

Agenda

Standards Panel

Date: **Wednesday 18 December 2019**

Time: **10.00 am**

Place: **Committee Room 1, Shire Hall**

Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

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Agenda for the meeting of the Standards Panel

Membership

Chairperson

Jake Bharier

Councillor Dave Boulter

Councillor Peter Jinman

Councillor Nigel Shaw

**Councillor Richard Gething (Nominated
Herefordshire Association of Local
Councils (HALC))**

Agenda

THE PUBLICS RIGHTSTO INFORMATION AND ATTENDANCE AT MEETINGS

Pages

1. APOLOGIES

To receive apologies for absence.

2. SUBSTITUTION

To receive any details of panel members nominated to attend the meeting in place of a member of the panel.

3. DECLARATIONS OF INTEREST

To receive declarations of interests in respect of Schedule 1, Schedule 2 or Other Interests from members of the panel in respect of items on the agenda.

4. MINUTES OF PREVIOUS MEETING

To approve the minutes of the meeting held on 10 September 2019.

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5. EXCLUSION OF PRESS AND PUBLIC

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

6. REFERRAL OF COMPLAINT TO THE STANDARDS PANEL FOR DETERMINATION

To determine a complaint following referral by the deputy monitoring officer of a complaint which cannot be dealt with under monitoring officer resolution.

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The public's rights to information and attendance at meetings

You have a right to: -

- Attend all council, cabinet, committee and sub-committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the council and all committees and sub-committees and written statements of decisions taken by the cabinet or individual cabinet members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public register stating the names, addresses and wards of all councillors with details of the membership of cabinet and of all committees and sub-committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the council, cabinet, committees and sub-committees.
- Have access to a list specifying those powers on which the council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the council, cabinet, committees and sub-committees and to inspect and copy documents.

Public transport links

The Shire Hall is a few minutes walking distance from both bus stations located in the town centre of Hereford.

Recording of this meeting

Please note that the council will be making an official audio recording of this public meeting. These recordings form part of the public record of the meeting and are made available for members of the public via the council's website.

To ensure that recording quality is maintained, could members and any attending members of the public speak as clearly as possible and keep background noise to a minimum while recording is in operation.

Please also note that other attendees are permitted to film, photograph and record our public meetings provided that it does not disrupt the business of the meeting.

If you do not wish to be filmed or photographed, please identify yourself so that anyone who intends to record the meeting can be made aware.

Please ensure that your mobile phones and other devices are turned to silent during the meeting.

The reporting of meetings is subject to the law and it is the responsibility of those doing the reporting to ensure that they comply.

Fire and emergency evacuation procedure

In the event of a fire or emergency the alarm bell will ring continuously.

You should vacate the building in an orderly manner through the nearest available fire exit and make your way to the Fire Assembly Point in the Shire Hall car park.

Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

The chairman or an attendee at the meeting must take the signing in sheet so it can be checked when everyone is at the assembly point.

Standards Panel

Procedure for hearing a complaint

On the day of the standards panel, the following will occur:

- 1 A chairperson of the panel will be elected (if an independent person is not available to chair the meeting).
- 2 Any declarations of interest will be made
- 3 A decision will be taken by the panel as to whether or not there will be a formal resolution to exclude the press and public on the grounds that an individual may be identified and the public interest.
- 4 Introductions of all parties will be made.
- 5 The complainant and the subject member (or their supporters) will be invited to present their views on the complaint (*to a maximum time of 20 minutes each*). If a supporter speaks on behalf of either the complainant or subject member, then they shall be the only speaker.
- 6 The complainant shall speak first followed by the subject member.
- 7 The panel members may ask questions of the complainant and subject member. There will be no cross examination by either the complainant or subject member.
- 8 The monitoring officer or deputy monitoring officer (whoever received the complaint) will be available to answer any questions the panel members may have.
- 9 The subject member and then the complainant will be invited to make a closing statement.
- 10 With the exception of the panel, the clerk and the advisor all other attendees will be required to leave the room so that the panel can discuss and arrive at a decision.
- 11 The subject member and complainant will be invited back into the meeting room where the outcome of the panel's discussion will be verbally delivered.
- 12 Where there is a finding of a breach of the code of conduct, a decision to reopen the meeting will be taken to the press and public and the outcome repeated.
- 13 A decision notice will sent to both the complainant and subject member within 10 working days of the meeting.
- 14 Where there is a finding of a breach of the code of conduct, details will appear in the decisions of the standards panel page of the council's website within 14 working days.
- 15 The decision is final and there are no further rights of appeal.
- 16 If a complainant who is a member of the public remains dissatisfied about the process which has been followed, they may complain to the Local Government and Social Care Ombudsman.

