

Meeting:	Audit and governance committee
Meeting date:	Tuesday 24 September 2019
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. To provide an overview of how the arrangements for dealing with complaints are working together with views from the latest standards panel sampling review.

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; and**
- (c) the committee endorse the recommended changes to the standards complaints process proposed by the monitoring officer in consideration of the review by the committee on standards in public life, set out in appendices 1 and 2 .**

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 1 October 2018 to 30 April 2019. The period 1 May 2018 to 30 September 2018 having been reviewed by the committee at its meeting on 28 November 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, city and town councils in the county, have a statutory duty under 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 receiving an annual review by the monitoring officer.

Code of Conduct

5. 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 adopted on 25 May 2018.

Independent Persons

6. 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.
7. During the period, eight independent persons were recruited and Council approved their appointment on 15 February 2019. Since their appointment, two independent persons has resigned for personal reasons.
8. The monitoring officer is grateful for the work and support from all of the independent persons.

Arrangements

9. A [revised standards procedure](#) to investigate code of conduct complaints was reviewed by this committee on 8 May 2018 . The changes listed below have achieved clarity and transparency on the operation of the council's arrangements.
 - Revised wording to the criteria for initial assessment,
 - Referral to the standards panel for determination where a councillor has not complied with a monitoring officer's recommendation.
 - The naming of parish councils in the code of conduct annual report.

Register of Interests

10. The council maintains a register of interests for members of Herefordshire Council and parish councillors, where provided; these declarations are published on the Herefordshire Council website ([parish councils](#) and [Herefordshire Council](#)).
11. Following the local elections on 2 May 2019, every Herefordshire Council member has completed a new declaration of interest form.
12. The majority of Herefordshire parish councils have now adopted the Herefordshire Council code of conduct and registers of interests have been received for signature and publication.
13. As from May 2017, the Herefordshire Council 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.
14. Members are reminded on a quarterly basis to keep their register under review. The first reminder for this year is due at the end of September 2019.

Dispensations

15. Dispensations are able to be granted in circumstances set out in section 33 of the Localism Act 2011. A dispensation can enable a councillor where they have a schedule 1 or 2 interest to participate and or vote and or remain in the room where they have an interest in the matter being discussed.
16. The reasons why a dispensation could be granted is detailed in the Localism Act as set out below. The monitoring officer can grant dispensations (a) and (c) with the audit and Governance committee granting (b), (d) and (e), together with any appeals against a monitoring officer consideration on grounds (a) and (c).

“A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—

(a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority’s area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member

of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

(e)considers that it is otherwise appropriate to grant a dispensation.”

17. Since the local elections in May 2019, four dispensations have been granted by the monitoring officer under the Section 33 (2) (c) of the Localism Act as they were considered to be in the best interests of the persons living in the council's area. All four councillors live in the area affected by the Southern Link Road (SLR) and or Hereford Transport Package (HTP), because their land could be affected by decisions on these transport packages they would not be able to represent the views of the ward they represent without the dispensation. It must be right that the ward are represented.
18. The dispensations were granted to
 - Councillor David Hitchiner
 - Councillor Tracy Bowes
 - Councillor Graham Andrews
 - Councillor Christy Bolderson
19. Copies of the dispensations granted are attached to the councillor's register of interest forms and published on the council's website.
20. These were all granted to the members in their role as ward members so that they could represent the views of their ward. As well as representing his ward, Councillor Hitchiner was granted a dispensation to undertake his role as leader as in the monitoring officer's view, the elected leader of the council should be involved in a such a strategically important decision for this council. The dispensation enables Councillor Hitchiner therefore to represent the views of his ward and also to be involved in the decision as leader.
21. The implications of having a dispensation has been drafted as frequently asked questions and will be provided to each councillor who has a dispensation and will be generally available on the council's website

