

Title of report: Proposed amendments to the Code of Conduct Reporting Process

Meeting: Audit and Governance Committee

Meeting date: Tuesday 12 December 2023

Report by: Head of Legal Services and Deputy Monitoring Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

A report to propose an amendment to the functions of the Standards Panel, which will streamline the joint functions of the Audit and Governance Committee and Standards Panel.

Recommendation(s)

That Committee:

- a) **Considers and approves the proposals in principle; and**
- b) **Recommends to full Council to change the Constitution as set out in Appendix 1 to enable:**
 - (i) **a change to process used by Standards Panel to better enable concurrent oversight of the Code of Conduct standards arrangements as set out in the report; and**
 - (ii) **a change to the Code of Conduct, in relation to Disclosure of Non-Registerable Interests, to reflect case law on this issue and to protect the position of all members by clarifying the circumstances in which disclosure in a relevant meeting will be appropriate, and, in such case, what appropriate participation may follow.**

- c) **approves the amendments to the website procedure to be used when dealing with complaints, set out at Appendix 2 to reflect the Code and the adopted arrangements.**

Alternative options

1. The Committee may choose not to approve the proposals and agree that functions will remain as currently described in the Constitution.
2. This would mean that opportunities to streamline the joint functions for review of Code of Conduct cases that have been considered by the Monitoring Officer may be missed, including the opportunity for costs benefits, since the provisions currently necessitate the production of reports to both Standards Panel and Audit and Governance Committee. In particular, it is not necessary as a matter of law or process for Standards Panel to convene at 6 monthly intervals to review the Monitoring Officer's decisions.
3. In relation to the recommended amendment to the Code of Conduct regarding Disclosure of Non-Registerable Interests, Committee may choose not to recommend the amendment to Full Council, noting the bias risk identified in the current Code.

Key considerations

4. Council has delegated to Audit and Governance Committee responsibilities including, at Part 3 of the Constitution, section 3.5.14, the responsibility to promote and maintain high standards of conduct by members and co-opted members of the Council, through the Code of Conduct and its arrangements.

Reporting and oversight by Audit and Governance

5. Section 3.5.14 (f), describes Committee's specific responsibility to review on an annual basis the overall figures and trends from Code of Conduct complaints which will include the number of upheld complaints by reference to individual councillors within unitary, town and parish councils and when a code of conduct complaint has been upheld by the Monitoring Officer or Standards Panel, to promptly to publish the name of the councillor, the council, the nature of the breach and any recommendation or sanction applied.
6. The Constitution defines the responsibilities of the Standards Panel at Part 3, section 3.5.16. This includes at section 3.5.19 a responsibility to undertake a twice a year sample review of decisions made by the Monitoring Officer under the Code of Conduct complaint process.
7. The Monitoring Officer has responsibility for the implementation of the Code of Conduct, which is included in the Council's Constitution at Part 5 section 2. This means that, except in circumstances where a decision is referred to the Local Government Ombudsman, or a claim of judicial review is made, there is no appeal against the decision of the Monitoring Officer nor against a determination of the Standards Panel following a hearing.
8. It is considered that the role of Standards Panel to retrospectively undertake sample reviews of decisions made by the Monitoring Officer 6 or 12 months after the event, does not achieve any useful outcome. There is an important and useful element of oversight necessary by the Standards Panel but this isn't considered to be as effective (or could be more effective) by a change to the procedure used. Council has delegated initial decision making to the Monitoring Officer who must consult with the Independent Persons before making a decision. In the absence of an appeal process, it is considered that oversight by Standards Panel gives an important quality check to the processes.

9. However, it is considered that receiving the views of the Standards Panel 6 or 12 months after the decision is not particularly helpful. The Audit & Governance Committee already has an annual obligation to comment on the process, trends and resourcing. Feedback from Standards Panel on specific cases so long after the event, is not considered particularly effective or useful.
10. This report therefore proposes that the Constitution is amended at Part 3, paragraphs 2.8.27 and 3.5.19, to remove the twice/annual review of the Monitoring Officer's decisions by the Standards Panel.
11. This will be replaced by:
 - a. notification to all members of the Panel on a confidential basis of all decisions as they are made by the Monitoring Officer (whether at the Initial Assessment or post-Investigation stage). This will give the Committee an understanding of decisions as they are being made rather than waiting 6 months; and
 - b. there will be no requirement for an exempt meeting to discuss the decisions. Each member can simply contact the Monitoring Officer should they have any questions; and
 - c. the Chair of the Panel can request the Monitoring Officer to convene a formal meeting should a specific matter need to be discussed; and
 - d. the Audit and Governance Committee receiving a report on a 6 month basis in respect to processes, trends and resourcing.
12. The consultation with the Independent Persons on all decisions will continue and remains fully effective if the proposal is approved. The Council has to appoint Independent Persons under section 28 of the Localism Act 2011, to work with the Monitoring Officer to support them with Code of Conduct complaints and standards issues. Independent Persons are people who are neither councillors or officers of the Council.
13. It is also recommended that Part 3 section 5 is amended to provide for the Independent Persons to be invited to attend any Audit and Governance Committee meeting when the agenda includes consideration of any report pertaining to Committee's functions concerning the Code of Conduct, at Part 3, section 3.5.14 of the Constitution.
14. The proposals will also streamline the actions and responsiveness of Standards Panel and will improve budget efficiency by removing an existing area of duplication of reports and unnecessary formal meetings.
15. Members can be reassured that the current provision for Standards Panel to undertake 6 or 12 monthly sample reviews of decisions made by the Monitoring Officer under the Code of Conduct complaint process is not necessary as a matter of law and is not an approach mirrored in other councils that we have found. Instead of dip sampling some decisions 6 or 12 months after the event, the proposal is to give all members of the Standards Panel oversight of all decisions as they happen.

