

Agenda

Standards Panel

Date: **Tuesday 16 October 2018**

Time: **4.00 pm**

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

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

For any further information please contact:

Caroline Marshall, democratic services officer

Tel: 01432 260249

Email: caroline.marshall3@herefordshire.gov.uk

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 J Stone
Robert M WILSONWilson,
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 COMPLAINANT To consider an appeal by a complainant.	5 - 22



Meeting:	Standards Panel
Meeting date:	16 October 2018
Title of report:	Appeal of a monitoring officer resolution by a complainant
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 complainant.

Recommendation

THAT the panel determine an appeal by a complainant 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 complainant 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.
7. The appeal information submitted by the complainant is attached at appendix 5.
8. The 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.
9. 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.
10. The complainant has the right to attend the panel to present their views or submit in writing their comments.
11. The subject member has been invited to present their views on the monitoring officer resolution decision notice.
12. 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.
13. 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.

14. 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. The panel can only make recommendations to the parish council in respect of any finding of a breach of the code of conduct.
15. 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

16. 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) (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 – Appeal information submitted by complainant

Background Papers

None

Complaint form - members' conduct



This is an interactive PDF that you can fill in electronically. When you have completed the form – please save it and email to accesstoinformation@herefordshire.gov.uk or print it, sign and post to Information Access Team, Herefordshire Council, Plough Lane, PO Box 4, Hereford HR4 0XH.

Section 1 - Your details

Title:	<input type="text" value="mrs"/>
First name:	<input type="text" value="tracey"/>
Last name:	<input type="text" value="iwanczuk"/>

Address:

<input type="text" value="Redacted address"/>

Daytime phone:	<input type="text" value="Redacted phone"/>
Evening phone:	<input type="text" value="Redacted phone"/>
Mobile Phone:	<input type="text"/>
Email:	<input type="text" value="Redacted email"/>

Please tick the capacity in which you are making the complaint:

Member of the public ☒

An elected or co-opted member of an authority ☐

Member of Parliament ☐

Signature: [REDACTED] Date: June 26, 2018

Guidance notes for the complaint form

Are you using the correct form?

Before completing the complaints form, please ensure that:

- your complaint is about conduct that occurred while the member you are complaining about was in office. Conduct of an individual before he or she was elected, co-opted or appointed to a council, or after he or she has resigned or otherwise ceased to be a member, cannot be considered under this procedure;
- your complaint is about one or more named members of:
Herefordshire Council; or a
Parish council or town council in Herefordshire
- your complaint is that the member has, or may have, failed to comply with the council's Code of Conduct. A copy of the Code of Conduct is available on the council's website, or from the monitoring officer.

Complaints about a service provided by the council, or the actions of people employed by the council cannot be dealt with using this procedure. These matters are dealt with by the council's complaints procedure, accessible at www.herefordshire.gov.uk for Herefordshire Council, or by the Local Government Ombudsman at www.lgo.org-uk.

We will tell the member that you are complaining about that we have received a complaint and the name of the person making the complaint. If you have any concerns about this, please contact the monitoring officer.

Additional Help

Complaints must be submitted in writing. This includes fax and electronic submissions. If you have a disability that prevents you from making your complaint in writing, we will make reasonable adjustments to assist you. We can also help if English is not your first language.

If you need help with completing this form, please let us know as soon as possible or contact the Corporate Diversity Team on 01432 260244 or e-mail: diversity@herefordshire.gov.uk

Section 4 - Herefordshire Council Diversity Monitoring Form

The following information is needed to help us ensure that our services are accessible to all. Your answers will be treated in the strictest confidence and will not be used to identify you. You do not have to complete this form but it will help us to improve our services if you do. For further information, please refer to the 'Diversity Monitoring' pages on our website.

Further information about complaint:

Councillor Fielding initiated the Lengthsman scheme for Cradley parish council and subsequently managed the Lengthsman and the scheme with little to no input from the parish council.

After the first Lengthsman's contract ended in March 2016 there is no record of the position being advertised to create a competitive tender and the new Lengthsman [REDACTED] was hired at a rate of £28.50 per hour as opposed to £15 per hour for the previous contractor.

