

SUPPLEMENT TO THE AGENDA FOR

Audit and Governance Committee

Monday 12 November 2012

2.00 pm

Concert Hall, Shire Hall

	Pages
10. REPORT OF THE STANDARDS PANEL: BREACH OF THE MEMBERS' CODE OF CONDUCT BY COUNCILLOR MAF HUBBARD	61 - 68



MEETING:	AUDIT AND GOVERNANCE COMMITTEE
DATE:	12 NOVEMBER 2012
TITLE OF REPORT:	STANDARDS PANEL REPORT, 2 NOV 2012
PORTFOLIO AREA:	CORPORATE SERVICES

Wards Affected

County-wide

Purpose

To consider the recommendations of the Independent Person, following the Standards Panel meeting on 2 November 2012

Recommendation(s)

THAT:

- (a) The Audit & Governance Committee considers the report of the Standards Panel meeting on 2 November 2012;
- (b) The Audit & Governance Committee approves the recommendations of the independent person following the Standards Panel meeting; and
- (c) The Audit & Governance Committee reports the outcome of these breaches to Council.

Introduction and Background

1. Council has adopted a new system for resolving complaints against members, which was approved by the Audit and Governance Committee, at its meeting on 21st September 2012.
2. Under this process, complaints which were otherwise ready for final determination under the old regime, but which had not been concluded by the Standards Committee, fell to be considered by a newly constituted Standards Panel who would consider the facts and/or previous findings and make an appropriate report to this committee.
3. This report relates to the first of two complaints that remain outstanding from the old regime.

Key Points Summary

- The Standards Panel met on Friday 2 November to consider a complaint made on 23 April 2012 that Councillor Mark Hubbard had failed to comply with the members' code of conduct;
- This was the first case to be considered under the new standards regime. The former scheme ended on 1st July this year. The case comprised two separate, but linked, complaints.
- The process of addressing the two complaints had already commenced under the previous scheme. They had been referred for investigation following consideration by an assessment sub-committee.
- A report of the investigation had been considered by the former Consideration Sub-Committee, and the complaints had been referred for hearing.
- The Panel considered the investigation report and the subject member's comments and decided that there had been a breach of the code of conduct;
- The Panel discussed and agreed what sanctions it would be appropriate to recommend to the Monitoring Officer for decision by the Audit & Governance Committee.

Alternative Options

4. The alternative options are to:
 - accept the findings in the report, but impose an alternative sanction;
 - accept the findings and impose no sanction;
 - reject the findings and recommendations.

Reasons for Recommendations

5. The Panel agreed that the subject member had failed to comply with one of the Ten General Principles of Public Life that define the standards that members should uphold, which serve as a reminder of the purpose of the code of conduct and which form part of the code.
6. The Panel considered that the subject member had also failed to comply with paragraph 4(a)(iv) of the code of conduct.

Key Considerations

7. The Standards Panel considered that the subject member had failed to comply with one of the Ten Principles of Public Life and with Paragraph 4(a)(iv) of the members' code of conduct. The Panel considered that such conduct could have seriously

affected the reputation of the council and that the subject member had failed to follow due process in order to comply with the reasonable requirements of the council.

Financial Implications

8. None arising directly from this report.

Legal Implications

9. The Council's Standards Committee and the previous regime for resolving complaints about the conduct of elected members were abolished on 1st July 2012 by the Localism Act 2011. Complaints unresolved at that date fall to be concluded in accordance with the new scheme to ensure a clear transition from the previous standards regime to the new local complaints system. The content of this report complies with the requirements of the Localism Act.

Risk Management

10. If complaints are not handled expeditiously then public confidence may be undermined and the Council's ethical credibility may be undermined.

Consultees

11. None.

Appendices

12. Report of the Standards Panel meeting on 2 November 2012 (attached as an appendix to this report).

Meeting of the Standards Panel 2 November 2012: Committee Room 1, Shire Hall

Present:

The Standards Panel:

Jake Bharier, Appointed Independent Person (Chair)
Councillor Chris Chappell (Herefordshire Council Representative)
Richard Gething (Town & Parish Council Representative)

Legal Adviser:

John Jones, Deputy Monitoring Officer

Clerk:

Hazel Lavelle, Democratic Services Support Officer

Observer:

Rob Cook, Appointed Independent Person

Subject Member:

Councillor Mark Hubbard

Summary

1. The Chair introduced all those present. He outlined the roles of the Panel members and the function of the Panel as a whole, with reference to the relevant section of the Localism Act 2011. He explained that the meeting was not a 'hearing' but a dialogue that would inform the Panel's deliberations and the views that it would subsequently express to the Audit and Governance Committee.
2. The Chair explained that this was the first case to be considered under the new Standards regime. The process of addressing the two complaints had already commenced under the previous scheme: they had been referred for investigation following consideration by an Assessment Sub-Committee. A report of the investigation had been considered by a Consideration Sub-Committee, and the complaints had been referred for hearing. A few days afterwards, the Standards scheme had been abolished and the complaints therefore fell to be considered under the new scheme.
3. The starting point for consideration of the complaints would therefore be the investigation report. The Panel would then hear the Subject Member's comments and decide, in respect of each complaint:
 - whether there had been a breach of the code of conduct; and
 - if so, what sanctions the Panel should recommend to the Monitoring Officer for decision by the Audit & Governance Committee.

