

MEETING:	AUDIT AND GOVERNANCE COMMITTEE
DATE:	19 FEBRUARY 2013
TITLE OF REPORT:	POWERS AND RESPONSIBILITIES IN RELATON TO STANDARDS COMPLAINTS
REPORT BY:	HEAD OF GOVERNANCE / MONITORING OFFICER

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

4.1 To note the powers and responsibilities of the Audit and Governance Committee, and of other bodies in relation to Standards complaints against Councillors, and to consider best practice within the Council's adopted process.

5. Recommendation(s)

THAT:

- (a) the report be noted; and**
- (b) the Committee endorses its procedures for dealing with Standards complaints at meetings, and within the Council's adopted process.**

6. Key Points Summary

- The Audit and Governance Committee has resolved to consider the powers and sanctions available to it in respect of Standards cases, under the Localism Act 2011.
- The report indicates precisely what can be expected of the Audit and Governance Committee in relation to the Localism Act and what has been agreed by the Committee and by Council in relation to Standards matters.

- Appendix A outlines a specific procedure followed by the Audit and Governance Committee when considering Standards cases at meetings.
- Arising from the report and Appendix A, the Committee may wish to seek further guidance from the Monitoring Officer on powers, responsibilities and sanctions, and consider the procedures that it follows at meetings.
- The report is also intended to provide a comprehensive reference of the functions of other bodies in relation to Standards, such as Council and the Monitoring Officer, so that members can see within one document the how one part of the process relates to another. Appendices B and C further illustrate the processes that Herefordshire Council has adopted for dealing with Standards complaints.
- References to the Localism Act, the Council and other bodies which have made decisions about the way that Standards procedures are handled, are contained throughout the key considerations of the report in italics, so that members can pinpoint where and why a decision about process was made.

7. Alternative Options

- 7.1 The procedures, powers and responsibilities as set out are governed by the Localism Act 2011 and by decisions made by the Council or another of its Committees. There are no alternative options currently available to these. The Committee may however, wish to refine further its own procedures at meetings in the light of its experiences.

8. Reasons for Recommendations

- 8.1 At its meeting on 12 November 2012, the Audit and Governance Committee resolved to consider the powers and sanctions available to it in respect of Standards cases under the Localism Act 2011.

9. Introduction and Background

- 9.1 On 20 July 2012, the Council adopted a new Code of Conduct and a procedure for dealing with complaints, following the introduction of the Localism Act 2011. The functions listed below have all been decided either as a result of the Localism Act, or as required by the Council or one of its Committees.
- 9.2 The various powers and responsibilities of the Audit and Governance Committee, Council, the Monitoring Officer, the Standards Panel and the Independent Persons are set out below, and members may wish to use the document as a reference source when dealing with Standards complaints.

10. Key Considerations

Note: All references to the Localism Act 2011 in this section refer specifically to Part 1 (Local Government), Chapter 7 (Standards), and are shortened to "LA" plus the relevant Section.

Audit and Governance Committee

- 10.1 The functions in the Localism Act, Sec 28 (11)(a)(b) have been delegated to the Monitoring Officer for complaints that can be resolved informally, and to the Audit and Governance Committee for complaints that have been investigated or cannot be resolved informally (for example, because the subject member/complainant does not want an informal resolution) [Council, 20 July 2012]. As a result, the Committee has the power to decide (a) whether to take action about a Councillor who has been complained about, and (b) what action to take or to recommend. In carrying out its functions in this respect, the Committee must take account of the opinion of an Independent Person [LA, Sec 28(7)(a)], who will put a recommendation before the Committee. This will take the form of a written report from the Independent Person, who will have considered all aspects of the complaint in detail and will have spoken to the parties involved as necessary. As a general rule, the Independent Person will also be present at the Committee when a Standards complaint is on the agenda, to answer the Committee's questions and give further opinion. The Chairman of the Audit and Governance Committee and the Monitoring Officer have devised a procedure for the Audit and Governance Committee to follow when considering Standards complaints. This is attached at Appendix A to the report.
- 10.2 On the recommendation of the Independent Person, the Committee makes decisions on allegations about Councillors breaching the Code of Conduct [LA, Sec 28(6)(b)] [Council, 20 July 2012]. There are important distinctions to be made about where powers lie for administering the various sanctions.
- 10.3 In a case involving a member of Herefordshire Council, the Audit and Governance Committee has broad discretion about the action it can take but it cannot fine, suspend or disqualify a member from membership of the authority itself [Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2011, Sec 2(h)]. Some examples of possible action are:
- (1) Censuring the member;
 - (2) Reporting its findings to Council for information. In this case, the formal noting of the report and the release of it into the widest domain is, in itself, the sanction. Council notes the report and can comment, but at this stage Council does not have the power to re-open the case and re-hear the complaint;
 - (3) Recommending the Monitoring Officer to arrange training for the member;
 - (4) Removing access to support services, etc.
- 10.4 There are also some sanctions which can only be imposed by Council, and these are to be distinguished from 10.3 above. They usually relate to various offices held by Councillors, and because Council has the constitutional power to appoint Councillors to these offices, it follows that only Council has the power to remove Councillors from them. In these cases, the Audit and Governance Committee must recommend the course of action to Council. Examples include:
- (1) Recommending to Council that a member be replaced as Executive Leader of the authority;
 - (2) Recommending to Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority.

