

Meeting:	Audit and governance committee
Meeting date:	Friday 25 September 2020
Title of report:	Annual report on code of conduct
Report by:	Solicitor to the Council

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

To enable the committee to be assured that high standards of conduct continue to be promoted and maintained. To provide an overview of how the arrangements for dealing with complaints are working together with views from the latest standards panel sampling review.

Recommendation(s)

That:

- (a) the annual report on code of conduct complaints be reviewed and any areas for further work be identified for inclusion in the work programme; and**
- (b) the recommendations from the standards panel advising this committee (appendix 1), following their annual sampling exercise, are considered and are adopted as appropriate into the action tracker**

Alternative options

1. There are no alternative options, the constitution requires the committee to annually review overall figures and trends from code of conduct complaints. The report provides a

factual summary of the work undertaken during the period 1 May 2019 to 30 April 2020 the ('review year').

Key considerations

2. The monitoring officer is responsible for dealing with allegations that councillors have failed to comply with the members' code of conduct and for administering the local standards framework.
3. Herefordshire Council, and all parish, city and town councils in the county, have a statutory duty under the Localism Act 2011 to 'promote and maintain high standards of conduct by members and co-opted members of the authority'.
4. The committee is responsible for receiving an annual review by the monitoring officer.

Code of Conduct

5. In accordance with Section 28 Localism Act 2011 the council has adopted a code of conduct, and this has also been made available to all parish councils in the county to inform the adoption of their own code. This report considers the code as adopted on by this council on 25 May 2018.

Independent Persons

6. Section 28(7) of the Act also requires that the council appoint "at least one independent person" whose views are sought and taken into account before it makes its decision on an allegation of a breach of the code of conduct.
7. During the year 2019/20, there were seven independent persons appointed for Herefordshire Council.
8. There are currently six independent persons as Mr Richard Stow's four year term came to an end in March 2020. Mr Stow's contribution to the code of conduct arrangements were invaluable during his period of term. A future recruitment exercise is currently scheduled for 2022/3.
9. The monitoring officer is grateful for the work and support from all of the independent persons.
10. During the review year the monitoring officer has held two independent persons' conferences and key outcomes were
 - Agreement on how independent persons can offer support to councillors who are subject to complaints; and
 - A legal update on when a potential defence might be relevant, where a councillor fails to meet their statutory obligations in relation to disclosable pecuniary interests, which could otherwise result in criminal liability; and
 - A helpful guide on when 'public interest' is relevant in handling code of conduct complaints.
11. The independent persons framework under which they will offer support to councillors who are subject to complaints became effective from January 2020 and is routinely offered when councillors are advised of a complaint against them. Support has been sought

Further information on the subject of this report is available from

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since since May 2020 and details will be provided in the 2021 annual code of conduct report.

Arrangements

12. A [revised standards procedure](#) to investigate code of conduct complaints was endorsed by this committee on 24 September 2019. The changes outlined in the 2019 annual code of conduct report were implemented from October 2019. A review of the arrangements is scheduled for discussion by the Independent persons in October 2020.

Register of Interests

13. The council maintains a register of interests for members of Herefordshire Council and parish councillors, where provided; these declarations are published on the Herefordshire Council website ([parish councils](#) and [Herefordshire Council](#)).
14. As from May 2017, the Herefordshire Council register of interests also includes the register for gifts and hospitality. Over the period covered by this report, registers have been updated in order to record offers of gifts and hospitality which have been accepted or declined.
15. Members do regularly update their registers and these are republished on our website. Herefordshire council members are reminded to keep their register under review at six monthly intervals.

