

Title of report: Code of Conduct for Councillors - 2023/24

Meeting: Audit and Governance committee

Meeting date: 23 July 2024

Report by: Head of Legal Services and Deputy Monitoring Officer,
Senior Paralegal Officer, Corporate Services

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards)

Purpose

To assure the committee 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 the update on the Code of Conduct complaints arrangements in respect to 2023/24 and guidance issued to Town/Parish council in relation to Disrespect; and**
- b) **approves the updated Code of Conduct arrangements as set out in Appendix 2 & Appendix 3 to this report and delegates to the Head of Legal Services provision to make any formatting, typographical or consequential additions or changes as necessary to give effect to this decision.**

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 recommendations were approved by Council in March 2024. This report provides a summary of the work undertaken during the 2023/24 administrative year ('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 where councillors have failed to comply with their 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 was approved by Council in March 2024, with the intention that the changes will take effect from the new administrative year.
6. In addition to the above, this committee resolved on 30 January 2024 to change the arrangements and guidance so that it was easier to understand the Council's process. Councillor Woodall was delegated to be the member of the Committee to be an early consultee on changes that would be recommended to this committee on the Code of Conduct arrangements (investigation process). Officers agreed with the committee to review the existing Code of Conduct arrangements and present this back to this committee. The Council had 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 Code of Conduct arrangements have been amended and officers have consulted with Councillor Woodall as planned. The proposed arrangements are appended to this report (Appendix 2). Since the amendments refine rather than alter the existing arrangements, they will not require approval by Council. The committee is requested to provide any comments and approve the arrangements.

Staffing Arrangements

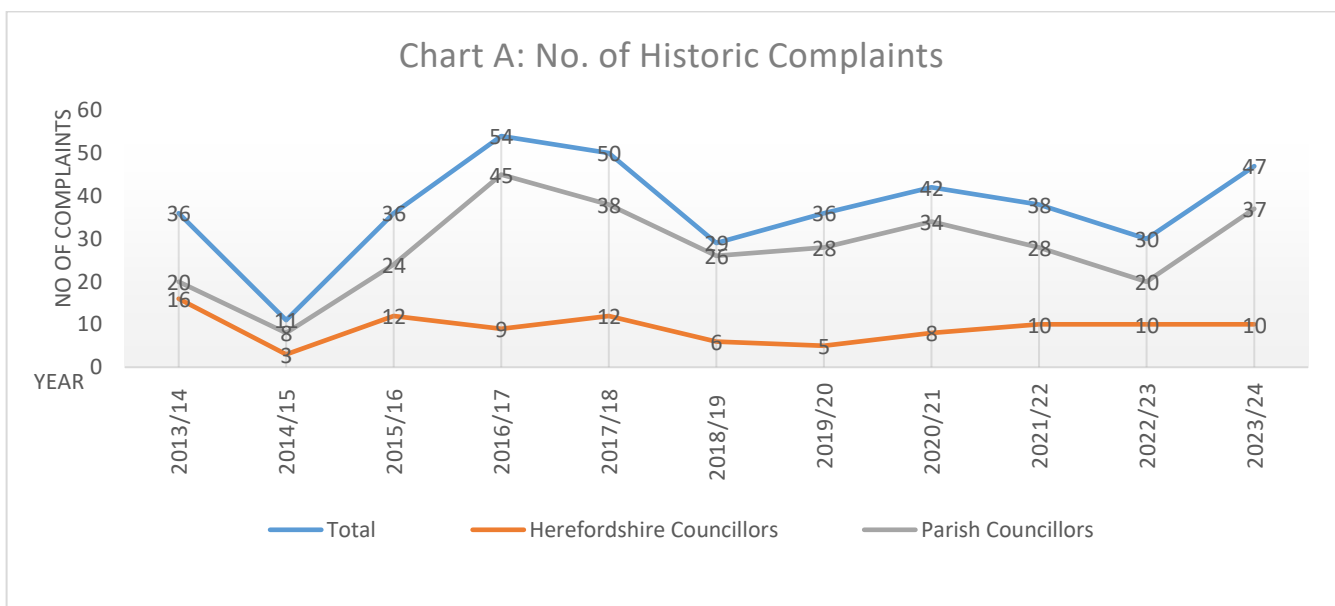
8. The Code of Conduct process is conducted by a lawyer, on a part time basis, with oversight by the Deputy Monitoring Officer, as well as administrative paralegal support which has been in place since February 2024. The process is therefore managed in a cost effective way, making appropriate use of legal and non-legal staffing resources.

