

Herefordshire Council Standards Committee Localism Act 2011 Standards (chapter 7)

Proposal for a new regime of member conduct

On 25th July 2011 at the Group Leaders' meeting it was decided that the Standards Committee should be tasked with working up some proposals, to be brought back to the next meeting. This was agreed by all the Group Leaders.

A working group (D.Stevens, J.Bharier, R.Gething, J.Stone) has now prepared this report, recommending a new regime of member conduct following the abolition of the statutory code and penalties. Initial drafts have been discussed with the Group Leaders on 12 December 2011, and with the Standards Committee on 10 November 2011.

This report is for discussion at the next Standards Committee meeting on 13th. January 2012.

Subsequently these recommendations are to be brought forward to Herefordshire Council.

Attached:

- Summary of recommendations to Herefordshire Council
- Introduction
- Outline process chart for dealing with a complaint

December 19th. 2011.

Herefordshire Council Standards Committee
Localism Act: proposal on Standards

Summary of recommendations to Herefordshire Council

1. Code of Conduct

The model code of conduct produced by ACSeS be used as the basis for consultation with parish and town councils, with a view to it being initially adopted with appropriate amendment by Herefordshire Council and subsequently adopted by Parish and Town councils,

2. Standards Panel

A Standards Panel be established by the Council, comprising, as a minimum:

- Three Independent members (one of whom is to be Chair & one Vice Chair),
- two members of Herefordshire Council,
- two Parish/Town Councillors.

3. Additional members

Consideration be given to appointing a fourth independent member in due course, and that substitutes be nominated for the four councillors.

4. Appointment of Independent Members

The existing independent members of the Standards Committee be appointed, in the first instance, to the Standards Panel as Independent Persons under the Localism Act.

5. Complaints Procedure

The appended complaints procedure be endorsed in principle.

6. Procedure working

The MO work with the Standards Committee and subsequently the Standards Panel to settle the detailed working of the complaints procedure.

7. Procedure Review

The Standards Panel regularly review the procedure and report to Herefordshire Council on any changes that may be appropriate in the light of experience.

8. Registers of Interest

The MO commences work as soon as possible on establishing new registers of interest for the Council, and for all town and parish councils within the remit of the Council, and that appropriate resources be allocated to meet this statutory obligation.

9. Training

The MO, with the support of the Standards Committee and subsequently the Standards Panel, and with HALC, ensures that all councillors receive appropriate information and briefing on the new statutory duties and new arrangements.

Introduction

The Localism Act 2011 received Royal Assent on 15 November 2011. Sections 26 – 37 of the Act deal with standards. The current regime, including a statutory code of conduct for councillors, and oversight of the arrangements by Standards for England, is abolished. In place of this are new statutory obligations, which are considerably less prescriptive.

The Secretary of State has not yet made an order to bring into force these changes. However, there are indications that the effective date would be 1 April 2012, by which date Herefordshire Council would need to have in place arrangements for compliance with the statutory duties.

The Standards Committee has considered this, and had discussions with the Group Leaders. We now present proposals for meeting statutory obligations in a manner which would maintain public confidence. In respect of complaints, our aim has been to have a procedure which is as simple and short as is possible, while complying with a range of legal obligations, such as the principles of natural justice, as well as those of the Localism Act.

A few aspects of the proposals remain tentative: we are seeking clarification on interpretation of one or two matters.

The statutory obligations

Herefordshire Council must:

- promote and maintain high standards of conduct (section 27);
- adopt a code of conduct which must:
 - be consistent with the Nolan principles;
 - set out requirements for a register for disclosure of interests – financial and non-financial (ss 27 and 28).
- set up arrangements for dealing with complaints relating to members of the council and of parish and town councils, which must
 - Include involvement of at least one independent person (s28).
- establish a register of interests – and registers of interests for parish and town councils (s29).

Members must:

- register and declare financial interests of themselves and their spouse or partner(s30). Failure to do so becomes a criminal offence (s34).

High standards of conduct – the code

The Act states that the adoption of a code is a requirement for discharging the duty to promote high standards of conduct.

The duty to adopt a code extends to parish and town councils. However, such councils may adopt the code of their principal authority (in our case, Herefordshire Council).

The Standards Committee has considered three options:

- a. to adopt the existing code of conduct, contained within the Council's constitution, subject to some amendment, in particular in relation to disclosure of interests;
- b. to adopt a model code prepared by ACSeS and LGA; or
- c. to prepare a new code which would meet the requirements for content.

At the time of writing, a final version of the model code (option b) is not yet available. However, the most recent draft is written in more positive terms than the council's existing code. Our view is that, subject to any amendment of detail to deal with local circumstances, option 'b' would be preferred.

