

Herefordshire Council Standards Committee

Possibilities post-Localisation Bill: initial thoughts

Introduction

1. The Localisation Bill, if enacted in its present form, would repeal the statutory basis of a code of conduct for members of councils, and the statutory framework for application of such a code. There would remain, however, statutory obligations in respect of declarations of conflict of interest. Councils will be invited to make voluntary arrangements.
2. This note is a personal reflection on possible ways in which Herefordshire Council might respond.
3. The Council would need to address three areas:
 - (a) What is the behaviour expected of Members?
 - (b) How would the Council deal with departures from the expected behaviour?
 - (c) How might any of this relate to Parish and Town Councils within the area?

What is the behaviour expected of Members?

4. The existing Code of Conduct would be a very sound basis for any voluntary replacement. It sets out the general obligations of treating people with respect, of handling information which may be confidential, of maintaining the reputation of the council, and of taking advice on legal matters. The Code may need some tweaking in order to be consistent with any new statutory provision. However, there would appear to be no reason why the principles in sections 3 – 7 of the current code could not be adopted as a voluntary code.

How would the Council deal with departures from the expected behaviour?

5. A voluntary code is likely to have an element of self management. However, the Council would still need to have a reasonably robust means of responding to departures from expected behaviour. And the process of dealing with such cases must recognise both the public nature and the political nature of the organisation. So the process should be capable of demonstrating a degree of openness, and independence from the political aspects.

6. A departure from expected behaviour might be identified by one of four groups of people:
 - Officers undertaking a statutory duty;
 - councillors (either individually or collectively);
 - employees; or
 - members of the public.
7. A complaint about a member's behaviour ought to be handled in accordance with the principles of natural justice, and consistently with Human Rights legislation. If a complaint were raised by an employee, then the provisions of employment legislation and employment contracts may also need to be taken into account.
8. The statutory role of Monitoring Officer is, I understand, likely to continue, and it would be sensible for the role to continue to be the principal channel for managing procedures related to the behaviour of members. However, the position of the Monitoring Officer may be strengthened if supported by an appropriate constituency, such as senior Members and independent people.
9. The statutory basis for sanctions in cases of departures from expected behaviour is likely to disappear, except in respect of conflict of interest. However, the Council would need to have some form of sanction available. As an extreme example, how could the Council respond if a Member assaulted another Member during the course of a meeting? Or in the corridor outside the meeting?
10. It may therefore be appropriate for a voluntary code to include an indicative list of possible sanctions in case of departures from expected behaviour, together with an obligation to make such sanctions public.

How might any of this relate to Parish and Town Councils within the area?

11. We understand from HALC that there is a strong view among parish councils that there remains a need for clear guidance and support on these matters. If there is no statutory basis, then any arrangement would need to be voluntary.
12. One way of managing this might be for HALC to take a stronger role. It could, for example, be made a condition of membership of HALC that parish councils endorse the voluntary code and agree the processes for implementing the code. HALC could then agree with Herefordshire Council that the Council's Monitoring Officer act as principal agent for implementation.

Possible actions and options

13. First thoughts, therefore, on what could be done, and how.

- (a) An initial report to the Council indicating possible ways forward
- (b) Discussions, moderated by the Monitoring Officer, with the Group Leaders
- (c) The Council to give some publicity to post-Localism proposals on standards, and invite comment
- (d) The Council to agree a voluntary code of conduct based on sections 3 – 7 of the current code of conduct
- (e) The Monitoring Officer to remain principal channel for dealing with complaints, acting:
 - alone; or
 - through an advisory committee along the lines of the existing Standards Committee; or
 - through the senior Members (Chair and group leaders); or
 - through a committee that also dealt with other matters that required a degree of independent input, such as audit.
- (f) The code to include an indication of possible sanctions, and a requirement that sanctions be published.
- (g) HALC to act as interlocutor with parish councils in order to have some equivalent arrangements.

Jake Bharier
8 June 2011