Code of Conduct Complaints

This report refers to metrics for the entire administrative year but only reference to specific matters that have arisen since the update in the [6 month report](#) in January 2024.

Number of Complaints

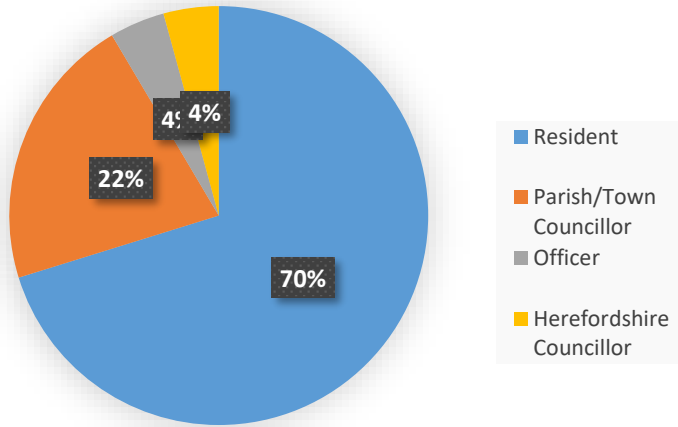
9. Since the introduction of the Localism Act 2011, the number of complaints handled by Herefordshire Council has been tracked. There are 53 Herefordshire councillors, 1225 parish council seats and 4 parish meetings each of whom is subject to a councillor code of conduct.
10. Since the last update to this Committee, from 1 November 2023 to 31 March 2024 the Council received a further 18 Code of Conduct complaints, bringing the total complaints for 2023/24 to 47.
11. Chart A below shows the number of complaints received since 2013. The numbers had been reducing since 2021 but the year ending 31 March 2024 saw a significant increase in complaints. The majority of complaints continue to be against Parish/Town Councillors which is not surprising when considering the numbers of Parish/Town Councillors.



Source of Complaints

12. Chart B shows that, for the review period, 70% of complaints has been from residents and 22% of complaints have been generated by Parish/Town Councillors. On a positive note, only a minority of complaints have been generated by members of Herefordshire Council.
13. The number of complaints generated by Parish/Town Councillors continues to appear higher than expected when we consider that the Code of Conduct complaints process is predominantly meant to be for the use of the public. The trend appears to indicate that some Parish/Town Councillors use the Code of Conduct process to resolve differences of opinion where matters are not resolved locally by the Councillors themselves. Local views appear, in some instances, to be that the matters should be dealt as a Code matter rather than Councillors and clerks settling their differences of opinion appropriately.