- 10.5 Similarly, there are some sanctions which can only be imposed by Group Leaders, and the Audit and Governance Committee must recommend the course of action to them. For example:
- (1) Recommending to the Leader of the Council that a member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (2) Recommending to the member's Group Leader (or in the case of ungrouped members, recommending to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.
- 10.6 It is worth bearing in mind that the list of sanctions provided is not exhaustive, although care needs to be taken to make sure that any alternative sanction imposed will not hinder the subject member in performing the duties that he/she was elected to perform, or amount to a suspension or a fine. For this reason, sanctions are more likely to be impossible if they relate to the restriction of a very specific activity over a defined period, and this should in turn relate specifically to the actions which caused the member to breach the Code of Conduct. The Monitoring Officer will be able to guide Members on these matters when they arise.
- 10.7 In cases about parish or town councillors, only the parish or town council can impose sanctions. No body of the Council, including the Audit and Governance Committee, has authority to do this. Therefore, these types of complaint are referred automatically from the Independent Person to the parish or town council in question.
- 10.8 The Committee grants some dispensations on written application, to Councillors who are requesting participation in decision making where they have a disclosable pecuniary interest *[LA, Sec 33 (2)(b)(c) and (e)] [Council, 28 September 2012]*. The granting of some dispensations has also been delegated to the Monitoring Officer, so there is a shared responsibility depending upon what the dispensation relates to.

Council

- 10.9 The Council must have arrangements in place, both for investigating allegations against Councillors *[LA, Sec 28(6)(a)]*, and for making decisions about allegations *[LA, Sec 28(6)(b)]*. In practice, these arrangements have been delegated to the Monitoring Officer and the Audit and Governance Committee, respectively *[Council, 20 July 2012]*.
- 10.10 The views of an Independent Person must be sought and taken into account before Council makes a decision on any complaint that has been investigated *[LA, Sec 28(7)(a)]*.
- 10.11 The Council has two roles in the handling of Standards complaints: (1) Council receives the reports of the Independent Persons when the Audit and Governance Committee has resolved that this should be done as a form of sanction. The aim of this is for Council to note that a member has breached the Code of Conduct, and comment accordingly – it is intended to have the effect of a form of censure at the highest level. Bearing in mind the work already undertaken by the Standards Panel and the Audit and Governance Committee at this point, it is advisable that Council's comments should not re-examine or try to re-open the debate on the case. (2) Only the Council can impose certain sanctions, for example: replacing a member as Executive Leader of the authority, or removing a member from outside appointments to which he/she has been appointed or nominated by the Council. In these circumstances, it is expected that Council will debate the matter, taking account of the views of the Independent Person and the Audit and Governance Committee, and make a resolution accordingly. The Independent Person will usually attend Council to answer any questions and give further opinion.

