

Agenda

Standards Panel

Date: **Tuesday 16 October 2018**

Time: **2.00 pm**

Place: **Committee Room 1, Shire Hall**

Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

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If you would like help to understand this document, or would like it in another format, please call Caroline Marshall, democratic services officer on 01432 260249 or e-mail caroline.marshall3@herefordshire.gov.uk in advance of the meeting.

Agenda for the meeting of the Standards Panel

Membership

**Councillor ACR Chappell
Councillor EE Chowns
Councillor RM Wilson, Bartestree
with Lugwardine Group Parish
Council (HALC representative)**

Please note that in accordance with the 2.8.24 of the Herefordshire Council constitution, a second member of the audit and governance committee is substituting as an independent person is not available.

Agenda

		Pages
1.	ELECTION OF CHAIRPERSON To elect a chairperson for the meeting.	
2.	EXCLUSION OF PRESS AND PUBLIC In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered. RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. 2 Information which is likely to reveal the identity of an individual.	
3.	APPEAL OF A MONITORING OFFICER RESOLUTION BY A SUBJECT MEMBER To consider an appeal by a subject member.	5 - 34
4.	HOW TO UNDERTAKE AN ANNUAL SAMPLE REVIEW OF DECISIONS MADE BY THE MONITORING OFFICER To agree a process for the annual sampling of code of conduct complaints by the Standards Panel.	35 - 40



Meeting:	Standards Panel
Meeting date:	16 October 2018
Title of report:	Appeal of a monitoring officer resolution by a subject member
Report by:	Democratic services officer

Classification

Open – Report

Appendices 1 to 5 are exempt by virtue of the paragraph(s) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A of the Local Government Act 1972, as amended.

- 1 Information related to any individual

And the public interest in maintaining this exemption whilst the matter is being determined by the panel outweighs the public interest in disclosing the information.

Key Decision

This is not an executive decision.

Wards Affected

All Wards

Purpose

To consider an appeal by a subject member.

Recommendation

THAT the panel determine an appeal by a subject member following monitoring officer resolution of a code of conduct complaint.

Options

1. There are two options open to the panel:
 - a) Confirm the monitoring officer's decision; or
 - b) Substitute the monitoring officer's decision for their own decision.

Key Considerations

2. The standards panel is determining an appeal against a monitoring officer resolution by a subject member against a finding of a breach of the code of conduct
3. The original complaint is attached at appendix 1.
4. The initial assessment of the complaint is attached at appendix 2.
5. The subject member's comments on the complaint are attached at appendix 3
6. The original monitoring officer resolution decision notice is attached at appendix 4 and the full response to the original complaint is appendix 5.
7. The deputy monitoring officer who looked at this complaint will be present at the meeting to answer queries which the panel members may have in connection with the matter.
8. The independent person whose views were taken into account when making the monitoring officer resolution has also been invited to the meeting to answer queries which panel members may have.
9. The subject member has the right to attend the panel to present their views or submit in writing their comments.
10. The complainant has been invited to present their views on the monitoring officer resolution decision notice.
11. It is for the panel members to determine whether or not there has been a breach of the code of conduct in relation to the complaint.
12. If the panel find that a subject member is in breach of the code of conduct, it may:
 - Publish its findings in respect of the member's conduct;
 - Report its findings to council (or to the town/parish council) for information;
 - Recommend to council that the member be censured;
 - Recommend to the member's group leader (or in the case of un-grouped members, recommend to council) that he/she be removed from any or all committees or sub-committees of the council;
 - Recommend to the leader of the council that the member be removed from the cabinet, or removed from their portfolio responsibilities;
 - Recommend that the subject member be replace as executive leader;
 - Instruct the monitoring officer to (or recommend that the town/parish council) arrange training for the member;
 - Recommend to council (or recommend to the town/parish council) that the member should not be appointed and/or be removed from all outside body appointments to which they have been appointed or nominated by the council (or by the town/parish council);
 - Withdraw (or recommend to the town/parish council that it withdraws) facilities provided to the member by the council, such as a computer, website and / or email and internet access;
 - Exclude (or recommend that the town/parish council exclude) the member from the council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.
 - Require an apology in terms suitable to the standards panel.

13. The above list is not exhaustive. However, it should be noted that the panel does not have the power to suspend a councillor or to withdraw any allowances which a subject member may be in receipt of.
14. If there is a finding of a breach of the code of conduct, the decision will be published as a decision of the standards panel.

Community Impact

15. 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 and that appropriate action is being taken to ensure that the code is being upheld.