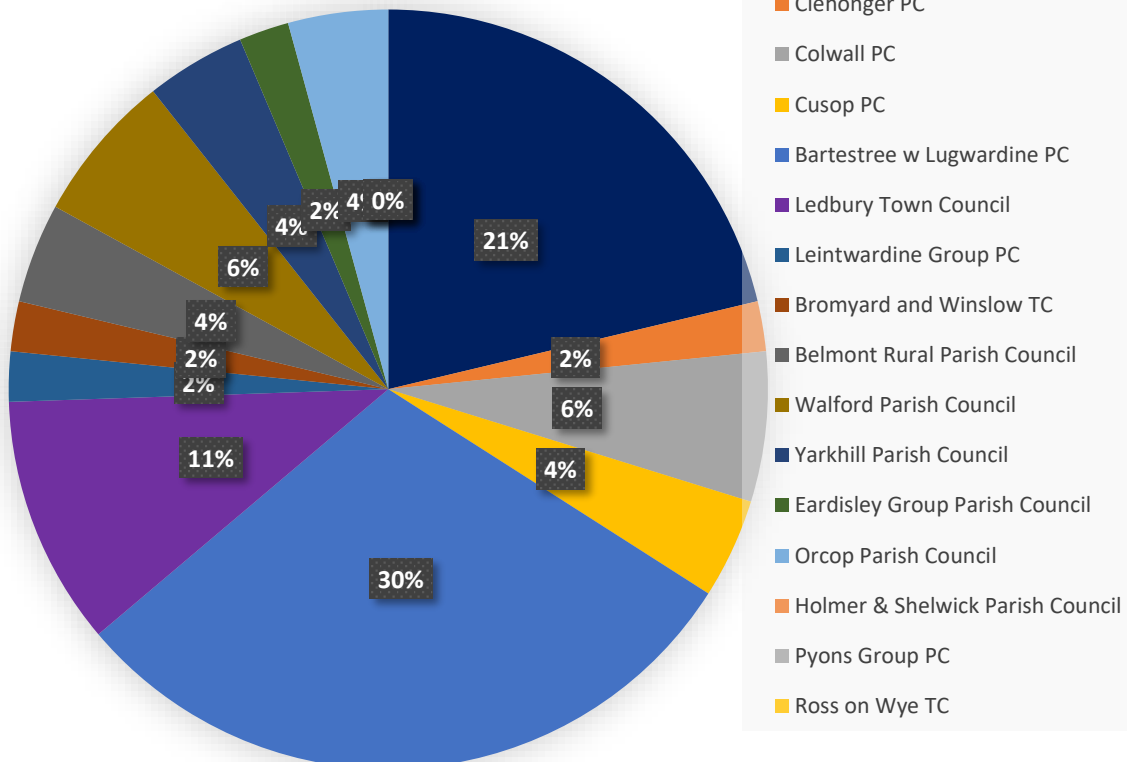
Chart B: Source of Complaint



Relevant Council

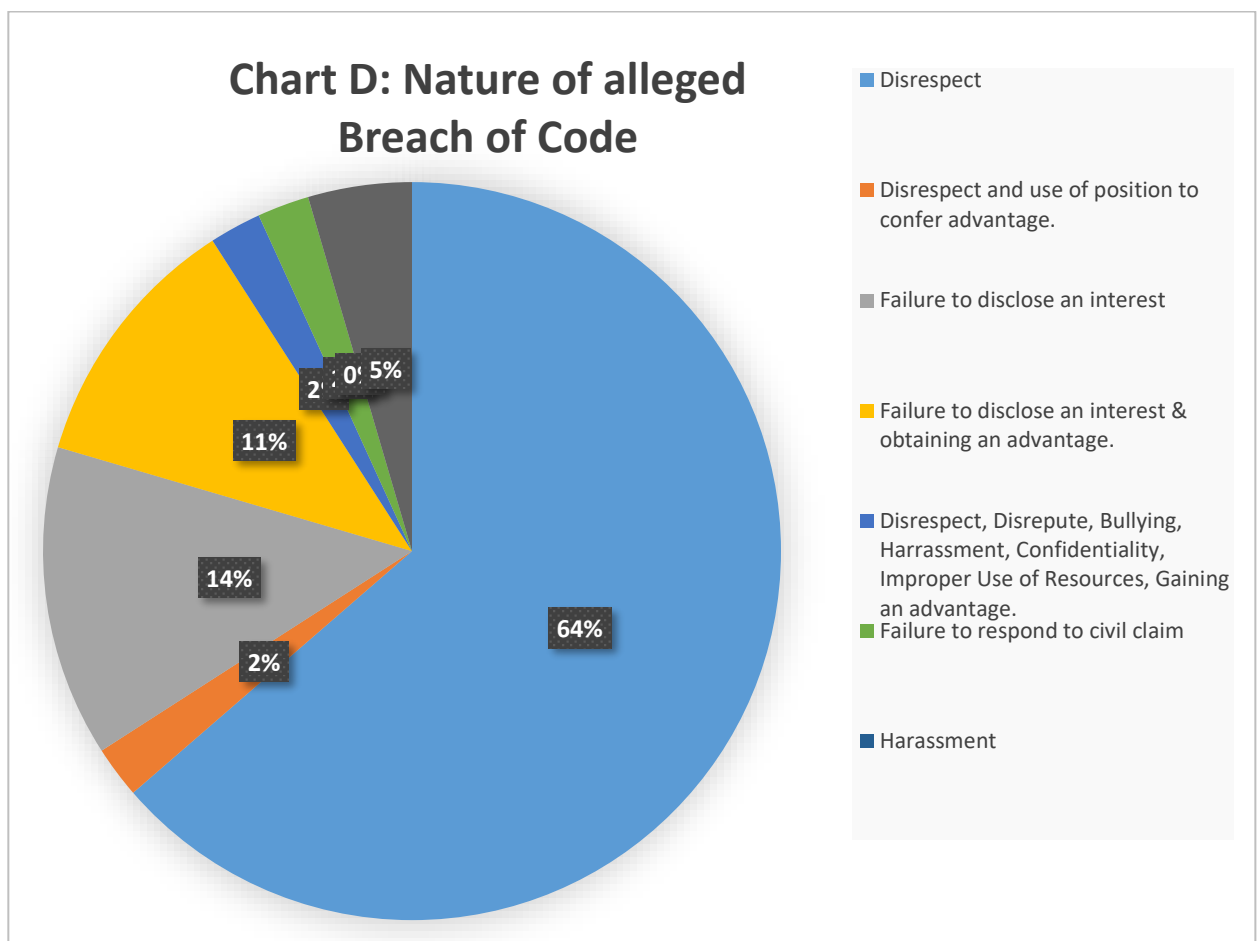
14. Chart C shows the council in which the complained about Councillor is located. The majority of complaints by number relates to members of Parish/Town Councils. Complaints were received in respect of 4 Councillors of Herefordshire Council.