10.12 The Council also:

- (1) Promotes and maintains high standards of conduct by members and co-opted members of the authority [LA, Sec 27(1)].
- (2) Adopts a Code of Conduct which deals with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity [LA, Sec 27(2)]. It must either revise the Code of Conduct that was in place when the Localism Act came into force [LA, Sec 28(5)(a)], or it must adopt a new Code of Conduct [LA, Sec 28(5)(b)]. [A new Code was adopted by Herefordshire Council on 20 July 2012 – found in the Constitution, Part 5].
- (3) Appoints at least one Independent Person whose views can to be sought on allegations of Councillor misconduct [LA, Sec 28(7)(a)&(b)]. In practice, the Council meeting must have the final say on the appointment [LA, Sec 28(8)(c)(iii)]. Recruitment and selection is administered by officers, and carried out by a panel normally comprising the Monitoring Officer, the Chairman or Vice-Chairman of the Council, the Chairman of the Audit and Governance Committee, one member of an opposing political group and one Independent Person from the Standards Panel.
- (4) Receives an annual report from the Monitoring Officer on the effectiveness of the Code [Constitution, Preamble, Page 1].
- (5) Must approve any adopting, revising or replacing the Council's Code of Conduct [LA, Sec 28 (13)].

10.13 It is perhaps worth noting that Standards functions are expressly not to be the responsibility of the executive [LA, Sec 27(8)]

Monitoring Officer

- 10.14 The Monitoring Officer is responsible for the effectiveness of the Council's codes in respect of legal obligations and ethical Standards, and reports annually on this to the Audit and Governance Committee and to Council [Constitution, preamble, Page 1].
- 10.15 The Monitoring Officer is responsible for establishing, maintaining, making available for inspection, and publishing on the Council's website a register of interests of members and co-opted members of the Council (and must also do this for Parish and Town Councils [LA, Sec 29(4)]), and providing Parish and Town Councils with any data they need to publish a register on their websites [LA, Sec 29]. The Monitoring Officer is also obliged to withhold from the publically available version of the register of interest, certain information as appropriate relating to "Sensitive Disclosable Pecuniary Interests" [LA, Sec 32].
- 10.16 The Monitoring Officer has authority over arrangements relating to the investigation of allegations about Councillors' conduct [LA Sec 28(6)(a)] [delegated by Council, 20 July 2012]. Investigations will usually be carried out by the Monitoring Officer, or most often by someone appointed by the Monitoring Officer.
- 10.17 He must seek the views of an appointed Independent Person over all Standards complaints which result in an investigation [LA, Sec 28(7)(a)]. It has also been agreed that the Monitoring Officer will seek the views of an Independent Person in all instances when a complaint cannot be resolved informally [Council, 20 July 2012].

- 10.18 He can choose to seek the views of an appointed Independent Person in complaints where no investigation has taken place [LA, Sec 28(7)(b)(i)]. In this instance, the Monitoring Officer is not obliged to seek the views of an Independent Person, and can be the only person who handles the complaint. In practice however, the Independent Persons are given the details of all complaints, and the Monitoring Officer usually uses them as a sounding board in all instances where a complaint is accepted. In this way, transparency, integrity and good practice are maintained in the process.
- 10.19 The functions in the Localism Act, Sec 28 (11)(a)(b) have been delegated to the Monitoring Officer for complaints that can be resolved *informally only* [Council, 20 July 2012].
- 10.20 In the pursuit of informal complaint resolution, the Monitoring Officer can decide (a) whether to take action about a Councillor who has been complained about, and (b) what action to take. This will involve undertaking an initial appraisal of all complaints to decide whether some action should be taken. This appraisal will include assessing whether the complaint appears to be covered by the Council's Code of Conduct, deciding whether the complaint is appropriate for investigation (e.g. is it not sufficiently serious; not in the public interest; vexatious, malicious or obsessive; political tit for tat; broadly similar to another complaint about the same issue?). The Monitoring Officer will also attempt to resolve complaints informally wherever possible. Complaints can be resolved informally in a number of ways, including:
- provision of advice;
 - provision of training;
 - inviting an apology;
 - mediation.
- 10.21 The Monitoring Officer grants some dispensations on written application, to Councillors who are requesting participation in decision making where they have a disclosable pecuniary interest [LA, Sec 33 (2)(a) and (d)] [Council, 28 September 2012]. The granting of some dispensations has also been delegated to the Audit and Governance Committee, so there is a shared responsibility depending upon what the dispensation relates to.
- 10.22 The Monitoring Officer makes the administrative arrangements for recruiting Independent Persons, including putting together an interview panel [Standards Committee on 20 April 2012].

