

Minutes of the meeting of Standards Panel held at Committee Room 1, Shire Hall on Tuesday 13 November 2018 at 10.00 am

Present: Councillor RJ Phillips (Chairperson)
Councillor ACR Chappell
Councillor RJ Gething (HALC representative)

Officers: Claire Ward and Annie Brookes

5. ELECTION OF CHAIRPERSON

Councillor RJ Phillips was elected as the chairperson for the meeting.

6. DECLARATIONS OF INTEREST

Councillor RJ Phillips declared that he knew some of people named in the complaints but they were not close personal associates

Councillor ACR Chappell declared that he knew some of people named in the complaints but they were not close personal associates.

Councillor RJ Gething declared that he knew some of people named in the complaints but they were not close personal associates.

Councillor Richard Gething also stated that currently Ledbury Town Council are investigating factors that have resulted in the Council incurring legal costs. As Chairman of the Herefordshire Association of Local Councils (HALC), he may have a potential conflict of interest regarding this issue. The monitoring officer confirmed that as the complaints in relation to Ledbury did not form part of the sampling, then this did not preclude Cllr Gething from participating in the panel's meeting.

7. EXCLUSION OF PRESS AND PUBLIC

It was noted that the purpose of the report was to sample monitoring officer decisions and then make recommendations to audit and governance committee. The recommendations would be public.

The monitoring officer confirmed that the reason why the panel needed to decide whether or not the meeting should be in private or public was because the appendices identified individuals. A number of the complaints being reviewed had been rejected and as such the councillor concerned would be unaware that a complaint had been received against them.

A member of the panel stated that they took on board the points but would prefer the meeting to be held in public as this would stop any rumours.

RESOLVED

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.

Exempt information - Information which is likely to reveal the identity of an individual.

8. **SAMPLING OF MONITORING OFFICER RESOLUTION DECISIONS BETWEEN 1 APRIL 2017 AND 30 SEPTEMBER 2018**

The monitoring officer presented the report and explained that this would be the first time that the panel had meet to sample monitoring officer resolution decisions. The period covered by the sampling was 30 April 2017 to 30 September 2018.

It was noted that Herefordshire had adopted their own arrangements for dealing with code of conduct complaints in line with the requirements of the Localism Act 2011. Monitoring officer resolution had always been part of the local arrangements.

The standards panel held on 16 October had set the criteria to be use and they cover a range of different complaints as set out in the covering report.

The monitoring officer explained the procedure used as follows:

- The access to information team carried out a pre-qualification criteria and then forwarded the complaint to the monitoring officer.
- The monitoring officer considered the complaint at the initial assessment stage and would determine whether to reject the complaint or whether to look into the complaint. At this stage, the monitoring officer may seek the views of the independent person.
- The criteria for rejecting complaints were set out in the arrangements for dealing with code of conduct complaints which was available on the council's website:
- If the complaint was not rejected, then the procedure set out in the arrangements was followed.

Rejected Complaints

During the sampling of the 24 complaints which had been rejected during the period, the following points were raised:

- a complaint which had been rejected because a councillor had resigned would not be re-opened if they were re-elected or co-opted. Should the complainant wish to resubmit their complaint in these circumstances it would be necessary to consider whether, having regard to the passage of time since the incident complained of, it would be reasonable to accept the new complaint. However, the recent addition of a public interest test in determining whether or not to proceed with a complaint when a councillor had resigned was welcomed. If a complaint proceeded after the councillor had resigned and there was a breach of the code, then this information would be available on the council's website and the former councillor concerned would have an automatic right of appeal to the standards panel

- If a tit-for-tat complaint revealed a potential breach of the code of the conduct, then the complaint would be looked into and not rejected.
- Group leaders were informed when there was a breach of the code and recommendations could involve the group leaders, e.g. a recommendation that councillors be withdrawn from sitting on committees.
- Advice was needed to be provided to councillors stressing the need to be careful about what is said over social media, emails, etc.
- Advice was needed to be provided to councillors in relation to ward members presenting the views of their residents at planning and regulatory committee as it was felt that the current guidance in the planning code was not sufficiently clear. It was further noted that parish councils were not statutory consultees for planning applications but that Herefordshire Council did consult with parish councils.
- If a complaint was rejected because there was insufficient evidence provided and new evidence was provided, then a new code of conduct complaint would be opened if further information was provided.
- Listening to the official recording of Herefordshire Council committee meetings was a positive step forward as it was an accurate record of what was said and there could be no editing of the minutes.
- Training for the chairpersons of all the committees/councils would be recommended especially in relation to the conduct of councillors attending meetings.
- The letter in relation to rejecting complaints because they were outside of the scope due to being in relation to the internal workings of a parish council was welcomed.
- The decision letters were appropriate and proportionate. However, the decision notices were an improvement.
- HALC gave advice to the parish council and not to members of the public.
- Mediation should be considered but it was acknowledged that this was a fine balancing act. It could only be a recommendation to the parish councils and would be at their cost. It was noted that where there are a number of complaints about an individual who may have a style which is aggressive is different to councillor against councillor complaints where there is potentially a relationship breakdown which then escalates into factions in the parish council. Another option would be to see if another principal authority's monitoring officer would be willing to provide mediation.
- It was noted that under the current arrangements, when there is a rejection, a letter is sent rather than a decision notice. This is because there is no right of appeal.
- It was noted that two complaints had been referred to the Local Government and Social Care Ombudsman. Both had been dismissed with no further investigation. The Ombudsman jurisdiction was in relation to whether or not the local arrangements had been followed. It was further noted that the Ombudsman would only consider complaints from members of the public and not from councillors. The only time when the Ombudsman would look at complaints submitted by councillors was when they were acting as an advocate for one of their residents.

