

MEETING:	AUDIT & GOVERNANCE COMMITTEE
MEETING DATE:	10 MARCH 2014
TITLE OF REPORT:	REVIEW OF THE STANDARDS PROCESS
REPORT BY:	SOLICITOR TO THE COUNCIL

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

County-wide

Purpose

To consider alternative options for the operation of the Council's Standards process.

Recommendation(s)

THAT :

- (a) **subject to consultation with the appointed independent persons and Herefordshire Association of Local Councils (HALC), a revised complaints process be recommended to Council which includes:**
- **retention of the standards panel; and**
 - **that the standards panel in future considers only written evidence: and**
- (b) **delegated authority be given to the Solicitor to the Council, in consultation with the Chairman of Audit & Governance Committee to agree the final draft complaints process, following consultation, for recommendation to Council.**

Alternative Options

1. Remove panel meetings from the process and pass responsibility for investigating allegations to the monitoring officer.

Advantages

- This would meet the statutory requirement to have in place arrangements for

investigating allegations;

- It would simplify the process.

Disadvantages

- Having one council officer responsible for receiving, assessing and investigating complaints could be perceived as not being open and transparent by the public and subject members;
- In practice, the monitoring officer would need to appoint an investigating officer in cases where an investigation was necessary. This could prove costly and might still result in unacceptable delays. Investigations under the previous system involved a lengthy process of interviewing all parties and witnesses, and producing a written report. Investigations were unlikely to be completed within three months.

2. Consider adopting another authority's system.

Many other authorities have adopted systems that largely replicate the previous regime. These systems tend to involve a standards committee and sub-committees, independent investigation officers and public hearings, or variations on that model. These are far more complex and time-consuming systems than the Herefordshire Council one. (See summary attached at Appendix 2). The model closest to the Herefordshire one is Staffordshire, which uses a similar panel arrangement but has the advantage that the panel meets to consider written submissions, rather than inviting the parties to attend.

3. Retain the present system unchanged.

Advantages

- This meets the statutory requirement to have in place arrangements for investigating allegations;
- In comparison with other authorities, Herefordshire Council's system appears much simpler and more straightforward. The vast majority of complaints are dealt with informally, without the need for a panel meeting. (Statistical information on standards complaints is attached at Appendix 1). Since the new regime was implemented, 35 complaints have been dealt with. Of these, 27 (77%) were dealt with informally by the monitoring officer, eight were referred to a panel and four panel meetings were held.

Disadvantages

- Can be a lengthy process because of the need to set up meetings and arrange for attendance of all parties;
- Duplicates work by enabling parties to present orally what has already been presented in writing;
- Can be confrontational.

Reasons for Recommendations

4. The recommended option is to retain the system as it is, but for panel meetings to consider only written submissions. This would have the advantage that a date could be

set at an early stage in the process, and it would not require the presence of the parties to the complaint or any witnesses. It would meet the statutory requirement to have in place arrangements for investigation, without the need to appoint an independent investigation officer. It would also meet the statutory requirement relating to the appointment of an independent person.

Key Considerations

5. The Localism Act 2011 abolished the standards regime administered by Standards for England, under which local standards committees were established, together with the national code of conduct which was supported by a statutory scheme of sanctions. Following the removal of the previous regime, the council was required to adopt a new code of conduct, and to implement a process for handling complaints.
6. Options for a new process for handling complaints were considered by the standards committee prior to its abolition on 30th June 2012, and their proposals for a new regime were considered by council on 20th July 2012. The new process was agreed with HALC, to ensure the involvement of town and parish councils. At the meeting of council on 20th July 2012, council resolved to:
 - adopt the code of conduct;
 - adopt the complaints process; and
 - extend the powers of the Audit and Governance Committee to enable it to determine complaints about member conduct.
7. Currently the procedure for dealing with complaints provides for the monitoring officer to undertake an initial appraisal of the allegation. The monitoring officer attempts to resolve the complaint informally wherever possible and appropriate. Whether or not there appears to have been a breach of the code of conduct, the complaint may be resolved informally by, for example, providing advice or training, inviting an apology or mediation. The monitoring officer normally consults one of the council's appointed independent persons as part of the initial appraisal. The majority of complaints are resolved informally and there is no right to request a review of the monitoring officer's decision.
8. If the complaint cannot be resolved informally and requires further investigation, it is referred to a panel chaired by an independent person. The other members of the panel are normally an elected member of Herefordshire Council and a town or parish council representative. The panel investigates the allegation by meeting to consider submissions made in person or in writing by the complainant, the subject member and the monitoring officer. Following the meeting, the independent person produces a report of the investigation.
9. If the panel considers that the member has breached the code of conduct, the report makes a recommendation for resolving the complaint. The report and recommendations are presented to the council's Audit and Governance Committee in the case of a member of Herefordshire Council, or to the relevant town or parish council in the case of a complaint against a town or parish council member. That body then decides whether to accept and action the recommendations.
10. The Audit and Governance Committee has broad discretion about the action it can take, for example, censuring the member, reporting the findings to council for information or requiring the member to undergo training. However, it cannot fine, suspend or disqualify a member from membership of the authority itself. Town and parish councils have similar

Further information on the subject of this report is available from
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discretion and powers.

11. Both the Audit and Governance Committee, and town and parish councils, have the option to reject the recommendations of the standards panel.

Reasons for reviewing the process

12. The current procedure has now been in place for almost two years. When the current regime was introduced, it was recommended that it be periodically reviewed in the light of experience.
13. Group leaders have expressed concerns that the standards panel involves a lengthy process, which is unsatisfactory for both complainants and members. They consider that the sanctions that can be applied to a member found by the panel to have breached the code of conduct are ineffectual, and do not justify the process.
14. In November this Committee requested that alternative options for the operation of the Council's Standards process should be prepared.

Community Impact

15. None

Equality and Human Rights

16. The recommendation pays due regard to the council's public sector equality duty as set out below, having due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct ... prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

Financial Implications

17. Any financial implications arising from the proposed change to the complaints process would be minimal in terms of reduced expenses for attendance at panel meetings.

Legal Implications

18. In compliance with the requirements of the Localism Act 2011, in July 2012 Council adopted a local code of conduct and a complaints process the latter having been devised in consultation with HALC as the process is used to handle complaints about town and parish councillors as well as this council's own members. Where the council has decided to investigate an allegation, there is a statutory requirement to appoint an independent person and to take that person's views into account after the council has investigated, but before it makes its decision; the proposed changes make no alteration to this element of the process.

19. In recommending the proposed changes to the complaints process regard must be had to both proportionality and fairness. Should there be circumstances where written submissions may present a barrier to engagement with the process, appropriate support must be made available.
20. No changes are currently proposed to the Code of Conduct, although members may wish to note that this will be reviewed as part of an ongoing programme to review the council's constitution in the forthcoming year.

Risk Management

21. There is a risk that the proposed changes may reduce confidence in the fairness of the process. This will be mitigated by providing appropriate support to ensure that the requirement for written submissions does not present a barrier to complaints being progressed.

Consultees

22. Subject to the views of the committee members, it is proposed to consult with appointed independent persons and HALC on the minor amendments proposed, prior to making any recommendation to Council.

Appendices

1. Standards complaints statistics
2. Summary of standards processes of other authorities

Background Papers

- None