Minutes of the meeting of Standards Panel held at Committee Room 1, Shire Hall on Tuesday 10 September 2019 at 2.30 pm

Present: Jake Bharier (chairperson)

Councillors: Christy Bolderson, Peter Jinman, Nigel Shaw and Robert Wilson (HALC nominated representative)

Officers: Solicitor to the Council/Monitoring Officer and Head of Corporate Governance/Deputy Monitoring Officer

9. APOLOGIES

There were no apologies for absence.

10. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes.

11. DECLARATIONS OF INTEREST

The chairman of the standards panel stated that this was the second standards panel meeting to review the quality of the management of arrangements for dealing with code of conduct complaints.

The first meeting had taken place on 13 November 2018 and because the panel would be different each time, the minutes of the previous meetings would not be approved. However, the monitoring officer confirmed that all the actions from the meeting held in November 2018 had been completed.

With regard to declarations of interest, the following comments were made

- Councillor Nigel Shaw recognised the names in appendix 7 and 10 but confirmed that none were close personal associates.
- Councillor Christy Bolderson recognised some names but confirmed that none were close personal associates.

12. EXCLUSION OF PRESS AND PUBLIC

It was noted that the appendices to the report were exempt under Schedule 12 A of the Local Government Act because they identified individuals. The panel needed to decide whether or not the review could take place in a public session. During the discussion the following points were made:

- The behaviour of councillors is a matter of public interest.
- The matter could be considered without identifying individuals, however, there was a risk that the panel may inadvertently identify an individual.
- Neither Councillor Mike Wilson or Jake Bharier had a vote but they could express their opinion.

- The election in May 2019 had voted for openness and was supported by the council.
- It was a review of the process and not of the complaints themselves.
- The panel did not have the power to change the decisions made but could make recommendations in connection with the process used.
- On the basis of the above, there was no reason why the meeting could not be held in public.
- If the panel wished to discuss a complaint in more detail and would have to identify the individuals as part of the discussion, then the panel could move into private session.

RESOLVED

That the meeting of the standards panel held on 10 September 2019 be held in public.

13. SAMPLING OF MONITORING OFFICER RESOLUTION DECISIONS BETWEEN 1 OCTOBER 2018 AND 30 APRIL 2019

The chairman set out the parameters under which the review would be undertaken as follows:

- The panel would go through each appendix and would use the appendix number as the identifier.
- The complainant would also be referred to as the complainant.
- The subject of the complaint would be referred to as the councillor
- The council would always be referred to as the council.

It was noted that the previous review had looked at 38 complaints and the panel felt that that may be too unwieldy but that there needed to be a process of sampling. The current review was in relation to a smaller number of complaints and the panel would consider at the end whether or not it needed to be re-convened to review the remainder of the complaints. One independent person had provided their views on all the complaints.

The criteria which the panel would be considering were:

- Timeliness of decision making
- Consistency of decision
- Any sanctions or recommendations.

It was noted that the monitoring officer was reliant on the complainant and / or subject member providing information in a timely fashion. The panel stressed the importance of people responding promptly to enquiries.

The monitoring officer does not normally reject complaints for delay, but may if the delay was substantial and the complaint was deemed to be frivolous, or insufficient evidence was provided.

Appendix 2

The broad outline of this complaint was in relation to allegations of malicious comments by two councillors.

The outcome for one councillor had been no further action because the councillor had resigned and there was no overriding public interest in continuing the complaint.

It was noted that councillors cannot resign in order to halt a complaint against them as the monitoring officer did consider whether it was in the public interest to continue. The other factor considered was whether the councillor would co-operate once they resigned.

The outcome for the second councillor was no further action as remedial action had been taken to resolve the complaint. The panel noted that if the councillor had not undertaken the action they said had or would occur, the complainant would be able to submit another complaint.

The monitoring officer's view was that it was always better when a councillor remedied the situation.

The panel used the example of a councillor physically assaulting a person, then resign and soon after, being re-elected. The monitoring officer confirmed that the resignation would not prevent the complaint continuing to be investigated in such a circumstance. .