Meeting adjourned at 11.30 am; re-convened at 11:37

Complaints rejected without the views of the independent person

The panel then considered the 14 complaints which had been rejected without the views of the independent person being sought. The following points were raised:

- Under the Localism Act 2011, the views of the independent person are to be sought, and taken into account, by the council before it makes its decision on an allegation that it has decided to investigate, and
- The views of the independent person may be sought if an allegation is to be rejected.
- The independent person's views are sought if there are any doubts about whether or not to reject a complaint.
- Ultimately the decision about whether or not there is a breach or no breach of the code is the council's.
- The views of the independent person are confidential and this has been confirmed by decisions of the Information Commissioner's Officer (ICO) and first tier tribunal case law.
- The independent person does provide challenge and a useful check and balance.
- At the moment independent person support is not provided to councillors who are subject to a complaint but when new independent persons are appointed, this support will be offered.

Complaints against Cabinet Members

During the sampling of 5 complaints against cabinet members, the following points were made:

- There needed to be more in depth training for cabinet members and all chairpersons of Herefordshire Council committees because they are in a position of responsibility.
- NALC would be lobbying government for mandatory training for all councillors
- Herefordshire Council have a two-tier basic allowance so that when a member is first elected, they are on a lower rate of basic allowance until all the mandatory training is undertaken.
- HALC were encouraging the parish councils to publish details of training attended by parish councils.

Cluster:

During the sampling of 9 complaints against a cluster of complaints against a parish council and individual parish councillor, the following points were made:

- Once the narrative was understood, it was a relatively straightforward issue.
- There was some sympathy for the subject member but that some issues are divisive within a local community
- It was hoped that the letters which had been sent in response to the outcome of the complaints had provided clarity.

Dissatisfaction from either a subject member or complainant

During the sampling of 9 complaints which had resulted in dissatisfaction from either a subject member or complainant, the following points were made:

- Complaints in relation to social media postings needed to clearly identify a councillor and that they were acting in their capacity as a councillor. It was noted that there was case law in respect of this and the Livingstone case was mentioned.
- Councillors needed to be mindful of the perception of members of the public in relation to planning applications submitted by relatives. It was noted that on occasion members may not be aware that relatives had submitted a planning application but as soon as they were aware, the interest should be declared.

- When appeals are lodged by complainants, new substantial information or evidence needed to be submitted. They could not just express dissatisfaction over the finding but did need to demonstrate that issues had not been taken into account when the original complaint had been looked into.

Random Sample

During the discussion on the random sampling of 8 number of complaints, it was noted that the points raised under the other criteria were applicable. The sample did not raise any other matters.

Open Session

When the meeting moved back into public session, the panel agreed that the following would be the advice to the audit and governance committee.

The standards panel had sampled 37 out of the 64 complaints received during the period 30 April 2017 to 30 September 2018; it was noted that those 64 complaints related to 30 individual elected members.

The panel had noted that generally there was a good standard of governance and behaviour in Herefordshire, especially as there were approx. 1,300 parish councillors.

The panel felt that the following were welcomed:

- The introduction of a public interest test when considering a rejection of a complaint following the resignation of a councillor
- The introduction of decision notices. It was felt that longer responses would be appropriate but it was noted that occasionally legal clarity was required.
- Herefordshire Council working with the political group leadership as part of the Local Protocol on Relations between Political Groups.
- Listening to the Herefordshire Council official audio recording of committee meetings. This assisted with establishing the accuracy and context of the comments made. It was noted that the council meetings were available on the website and the audio recordings would be accessible for up to six years.

The panel felt that where there were a cluster of complaints against a town or parish council, there may need to be a recommendation of mediation. However, it was noted that this is only advisory to parish or town council.

The panel noted that an early apology of the behaviour would diffuse the situation.

The panel welcomed that there was monitoring of compliance with the recommendations made under the monitoring officer resolution. It was noted that if there was no compliance, then this may lead to a further code of conduct complaint. It was further noted that in respect of town or parish councils, the compliance would be that they had considered the recommendations made under the arrangements for dealing with code of conduct complaints.

The panel had noted that the two referrals by the Social Care and Local Government Ombudsman had been dismissed without investigation. This indicated that the Herefordshire procedure was effective.

The panel were satisfied that the approach for seeking the independent person's views was appropriate.

RESOLVED

That:

- a) **the arrangements for dealing with code of conduct complaints are appropriate and consistency applied; and**
- b) **The following be recommended to Audit and Governance Committee:**
 - 1. **the training and development for members include guidance on social media; appropriate usage of emails, chairing of meetings in relation to the conduct of councillors at those meetings, the responsibilities of ward members representing their views at planning and regulatory committee**
 - 2. **the monitoring officer be supported in making a recommendation of mediation when there is evidence of a breakdown of relationships**

The meeting ended at 1.15 pm

Chairman