‘imposed’ norms of ethical behaviour. Indeed, while researchers tend to treat codes of conduct as *prima facie* complete statements of values, there is significant scope for teasing apart the extent to which different dimensions of public value can be regulated. While it might be entirely right that government persists with the struggle to specify and control corruption, and so persists in trying to define what constitutes unacceptable individual self-interested behaviour, despite the difficulties, other principles – such as not bringing councils into disrepute, may be seen as too difficult to detach from legitimate political competition.

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Table 1: Contextual information on the nine case study councils

Case study	Thumbnail sketch
A	A relatively affluent district in southern England, with most residents enjoying a high quality of life. The council has achieved excellent CPA scores, and has been pro-active in helping parishes implement the ethical framework. The district itself has experienced very few cases under the Code of Conduct; a few have arisen at parish level.
B	A London borough in a socially diverse part of the capital, with pockets of affluence and deprivation. The council has experienced excellent CPA scores, and has been pro-active in its approach to ethical governance. The borough has experienced very few cases under the Code of Conduct.
C	A small district in the Midlands in a relatively deprived area where traditional industries have declined. The council is improving its CPA score over time (to 'good' most recently). There have been a large number of complaints under the Code of Conduct, most of them amongst members and between officers and members.
D	A relatively affluent and fast-expanding district in southern England, with a largely rural area. The council has received 'fair' CPA scores but has experienced problems with its corporate governance, including a large number of complaints under the Code of Conduct, most of them amongst members and between officers and members.
E	A unitary council in the north of England which covers a largely rural area with an affluent population. The council has achieved excellent scores in the CPA and few complaints under the Code. The large majority of complaints come from the parish councils in the area.
F	A largely urban unitary authority in the North, serving a population that is economically and ethnically diverse. The council has achieved a four star performance score in the CPA, and has generated a moderate number of complaints under the Code of Conduct.
G	A unitary council in southern England with a mostly affluent population. The Council has recorded good CPA scores, and has generated a moderate number of complaints under the Code of Conduct, though more so from among its parishes.
H	A small district council in the Midlands, with an affluent population. The Council has recorded poor CPA scores, and generated a large number of complaints about misconduct under the Code, most of them by members against other members.
I	A socially diverse and in places very deprived metropolitan area in the north of England. The Council has achieved poor/fair CPA scores, but neither a large number nor a consistent pattern of complaints under the ethical framework. A few of these cases did involve unlawful behaviour.