Chart C: Relevant Council



Nature of Complaints

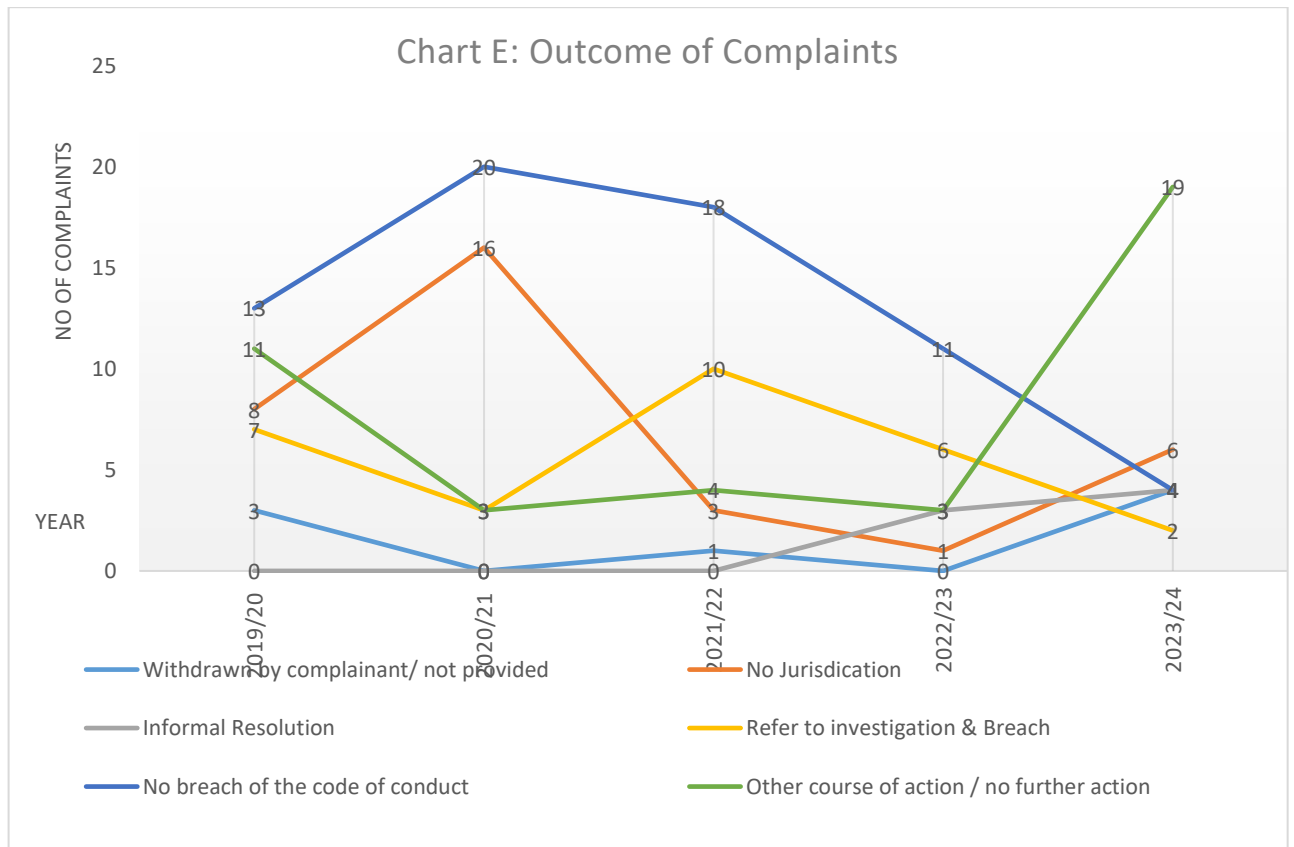
15. A complaint requires a potential breach of the relevant Code of Conduct. Although this has been recorded by officers, due to the fact there is not a standard Code of Conduct (not all Parish/Town Councils have adopted the Herefordshire Code), this means that there is overlap in the recorded potential breaches. As such there are wide ranging descriptions of potential breaches of the Code of Conduct of the relevant council.
16. Chart 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, typically in the context of representations about planning applications.