Dispensations

16. Since last year's annual code of conduct report, no new dispensations have been granted by the monitoring officer. Four remain in existence ([live link](#))

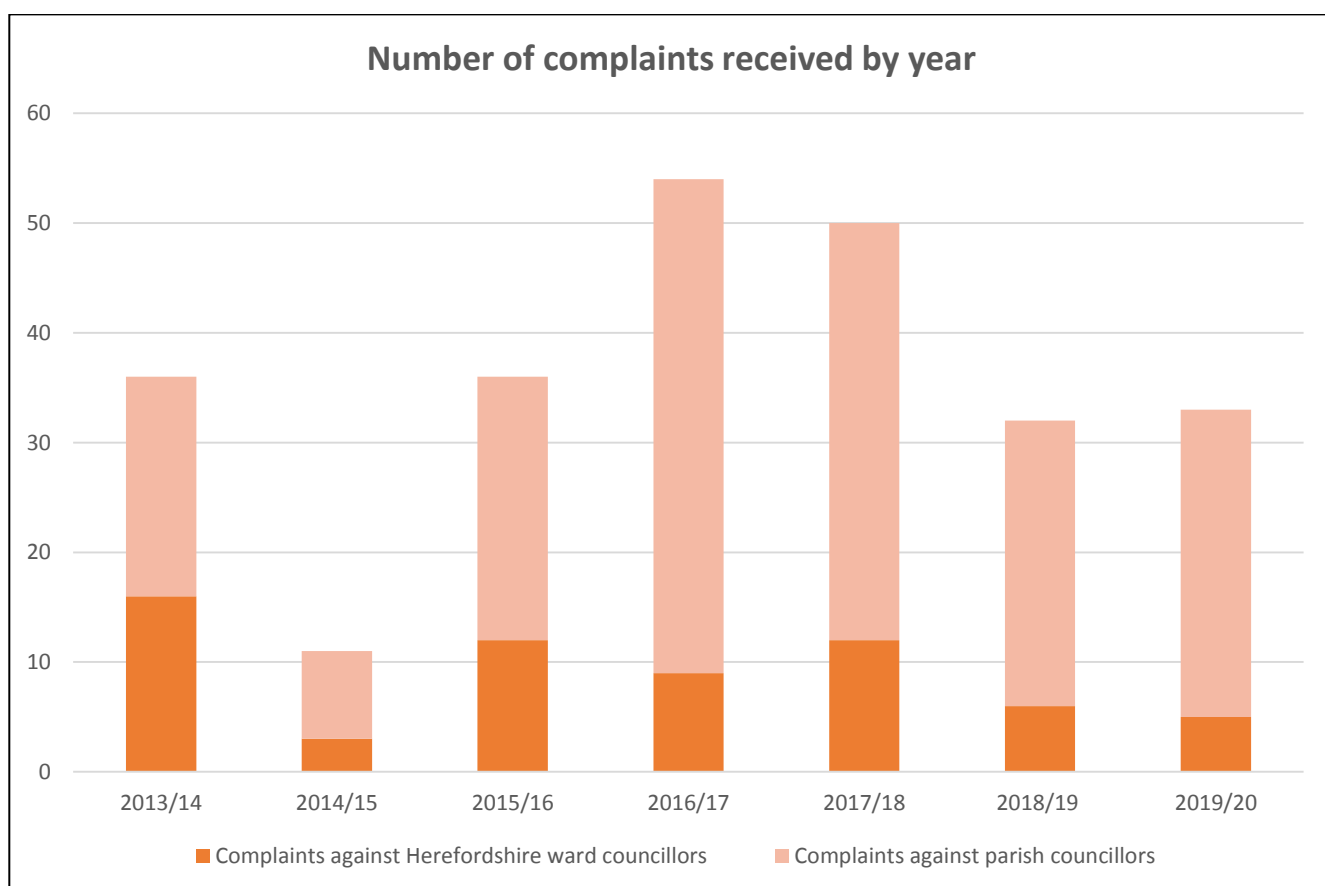
Protocol with the police

17. The protocol with West Mercia Police has remained unchanged during the year and is available on the council's website. This protocol explains how the council and police will deal with a code of conduct complaint if it is considered that a criminal offence may have occurred.

