

Meeting:	Audit and governance committee
Meeting date:	Wednesday 28 November 2018
Title of report:	Annual report on code of conduct
Report by:	Solicitor to the council

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To enable the committee to be assured that high standards of conduct continue to be promoted and maintained.

Recommendation(s)

That:

- (a) the annual report on code of conduct complaints be reviewed and any areas for further work be identified for inclusion in the work programme**
- (b) the recommendations from the standards panel advising this committee, following their annual sampling exercise, are adopted.**

Alternative options

1. There are no alternative options, the constitution requires the committee to annually review overall figures and trends from code of conduct complaints. The report provides a factual summary of the work undertaken during the period municipal year 1 May 2017 to 30 April 2018 and in addition 1 May 2018 to 30 September 2018.

Key considerations

2. The monitoring officer is responsible for dealing with allegations that councillors have failed to comply with the members' code of conduct and for administering the local standards framework.
3. Herefordshire Council, and all parish and town councils in the county, have a statutory duty in the Localism Act 2011 to 'promote and maintain high standards of conduct by members and co-opted members of the authority'.
4. The committee is responsible for conducting an annual review of the complaints received.
5. As requested by the committee on 30 July 2018, this report covers the municipal year 1 May 2017 to 30 April 2018 and in addition 1 May 2018 to 30 September 2018.

Code of Conduct

6. In accordance with the provisions of the Localism Act 2011 the council has adopted a code of conduct, and this has also been made available to all parish councils in the county to inform the adoption of their own code. This report considers the code as was adopted on 24 May 2017 and the version adopted on 25 May 2018.

Independent Persons

7. The Act also requires that the council appoint "at least one independent person" whose views are sought and taken into account before it makes its decision on an allegation of a breach of the code of conduct. Their view may also be sought in dealing with allegations which have not been investigated and they may be asked to provide support to subject members who are the subject of an allegation. During the period the council had one independent person, Richard Stow. The monitoring officer is grateful for the time and commitment the independent member has given. A recruitment process is currently underway to recruit additional independent persons
8. During the year as part of the consultation on the annual governance statement, the independent person has raised the following concerns:
 - a. That the standards procedure supporting the code of conduct would be strengthened by greater clarity on the sanctions which may be applied and how they may be enforced – details of the sanctions available are contained within the arrangements for dealing with code of conduct complaints.
 - b. Inclusion of an appeals process – an appeals process has been implemented as from 25 May 2018.
 - c. Clarification of the basis on which a breach of the code relating to the declaration of a schedule 1 interest may be referred to the police – discussions with the police have continued.
 - d. The two rejections of complaints against senior members of Herefordshire Council without referral to the independent person – the standards panel have reviewed all complaints which were rejected without referral to the independent person and their views are incorporated into this report at a later stage.
 - e. The appeals process – this is covered later in the report.

Arrangements

9. A [revised standards procedure](#) was approved by the committee on 8 May 2018 to investigate code of conduct complaints.

Register of Interests

10. The council maintains a register of interests for members of Herefordshire Council and parish councillors; these declarations are published on the Herefordshire Council website ([parish councils](#) and [Herefordshire Council](#)).
11. Following the adoption of a new code of conduct on 25 May 2018, all Herefordshire Council members have completed a new declaration of interest form.
12. As from May 2017, the register of interests also includes the register for gifts and hospitality. Over the period covered by this report, registers have been updated in order to record offers of gifts and hospitality which have been accepted or declined.
13. Members are reminded on a six monthly basis to keep their register under review.

Dispensations

14. During the period, two dispensations have been granted under the Section 33 (2) (c) of the Localism Act as it was considered to be in the best interests of the persons living in the council's area.

Protocol with the police

15. At the audit and governance committee meeting on 19 September 2017, authority was delegated to the monitoring officer to agree a protocol with West Mercia Police in respect of referring code of conduct complaints which may be considered a criminal offence under the Act. A draft protocol is with the police's legal department for comment.

Code of conduct complaints

16. During the period 30 April 2017 to 30 September 2018, there were 64 standards complaints. Some of the standards complaints were in respect of multiple councillors and the total number of complaints against councillors received in the period were 75.
17. Below are details of the number of complaints received since the introduction of the Localism Act 2011 and the breakdown of complaints between Herefordshire ward councillors and parish councillors. As can be seen from the figures below which are based on the number of complaints received, the majority of complaints received continue to be against parish councillors.

Year	Total no of complaints received	No of complaints against Herefordshire ward councillors	No of complaints against parish councillors
2013/14	36	16	20
2014/15	11	3	8

2015/16	36	12	24
2016/17	54	9	45
2017/18	50	12	38
2018/19 (year to date – 30 September 2018)	14	4	10

18. Of these complaints, the following outcomes are recorded:

Outcome	2017/18	2018/19 (year to date – 30 September 2018)
Withdrawn by complainant	6	1
Rejected	15	9
Breach of the code of the code of conduct	6	3
No breach of the code of conduct	31	2
Other course of course / no further action	2	0
Total number of complaints received against councillors	60	15

19. In accordance with section 3.5.14 (f) of the Constitution, details of the nine upheld complaints during the period by reference to individual councillors within unitary, town and parish councils are as follows:

Individual Member	Council	Trend	Recommendation	Recommendation completed
E Holton	Herefordshire Council	Respect / Behaviour	Apology to be provided	Apology provided
Tillett	Hereford City Council	Confidentiality	Code of conduct training, particularly confidentiality duties	Training undertaken by clerk to Hereford City Council
M Brown	Border Group Parish Council	Bullying	Apology	Apology provided
M Brown	Border Group	Bullying	Apology	Apology provided

	Parish Council			
T Brazier	Pencombe and Little Cowerne	Respect / Behaviour	Apology	Apology provided
G Fielding	Cradley Parish Council	Failure to declare an other interest	Code of conduct training to be provided by Monitoring Officer	Councillor has now resigned
J Kenyon	Herefordshire Council	Failure to declare an other interest	Code of conduct training to be provided by Monitoring Officer	Training provided
A Johnson	Herefordshire Council	Misleading statement to the Hereford Times	Apology and correction requested to Hereford Times	Letter sent to Hereford Times Confirmed will apologise in person
G Fielding	Cradley Parish Council	Bullying	Training to be provided by Monitoring Officer	Councillor has now resigned

20. As from 25 May 2018, where the complaint has been upheld and the monitoring officer found a breach of the code, a decision notice is published as soon as possible after the expiry of the 14 working days appeal period on the council's website and these can be viewed [here](#).
21. On analysis of all complaints received, the overall complaint trend continues to relate to a lack of respect which includes behaviour at meetings, email correspondence and social media.
22. Of the complaints received during the period, 23 complaints were received from councillors complaining about other councillors and 41 complaints were made by members of the public.
23. During the period, two complaints were referred to the Local Government and Social Care Ombudsman. They investigate complaints from members of the public of injustice and maladministration. They cannot question whether a council decision is right or wrong. They consider whether there was fault in the way the decision was reached. For the two complaints received, the Ombudsman did not proceed beyond their initial assessment. In one case because they had not seen any evidence of fault in the way the council considered the complaint and in the other complaint it was found that there was no personal injustice as a result if the alleged fault in the way the council handled the code of conduct complaint.

Standards Panel

24. As from 25 May 2018, there has been a right of appeal against monitoring officer resolution decisions. To date, there have been two appeals accepted, one from a complainant and one from a subject member.

25. The standards panel upheld the monitoring officer resolution in respect of Councillor J Kenyon, Herefordshire Council, in a finding of a breach of the code of conduct.
26. The standards panel dismissed the monitoring officer resolution decision in respect of Councillor G Fielding, Cradley Parish Council and found that Councillor Fielding had breached the Cradley Parish Council code of conduct.
27. Both decision notices are available on the Standards Panel committee page, together with the minutes of the two panel meetings.
28. At the standards panels held on 16 October 2018, the panel recommended that:
 - a. guidance be circulated to councillors in order to provide greater clarity as to the definition of close personal associate (code of conduct) and inappropriate contact (planning code). A letter was sent to all chairpersons and vicepersons on 25 October 2018 and a copy of the letter was included in the Ward Member Update on 31 October 2018.
 - b. when subject members are notified that a complaint has been received against them they made aware of the procedure and possible outcomes. This recommendation has been implemented.
 - c. The process for collecting evidence be improved.
29. The procedure to be used at the panel meetings has been developed and a copy is attached as appendix 1 for audit and governance committee members to provide comments.
30. The procedure to be used when assessing appeals lodged by subject members and complainants has also been considered. A copy of the draft procedure is attached as appendix 2 for members to provide comments.
31. As requested by the committee at its meeting on 30 July 2018, a standards panel was convened on 13 November 2018 in order to undertake a sample review of monitoring officer resolution decisions during the period municipal year 1 May 2017 to 30 April 2018 and in addition 1 May 2018 to 30 September 2018.
32. The panel sampled 37 complaints out of 59 complaints (5 complaints were excluded from the sample review as they were still open as at the date of publication of the papers for the meeting). The panel found that the procedure was appropriate and had been consistently applied. The minutes of this meeting have been published [here] and the panel's advice to this committee is attached at appendix 3.
33. The committee is asked to consider the procedures that have been developed and in particular to consider the public interest test that applies where information identifies an individual. It is always a matter for the committee to decide if the meeting should be conducted in private. It is a balancing exercise where information does identify an individual to consider if the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Our arrangements for appeals as considered by the working group and approved by this committee since May 2018 state that the meeting of the standards panel will be in private with decisions published.

Community impact

34. This report provides information about the council's performance in relation to the code of conduct
35. 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

Equality duty

36. 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.
37. 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 report on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

38. There are no resource implications arising directly from this report which is for information
39. The council has a statutory duty in the Local Government and Housing Act 1989 to provide the monitoring officer with sufficient resources to allow them to perform their duties.
40. The Independent Persons receive no allowances and are only reimbursed their travel expenses for meetings with the monitoring officer.

Legal implications

41. The review evidences that the council complies with the duties required under the Localism Act 2011.

Risk management

42. 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. How the arrangements are managed can be cause for complaint and are dealt with by the chief executive. The fact that only recommendations can be made exposes the council to risk of

criticism, this is a result of the national framework which the committee in public life will be considering.

Consultees

43. The independent person has not been consulted on the content of this report due to annual leave but has helpfully confirmed that he will be present at the committee meeting on 28 November 2018 to answer questions from members.

Appendices

Appendix 1 Process for hearing appeals

Appendix 2 Appeals process

Appendix 3 Advice from the Standards Panel held on 13 November 2018

Background papers

None