17. In relation to disrespect, although undesirable and unwarranted, 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 rights under 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.
18. After discussion with the Independent Persons and Monitoring Officer, guidance on disrespect was produced by officers and circulated to the Parish/Town Clerks in April 2024 in an effort to raise awareness of councillors' commitment under the Code of Conduct to treat others with respect (Appendix 4).

Outcome of Complaints

19. Chart E shows the outcomes of complaints registered against Councillors. Overall the number of complaints was reducing and as such the different outcomes were likewise reducing. This has changed for the review period.
20. At 31 March 2024, there were 39 complaints that had been closed during the review period. Closed complaints 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. No Further Action includes where the member has already taken remedial action to correct the matters in the complaint.



21. During the review period, after a full investigation, the Monitoring Officer determined that there were breaches of the Code of Conduct relating to a Councillor at Ledbury Town Council. This complaint was complex and required a significant amount of officer resource during the review period, culminating in the publication of a [Decision Notice](#) in February 2024.
22. A second complaint was the subject of full investigation during the review period. This determined a breach of the Code of Conduct relating to a Councillor at Orcop Parish Council, culmination in the publication of a [Decision Notice](#) in May 2024.

Current Complaints

23. No 2023/24 complaints remain open at the date of preparation of this report, the last for the review period having been closed by 31 May 2024. There are currently 12 open continuing complaints.

Historic Complaints per Parish/Town Council.

24. Appendix 1 to this report contains the number of complaints received against each Parish/Town Council since 2019/20.
25. Over that period, almost 50% of all complaints have been generated by 4 Parish/Town Councils (77 out of total 158), although 1 of those received no complaints in 2023/24.

Sanctions

26. Our arrangements are that where there has been a breach of the Code of Conduct 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.
27. Both subject members (for Herefordshire Council) and the Parish Council are asked to confirm whether or not sanctions have been complied with.
28. Decision notices for all breaches are made public on the Council's [website](#).
29. Where a complaint is resolved without a formal investigation, no finding of breach can be made. This committee has agreed that it will nevertheless receive a copy of all decision notices made following initial assessment, no matter what the outcome is. In this instance, the decision notice is provided to the Complainant and Subject Member, as well as the Clerk as Proper Officer, but it is not published.
30. All Decision Notices are provided to the members of the Standards Panel.

Standards Panel

31. A Standards Hearings panel was not convened during the review period.

Key Performance Indicators

32. These are currently in an early form as data captured before the current administrative year was incomplete. Data is robustly captured currently and demonstrates the following key indicators.