Appendix 3

The outline of the complaint was about the general behaviour of the council where there had been a fairly lengthy history between the council and the complainant. The complaint was detailed and lengthy but it had been challenging to find any complaint against an individual councillor. The complaint had been rejected because it was related to the behaviour of a council and not a councillor and therefore outside of the scope for the arrangements for dealing with code of conduct complaints.

It was noted that the complainant had concurrently raised a complaint with the council concerned. It was also noted that parish councils were not required to have a complaints process but that it would be advisable for them to have one in place. The nominated HALC representative confirmed that there were facilities within the Herefordshire Association of Local Councils (HALC) to provide assistance to parish councils with regard to complaints.

Appendix 4

The broad outline of the complaint was that an allegation had been made that a councillor had conferred or secured an advantage. The facts of the cases were clear and there was no evidence to support the allegation.

The panel commented that the investigation had been excellent.

Appendix 5

The broad outline of the complaint was the complainant had taken exception to some comments made against a councillor of a previous administration of the council but had not provided sufficient information or evidence.

The panel were satisfied with the way the complaint had been dealt with.

Appendix 6

The broad outline of the complaint was that the complainant had named individual members in their complaint but the substance was about council procedures.

There were further allegations about:

- a failure to declare but the councillor concerned had been appointed to the organisation by the council concerned and there was no requirement to declare; and
- the eligibility to be a councillor. It was noted that would be an issue for the electoral services.

The panel were satisfied with the way the complaint had been dealt with but it was a good example of where complaints could be considered by another body.

Appendix 7

The complaint was about council procedures rather than an individual.

The panel agreed with the process.

Appendix 8

The broad outline of the complaint was an allegation in connection with discriminatory language: against one councillor for the language used; and against the chair of the council in failing to act. Due to the exceptional personal circumstances of one of the councillors, this complaint had been resolved under other course of action with the agreement of the complainant. The outcome had been a formal public apology at a council meeting and that the council would undergo training. The wording of the public apology had been agreed with the complainant.

It was noted that this was an issue of race relations and it could have been resulted in a referral to the police as it could have been a criminal offence. It was confirmed that it was a serious allegation and that it was a judgement call as to whether to refer the matter to the police; the advice of the council's equality team may be sought in such circumstances, as well as the views of the complainant. The test which the monitoring officer was using was the civil test of the balance of probabilities and there are often complaints which are one person's word against another. The monitoring officer will on occasion contact the ward member or the clerk if it is one person's word against another.

Appendix 9

The complaint was against a council rather than a councillor.

The panel were satisfied in the way this complaint had been dealt with.

.Appendix 10

The broad outline of this case was that a councillor had failed to do something requested by the complainant. When the councillor's comments had been received, it had been obvious that the councillor had taken steps to remedy the matter. It was noted that the matter had been raised in 2017 but the complaint was received in 2019.

The monitoring officer confirmed that the length of time was considered but on this occasion had determined that it was a continuing matter.

Appendix 11

The broad outline of this complaint was about the processes of a council and the way were conducting themselves. It was confirmed that HALC could advise but it would be a decision for the council.

There was a requirement for council to have an audit. The process was that there would be an internal auditor and their report goes to an external auditor for consideration. . A parish council with a small precept would apply for an exception.

The panel suggested that the template letter for rejecting complaints where council procedures are being complained about, be amended to say that details of the auditor can be obtained from the parish clerk.

Appendix 12

The broad outline of the complaint was in relation to planning application. The monitoring officer confirmed that land registry maps are contained to check the location of properties in establishing schedule 1 interests.

The panel agreed with the process.

RESOLVED

That

The Panel was satisfied that the sample of complaints considered had each been handled appropriately: in a timely manner, consistently and with appropriate outcomes.

The Panel's advice to the committee was:

- 1. That the guidance for making code of conduct complaints stress the need for the complainant to co-operate in providing requested information in a timely manner.**
- 2. That guidance provided on the website, explaining the remit of the arrangements for code of conduct complaints, also includes signposting complainants to other relevant organisations for matters which the council is unable to consider because they are outside the scope of the code of conduct.**
- 3. Such guidance should include, in particular, how to contact the internal or external auditor.**
- 4. That the panel meet twice a year, to review a six-month sample of code of conduct complaints , and reports to the audit and governance committee on an annual basis**
- 5. That the sampling report includes information on the extent of compliance with recommendations made in each case reviewed.**
- 6. That the process and criteria for undertaking the sample review be replicated at the next meeting.**



Meeting:	Standards Panel
Meeting date:	18 December 2019
Title of report:	Referral of complaint to the standards panel for determination
Report by:	Democratic services officer

Classification

Open – Report

Appendices 1 to 7 are exempt from publication because doing so would disclose information which is confidential, being prohibited from publication under an enactment.