Councillor Fielding resigned from the parish council in October 2017 and as no one else knew how the lengthsman scheme operated nothing else was done with the scheme until Councillor Fielding was re-elected to the council in January 2018. During this period the Lengthsman stored his vehicle off road on Councillor Fielding's driveway. Upon re-election Councillor Fielding assumed his role of Scheme Administrator and submitted paperwork with a new salary rate of £30 per hour for [REDACTED]. At this point new councillors questioned the scheme and agreed to put the contract back out to tender, much to Councillor Fielding's opposition.

At the April 2018 parish council meeting during open session I suggested that Councillor Fielding should declare a non-pecuniary interest in the Lengthsman as he had stored [REDACTED] vehicle off road on his driveway for several months. I felt this showed 'a close association to a greater extent than with other inhabitants of the electoral area'. Councillor Fielding scoffed at my suggestion, however, at the May meeting he related how close his relationship was with [REDACTED] and also how he had "spent several thousands of pounds of his own money during the 3 to 4 years he was involved with running the Lengthsman scheme". Surely this constituted a declarable interest?

This shows to me that Councillor Fielding either doesn't understand such fundamental rules or doesn't believe they apply to him. Given that he is currently the Chairman for the parish council it concerns me that all the work done over the last few months to bring the council back on track and operating legally will be undone by his cavalier, self-serving and bullying attitude.

Initial Assessment in relation is a complaint against Councillor G Fielding

The MO's initial assessment is that the complaint should be accepted.

11 (a) of the Cradley PC code of conduct states:

"A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the Ward or electoral area for which you have been elected or otherwise of the Authority's administrative area".

The allegation of the storing of a vehicle by the lengthsman on Cllr Fielding's drive may be construed as a close association and the awarding of a contract or increasing the hourly rate would affect the financial standing of the lengthsman.

Cllr Fielding's comment to be sought on the complaint.

Received: 19/7/18.

Chapel Court , Chapel Lane ,
Cradley , Worcs , WR13 5HX

Caroline Marshall
Democratic Services Officer
Governance and Democratic Services
33-35 Union Street
St Peters Square
Hereford

HR1 2HX

17th July 2018

Dear Madam ,

Complaint: 27th June by Mrs Tracey Iwanczuk. Received by me 11th July 2018

I am in receipt of the above complaint received by your office and would respond as follows:

Paragraph 1. I did not initiate the lengthsman scheme it was initiated by Cradley Parish Council of which I was a member and first noted in the minutes of the PC on 14th October 2014 for discussion at the following meeting on 11th November 2014 . I volunteered to gather the required information on the scheme and report my findings to the council at that meeting.

It should be noted that Mrs Iwanczuk was a serving Parish Councillor at that time.

At the meeting on 11th November 2014 I provided my report to the PC on the requirements of the proposed Lengthsman scheme

CPC minutes extract:

2) Appointment of a Lengthsman – Prior to the meeting GF had circulated all Councillors with information regarding a new Lengthsman scheme put forward by Herefordshire Council, together with his own proposals of what a Lengthsman could achieve in the Parish and how the proposed system would work, adding that he would volunteer to be the Co-ordinator and run it for the first year if it was decided to proceed with appointing a Lengthsman for the Parish Council. It was noted that the Lengthsman was responsible for his own insurance. The offer from Herefordshire Council of “match funding” could be taken up at a later date if the new scheme was found to be beneficial for the Parish and it was unanimously agreed that GF approach Herefordshire Council/Balfour Beatty about setting up a new Lengthsman Scheme and he agreed to report back at the next meeting in January 2015.

It must be noted that Mrs Iwanczuk voted for this action in council. It must also be noted that she resigned from the council following the November meeting

I reported back to the council at the PC meeting on 13th January 2015
CPC minutes extract:

“ Matters for consideration –

- 1) **Lengthsman scheme** – *an up to date Report on the proposed Lengthsman Scheme had been circulated by Geoff Fielding to all Councillors advising that on 8th January 2015 Herefordshire Council had advised they were scrapping the existing scheme and had put forward new proposals with effect from 1st April 2015. These new proposals were discussed and it was unanimously agreed that GF look further into the Parish Council joining the new scheme, he would attend the “workshop” in late January/early February and report back to the Council in due course. In the event of match funding being required, it was generally agreed that rather than increasing the Precept for 2015/16, the Council could cover this out of existing funds and adjust the Precept for the following year if required.*

At the PC meeting on 10th February 2015 a decision was made to continue with the Lengthsman scheme with myself as administrator

CPC minutes extract:

Lengthsman – GF reported on meeting that day attended by himself and Jeff White and advised on the great opportunity to the Parish Council in joining this scheme along with the P3 scheme as above. Under the extended Lengthsman Scheme, both “C” and “U” roads will be covered, GF agreed to act as Parish Council Administrator of the scheme and advised that he would draw up a plan within the next few weeks, and look into the appointment of a Lengthsman.

