

Title of report: Code of Conduct for Councillors - 6 monthly Update

Meeting: Audit and Governance committee

Meeting date: 30 January 2024

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

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.

Recommendation(s)

That the Committee:

- a) notes this 6 monthly update on the Code of Conduct complaints arrangements; and
- b) delegates to member(s) of this Committee to be an early consultee on the changes to be recommended on the Code of Conduct arrangements (investigation process) as set out in paragraph 7 to 9 of this report.

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. This committee agreed that this should be 6 monthly and the committee's recommendation will be put to Council in March

2024. This report assumes changes will be agreed and provides a summary of the work undertaken during the period 31 March 2023 to 31 October 2023 the ('review period').

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. The Committee is responsible for receiving an annual review by the Monitoring Officer.

Changes to Code Arrangements (Investigation Process)

4. In December 2023, this committee approved recommendations to changes to the transparency and reporting of the Code of Conduct. This included officers making full disclosure of all decisions made under delegated powers to the Standards Panel and included fixing the membership of the Panel and chairing responsibilities.
5. The recommendation will be received by Council in March 2024 and it is intended that the changes will take effect from the new administrative year.
6. In addition to the above, officers have agreed with the Chair of this committee to review and simplify the existing Code of Conduct arrangements and present this back to this committee. The Council adopted the LGA model code of conduct (as amended) in [May 2022](#) but unusually adopted the accompanying [LGA guidance](#) as Herefordshire's arrangements for dealing with complaints.
7. The Guidance is a 47 page guidance document rather than a precise process. This in itself causes issues. There is a lack of clarity about exactly what is expected in the process. The guide gives options rather than precision and often uses words such as 'can', 'may', 'may wish' and 'should' where as procedure should be exact on what 'must' be done. This causes issues for officers in that it is not clear exactly what the delegated authority wants us to do.
8. The important point is that there will not be any actual change to the arrangements but greater clarity and precision in exactly what the process is.
9. This will need approval by Council and we will consult with group leaders and independent persons prior to this committee receiving this recommendation. It is also recommended that one or more members of this committee acts as an early consultee as part of the initial review process.

Staffing Arrangements

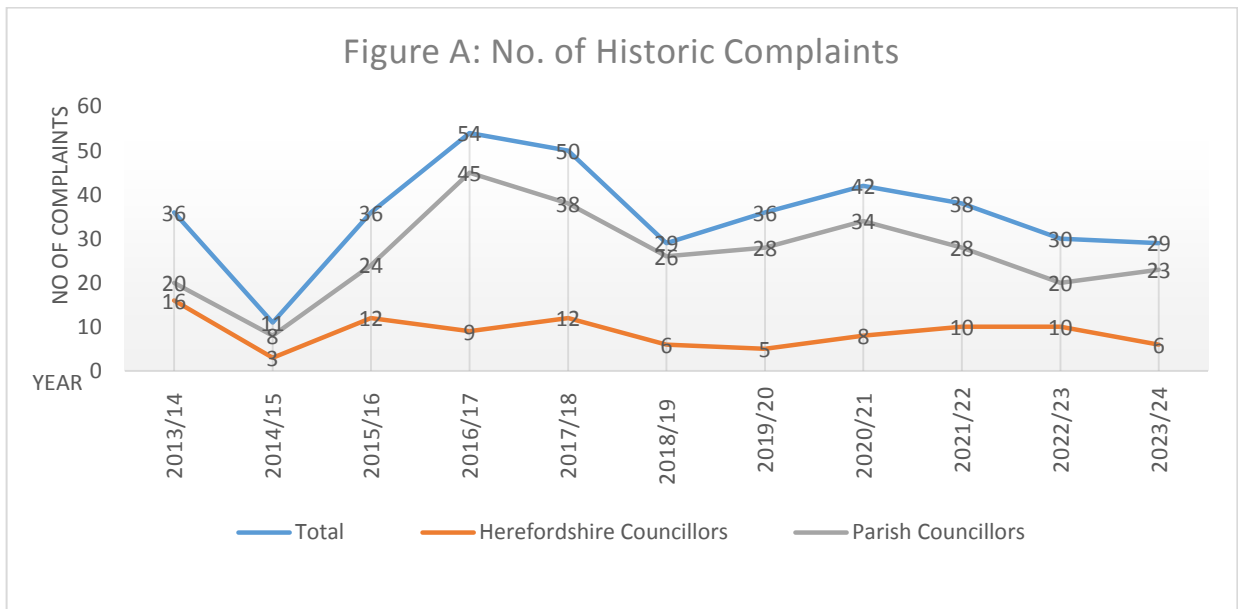
10. It has been clear from historic records that the Code of Conduct arrangements have been transacted by lawyers in legal services supporting the Monitoring Officer. This process is in addition to their normal duties and responds to complaints being received. This means that the arrangements are transacted not in accordance with the adopted timelines but as dictated by workloads and other priorities.