Code of Conduct Complaints

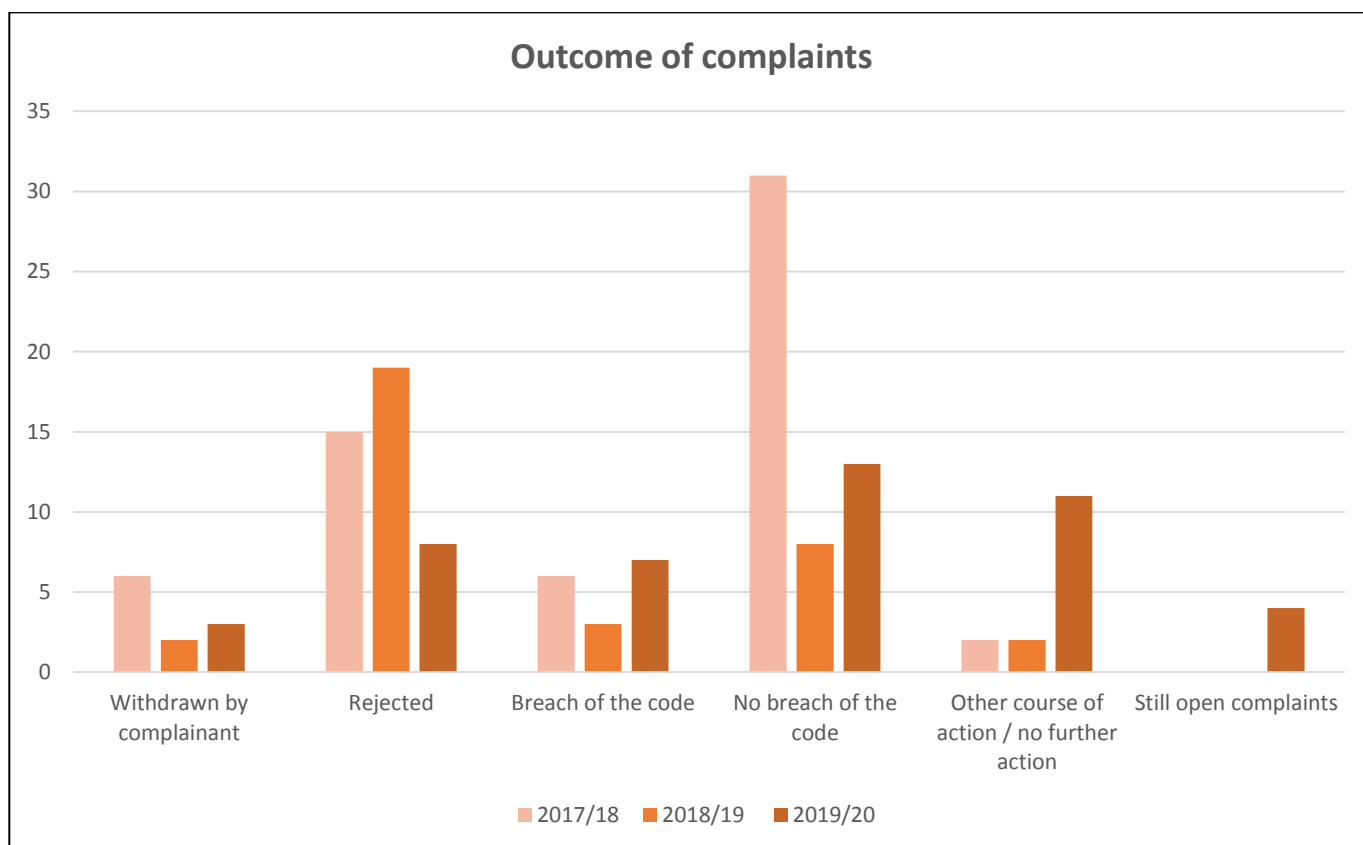
18. During the period 1 May 2019 to 30 April 2020 there were 36 Code of Conduct complaints. Some of these complaints cited multiple councillors and so the total number of councillors subject to a complaint received in the period was 46.
19. As at 17 September 2020, there were 3 complaints (number of councillors 4) still open for the review period. Two are being considered under the appeals process, two are in the appeals period and 1 is in the process of being determined by the monitoring officer.
20. Since the introduction of the Localism Act 2011, the complaints handled by Herefordshire Council is tracked and set out in the table below. There are 53 Herefordshire councillors and approximately 1300 parish councillors each of whom are subject to the councillor code of conduct. As can be seen from the figures below which are based on the number of complaints received, the majority of complaints received continue to be against parish councillors who are the largest number of councillors in the area.