The Chair noted that the complaints had been received at a time when the previous code of conduct had been in force, and the Panel would therefore be considering the complaints against that code.

Complaint 1208:

4. This complaint, made by the Chief Executive, was that, on 29 March 2012, the Subject Member removed confidential documents from the office of an officer of Herefordshire Council without permission.
5. The Subject Member did not dispute the facts. In mitigation, the Subject Member stated that he had acted on impulse in a heightened emotional state, having felt frustrated at being denied access to a document. The Subject Member stated that he realised immediately that he had done the wrong thing, did not look at the contents of the envelope marked 'Private & Confidential', and immediately took steps to acknowledge his error and return the envelope to the officer. The Subject Member stated that he deeply regretted his action and acknowledged that it was likely to affect the trust between members and Council officers.
6. The Panel accepted the Subject Member's statement that he had not looked at the contents of the envelope and had taken immediate steps to correct his actions. Nevertheless, the Panel took the view that his conduct could have had serious consequences for the Council. The Panel considered the Ten General Principles of Public Life that define the standards that members should uphold, which serve as a reminder of the purpose of the code of conduct and which form part of the code. The second principle states:

'Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.'

7. **The Panel agreed that the Subject Member had failed to comply with this general principle of public life in that he had removed from a Council office a document marked 'Private & Confidential' to which he was not entitled.**
8. The Panel deferred their consideration of the recommendation regarding sanctions until they completed their consideration of the second complaint.

Complaint 1209

9. This complaint, also made by the Chief Executive, was that, on 28 March 2012, the Subject Member attended a local member briefing meeting with the Council's Director for Places and Communities (DfPC), at which the DfPC briefed members on a forthcoming report to Cabinet, emphasising that certain elements of the report were exempt from publication for reasons of commercial confidentiality. The DfPC had reminded the members of the requirement to maintain confidentiality. On 5 April, the Hereford Times published a front page picture of the Subject Member holding the confidential report to Cabinet.
10. The Subject Member did not dispute the facts. In mitigation, the Subject Member stated that he felt that he was acting in the public interest in disclosing the confidential report, and that he had acted according to his own principles of open and honest government. The Subject Member stated that he had not sought advice from Council officers or discussed his intention to disclose the report with them before doing so. He stated that the press deadline required swift action so that the report would become public before the Cabinet meeting, and encourage members of the public to attend the Cabinet meeting. The Subject Member said that he had acted in his capacity as ward member for the ward affected by the report, and not in his capacity as leader of the 'It's Our County' group. The Panel asked if, while the Subject Member may have thought he was acting in the public interest, he was also motivated by a

wish to bring political pressure on the Council by encouraging the public to attend the Cabinet meeting. The Subject Member acknowledged this.

11. **The Panel considered that the Subject Member had failed to comply with paragraph 4(a)(iv) of the code of conduct. They accepted that the Subject Member believed that his disclosure of the exempt document would be in the public interest. However, the Panel considered that the Subject Member had had sufficient time to follow established procedures for consulting fellow members and officers before disclosing the report, and that he had failed to do so. The subject of the report had been available to him via the Council's Rolling Programme for some months. He had therefore failed to follow due process in order to comply with the reasonable requirements of the Council.**

Penalties

12. The Panel having considered the options for penalties in respect of both complaints, decided - and it is my recommendation - that:
 - the Audit and Governance Committee be asked to present a report on the consideration of the investigation of the complaints to the next full Council meeting; and
 - training should be arranged for the Subject Member to ensure he is fully apprised of the established processes for seeking advice.

Note on the code of conduct

13. This report considers the position under the code of conduct in force at the time of the complaint. The new code of conduct currently in force has similar requirements, specifically in paragraph 10: "*Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Authority...*"; and in paragraph 11 (h)(iv) in relation to disclosure of information in the public interest. I therefore consider that very similar conclusions would have been reached had the conduct been considered against the new code.

**Jake Bharier
Independent Person
Chair of the Standards Panel
3 November 2012**