11. Further, the majority of tasks involved with the arrangements is process driven using rules based workflows and templates documentation. There is only a small number of stages in the process that, although extremely important, require legal judgment and the attention of a lawyer. The majority of tasks in the process are time intensive but administrative.
12. As such, legal services has now dedicated non-lawyer staffing resources to perform the majority of tasks and recruited to this role. The individual will be in post from February 2024. The cost of the post is considerably lower than a lawyer.

Code of Conduct Complaints

Number of Complaints

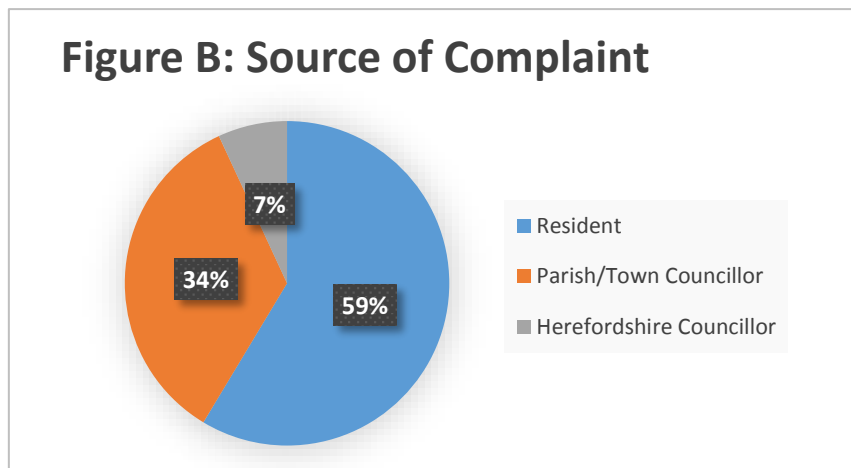
13. Since the introduction of the Localism Act 2011, the number of complaints handled by Herefordshire Council has been tracked. There are 53 Herefordshire councillors and approximately 1300 parish councillors each of whom is subject to a councillor code of conduct.
14. During the period 31 March 2023 to 31 October 2023 there were 29 Code of Conduct complaints received. Some of these complaints cited multiple councillors for Bartestree with Lugarwardine Parish Council and were considered with 3 complaints from the previous administrative year (total 17 processed complaints).
15. Figure A below shows the number of complaints received since 2013. The numbers have been reducing since 2021 but the first 6 months of 2023 has generated 29 complaints, being almost the same numbers of complaints as the previous year. The vast majority of complaints continue to be against Parish/Town Councillors.



