

Minutes of the meeting of Standards Panel held at Committee Room 1, Shire Hall on Wednesday 18 December 2019 at 11.30 am

Present: Sheila Archer (Independent Person) (chairperson)

Councillors: Richard Gething (Herefordshire Association of Local Council's nominated representative), Dave Boulter, Peter Jinman and Nigel Shaw

Officers: Solicitor to the council / monitoring officer and Interim Head of Legal Services / deputy monitoring officer

14. APOLOGIES

There were no apologies for absence.

15. SUBSTITUTIONS

There were no named substitutes.

16. DECLARATIONS OF INTEREST

The following declarations of interests were made:

Councillor Richard Gething: on appendix 9, the complainant mentioned a name which was known to him but there was no close personal association.

Councillor Nigel Shaw: on appendices 3, 7, 9, 10 and 11, the complainant was known but they were not close personal associates.

Councillor Dave Boulter: on appendix 4 the complainant was known and on appendices 9 and 11 the subject member was known but none were close personal associates.

Councillor Peter Jinman: on appendix 4 both the complainant and subject member were known but were not close personal associates.

17. EXCLUSION OF PRESS AND PUBLIC

The panel discussed whether the meeting should be held in public or private. During the course of the discussion, the following points were made:

- The meeting should be held in public as much as possible.
- If there were any complaints which would need to be discussed in more detail which would mean identifying the complainant or subject member, those complaints should be clustered together and discussed in private session at the end of the meeting.
- It was the process of dealing with code of conduct complaints which was being discussed so the meeting should be held in public to provide openness and transparency.

RESOLVED That

the meeting of the standards panel held on 18 December 2019 be held in public.

18. SAMPLING OF MONITORING OFFICER RESOLUTION DECISIONS BETWEEN 1 MAY 2019 TO 31 OCTOBER 2019

The chairperson invited the monitoring officer to take the panel through each appendix to see if there were any trends or lessons to be learned.

Appendix 2 - this was a complaint by a clerk in relation to a Facebook post by a councillor. The complaint had been rejected as it was not in the public interest to investigate as the subject member was no longer a councillor. It was noted that the complaint had not been automatically rejected but a public interest test had been undertaken before it was rejected.

It was noted that there was an important lesson in how social media is used.

The monitoring officer confirmed that there was no written criteria with regard to a public interest test as it was based on judgement and the factors of the case. The independent persons were given public interest criteria when complaints were sent to them for their comments. If the email which had been shared had been marked confidential, then there would have been other factors to take into account. It was noted that the independent persons now commented on complaints without the views of the monitoring officer.

Appendix 3 – the complaint was in relation to the complainant being challenged in a meeting. The subject member had made a reasonable endeavour to apologise at the meeting. When the complaint came in, it was rejected on the basis that the subject member had already apologised.

Appendix 4 – the complaint was in relation to an allegation of bribery and had been dealt with under Other Course of Action. In this case, it had been sent to South West Audit Partnership (SWAP) for investigation under the anti-fraud and corruption strategy.

The complaint was in connection with an incident many years ago and there was guidance on whether it would be pursued given the length of time which had elapsed. As a guide if an incident takes place more than a year ago then it would not be investigated but if the allegation was serious and significant, then the monitoring officer will investigate.

It was noted that the complaint had not been sent to the police but in this case it would have been a referral by SWAP, if that was the course of action to be taken. It was further noted that the monitoring officer had an agreed protocol with the police in connection with referring code of conduct complaints to them where there was evidence of criminal behaviour.

Appendix 5 – this complaint was part of a cluster of complaints and the allegation was one of bullying. The description of the events indicated that it was one person's word against another but it had been a lively discussion at the council meeting so it was difficult to determine whether bullying took place. The outcome had been a finding of no breach of the code.

It was noted that the arrangements for dealing with code of conduct complaints had been updated and a bullying definition had been included which was in line with the ACAS guidance.

The monitoring officer reported that if there were signs of an underlying problem at parish councils, then an Other Course of Action would have been recommended. It was reported that during the next financial year, there will be a budget for mediation.

Appendix 6 – this was part of the same cluster and similar to appendix 5. The complaint was about a failure to declare a discloseable pecuniary interest which the subject member had denied. It was the second complaint against the subject member so if another complaint came in, there was the possibility that it would be considered as similar and rejected.