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

Key Decision

This is not an executive decision.

Wards Affected

All Wards

Purpose

To determine a complaint following referral by the deputy monitoring officer of a complaint which cannot be dealt with under monitoring officer resolution.

Recommendation

THAT the panel determine a complaint following a referral by the deputy monitoring officer

Options

1. It is for the panel to decide whether or not there has been a breach of the code of conduct.
2. There are no other options as the deputy monitoring officer has determined that the complaint cannot be resolved under monitoring officer resolution.

Key Considerations

3. The following appendices are attached to this report to assist the panel in its determination:

Appendix 1 – Summary of matter referred to Standards Panel for determination

Appendix 2 – Complaint

Appendix 3 – Investigation report

Appendix 4 – Subject Member's comments

Appendix 5 – Training presentation

Appendix 6 – letter from the complainant

Appendix 7 – code of conduct as applied at time of alleged breach

4. The monitoring officer will be present at the meeting to answer queries which the panel members may have.
5. It is for the panel members to determine whether or not there has been a breach of the code of conduct in relation to the complaint.
6. If the panel find that a subject member is in breach of the code of conduct, it may:
 - Publish its findings in respect of the member's conduct;
 - Report its findings to council (or to the town/parish council) for information;
 - Recommend to council that the member be censured;
 - Recommend to the member's group leader (or in the case of un-grouped members, recommend to council) that he/she be removed from any or all committees or sub-committees of the council;
 - Recommend to the leader of the council that the member be removed from the cabinet, or removed from their portfolio responsibilities;
 - Recommend that the subject member be replace as executive leader;
 - Instruct the monitoring officer to (or recommend that the town/parish council) arrange training for the member;
 - Recommend to council (or recommend to the town/parish council) that the member should not be appointed and/or be removed from all outside body appointments to which they have been appointed or nominated by the council (or by the town/parish council);
 - Withdraw (or recommend to the town/parish council that it withdraws) facilities provided to the member by the council, such as a computer, website and / or email and internet access;
 - Exclude (or recommend that the town/parish council exclude) the member from the council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.
 - Require an apology in suitable terms to the standards panel.
7. The above list is not exhaustive. However, it should be noted that the panel does not have the power to suspend a councillor or to withdraw any allowances which a subject member may be in receipt of.
8. If there is a finding of a breach of the code of conduct, details will appear as a decision of the standards panel, subject to any publication restrictions arising from the confidential nature of the matter.

Community Impact

9. Having an effective process for dealing with code of conduct complaints upholds principle A and G of the code of corporate governance by ensuring that councillors behave with integrity and that councillors are accountable for their actions. This should provide reassurance to the community that councillors are behaving in the best interests of their communities and that appropriate action is being taken to ensure that the code is being upheld.

Equality duty

16. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
17. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

18. There are no resource implications arising as a result of this report.

Legal Implications

19. The council's arrangements for dealing with code of conduct complaints enables a referral into the standards panel where the monitoring officer is unable to resolve the complaint.
20. The panel is asked to determine this complaint, taking account of the complaint and the subject members views against the code of conduct as applies.
21. No matter relating to this complaint can be publicised due to a restriction in an enactment. There is no discretion for the panel. This matter must be dealt with in private to ensure there is no breach in the obligation of confidence.

Right of Appeal

20. There is no right of review or appeal against the standards panel decision.

If either party remains unhappy about the process which has been followed, they may complain to the Local Government and Health and Social Care Ombudsman,

Risk Management

21. There are no risks arising directly from the report which is for information. Maintaining high standards of conduct mitigates risks to the reputation of the council.
22. The Council cannot publish the details of this complaint. There is no discretion. The meeting must be held in private to ensure that an offence is not committed.

Consultees

22. None.

Appendices

Appendix 1 – Summary of matter referred to Standards Panel for determination
Appendix 2 – Complaint
Appendix 3 - Investigation Report
Appendix 4 – Subject Member's comments
Appendix 5 – Training presentation
Appendix 6 – Letter from the complainant
Appendix 7 – Code of conduct as applied at time of the alleged breach

Background Papers

None

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