Year	Total no of complaints received	No of complaints against Herefordshire ward councillors	No of complaints against parish councillors
2013/14	36	16	20
2014/15	11	3	8
2015/16	36	12	24
2016/17	54	9	45
2017/18	50	12	38
2018/19	29	6	26
2019/20 (excludes 3 withdrawn complaints)	36	5	28



21. Of these complaints, the following outcomes are recorded:

Outcome	2017/18	2018/19	2019/20
Withdrawn by complainant	6	2	3
Rejected	15	19	8
Breach of the code of conduct	6	3	7
No breach of the code of conduct	31	8	13
Other course of action / no further action	2	2	11
Still open complaints	N/A	N/A	4
Total number of complaints received against councillors	60	34	46



22. During the year there were 7 upheld complaints. Details of the upheld complaints can be found on the council's website.

23. During the year there were no standards panels convened in order to hear appeals against monitoring officer resolution. Four appeals were received but rejected as no new substantial information / evidence had been provided by either the complainant or the subject members.

24. On analysis of all complaints received, there is now an approximately 50% split between complaints relating to a lack of respect which includes behaviour at meetings, email correspondence and social media and allegations of failing to declare relevant interests at meetings. The failure to declare interests has not previously been an area of major concern but will need to be a key focus of the 2020 training to ensure clear understanding of when interests can occur and what it restricts a member from doing.
25. Of the complaints received during the period, 8 complaints were received from councillors complaining about other councillors and 25 complaints were made by members of the public. These figures exclude the withdrawn complaints.
26. There were 5 complaints received against Councillors at Herefordshire Council. The remaining complaints were against parish councillors. Details of the complaints by parish council are:

Parish Council	Number of complaints
Bodenham Parish Council	1
Bromyard and Winslow Town Council	2
Clifford Parish Council	1
Edwyn Ralph Parish Council	1
Ledbury Town Council	4
Linton Parish Council	1
Llangarron Parish Council	6
Pixley and District Parish Council	1
Tarrington Parish Council	3
Vowchurch Parish Council	1
Walford Parish Council	6
Welsh Newton & Llanrothal Group Parish Council	1
Total (excludes three withdrawn complaints and includes the open complaints)	28

27. This compares to last year where the complaints were:

Parish Council	Number of complaints
Bartestree Parish Council	1
Belmont Rural Parish Council	1
Cradley Parish Council	2
Eardisley Parish Council	1
Ledbury Town Council	1
Linton Parish Council	1
Marden Parish Council	1
Mathon Parish Council	1
Much Cowarne Parish Council	1
Tarrington Parish Council	1
Walford Parish Council	1
Total (excludes withdrawn complaint)	12

28. The independent persons views were sought for all complaints considered at initial assessment and resolution stage during the period.
29. Following last years review of code of conduct complaints at the audit and governance committee meeting held on 24 September 2019, there were various actions and attached at appendix 2 is an update on those actions.

Sanctions

30. Our arrangements explain that where there has been a breach of the code and recommendations are made by the monitoring officer that these actions are in fact complied with. A councillor is asked to confirm that they have complied within 6 weeks of the decision being communicated to them. If they are unable to confirm completion then the matter has not been able to have been resolved by the monitoring officer and the complaint will be referred to the standards panel for determination.
31. Where there is a breach of the code, the decision notice is published on the council's website, once the appeal period has expired, and can be viewed [here](#) (live link)
32. In respect of the seven breaches of the code of conduct, three findings had a recommendation from the monitoring officer as follows:
 - Tarrington Parish Council – Councillor Ward to provide an apology in respect of the behaviour displayed. This apology was provided.
 - Linton Parish Council – written advice to be provided on dispensations. This was provided by Herefordshire Council to the clerk of Linton Parish Council
 - Walford Parish Council – training was provided by the monitoring officer to the councillor in respect of code of conduct and when interests should be declared.
33. Two complaints dealt with under any other course of action contained a recommendation of training. Both complaints were broadly about the behaviour of the councillors in meetings. The arrangements for this training were put on hold due to Covid-19. However, one parish council has confirmed that training has been undertaken and confirmation is awaited that 100% of councillors attended. The other parish council is arranging the training through HALC and confirmation is awaited as to when this has been completed.

