

Issues raised by working group

Code of conduct appeals process

	Issue raised	Monitoring Officer's proposed action
1.	To be consistent, the title of the document be changed from 'Standards Panel Appeals Process' to "Code of conduct appeals process".	Title to be amended
2.	<p>Appeals being held in private or public</p> <p>The working group was concerned that there may be inconsistent decision making regarding exclusion of the public from a panel hearing, as any decision may depend on the membership of the panel. It was noted that was a matter for the panel to decide whether or not to exclude the public from part of a meeting. All decisions should be taken in accordance with the access to information rules.</p> <p>Feedback from those involved in appeal hearings suggested that members of the public may be inhibited from pursuing an appeal by the thought of a public hearing and how that may impact their position in the community. It was noted that if all appeals were heard in public, there may be a disincentive to appeal a decision.</p> <p>It was noted that the arrangements for dealing with code of conduct complaints states that the panel meeting will be in private and working group members were advised that the covering report will be public but the appendices will be confidential.</p> <p>There was a concern that without guidance, there may be inconsistent practice applied by the panel arising from its fluid membership. The working group recommended that guidance be drafted for panel chairpersons and members on the application of the access to information rules, and the matters that should be taken into account determining whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>	Guidance to be produced to assist with the panel's decision.
3.	<p>Membership of the standards panel.</p> <p>The working group felt that all members of the panel should be independent of the decision and that there should be no councillors on the panel. It was noted that if the panel were to</p>	Panel membership be considered as part of the next review of the Constitution

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	<p>consist of all independent persons, then there would need to a minimum of five independent persons appointed at all times.</p> <p>The constitution provides for a parish councillor member of the panel to be nominated by Herefordshire Association of Local Councils (HALC) and concern was expressed that because not every Herefordshire parish council is a member of HALC this may restrict the potential pool of panel members. The working group suggested that consideration be given to suitable mechanisms for involving all parish councils including recruitment to a 'pool' of parish councillors able to be drawn on for panel membership. The parish council representative on the working group noted that HALC was not restricted by the constitution to nominating from its own membership.</p> <p>It was noted that panel membership was a matter for Council to determine and that the issues raised by the working group relating to panel membership would be considered during the next review of the constitution.</p>	
4.	The procedure would be easier to follow if it was split to show what would happen in the case of an appeal received from a subject member or a complaint.	Procedure to be amended into two clear sections for complainant and subject member.
5.	The procedure should make clear that the appellant only has one opportunity to submit new information. They cannot provide a response to any further submission which the subject member may make in response to their appeal.	Procedure to be amended to make this clear.
6.	The procedure should make it clear whether a report on any appeal accepted will be a public document.	<p>Amend the process to make clear that the report will be in public but the detail of the complaint and appeal will be in appendices to the report which are exempt from publication, unless there is a decision taken by the panel for the meeting to be held in public.</p> <p>If standards panel decide to hold the appeal in public, the appendices will be made public, once all third party information has been redacted from the documents. This will be</p>

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		done as soon as possible after the standards panel have met.
7.	A flowchart to be produced as this would make the process easier to follow	Flowchart to be produced and included as part of the published procedure.
8.	The wording in the procedure stating panel membership includes "a representative from Herefordshire Association of Local Councils (HALC)" be amended to "a parish councillor nominated by Herefordshire Association of Local Councils" to ensure consistency with the constitution	Procedure to be amended to reflect the constitution.

Procedure for hearing an appeal at Standards Panel

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9.	If a complainant or subject member brings a supporter, there needs to be flexibility for them to speak in place of the person they are supporting.	Procedure to be amended to make clear that a supporter may speak on behalf of the person they are supporting.
10.	The procedure currently states that "The complainant and the subject member will be invited to present their views on the appeal" but it would be preferable for the person who lodged the appeal to speak first in order to set out the grounds of their appeal.	Procedure to be amended to reflect that the person lodging the appeal speaks first.
11.	The decision notice published following the panel meeting where a breach was upheld had not made clear the grounds for the original finding of a breach and the working group suggested that where the standards panel is upholding a monitoring officer resolution decision, the original decision notice should be available for the public to see.	Procedure to be amended to make clear that the original monitoring officer resolution decision notice will be appended to the standards panel decision notice where the panel uphold the original decision.
12.	The working group suggested that the word 'unhappy' included in the procedure at "If either party remains unhappy about the process which has been followed, they may complain to the Local Government and Health and Social Care Ombudsman" should more appropriately state 'dissatisfied'.	Procedure to be amended to replace 'unhappy' with "dissatisfied".

Arrangements for dealing with code of conduct complaints

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13.	Working Group members expressed concern that there was an imbalance in the rights to appeal, in that whilst a complainant had to provide substantial new evidence / information in order to proceed with an appeal, a subject member had an automatic right of appeal.	<p>The criteria for appeals by either a complainant or subject member be amended to:</p> <ul style="list-style-type: none"> • New evidence or information; • Procedure used was flawed; and, in the case of subject members only • Sanction is disproportionate • <p>NB: If approved the Monitoring Officer would amend the Code of Conduct Appeals Process to reflect the change</p>
14.	Concern was expressed that the arrangements did not make sufficiently clear that any complaint would be investigated under the relevant code of conduct in place at the time of the alleged breach occurred.	That the words "at the time of the alleged breach." be added to the end of the first paragraph in the arrangements
15.	<p>The ability to reject a complaint at both the pre- qualification stage and the initial assessment stage if a subject member is not in office was discussed by the working group.</p> <p>It was noted that a complaint may continue to be investigated if it is in the public interest to continue, even though the subject member has resigned and it was agreed that the ability to reject should remain under both stages.</p>	No change recommended.
16.	Under (i) of the initial assessment stage, the word "and" was confusing.	That the word "and" at the end of (i) under the initial assessment stage be deleted.
17.	It was not sufficiently clear that if a complaint is rejected under the initial assessment stage that there was no right of appeal.	<p>That a new sentence be added after (g)</p> <p>"If a complaint is rejected, there will be no right of appeal"</p>
18.	Mediation was a resolution under the stages of the process. It was noted that mediation was a sensitive issue and that it was sensible to have this as a course of action under all the stages.	No change recommended.

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19.	The arrangements currently state that: "The monitoring officer will report with full reasons (within 10 working days from receipt of information from the subject member) the outcome of the complaint to the complainant, subject member, and if a parish or town councillor to the clerk to the town/parish council (if appropriate) for information, or where the subject member is a member of Herefordshire Council, the relevant group leader(s) will be informed." It was noted that the outcome being reported to a parish council would not necessarily be for information but may require action from the parish council.	That the words "for information" to be deleted.
20.	Within the arrangements a link provided to the constitution was not helpful and it was suggested a more suitable link would be to the standards panel committee page on the website.	That the link in the arrangements be changed to direct readers to the Standards Panel Committee web page.
21.	The arrangements did not reflect the fact that details of the number of complaints received relating to parish councillors were included in the annual report on code of conduct by reference to the relevant parish councils.	That the arrangements be amended to make it clear that the number of complaints against parish councils by reference to their parish council is reported publically on an annual basis to the audit and governance committee
22.	The arrangements did not reflect the fact that details of the names of councillors; the council; the sanction and the level of compliance for breaches of the code of conduct are reported on an annual basis	That the arrangements be amended to make it clear that details of breaches of the code of conduct and the degree of compliance will be reported on an annual basis to the audit and governance committee