Equality duty

15. 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.
16. 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.
 17. The appeal process will comply with Equality legislation and will ensure where necessary that the process is accessible and where necessary reasonable adjustment will be provided to support those that share a protected characteristic to participate fully in the process.
 18. Although Article 6 ECHR "right to a fair trial" does not apply to this type of hearing due to the sanctions that can be applied. The common law right to be heard by an unbiased tribunal, have notice of the misconduct and be heard in answer to the charges apply. The appeal process is capable of achieving justice and fairness.

Resource implications

18. There are no resource implications arising as a result of this report.

Legal Implications

19. The appeal process forms part of this council's arrangements for making decisions on allegations in accordance with section 27 (6) 9(b) of the Localism Act 2011.

Risk Management

20. 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.

Consultees

21. None.

Appendices

Appendix 1 – Original complaint

Appendix 2 – Initial assessment

Appendix 3 – Subject member's comments

Appendix 4 – Original monitoring officer's resolution decision notice

Appendix 5 – Full response to the original complaint

Background Papers

None

Document is Restricted

Document is Restricted

Document is Restricted

Document is Restricted

Document is Restricted



Meeting:	Standards Panel
Meeting date:	16 October 2018
Title of report:	How to undertake an annual sample review of decisions made by the monitoring officer under the code of conduct complaint process
Report by:	Monitoring officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

All Wards

Purpose and summary

To agree a process for the annual sampling of code of conduct complaints by the Standards Panel.

Recommendation

THAT

a process by which the annual sampling of code of conduct complaints be undertaken is agreed

Alternative Options

1. Not to agree a process by which to sample code of conduct complaints. This is not recommended as under the Herefordshire Council Constitution, one of the panel's functions is to undertake an annual sample review and there needs to be an agreed methodology for doing so.

Key Considerations

2. As part of the amendments to the constitution agreed at Council on 25 May 2018, an annual sampling of code of conduct complaints was approved.
3. At the audit and governance committee meeting on 30 July 2018, it was requested that the sampling takes place prior to its meeting in November 2018 so that the views of the panel could be taken into account as part of the annual report on the code of conduct.

4. As this is the first time that sampling of the complaints will take place, it is for the panel to decide how this is undertaken.
5. For the period 30 April 2017 to 30 September 2018, there were 64 complaints received by the monitoring officer.
6. The decisions made under the code of conduct complaints process fall broadly into the following categories affecting parish and ward councillors:
 - Rejected under the initial assessment process – with the views of the independent person sought
 - Rejected under the initial assessment process – without the views of the independent person sought
 - Monitoring officer resolution with a breach of the code of conduct
 - Monitoring officer resolution without a breach of the conduct
 - Discontinued with no finding as the subject member has resigned and it is not in the public interest to continue with the complaint.
7. Possible options are:
 - that a maximum number of complaints are sampled representing an agreed percentage. The sampling could be randomised, with the panel selecting from a list of reference numbers, or partially randomised by providing the panel with lists of reference numbers to select from different categories such as Herefordshire Councillors; parish councillors; complaints upheld; complaints dismissed as categorised above.
 - A decision or a number of decisions from each of the categories above are sampled.
8. As part of the annual governance statement report to the audit and governance committee on 30 July 2018, the independent person expressed concern that two complaints against Herefordshire councillors had been rejected without his views being taken into account. The independent person has suggested that these two complaints are reviewed by the standards panel.
9. A member of the audit and governance committee who is not part of this standards panel has also made suggestions as to how the sampling should proceed which is attached at appendix 1

Community Impact

10. 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 and that appropriate action is being taken to ensure that the code is being upheld.

Equality duty

11. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

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 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
12. 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.
13. The panel process will comply with Equality legislation and will ensure where necessary that the process is accessible and where necessary reasonable adjustment will be provided to support those that share a protected characteristic to participate fully in the process.

Resource implications

13. There are no resource implications arising as a result of this report.

Legal Implications

14. There are no legal implications arising as a result of this report.

Risk Management

16. 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.

Consultees

17. None.

Appendices

Appendix 1 – Sampling process suggested by a member of the audit and governance committee

Background Papers

None

Sampling suggestion from a member of the audit and governance committee

I would like to suggest that since we have only just introduced the ability to have appeals panels, we should be taking a close interest in all complaints determined prior to the change in our procedure which have resulted in dissatisfaction from the subject member or the complainant.

For the assurance and protection of the Monitoring Officer, we should also plan to look at all complaints which have been handled solely by the MO.

We should also have identified any clusters of complaints which relate either to an individual or to an individual parish council.

Also any complaints which have been made against members of the cabinet or those acting in support to the cabinet – again, for assurance and for the protection of the MO.