Protocol with the police

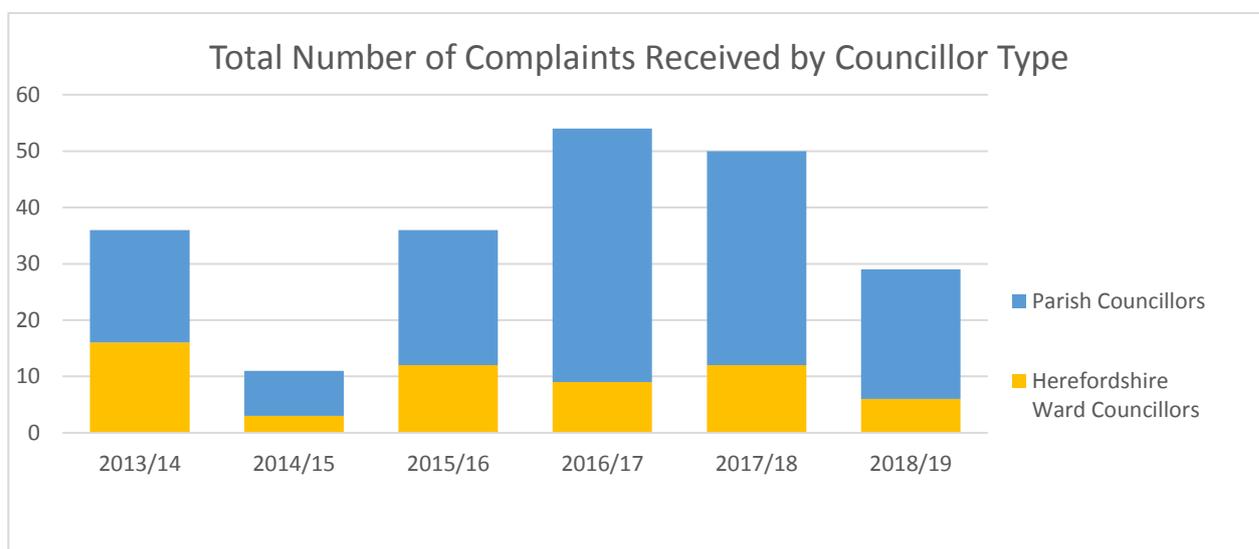
22. A protocol has now been agreed with West Mercia and is available on the council's website. This protocol explains how the council and police will deal with a code of conduct complaint if it is considered that a criminal offence may have occurred.

Code of conduct complaints

23. During the period 1 October 2018 to 30 April 2019 there were 15 standards complaints. Some of the standards complaints were in respect of multiple councillors and the total number of councillors subject to a complaint received in the period was 19.
24. 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 of which there are 53 councillors and parish councillors of which there are approximately 1300. As can be seen from the figures below which are based on the number of

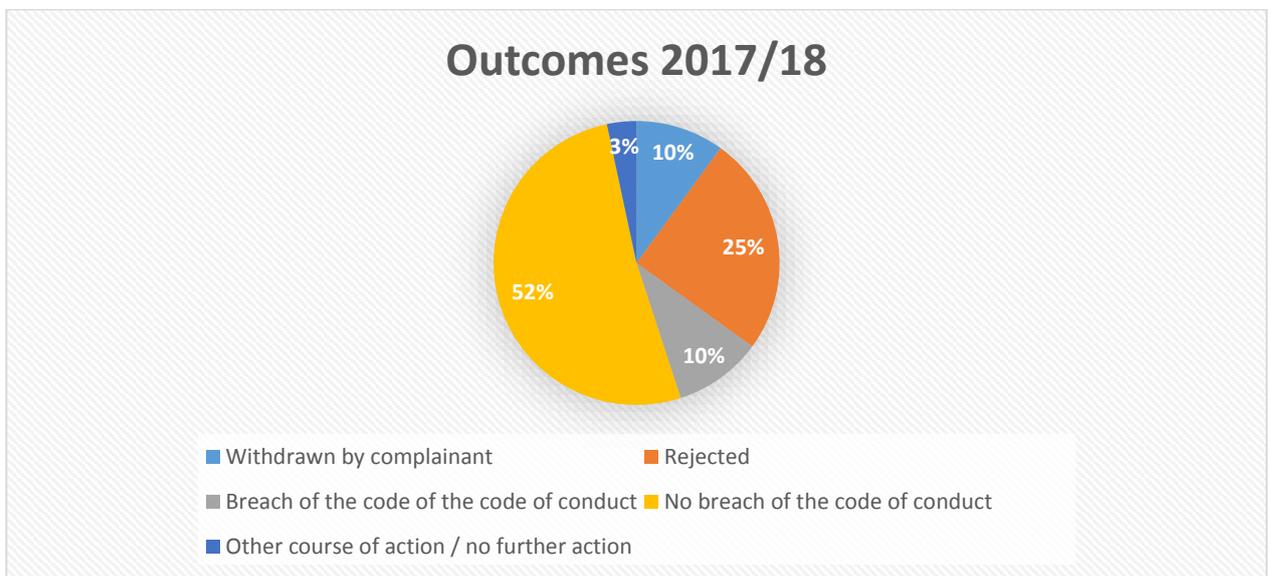
complaints received, the majority of complaints received continue to be against parish councillors who are the largest number of councillors in the area.