Source of Complaints

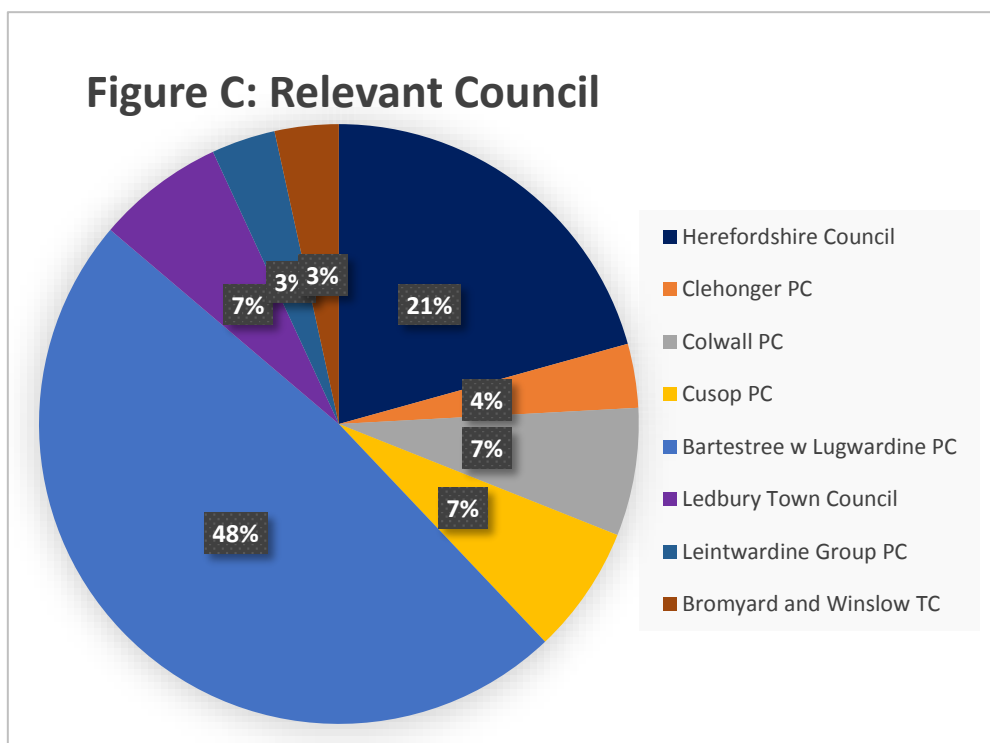
16. For the period, the source of complaints has been almost two thirds from residents. However as Figure B shows 34% of complaints have been generated by Parish/Town Councillors. Only two complaints have been generated by members of Herefordshire Council.
17. The number of complaints generated by Parish/Town Councillors appears to be very high when we consider that the Code of Conduct complaints process is predominately meant to be for the use of the public. However, increasingly it appears to be the means that some Parish/Town Councillors resolve differences of opinion where matters are not resolved locally by the

Councillors themselves. Local views appear to be in some instances that the matters should be dealt as a Code matter rather than Councillors and clerks settling their differences of opinion appropriately.



Relevant Council

18. Figure C shows which Council where the complained about Councillor is located. The majority of complaints relates to members of Parish/Town Councils and almost half of all complaints relate to Bartestree with Lugwardine Parish Council. 6 complaints were received in respect to Councillors of Herefordshire Council.