Time for Initial Assessment

33. 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 a number of factors, including the subject member's response who may request an extension of time to respond, particularly if a complaint is complex. This reduced from an average of 61 days in March 2023 to 15 days in October 2023 and, during the review period, was an average of 25 days.

Time for Independent Person Response

34. 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 an average of 3.6 days which is considered to be exceptional and in many cases the response time is the same day.
35. Time between Initial Assessment and Outcome

This is the time taken from Initial Assessment decision when a matter is proceeding to formal investigation, to outcome following that investigation. During the review period, only two cases have been subject to investigation; one concluded during the review period and the other, shortly after the review period ended. The first case took 58 days from Initial Assessment decision that the matter was proceeding to formal investigation, to outcome; the second took 56 days. The Bartestree cluster of complaints has not been included due to the number interlinked complaints and the protracted period that such were received. The decision to combine all complaints into a single investigation means that precise days are not available. However, the first of the 17 complaints was received on the 24 March 2023 and the final report and decision was published on the 23 October 2023.

Council's Independent Persons

36. The Council current has three Independent Persons who support the Code of Conduct process. Their input is invaluable and much appreciated. In preparing this report, the observations of the Independent Persons were sought and these are as follows:
- a. The KPIs reflect the efficient administration and support provided by officers and positive working relationship with IPs.
 - b. It was agreed that the majority of cases concern the relationship between councillors, behaviour concerning declarations of interest, and planning matters.
 - c. Officers have been proactive in providing advice, guidance and positive actions which continue to add value to the process, as does the full and timely consideration of IP comments and questions given by officers.
37. One independent person resigned her position recently due to employment and training pressures. The Council is currently recruiting a further independent person.

Conclusions

38. The data represents a review period of 6 months but demonstrates the following trends and observations, particularly when the review period is considered in the context of the historic data that is included in the report:
- a. Over a fifth of all complainants during the review period were generated by Parish/Town Councillors;
 - b. The majority of all complaints are in relation to disrespect and do not reach the required threshold to amount to a breach especially when raised by a councillor against another councillor;
 - c. The resource required to conduct Code of Conduct cases is significant. When a case proceeds to formal investigation, the data demonstrates a particularly work intensive period and resource need;

- d. Many cases could be avoided by a clearer focus on the part of the Code of Conduct that requires councillors to refrain from conduct that is disrespectful. It is hoped that the additional guidance offered will raise awareness on this point;
 - e. Cases concerning councillor to councillor complaint are a particular concern, since the parties have each committed to adherence to the Code of Conduct and it is regrettable that those cases are not capable of resolution without recourse to the Monitoring Officer.
39. 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 raise awareness of the issues and possibly reduce reliance on the process. However, we must recognise that there are 1225 Parish Town Councillors but only 37 complaints in 203/24 (3%).

Community impact

40. This report provides information about the council's performance in relation to the Code of Conduct.
41. 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

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

Equality duty

43. 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.
44. 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. Should any complaint be received alleging this as a breach, then we would investigate accordingly and report such within this report. There have been no complaints about discrimination recorded to date.

Resource implications

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

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.

The Independent Persons currently receive no allowances and are only reimbursed their travel expenses for meetings with the Monitoring Officer, or for panel hearings/meetings.

Legal implications

46. 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

47. 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

48. Independent Persons for Standards.

Appendices

Appendix 1 – Historic Complaints per Parish Council

Appendix 2 – Proposed Code of Conduct Arrangements

Appendix 3 – Arrangements for dealing with Code of Conduct complaints—Flowchart

Appendix 4 – Guidance Note on Respect under the Councillors' Code of Conduct

Background papers

None identified. Report Reviewers Used for appraising this report:

Governance	Jen Preece and John Coleman	Date 05/07/2024
Finance	N/A	
Legal	Sean O'Connor	Date 15/07/2024
Communications	Luenne Featherstone	Date 10/06 /2024
Equality Duty	Harriet Yellin	Date /2024
Procurement	N/A	
Risk	N/A	

Approved by	Claire Porter	Date /2024
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