1. We recommend that the model code of conduct produced by ACSeS be used as the basis for consultation with parish and town councils, with a view to it being initially adopted with appropriate amendment by Herefordshire Council and subsequently adopted by Parish and Town councils,

"... at least one independent person"

The Act requires that the Council appoint "... at least one independent person ... whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate."

The views of the independent person may be sought by the Council in relation to allegations which it decides not to investigate, and also by members of the Council or parish councils who are subject to a complaint.

The statutory requirement raises the likelihood of possible prejudice: a councillor may consult the independent member who later may also be required to offer views on the investigation into that member.

It is also possible that, in the interests of natural justice, an independent person may exclude themselves from involvement in a case because of close personal or financial interest.

We have also taken account of the number of complaints that have been dealt with over the past three years: about 50 a year. We therefore consider that the Council would need to appoint a panel of at least three independent persons.

Our experience has been that it is very valuable for the independent members of the current Standards Committee to work alongside members of the Council and of parish councils and therefore we consider that the current committee format to be an appropriate and effective mechanism.

2. We recommend that a Standards Panel be established by the Council, comprising, as a minimum:

- **Three Independent members (one of whom is to be Chair & one Vice Chair),**
- **two members of Herefordshire Council,**
- **two Parish/Town Councillors.**

3. We recommend that consideration be given to appointing a fourth independent member in due course, and that substitutes to be nominated for the four councillors.

The mechanism of appointment for independent persons, and the qualifications for such persons, are set out in the Act. Mechanism and qualifications are broadly unchanged from those currently applying. It is plainly in the interests of the Council to utilise the learning and experience of the past. Advice is still being sought on detail in this area.

4. We recommend that the existing independent members of the Standards Committee be appointed, in the first instance, as Independent Persons under the Localism Act.

Complaints procedure - Arrangements for dealing with complaints.

The Council "...must have in place —

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions on allegations can be made." (s28)

Our understanding is that such decisions become decisions of the Council, whereas under the present system, decisions would be made by the Standards Committee. This is a significant change. We consider this a little later, in the section on the procedure.

We have taken the opportunity to simplify the current (statutory) procedure, and to make it more transparent. Our proposal is shown schematically in Appendix 1. Some further commentary is necessary.

- The Monitoring Officer (MO) plays a more prominent role than at present. In particular, the MO would be the first filter on receipt of any complaint, whereas the current arrangement for filtering requires a meeting of an assessment sub-committee of the Standards Committee.
- The member subject to a complaint would learn about this, and be able to respond, earlier in the process than at present.
- If a complaint is investigated, and therefore requires "a decision of the Council", it would first be referred to a sub-Panel of the Standards Panel, comprising an independent Chair and two others, who would normally be a councillor and a parish councillor.
- The sub-panel would consider the complaint, usually at a meeting where complainant, subject member and MO could present their submissions. The option could be available for all submissions to be presented in writing.

- v. The sub-panel would prepare a report, which would include recommendations on findings, and any appropriate sanction.
- vi. The report would be published.
- vii. The report would be presented:
 - a) If the subject member is a member of Herefordshire Council, to the Audit and Governance Committee for decision; or
 - b) If the subject member is a parish or town councillor, to that parish or town council for decision.

We would expect that, usually, the time from a complaint being received to the publication of a report, would be no more than 12 weeks.

5. We recommend that the appended complaints procedure be endorsed in principle.

This is an area where some detail will need further clarification. We also recognise that we will need to learn from our experience.

6. We recommend that the MO work with the Standards Committee and subsequently the Standards Panel to settle the detailed working of the complaints procedure.

7. We recommend that the Standards Panel regularly review the procedure and report to Herefordshire Council on any changes that may be appropriate in the light of experience.

Registers of interest

The Council, and town and parish councils, will need to have new registers of interests consistent with the revised requirements on disclosure that will be contained in the code of conduct. The registers should also identify those interests, the non-disclosure of which would be a criminal offence.

8. We recommend that the MO commence work as soon as possible on establishing new registers of interests for the Council ,and for all town and parish councils within the remit of the Council, and that appropriate resources be allocated to meet this statutory obligation.

Training - Transition to the new arrangements

9. We recommend that the MO, with the support of the Standards Committee and subsequently the Standards Panel, and with HALC, ensure that all councillors receive appropriate information and briefing on the new statutory duties and new arrangements.

Appendix

Outline process for dealing with a complaint of a breach of the Code of Conduct

Proposal from the Standards Committee to Herefordshire Council:
13 January 2012