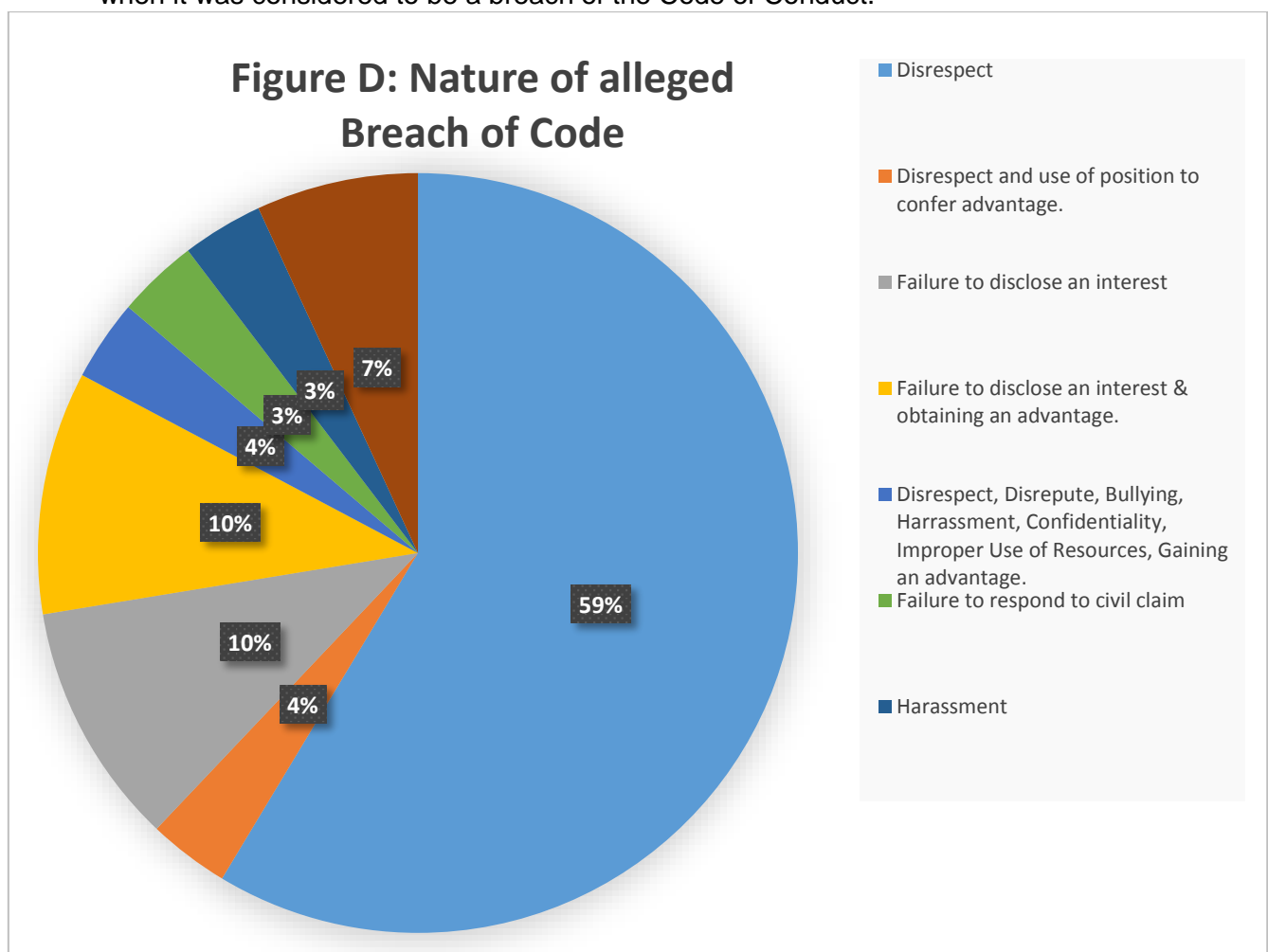


Nature of Complaints

19. A complaint requires a potential breach of the relevant Code of Conduct. Although this has been recorded by officers, due to the fact there is not a standard Code of Conduct (not all Parish/Town Councils have adopted the Herefordshire Code), this means that there is overlap in the recorded