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 (1 May – 30 September 2018)	14	4	10
2018/19 (1 October to 30 April 2019)	15	2	13

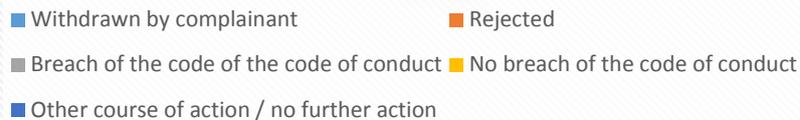
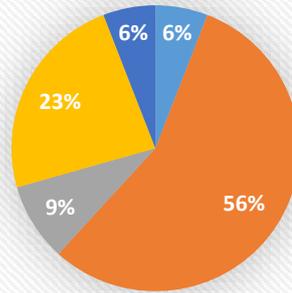


25. Of these complaints, the following outcomes are recorded:

Outcome	2017/18	2018/19 (year to date – 30 September 2018)	1 October 2018 to 30 April 2019
Withdrawn by complainant	6	1	1
Rejected	15	9	10
Breach of the code of the code of conduct	6	3	0
No breach of the code of conduct	31	2	6
Other course of course / no further action	2	0	2
Total number of complaints received against councillors	60	15	19



Outcomes 2018/19



26. During the period, 1 October 2018 to 30 April 2019, there were no upheld complaints. Since 1 May 2019, there has been one upheld complaint and details can be found on the council's website.
27. 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.
28. Of the complaints received during the period, 3 complaints were received from councillors complaining about other councillors and 12 complaints were made by members of the public.
29. There were two complaints received against Councillors at Herefordshire Council. The remaining complaints were against parish councillors. Details of the complaints by parish council are:

Parish Council	Number of complaints by parish council
Bartestree Parish Council	1
Belmont Rural Parish Council	1
Cradley Parish Council	2
Eardisley Parish Council	1
Ledbury Town Council	1
Linton Parish Council	1
Marden Parish Council	1
Mathon Parish Council	1
Much Cowarne Parish Council	1
Tarrington Parish Council	1
Walford Parish Council	1
Total (excludes withdrawn complaint)	12

30. This compares to last year where the complaint were:

Parish Council	Number of complaints by parish council
Walford Parish Council	9
Marden Parish Council	8
Cradley Parish Council	6
Border Group Parish Council	5
Ledbury Town Council	4
Leominster Town Council	3
Belmont Rural Parish Council	2
Llangarron Parish Council	2
Almeley Parish Council	1
Bartestree with Lugwardine Parish Council	1
Dinedor Parish Council	1
Garway Parish Council	1
Hereford City Council	1
How Caple, Sollers Hope and Yatton Parish Council	1
Ocle Pychard Group Parish Council	1
Pencombe and Little Cowarne	1
Sutton St Nicholas	1
Tarrington Parish Council	1

31. The committee requested at its meeting on 28 November 2018 that details of which independent person was consulted be included as part of this report. Richard Stow was our only independent person during the period and was consulted on all the complaints during the period 1 October 2018 to 30 April 2019.

