

# Title of report: Annual report on code of conduct

**Meeting:** Audit and governance committee

**Meeting date:** Tuesday 25 January 2022

**Report by:** Director of law and governance

## 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 2020 to 30 April 2021 the ('review year').

## **Key considerations**

2. 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'.
3. 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.
4. The committee is responsible for receiving an annual review by the monitoring officer. 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. The Code has recently been updated to include "and treat others with respect" as part of the leadership principle following the 23<sup>rd</sup> report Standards in Public Life November 2021.

## **Independent Persons**

5. 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.
6. During the year 2019/20, there were six independent persons appointed for Herefordshire Council.
7. There are currently four independent persons as two independent persons have recently resigned. A future recruitment exercise is currently scheduled for 2022/23.
8. The monitoring officer is grateful for the work and support from all of the independent persons.
9. The framework under which independent persons 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. The independent persons have provided support to three councillors during the year.

## **Code of Conduct**

10. Following a review undertaken by The Committee on Standards in Public Life the Local Government Association in response to this review, over the summer of 2021 produced further guidance with regard to a model code of conduct and after consideration, it is recommended that the model code be adopted and views sought on what if any local amendments might be sought. The proposed code is attached at appendix 2. If the committee are minded to agree with this course of action, consultation with elected members together with town and parish councils would be undertaken with the aim of adopting the new code as from annual Council in May 2022. The consultation will highlight where the LGA code differs from the existing code for example the value of gifts and schedule 2 interests and seek views on whether any local amendments would be necessary.
11. The Committee on Standards in Public Life is an independent advisory non-departmental public body, provided by the Cabinet Office with the remit to advise and make recommendations on ethical standards in public life.
12. In January 2019, the Committee on Standards in Public Life published a report on local government ethical standards. This called on the LGA to create a model code of conduct to enhance the consistency and quality of local authority codes, and ensure issues such as bullying and harassment were covered.

## **Arrangements**

13. A revised standards procedure to investigate code of conduct complaints was endorsed by this committee on 24 September 2019. A review of the arrangements was started in January 2021, however this was put on hold as a model code of conduct complaints process was due to be developed by the Local Government Association. The [Guidance on Member Model Code of Conduct Complaints Handling | Local Government Association](#) was published in September 2021. These arrangements have been adopted by a significant number of local authorities and it is proposed that these LGA arrangements be adopted following consultation. The new arrangements would then come into effect as from annual Council in May 2022.
14. 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](#)).
15. 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. A reminder about the need to update registers of interest in respect of gifts and hospitality was circulated to all Herefordshire Council councillors in September 2021.
16. Members do regularly update their registers and these are republished on our website.

## **Dispensations**

17. Since last year's annual code of conduct report, one new dispensation was granted by the monitoring officer. This dispensation was to Councillor David Hitchiner for the Council meeting on 2 February 2021 which was convened to debate the decision with regard to the Hereford Bypass. The dispensation was granted in order that he could represent the views of the residents in his ward. The dispensation was added to his register of interest form.
18. The four existing dispensations remain live and can be viewed [here](#)

## **Protocol with the police**

19. 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.
20. During 2020/21 there has not been any recourse to refer any code of conduct complaint to the police.

## **Code of Conduct Complaints**

21. During the period 1 May 2020 to 30 April 2021 there were 42 Code of Conduct complaints. Some of these complaints cited multiple councillors and so the total number of councillors subject to complaints received in the period was 54.
22. As at 17 January 2022, there were 9 complaints still open for the review period. Five are being considered under the appeals process.
23. During the review period, there has been regrettably an issue with the timeliness of dealing with complaints. The delay has been due to Covid-19 and other urgent high priority issues which meant that staff with responsibility for conduct complaints including the Monitoring Officer and Deputy Monitoring Officer were re-allocated to support those issues. Work has been undertaken to ensure that all outstanding complaints are dealt with as quickly as possible and complaints received in 2021/22 are being dealt with in a more timely manner. The reasons for any delays in addressing 2021/22 complaints will now be tracked and reported as part of

the standards panel review process. The standards panel on 12 January saw the detail of the timeliness of decisions and could only reflect that if we had informed the public and those subject to complaint of the delay, complaints may have been minimised.

24. The standards panel convened for 28 January 2022 has been postponed due to a full Council meeting being called and will be re-convened in February 2022 in order to review the first 6 months of code of conduct complaints received.
25. Since the introduction of the Localism Act 2011, the number of complaints handled by Herefordshire Council has been tracked and is set out in the table below. There are 53 Herefordshire councillors and approximately 1300 parish councillors each of whom is subject to a councillor code of conduct. As can be seen from the figures below, the majority of complaints received continue to be against parish councillors.

