

MEETING:	EXTRAORDINARY MEETING OF COUNCIL
DATE:	4 JANUARY 2013
TITLE OF REPORT:	BREACH OF THE MEMBERS' CODE OF CONDUCT BY COUNCILLOR MARK HUBBARD
REPORT BY:	ASSISTANT DIRECTOR - LAW, GOVERNANCE AND RESILIENCE

1. Classification

1.1 Open.

2. Key Decision

2.1 This is not a key decision.

3. Wards Affected

3.1 County-wide

4. Purpose

To advise Council of the findings of the Audit and Governance Committee in relation to breaches of the Members' Code of Conduct by Councillor Mark Hubbard.

5. Recommendation

THAT: Council notes the breaches of the Members' Code of Conduct by Councillor Mark Hubbard, as detailed below.

6. Key Points Summary

- The Standards Panel considered both complaints and agreed what sanctions would be appropriate to recommend to the Monitoring Officer, for decision by the Audit & Governance Committee.
- The complaints, and the Standards Panel's recommendations on them, were summarised as follows:

Complaint 1208:

- (a) On 29 March 2012, the Subject Member removed confidential documents from the office of an officer of Herefordshire Council without permission.
- (b) The Subject Member did not dispute the facts. In mitigation, the Subject Member stated that he had acted on impulse in a heightened emotional state, having felt frustrated at being denied access to a document. The Subject Member stated that he realised immediately that he had done the wrong thing, did not look at the contents of the envelope marked 'Private & Confidential', and immediately took steps to acknowledge his error and return the envelope to the officer. The Subject Member stated that he deeply regretted his action and acknowledged that it was likely to affect the trust between members and Council officers.
- (c) The Panel accepted the Subject Member's statement that he had not looked at the contents of the envelope and had taken immediate steps to correct his actions. Nevertheless, the Panel took the view that his conduct could have had serious consequences for the Council. The Panel considered the Ten General Principles of Public Life that define the standards that members should uphold, which serve as a reminder of the purpose of the Code of Conduct and which form part of the code. The second principle states: "**Honesty and integrity** – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour."
- (d) The Panel agreed that the Subject Member had failed to comply with this general principle of public life in that he had removed from a Council office a document marked 'Private & Confidential' to which he was not entitled.**

Complaint 1209

- (a) On 28 March 2012, the Subject Member attended a local member briefing meeting with the Council's Director for Places and Communities (DfPC), at which the DfPC briefed members on a forthcoming report to Cabinet, emphasising that certain elements of the report were exempt from publication for reasons of commercial confidentiality. The DfPC had reminded the members of the requirement to maintain confidentiality. On 5 April, the Hereford Times published a front page picture of the Subject Member holding the confidential report to Cabinet.
- (b) The Subject Member did not dispute the facts. In mitigation, the Subject Member stated that he felt that he was acting in the public interest in disclosing the confidential report, and that he had acted according to his own principles of open and honest government. The Subject Member stated that he had not sought advice from Council officers or discussed his intention to disclose the report with them before doing so. He stated that the press deadline required swift action so that the report would become public before the Cabinet meeting, and encourage members of the public to attend the Cabinet meeting. The Subject Member said that he had acted in his capacity as ward member for the ward affected by the report, and not in his capacity as leader of the 'It's Our County' group. The Panel asked if, while the Subject Member may have thought he was acting in the public interest, he was also motivated by a wish to bring political pressure on the Council by encouraging the public to attend the Cabinet meeting. The Subject Member acknowledged this.
- (c) The Panel considered that the Subject Member had failed to comply with paragraph 4(a)(iv) of the Code of Conduct. They accepted that the Subject Member believed that his disclosure of the exempt document would be in the public interest. However, the Panel considered that the Subject Member had**

had sufficient time to follow established procedures for consulting fellow members and officers before disclosing the report, and that he had failed to do so. The subject of the report had been available to him via the Council's Rolling Programme for some months. He had therefore failed to follow due process in order to comply with the reasonable requirements of the Council.

- The Standards Panel, and the Audit and Governance Committee, have both considered the position under the Code of Conduct in force at the time of the complaint. The new Code of Conduct currently in force has similar requirements, specifically in paragraph 10: "Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Authority..."; and in paragraph 11 (h)(iv) in relation to disclosure of information in the public interest. Both the Panel and the Committee therefore consider that very similar conclusions would have been reached had the conduct been considered against the new code.
- The Standards Panel made the following recommendations, which were approved by the Audit and Governance Committee on 12 November 2012:
 - **the Audit and Governance Committee be asked to present a report on the consideration of the investigation of the complaints to the next full Council meeting; and**
 - **training should be arranged for the Subject Member to ensure he is fully apprised of the established processes for seeking advice.**

7. Alternative Options

- 7.1 The report is brought before Council for formal noting only, and therefore there are no alternative options:

8. Reasons for Recommendations

- 8.1 The Audit and Governance Committee agreed with the findings of the Standards Panel, that the subject member had failed to comply with one of the Ten General Principles of Public Life that define the standards that members should uphold, which serve as a reminder of the purpose of the Code of Conduct and which form part of the code.
- 8.2 The Committee considered that the subject member had also failed to comply with paragraph 4(a)(iv) of the Code of Conduct.
- 8.3 One option open to the Audit and Governance Committee, in dealing with the breaches of the Code, is to report them formally to Council.

9. Introduction and Background

- 9.1 The Standards Panel, comprising Mr Jake Bharier (Appointed Independent Person), Councillor Chris Chappell (Local Authority Advisor) and Mr Richard Gething (Parish and Town Council Advisor), met on 02 November 2012 to consider two complaints about Councillor Mark Hubbard of Herefordshire Council, which had been made by the Chief Executive of Herefordshire Council.

- 9.2 The complaints had been investigated independently by Ms Olwen Dutton of Bevan Brittan, under the former Standards system for resolving complaints against Councillors. Under this system, the complaint had been referred for a final determination hearing. A few days after the decision to refer was made, the former system was abolished (on 30 July 2012). A new process for dealing with complaints came into effect on 01 July 2012, in accordance with the Localism Act 2011.
- 9.3 Under the new process, complaints which were otherwise ready for final determination under the old regime, but which had not been concluded by the Standards Committee, fell to be considered by a newly constituted Standards Panel who would consider the facts and/or previous findings and make an appropriate report to the Audit and Governance Committee.

10. Key Considerations

- 10.1 The Audit and Governance Committee agreed that the subject member had failed to comply with one of the Ten Principles of Public Life and with Paragraph 4(a)(iv) of the members' Code of Conduct. The Panel considered that such conduct could have seriously affected the reputation of the Council and that the subject member had failed to follow due process in order to comply with the reasonable requirements of the Council.

11. Community Impact

- 11.1 None identified arising directly from this report.

12. Equality and Human Rights

- 12.1 No impact on public sector equality identified.

13. Financial Implications

- 13.1 None arising directly from this report.

14. Legal Implications

14.1 The Council's Standards Committee and the previous regime for resolving complaints about the conduct of elected members were abolished on 1st July 2012 by the Localism Act 2011. Complaints unresolved at that date fall to be concluded in accordance with the new scheme to ensure a clear transition from the previous standards regime to the new local complaints system. The content of this report complies with the requirements of the Localism Act.

15. Risk Management

15.1 If complaints are not handled expeditiously then public confidence may be undermined and the Council's ethical credibility may also be undermined.

16. Consultees

16.1 None.

17. Appendices

17.1 None.

18. Background Papers

18.1 Report of Mr Jake Bharier, Appointed Independent Person and Chair of the Standards Panel, dated 03 November 2012.