Training

34. All Herefordshire ward councillors were trained by the monitoring officer on the code of conduct, as part of the mandatory induction training in 2019
35. Code of conduct training is available to all parish councils upon request free of charge as part of the monitoring officer's duty to uphold high standards of conduct within the county.
36. A training session open to all parish councillors is in the process of being arranged. This was due to take place in March 2020 but was delayed due to pandemic. This training is now considered a priority due to the rising numbers of complaints relating to failure to declare an appropriate interest in planning matters in particular.

Freedom of Information Requests

37. During the year there was one Freedom of Interest request.
38. One complaint was referred to the Local Government and Social Care Ombudsman. The Ombudsman decided not to investigate the complaint as they did not see any evidence of fault in the way the complaint was dealt with nor did they consider that any significant personal injustice was suffered that warranted their involvement.
39. The First Tier Tribunal dismissed the appeal against the information commissioner's decision to not require the council to publish the details of complaints rejected on initial assessment by the Monitoring Officer, in circumstances where we had provided summary information but refused to provide the names of the subject member / complainant and council concerned. This decision was communicated on 17 September and the reasons are not yet published on the information commissioner's website to provide more detail.

Standards Panel

40. As from 25 May 2018, there has been a right of appeal against monitoring officer resolution decisions. During the period, there were no appeals heard. Four appeals were received but were rejected as they did not contain any new substantial information or evidence which had not been considered at the time of the original complaint. Any new allegation would be dealt with as a new complaint.
41. Standards panels were convened on 18 December 2019 and 20 August 2020 in order to undertake a sample review of monitoring officer resolution decisions during the period 1 May 2019 to 30 April 2020.
42. In total, the panels reviewed 28 complaints. The panel found that they were satisfied with the level of assurance provided on the timeliness, consistency and sanctions.
43. The standard panels held on 18 December 2019 and 20 August 2020 did have some recommendations for the audit and governance committee and these are contained in appendix 1 for the committee's consideration. The standards panel held on 20 August 2020 agreed to close the 2019/20 complaints year based on the sampling completed even though a number of complaints remained open. This was on the understanding that if there were significant issues arising from the then five remaining complaints, this would be reported to the audit and governance committee.

Community impact

44. This report provides information about the council's performance in relation to the code of conduct.
45. Having an effective process for dealing with code of conduct complaints upholds principles A and G of the code of corporate governance by ensuring that councillors behave with integrity and that councillors are accountable for their actions. This should provide reassurance to the community that councillors are behaving in the best interests of their communities.

Environmental Impact

46. There are no environmental impacts arising from this report.

Equality duty

47. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
48. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

49. There are no resource implications arising directly from this report which is for information.
50. The council has a statutory duty in the Local Government and Housing Act 1989 to provide the monitoring officer with sufficient resources to allow them to perform their duties.
51. The Independent Persons receive no allowances and are only reimbursed their travel expenses for meetings with the monitoring officer.
52. Following a report to this committee, the council's independent remuneration panel (IRP) will be asked to consider an allowance for the independence persons for standards. It is anticipated that there will be recommendations contained within the IRP report for the councillors' allowances scheme which will be presented to the council meeting in May 2021. Under the Localism Act 2011, it is permissible to pay the independent persons for standards an allowance without affecting their independence and it would be a matter for the independent persons as to whether or not they wished to receive the allowance.

Legal implications

53. There is no statute that specifically requires the monitoring officer to produce an annual report. However, the review evidences that the council complies with the duties required under the Localism Act 2011.

Risk management

54. There are no risks arising directly from this report which is for information. Maintaining high standards of conduct mitigates risks to the reputation of the council. How the arrangements are managed can be cause for complaint and are dealt with by

the chief executive. The fact that only recommendations can be made exposes the council to risk of criticism, this is a result of the national framework which the committee in public life considered.

Consultees

55. None

Appendices

Appendix 1 – recommendations from the standards panels held on 18 December 2019 and 20 August 2020

Appendix 2 – Action tracker

Background papers

None identified.