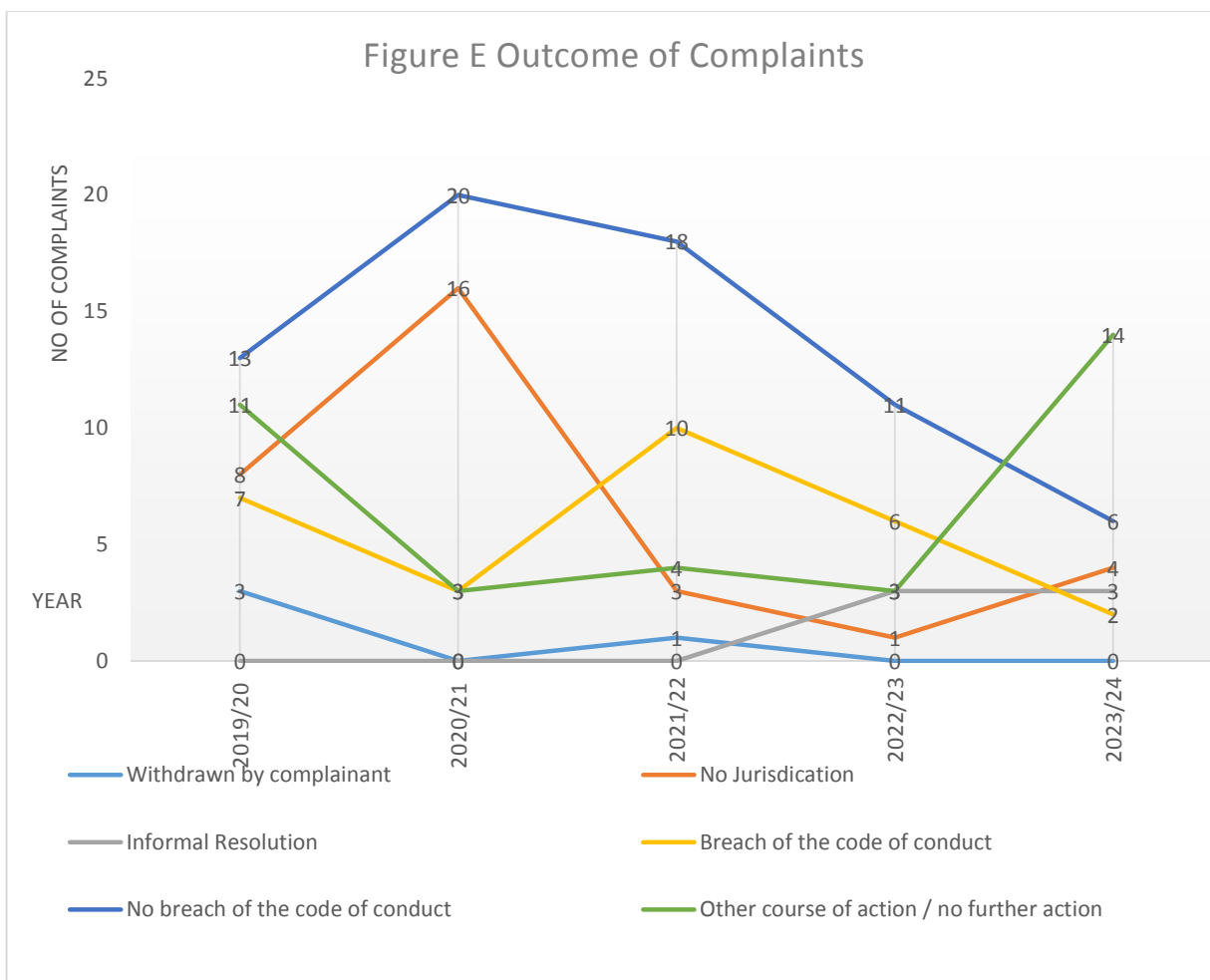
potential breaches. As such there are wide ranging descriptions of potential breaches of the Code of Conduct of the relevant council.

20. Figure D shows the range of allegations raised. It is clear that the majority of complaints relate to 'disrespect' (sometimes in combinations with other allegations) and a failure to disclose an interest.
21. In respect to disrespect, although often unwarranted and undesirable, complainants are unaware of the wide discretion given to Councillors when expressing political views and the fact that only the most egregious of comments could be in breach of the Code. The Courts have repeatedly upheld a Councillor's Article 10 Human Rights Act 1998 (right of freedom of expression) even when it was considered to be a breach of the Code of Conduct.



Outcome of Complaints

22. Figure E shows the outcomes of complaints registered against Councillors. Overall the numbers of complaints were reducing and as such the different outcomes were likewise reducing. This has changed for the review period.
23. As of 30 October, 27 of the complaints were closed from the period. In addition, 4 complaints from the previous administrative year were closed. Closed includes where a complaint was withdrawn, or resolved at the initial assessment stage and after the subsequent full investigation stage. Resolved includes where there is a finding of a breach, no breach or where there is no further action taken. NFA includes where the member has already taken remedial action to correct the matters in the complaint.



24. After a full investigation, the Monitoring Officer determined that there were 2 breaches of the Code of Conduct relating to Councillors at Bartestree with Lugwardine Parish Council. A further 15 complaints relating to this Parish Council found either no further action/no breach.
25. The Monitoring Officer has made a series of recommendations to Bartestree with Lugwardine Parish Council to assist them with future inappropriate behaviours in meetings but also to draw a line under the current dispute between different councillors. The Parish Council was notified on the 26 October 2023 and requested that it considers the recommendations and formally responds within 3 months (25 January 2024). No response has yet to be received but a cursory review of the website has indicated that recommendation about the unlawful activity of not publishing minutes of meetings has been addressed. Herefordshire cannot compel the Parish Council to adopt the recommendations but bearing in mind the cost of investigating this matter already, we have recommended that all meetings are recorded in full by the Parish Clerk and the recordings are publically available.
26. In addition to the 2 breaches mentioned above, a further 4 findings of breaches of the Code from the 2022/23 period were concluded.