It was noted that it was important that complainants had evidence to support their complaints. The monitoring officer reported that if there was no evidence detailed in the complaint, then a request for further information was sent. It was further noted that if there was a criminal allegation, then it would then be the criminal burden of proof (beyond all reasonable doubt). Code of conduct complaints used the civil burden of proof (balance of probabilities). If there was evidence of a criminal action, then it would be referred to the police.

Appendix 7 – this complaint was about a failure to disclose a DPI and there had been a finding of a breach of the code. The complaint was also the same cluster as appendices 5 and 6. The subject member had resigned which was the reason why there were no recommendations to the parish council.

It was noted that this was a lesson for councillors with regard to the inappropriate disclosure of information and the difficulties they can get into where there are Schedule 1 interests involved.

Appendix 8 – this complaint was about the conduct in the same meeting as appendix 7 and was part of the same cluster of complaints. The subject member was the chairperson and again was one person's word against another. There was a finding of no breach of the code.

The length of time to conclude this complaint was noted and the monitoring officer reported that it was not unusual for some complaints.

Appendix 9 – this complaint was about a post on Facebook during the May 2019 election period. Candidates use social media for campaigning and it was outside the scope of code of conduct. There had been request for the post to be taken down but it had not been.

Appendix 10 – this complaint was about a subject member acting in their personal capacity so had been rejected.

Appendix 11 – this complaint was complicated due to the nature of the complaint. The subject member had been able to answer succinctly and explain that they were acting in another capacity. The monitoring officer had to consider the balance of probabilities as to what hat the councillor was acting in and would look at the evidence to corroborate which "hat" a subject member was wearing.

Appendix 12 – this complaint was in relation to a concern that a subject member was treating a planning application applicant more favourably. A very detailed complaint had been received but when the subject member's comments were received, there was a detailed explanation.

Appendix 13 – this complaint was in relation to political canvassing in a by-election outside of Herefordshire. The complaint was outside of the scope of the code of

conduct and the complainant had been referred to the relevant political party's complaints procedure.

Appendix 14 – this complaint was in connection with a failure to declare a schedule 1 interest as part of a discussion on a planning application. Given the distance and type of land in between the land in the planning application and the subject member's land, there would not have been a direct interest. The other issue was that a councillor could give their private views on planning applications and the issue at a council meeting was whether they have a close mind but that would be a matter for the clerk and was not a matter for code of conduct.

Appendix 15 – this complaint was connected to appendix 14 and was again a failure to declare a DPI. The subject member's land was very close the planning application land so there was a schedule 1 interest which needed to be declared. The subject member had attempted to deal with the issue but the parish council had not granted a dispensation and they cannot be granted retrospectively. It was noted that it was always wise to treat any interest as a schedule 1 interest.

Appendices 16, 17 and 18 – these were councillor against councillor complaints which indicated an underlying problem within the parish council. The complaint was resolved under Any Other Course of Action with a recommendation of training on code of conduct, the Neighbourhood Development Plan (NDP) process and planning. If the training was not undertaken, then consideration will be given to bringing the complaints to a standards panel.

The issue of recording parish council meetings was discussed and it was noted that if they are recorded, it has to be declared at the beginning of the meeting and there is no embargo on a member of the public recording. The clerks may ask if the meeting can be recorded for points of accuracy for their use. However, once the minutes are published, then the recording may be destroyed. This was not an uncommon practice.

Conclusion of the review

The panel were satisfied that the process was doing what it was meant to do and they were happy with the decisions. The panel were grateful for the open way the materials had been presented to them. The process was never going to satisfy everyone and it was an evolving process but it was going the right way.

The panel requested that another column be added to the spreadsheet to show the number of working days it took to determine a complaint.

RESOLVED That:

- a) Audit and governance consider whether the subject member details should be published where there is a finding of no breach of the code.**
- b) A public interest test criteria be developed which can be published on the website.**
- c) Guidance on social media be included as part of the code of conduct.**
- d) The arrangements for dealing with code of conduct complaints be reviewed with regard to the provision and standard of evidence required by both parties.**
- e) Guidance be issued to parish councils in connection with planning applications and the requirements to declare interests.**