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
2020/21	42	8	34

26. Of these, the following outcomes were reported:

Outcome	2017/18	2018/19	2019/20	2020/21
Withdrawn by complainant	6	2	3	0
Rejected	15	19	8	16
Breach of the code of conduct	6	3	7	3
No breach of the code of conduct	31	8	13	20
Other course of action / no further action	2	2	11	3
Still open complaints / appeals received	N/A	N/A	4	12
<b>Total number of complaints received against councillors</b>	60	34	46	54

27. During the year there were 3 upheld complaints. Details of the upheld complaints can be found on the council's website.
28. On analysis of all complaints received, the primary cause for complaint relates to a lack of respect which includes behaviour at meetings, email correspondence and social media. The number of allegations of failure to declare interests, which was a factor in the previous year, has reduced.

29. Of the complaints received during the period, 13 complaints were received from councillors complaining about other councillors and 29 complaints were made by members of the public. These figures exclude the withdrawn complaints.
30. There were 8 complaints received against Councillors at Herefordshire Council. The remaining complaints were against parish councillors. Details of the complaints by parish council are:

	2018/19	2019/20	2020/21
<b>Parish Council</b>			
Ashton Ingram Parish Council			1
Ballingham, Bolstone & Hentland Parish Council			2
Bartestree Parish Council	1		4
Belmont Rural Parish Council	1		3
Bodenham Parish Council		1	
Bromyard and Winslow Town Council		2	
Callow Parish Council			1
Cradley Parish Council	2		
Clifford Parish Council		1	
Dilwyn Parish Council			1
Eardisley Parish Council	1		
Edwyn Ralph Parish Council		1	
Ledbury Town Council	1	4	3
Linton Parish Council	1	1	
Llangarron Parish Council		6	5
Lyonshall Parish Council			4
Marden Parish Council	1		
Mathon Parish	1		
Much Cowarne Parish Council	1		
Orcop Parish Council			1
Pencombe Parish Council			1
Pixley and District Parish Council		1	
Stoke Lacy Parish Council			1
Tarrington Parish Council	1	3	
Vowchurch Parish Council		1	
Walford Parish Council	1	6	7
Welsh Newton & Llanrothal Group Parish Council		1	
<b>Total (excludes withdrawn complaints)</b>	12	28	34

31. The independent persons' views were sought for all complaints received.
32. Following last year's review of code of conduct complaints at the audit and governance committee meeting held on 25 September 2020, there were various actions and attached at appendix 3 is an update on those actions.
- Sanctions**
33. Our arrangements explain that where there has been a breach of the code and recommendations are made by the monitoring officer, these actions are in fact complied with. A councillor is asked to confirm that they have complied with the recommendation. 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.

34. 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
35. In respect of the 3 breaches of the code of conduct, two findings had a recommendation from the monitoring officer as follows:

#### Belmont Rural Parish Council

An apology to be provided. The subject member has indicated that this will be scheduled for the next available parish council meeting.

#### Belmont Rural Parish Council

Code of Conduct training to be undertaken. The subject member has confirmed that this training was undertaken.

The third complaint did not warrant a recommendation.

### **Freedom of Information Requests**

36. There were no freedom of information requests during the year.

### **Local Government and Social Care Ombudsman**

37. One complaint was referred to the Ombudsman who decided not to investigate as "it is unlikely we will find fault by the Council"

### **Standards Panel**

38. 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. 5 appeals were received. Three 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. Two are still to be heard by the standards panel.
39. A Standards panel was convened on 12 January 2022 to undertake a sample review of monitoring officer resolution decisions during the period 1 May 2020 to 30 April 2021.
40. In total, the panels reviewed 30 complaints against individual councillors. The panel did have some recommendations for the Audit and Governance Committee and these are set out in appendix 1.

### **Community impact**

41. This report provides information about the council's performance in relation to the code of conduct.
42. 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**

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

## **Equality duty**

44. 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.

47. 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**

48. There are no resource implications arising directly from this report which is for information.

49. 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.

50. The Independent Persons receive no allowances and are only reimbursed their travel expenses for meetings with the monitoring officer.

## **Legal implications**

51. 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**

52. 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 the Monitoring Officer is only able to make recommendations regarding a breach of the code of conduct exposes the council and Monitoring Officer to risk of criticism, which was recognised by The Committee on Standards In Public Life.

## **Consultees**

53. None.

## **Appendices**

Appendix 1 – Recommendations from Standards Panel held on 12 January 2022

Appendix 2 – LGA Model Code of Conduct

## Appendix 3 – Action tracker

### Background papers

None identified.

### Report reviewers used for appraising this report:

Governance	Kate Charlton	Date 17/01/2022
Finance		
Legal	Kate Charlton	Date 17/01/2022
Communications	Luenne Featherstone	Date 14/01/2022
Equality Duty		
Risk	Kevin Lloyd	Date 17/01/2022
Approved by	Claire Ward	Date 17/01/2022