Current Complaints

27. As of 30 October, there are 2 current open continuing complaints. In respect to one of these complaints, a full investigation was commissioned by the Monitoring Officer. The amount of time

and resource in respect to this is comparable to the Bartestree complaint. This complaint will be reported to committee in the next full year report.

Historic Complaints per Parish/Town Council.

28. The appendix to this report contains the number of complaints received against each Parish/Town Council since 2019/20.
29. Over that period, 62% of all complaints have been generated by 6 Parish/Town Councils (83 out of total 134). However, of the 6, there have not been any complaints this year for 4 councils and 2 of the 6 also did not have complaints last year.

Sanctions

30. Our arrangements are that where there has been a breach of the code and recommendations are made by the monitoring officer, the subject member is asked to comply. In the event it is a parish councillor, then the report and recommendations are sent to the Parish Council for them to agree. Under our revised procedures, they are not able to substitute their own sanction and either have to agree with the Monitoring Officer's recommendation, or not.
31. Both subject members (for Herefordshire Council) and the Parish Council are asked to confirm whether or not sanctions have been complied with.
32. Decision notices for all breaches are made public on the Council's [website](#).

Standards Panel

33. A Standards Hearings panel was not convened during the period.

Key Performance Indicators

34. These are currently in an early form as there has not been any dates captured before the current administrative year. Currently there are two captured indicators.

Time for Initial Assessment

35. This is the average time taken in days from receipt of the complaint to the initial decision of the Monitoring Officer. This date is not a pure measure as it is dependent on the subject member's response who often requests further time. This has reduced from an average of 61 days in March 2023 to 15 days in October 2023.

Time for Independent Person Response

36. This is the response time for the Independent Persons to provide their views on matters before a decision is made by the Monitoring Officer (as required by the Localism Act 2011). This is currently on average of 1.7 days which is considered to be exceptional but in many cases the response time is the same day.

Conclusions

37. Although this data largely only represents 6 months of data in many aspects, the following is considered to be an undesirable pattern:
 - a. Bartestree with Lugwardine Parish Council has generated a large number of complaints at Parish/Town level;
 - b. A third of all complainants are generated by Parish/Town Councillors; and

c. The majority of complaints are in respect to disrespect and do not reach the required threshold to amount to a breach especially when raised by a councillor against another councillor.

38. If the above patterns continue, then the Monitoring Officer and Chair of Audit & Governance may wish to write to the Chairman of the Parish/Town Councils to advise of these patterns and request that they take necessary action and training to avoid further reoccurrence. Where appropriate, the Council will consider action necessitating reducing the cost of receiving and dealing with these complaints from the Parish Council where complaints are between Parish Councillors.

Community impact

39. This report provides information about the council's performance in relation to the Code of Conduct.

40. 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 are accountable for their actions. This should provide reassurance to the community that councillors are behaving in the best interests of their constituents.

Environmental impact

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

Equality duty

42. 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.

43. 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. However, the model Code of Conduct requires that Councillors do not discriminate unlawfully against a person and should any complaint be received alleging this as a breach, then we would investigate accordingly and report such within this report.

Resource implications

44. There are no resource implications arising directly from this report which is for information.
45. 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.
46. The Independent Persons receive no allowances and are only reimbursed their travel expenses for meetings with the Monitoring Officer, or for panel hearings/meetings.

Legal implications

47. There is no statute that specifically requires the Monitoring Officer to produce an annual report. However, the report evidences that the council complies with the duties required under the Localism Act 2011.

Risk management

48. 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. 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

49. None.

Appendices

Appendix 1 – Historic Complaints per Parish Council

Background papers

None identified.

Report Reviewers Used for appraising this report:

Governance	Jen Preece	Date 09/01/2024
Finance	N/A	
Legal	Sean O'Connor	Date 09/01/2024
Communications	Luenne Featherstone	Date 11/01/2024
Equality Duty	Harriet Yellin	Date 09/01/2024
Procurement	N/A	
Risk	N/A	

Approved by	Claire Porter	Date 18/01/2024
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