Ordinary Registerable/Non Registerable Interests and Bias

16. In relation to the recommended amendment to the Code of Conduct regarding Disclosure of Non-Registerable Interests, members are advised that this proposal flows from a review of the Code and noting the decision of the High Court in the case of [*CPRE \(Somerset\), R \(On the Application Of\) v South Somerset District Council*](#) [2022] EWHC 2817 (Admin). This case exposed a risk to members inherent in the Council's adopted Code, which is addressed by the amendment. The court considered that the current wording in the Code in respect to whether a

matter 'affects' an interest was more restricted than bias under the common law. The effect is that a member would not be in breach of the Code even if the member's decision was clearly biased. The change to the Code aligns this to the law.

Voting on Standards Panel

17. The Standards Panel consists of three Herefordshire Councillors, one of the Independent Persons and a parish councillor. Non-Herefordshire Councillors on the Standards Panel are co-opted members and do not at law have a vote on any decisions to be made by the Panel. As such, the recommendation is to add wording to clarify this as a new paragraph 3.5.20. This is a matter of law and clarity in the Constitution is recommended.

Publication of Decision Notices

18. In relation to the proposed amendment to the 'Arrangements For Dealing With Complaints About the Code of Conduct for Members', this provides for transparency so far as members and residents are concerned. The proposals specifies the type of decisions that will be published and the time periods of publication. The amendments also include the Monitoring Officers duty to provide members of Standards Panel copies of decision notices as they are published.

Actions of Monitoring Officer after Investigation.

19. The [arrangements for investigating a breach](#) of the Code of Conduct was [adopted](#) by Council on the 20 May 2022. This document was issued by the LGA and the Council agreed that this was to be their procedure with minor amendments. Audit and Governance agreed the online abridged version of the [arrangements](#) in a meeting on [13 March 2023](#) (recommendation b and c) but unfortunately this document doesn't entirely align to the adopted May 2022 arrangements.
20. The recommendation is to amend paragraph 10 so it is clear that the Monitoring Officer can seek to resolve the matter informally irrespective of whether a breach has been determined. This then aligns to part 5 of the LGA procedure (page 38 of 47).
21. Although this is a technical change, the Monitoring Officer considers that as the document was originally approved by the Committee, that the change should be approved.

Community impact

22. The proposals do not have any community impact, nor do they link to other local or national strategies or policies. They are proposals that fall within Council's powers to make local arrangements.

Environmental Impact

23. The proposals do not have any environmental impact.

Equality duty

24. 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.

25. 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 policies and in the delivery of services. Equalities data is collected with the complaints form.

Resource implications

26. The changes to the reporting to Standards Panel may resource implications arising if the change is adopted. The requirement for less formal meetings (2 Standards Panels) will free up officer and member time and resources. However, the new arrangements could lead to more contact time between officers and members, and even more formal meetings (albeit shorter and more focused). This will be monitored and even if there more contact time, it is considered necessary for the benefits of focused feedback which is provided as it happens.

Legal implications

27. Under Section 28 of the Localism Act 2011, local authorities must have in place 'arrangements' under which allegations that an elected or co-opted councillor of the authority or of a town or parish council within the principal authority's area has failed to comply with the authority's Code of Conduct can be considered and decisions made on such allegations.

28. It is for the Council, as principal authority to decide the details of the arrangements, as a matter of local choice.

Risk management

29. There are no risks arising directly from the report.

Consultees

30. The Independent Persons have been consulted. They asked whether Audit and Governance Committee would have the capacity to change the annual review by the Committee to a twice annual review of the Monitoring Officer's data and information relating to the Code of Conduct complaint process. As such the original proposal has been modified.

31. Discussions centred on the purpose of review, being that of considering trends that will inform allocation of appropriate resources to the process, as well as identifying any areas for development and training that might reduce the number of complaints received, rather than a detailed review of the Monitoring Officer's decisions.

32. The Group leaders have been consulted. A response was received from group leaders and where possible the recommendation has been amended in consideration of the views expressed. The response also included elements that are wider than the subject matter of this report which is principally around transparency and reporting. This includes redrafting the guidance and arrangements adopted by the Council so that it is clearer – this would not be changing the procedure. Officers will respond in full to the member concerned and where an element merits changes to the Constitution not covered within this report, then further recommendations will be made to this Committee.

Appendices

Appendix 1 - Changes to the Constitution

Appendix 2 - Amendment to Standards Procedure

Background papers

[Constitution Section 5 - Other functions.](#)

[Constitution Part 2 Article 8-The audit and governance committee.](#)