Independent Persons

- 10.23 With the introduction of the Localism Act 2011, Central Government decided that it was important to retain a proper degree of independence within the system for dealing with complaints relating to ethical standards. The intention is for this to ensure transparency, and provide assurance that complaints are being dealt with effectively and at a distance from the political arena. For this reason the Council must appoint, through a proper recruitment process [LA, Sec 28 (8)(c)], at least one Independent Person [LA, Sec 28(7)]. Independent Persons provide their services to Herefordshire on a voluntary basis.
- 10.24 Independent Persons have no voting powers and are not councillors or committee members, or co-opted onto the Council. The Localism Act sets out very specific criteria for who can undertake the role [LA, Sec 28(8)]. They are trusted, experienced and objective advisors from a diverse background, and they will consider all of the information relating to a complaint, the views of the parties involved, the Code of Conduct and the law as it affects Standards matters, before issuing a recommendation in the form of a full written report.

- 10.25 Their views must be taken into account by Council, the Audit and Governance Committee, and the Monitoring Officer in all complaints that are investigated [LA, Sec 28(7)(a)], and in Herefordshire's case, all those that cannot be resolved informally by the Monitoring Officer [Council, 20 July 2012]. Their views may also be taken into account by the Monitoring Officer at various stages during the informal process [LA, Sec 28(7)(b)].
- 10.26 Independent Persons can also give their opinions on a complaint to any Herefordshire county, parish or town councillor who has had a complaint made about them and who seeks advice. It is important to note that this role does not extend to advocacy; therefore, an Independent Person will remain objective in the advice that he/she gives to the Monitoring Officer, the Audit and Governance Committee, and the Council.
- 10.27 Herefordshire Council currently has three Independent Persons, with the aim of building greater flexibility into the system, and lowering the risk of conflicts of interest at various stages of the complaints process. The role of the Independent Person is developing alongside the embedding of the Council's Standards process, and the Independent Person will usually be available to the Audit and Governance Committee and Council when it considers Standards complaints.

Standards Panel

- 10.28 The arrangements relating to the Standards Panel were agreed by Council on 20 July 2012. They have been devised chiefly by the Standards Working Group, which was set up by the former Standards Committee to create a complaints process in accordance with the Localism Act. Prior to agreement by Council, the current arrangements had also been considered and endorsed by Group Leaders informally, and by the Audit and Governance Committee formally.
- 10.29 The Standards Panel comprises the Monitoring Officer, and one each of the following, drawn from a pool of available and appointed members: an Independent Person (who always chairs the Panel), a Parish/Town Council Advisor, and a Local Authority Advisor. Processes relating to appointments of the various types of panel member were agreed by the Standards Committee on 20 April 2012, and the Audit and Governance Committee on 21 September 2012.
- 10.30 The Standards Panel's role is to consider complaints that have been investigated or cannot be resolved informally. The Panel will look at all of the evidence and information provided with the complaint, seek any further information it requires, and listen to all parties involved complaint. The Advisors and the Monitoring Officer will assist the Independent Person in arriving at a recommendation, which will then be published as a report.
- 10.31 Some of the main functions of the Standards Panel are to help maintain a level of independence within Standards, keeping Standards matters away from the political arena as far as possible, and to undertake the work on cases so that the Audit and Governance Committee and Council are given a dedicated and effective level of support to help them to exercise their statutory functions.

11. Community Impact

- 11.1 None identified.

12. Equality and Human Rights

- 12.1 The information in this report is compliant with the provisions of the Equality and Human Rights legislation.

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 1 July 2012 by the Localism Act 2011. 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 be undermined.

16. Consultees

16.1 None.

17. Appendices

17.1 Appendix A: Audit and Governance Committee - Procedure to be followed when considering Standards complaints

17.2 Appendix B: How the Council deals with complaints about Member conduct

17.3 Appendix C: Standards Process Flow Chart

18. Background Papers

18.1 None.