KN queried the difference between the old and new scheme, and SH queried the situation with regard to Rectory Lane which had been formally adopted onto Herefordshire Council Streets scheme in 2014, and which to date, had not received any substantial repairs and/or resurfacing.

Resolved – *On a proposal by CL seconded by AE and carried with ten votes in favour (one abstention) it was agreed to take up the new Lengthman and P3 Schemes with effect from 1st April 2015 on the strict proviso that Rectory Lane is not included in the roads which are to be maintained by the Lengthsman. In support of this proviso, KN advised that if satisfactory work was not carried out then the Parish Council would look at taking legal action as Herefordshire Council does have a statutory duty to maintain the Lane.*

As can be seen I was appointed by the PC to act as administrator of the scheme from the outset and did this diligently and with the full authority of the council until the scheme was revised in 2018.

Paragraph 2

As to tenders for the lengthsman scheme, the first lengthsman(2015) was appointed by the council directly as they did not have a policy in place at that time for competitive tendering. The appointment of the last lengthsman [REDACTED] was done on a recommendation of [REDACTED] who had extensive work experience and qualifications working for Herefordshires contractors Balfour Beatty. [REDACTED] arranged to supply his own vehicle for the work required but did not have sufficient space at his home address to store it when not in use in Cradley. I felt it supportive to facilitate his position to offer free storage of this vehicle on my private drive. It was eminently practical to do so as at that time we met at my house to plan work schedules and discuss the needs of the community. The materials purchased or supplied for the lengthsman's work were stored in my private garage as no local facilities were available.

As to rates paid these totally reflected the knowledge, qualifications and abilities of [REDACTED] over the previous Lengthsman. All of the rates were presented to the council for their agreement and covered in the annual budget and costings plan with Balfour Beatty.

Paragraph 3

I did indeed, along with 6 other councillors resign from the PC in October 2017 and placed ourselves for open election due to a situation that had made the council undemocratic with vested interests at work. I was indeed, along with others re-elected to the council and took my place in January 2018.

Her point that "no one else knew how the lengthsman scheme worked" is of course a complete fallacy in that I kept, as administrator, meticulous records of all aspects of the scheme from bids for funding, preparation of contracts, through to work schedules and payment to suppliers and the lengthsman. All of these were passed to the Clerk for processing and implementation, and then fully reported , monthly , to full council and is a matter of record.

Paragraph 4

At the meeting on 10th April Mrs Iwaczuk from the public gallery, did not suggest but demanded to know why I had not declared an interest in the lengthsman topics as his vehicle was housed on my driveway. She addressed me personally without going through the chair in a very aggressive manner which included the banging of the council meetings table. The chair allowed a full discussion with her on the matter and it was referred to the acting clerk Mr David Hunter-Miller (HALC stand in Clerk service) who ruled that there was no requirement for me to make any such a declaration.

It has to be pointed out that as [REDACTED] contract ran out at the end of March (after having not received any work instructions from the council since October 2017) and as

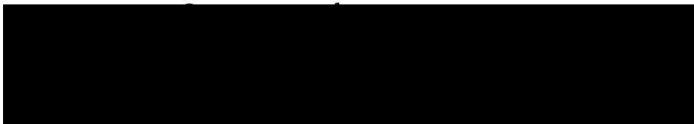
he was not going to take part in the tender process for the new contract that the parking of his vehicle on my private property was nothing to do with the PC.