Compliance

32. Our arrangements detail that where there has been a breach of the code and recommendations that these are complied with. A councillor is asked to confirm that they have complied within 6 weeks of the decision being communicated to them. If they are unable to confirm this then the matter has not been resolved by the monitoring officer and the complaint will be referred to the standards panel for determination.
33. There were no breaches during the period which required compliance.
34. One complaint was dealt with under any other course of action and confirmation was provided that the recommendations had been complied with.

Training

35. All Herefordshire ward councillors have been trained by the monitoring officer on the code of conduct. Training has been provided to clerks who are members in the Society of local committee clerks (SLCC) and Ross Town Council. Training is scheduled with

Leominster Town Council and as part of Herefordshire Council's suite of training for parish councillors.

Local Government Ethical Standards

36. In January 2019 the committee on standards in public life published a report on local government ethical standards see:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF
37. The report contains suggested best practice and formal recommendations. Whilst the government has yet to agree a response to the recommendations, as a matter of good practice a review of Herefordshire Council practice against the findings in the report has been undertaken as outlined at appendix 1 (re suggested best practice), and Appendix 2 (re formal recommendations).

Publications/Freedom of Information Requests

38. During the year there continues to be public interest in standards and Freedom of Information requests are received. The requests received relate to access to information which has been determined by a standards panel to be exempt and guidance has been produced by the monitoring officer to assist with this deliberation see appendix 4. Other requests relate to historic information.
39. We have published since 25 May 2018 all decision notices where the monitoring officer has found a breach of the code. These are available on the council's website. Complaints before that date have not been published..
40. The Information Commissioner required disclosure of former councillor complaint details in June 2019 and these have been provided to the requester but not published on the council's website. A further request was sought for the declaration of interest forms for the newly appointed independent persons. These are also not published on the council's website but were provided to the requester and is a matter already discussed with the IP's and is for further discussion at the next IP's conference with the monitoring officer in October 2019. There is an outstanding complaint with regard to publishing details of rejected complaints, this refusal by the council has been upheld by the information commissioner but is being appealed.
41. The arrangements are silent on the period of time that such complaints will be retained for. It is an operational matter but the committee should be aware that, from the date of this meeting, the council will only retain complaints and decision notices up until the complaint has been contained within the annual code of conduct report to this committee. Any complaints dealt with by the standards panel will be retained for six years and are then archived.

Standards Panel

42. As from 25 May 2018, there has been a right of appeal against monitoring officer resolution decisions. During the period, there were no appeals received or heard.
43. A standards panel was convened on 10 September 2019 in order to undertake a sample review of monitoring officer resolution decisions during the period 1 October 2018 to 30

April 2018. The period 1 May to 30 September was reviewed by the committee at its meeting on 28 November 2018.

44. The panel sampled 11 complaints. The panel found that they were satisfied with the level of assurance provided on the timeliness, consistency and sanctions.
45. The panel's did have some recommendations and these are contained in appendix 5.

Community impact

46. This report provides information about the council's performance in relation to the code of conduct.
47. Having an effective process for dealing with code of conduct complaints upholds principles 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

48. 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.
49. 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

50. There are no resource implications arising directly from this report which is for information.
51. 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.
52. The Independent Persons receive no allowances and are only reimbursed their travel expenses for meetings with the monitoring officer. The committee is due to receive a report at its meeting in March 2020 on allowances for independent persons.

Legal implications

53. There is no statute that specifically requires the monitoring officer to produce an annual report. However, the review evidences that the council complies with the duties required under the Localism Act 2011.

Risk management

54. 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 considered.

Consultees

55. All independent persons were consulted on this report and views provided by Ms S Archer, Mr G Hodson and Mr J Barrier have been incorporated into the report and appendices

Appendices

Appendix 1 – Self assessment against best practice recommendations from the Local Government Ethical Standards report

Appendix 2 – Self assessment against recommendations from the Local Government Ethical Standards report

Appendix 3 – Action plan for recommendations contained within appendices 1 and 2

Appendix 4 – Guidance on public/ private hearings

Appendix 5 - Standards Panel advice to the committee

Background papers

None.