Mrs Iwanczuk has totally miss interpreted my comments which were in answer to a question of my commitment to the lengthsman scheme in council. I stated that over the schemes history I had spent my own money in several areas in operating as the administrator. In administrative costs (printing photocopying), travel costs in collecting materials from suppliers and Balfour Beatty's depot, allowing my own personal equipment to be used when the PC had not acquired theirs (maintenance and sharpening & fuel) supplying my own protective clothing and footwear etc etc. I had willingly done this and had not sought any remuneration from PC funds so I cannot see why it was necessary to declare an interest. I feel that there is a certain amount of confusion with Mrs Iwanczuk's interpretation on declaration of interests.

Paragraph 5

The conclusions reached by Mrs Iwanczuk are misguided and have no basis in fact and can only be as a result of third party hearsay given to her.

Cradley Parish council is in fact engaged in removing misguided and unworkable proposals that were adopted and detrimental to good practice and is well on the way to once again returning to becoming an efficient and effective Parish Council by a fully informed and democratic process.



Geoffrey Fielding Chairman Cradley PC

STANDARDS COMPLAINT DECISION NOTICE

Complaint ref	IAT 016441
Complainant	Mrs T Iwanczuk
Subject Member	Councillor G Fielding
Council	Cradley Parish Council
Date of decision	7 September 2018
Breach of the code (Y/N)	No
DECISION	
<p>On 23 August 2018, the monitoring officer considered a complaint alleging that Councillor G Fielding may have acted in breach of the code of conduct for members. The appointed independent person was consulted in considering the matter.</p> <p>The monitoring officer and the independent person concluded that Councillor Fielding did not breach the code of conduct. The reasons for this are:</p> <ul style="list-style-type: none"> • The lengthsman stored his vehicle on Councillor Fielding's drive as he did not have sufficient space at his home when it was not in use in Cradley. • The materials purchased or supplied for the lengthsman work in connection with Cradley parish council were also stored in Councillor Fielding's garage due to the lack of local facilities. • Councillor Fielding has stated that since the lengthsman ceased going to Cradley in October 2017, he has had no communication with him. • The lengthsman contract expired in March 2018 and the current lengthsman did not take part in the tender process for the new contract. • There was a discussion in connection with the lengthsman contact at parish council meeting in April 2018 and the acting clerk for the meeting advised that there was no requirement for Councillor Fielding to declare an interest. • The lengthsman was not a member of the councillor's family or on the evidence provided a person with whom the councillor had a close association. <p>The section of the Cradley Parish Council code of conduct considered was 11 (a) which states</p> <p>"A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the Ward or electoral area for which you have been elected or otherwise of the Authority's administrative area"</p>	

From: Tracey Iwanczuk
Sent: 13 September 2018 13:25
To: Marshall, Caroline (Democratic Services Officer) <Caroline.Marshall3@herefordshire.gov.uk>
Cc: Access To Information <accesstoinformation@herefordshire.gov.uk>
Subject: Re: Code of conduct complaint: IAT number 016441

Thank you for your response, however, I would like to appeal this decision.

The third point in the decision "Councillor Fielding has stated that since the lengthsman ceased going to Cradley in October 2017, he has had no communication with him" is completely untrue. Councillor Fielding invited [REDACTED] to the first Infrastructure Working Group on Feb 28, 2018. [REDACTED] was still contracted as the lengthsman for Cradley at that point although he had not been assigned any work since the council became inquorate in October 2017. The Infrastructure Group had met to discuss the lengthsman scheme and other councillors at that meeting were surprised by [REDACTED] attendance and felt it quite inappropriate. Councillor Fielding also obviously had other 'communication' with [REDACTED] after that date because he read out statements from him during the March and April parish council meetings.

The last point in the decision "The lengthsman was not a member of the councillor's family or on the evidence provided a person with whom the councillor had a close association" is not completely accurate either. Yes, [REDACTED] is not a family member but he is someone Councillor Fielding has often described as "a mate" and "like a son to me"... and Councillor Fielding has now had [REDACTED] truck parked in his driveway for almost a year. How can that possibly not be someone you have a close association with!

I realise Cradley has a new lengthsman, however, I want to pursue my complaint against Councillor Fielding for the same reasons I stated in my initial complaint - his disregard for rules that don't suit him. I think his arrogance and bullying behaviour, which has led to the resignation of so many good councillors from Cradley Parish Council, urgently needs addressing.

I look forward to hearing from you.

kind regards
tracey iwanczuk

