



Joint Standards Complaints Committee 18 July 2018

Activity Report of the Monitoring Officer

Purpose of report

This regular report provides a brief update on Monitoring Officer activity since the last meeting.

1.0 Monitoring Officer Enquiries

1.1 Since the March meeting of this Committee there has been a slight decrease in enquires in relation to declarations of interest and Parish Council governance questions. There have been four new potential complaints, none of which has resulted in a formal complaint so far. (Those which did turn into formal complaints are noted in the next section). In 2017 there were 13 enquiries about possible complaints which have not so far lead to formal complaints.

2.0 Complaints

2.1 Since the last meeting, one new formal complaint has been received which related to the same parish council as several previous complaints. This was concluded at initial assessment stage with the outcome of 'other action', in the form of inclusion in the mediated governance review at the Parish Council, which was about to start at the time. (The final report from this governance review is due by the end of July and is anticipated will be published by the Parish Council concerned).

2.2 One complaint remains at Hearing Stage as, although Panel Dates have been set, it has not been appropriate for the Hearing to proceed because of personal circumstances. A date will be set as soon as possible.

3.0 Committee for Standards in Public Life Review of Local Government ethical standards.

3.1 In July 2017 the Committee for Standards in Public Life (CfSPL) announced that it was to review the arrangements for Local Government ethical standards, five years after the introduction of new arrangements under the Localism Act. The Monitoring Officer attended, on behalf of the Northamptonshire Monitoring Officers Group, a round-table event organised by the CfSPL. The focus for the event was the structures, processes and practices for maintaining high ethical standards by local councillors; whether the current arrangements are conducive to that aim; and what improvements might be made i.e. ethical standards rather than complaints process.

3.2 Discussions focused mainly on three areas:

- *Codes of Conduct and Declarations of Interest.* There was some concern that having different codes was confusing to the public and some councillors. The general feeling that one good national code would be more efficient but not necessary acceptable to all parties (in all senses). There was consensus that wording re DPIs should be widened to be 'about' the DPI not just 'in' it and should include more than just spouse but some of the rest of the family.
- *Sanctions and processes.* There was consensus amongst those present at this event that the lack of a suspension sanction was bringing the standards process into disrepute and there might be a need for governance style intervention in 'toxic' councils (similar to that currently being trialled in relation to a Parish Council locally).
- *Culture and Improvement.* It was agreed that the Complaints process should be vehicle of last resort and ethics should be greater guide to behaviour. One idea

was to have greater prominence of code on website and promotion to public.

Overall there was a feeling that the new process was generally working well but needed tweaking in some areas as noted above.

- 3.3 Some areas of practice followed by ENC were noted as positive such as:
- Having a code that includes provision for respect and confidentiality
 - Cllrs declaring relevant DPs and Other Interests at the start of a meeting (not relying on people having read Registers of Interest.
 - Wider involvement of Independent Persons than the statutory minimum.

One area where ENC could improve its approach is the reporting of complaints and their outcomes which is the subject of a separate report on this agenda.

- 3.4 It is anticipated that CfSPL will report on its review before Christmas 2018.

4.0 Outcome of Ledbury Town Council Case

4.1 This case (formal reference R(Harvey)v Ledbury Town Council [2018] EWHC 1151 (Admin)) originated in allegations of bullying and harassment of two employees by Cllr Harvey which were raised as a grievance by the employees under Ledbury Council's procedures. The grievance was heard by a panel of senior councillors, apparently without reference to Cllr Harvey. The grievance was upheld and the council adopted various protective measures. These restrictions meant Cllr Harvey could not sit on any committees, sub-committees, panels or working groups or represent the council on any outside body. All communications between her and its clerk and deputy clerk were also to go through the mayor. Cllr Harvey was also instructed that she could not speak on behalf of the council.

4.2 Cllr Harvey self referred herself to the MO of Herefordshire Council as a code of conduct complaint. In due course this was referred for external investigation. The investigators found that Cllr Harvey had not failed to follow the code of conduct. Nonetheless, the town council maintained the protective measures and indeed subsequently decided to extend the measures for a further year. The judicial review was about that second decision on the grounds that it was ultra vires as the matter should have been dealt with under the council's code of conduct, not its grievance procedure. The Court considered the measures were actually sanctions which had not been imposed through the appropriate process (i.e. going through the procedural safeguards of a code of conduct process). In addition the conduct of the grievance process through which the restrictions were imposed was unfair.

4.3 What is the impact of this court case? Council employees can still make a grievance because the grievance is against the employer as a whole, and not the individual councillor who is alleged to have harassed them. However, if the grievance is upheld, the employing council needs to take care that any measures it takes to remedy the grievance are focused, proportionate and reviewed. Ledbury removed Cllr Harvey from all committees amongst other measures. The judge considered that action to be excessive and in effect a punishment rather than a means of protecting the clerk from the alleged harassment. Ledbury also maintained these measures, seemingly indefinitely.

4.4 This reinforced the outcome of the previous Honiton Council judgement which was that sanctions could only be imposed through the procedural safeguards of the standards framework. It means that councils may need to instigate a standards complaint if the outcome of the grievance indicates that it is appropriate for the councillor involved to be subject to disciplinary measures.

5.0 Equality and diversity issues

5.1 There are no known negative equality and diversity issues arising from this paper.

6.0 Legal implications

6.1 This report outlines activities undertaken under local arrangements which reflect the Localism Act 2011 and related regulations.

7.0 Risk management

7.1 The preparation of this report highlights any areas where there is a risk of non-compliance with legislation.

8.0 Resource and Financial implications

8.1 It is probable that the Monitoring Officer will shortly have to draw on the Monitoring Officer Investigation Reserve. Additional provision of £10,000 was included in the Annual Budget to replenish the reserve in 2018/19.

9.0 Constitutional Implications

9.1 There are no constitutional implications arising from this report.

10.0 Customer Service Implications

10.1 Any delays in resolving investigations or during other parts of the procedure can have a negative impact on the councillor seeking to clear their name or the complainant awaiting an outcome for their complaint. As such the Monitoring Officer is endeavouring to keep time delays to a minimum.


11.0 Corporate outcomes

11.1 The work reported here contributes to the Corporate Outcome of Effective Management.

12.0 Recommendation

12.1 The Committee is recommended to note the contents of this report

(Reason: No further action or decisions are required as a result of this report).

Legal	Power:	Localism Act 2011			
	Other considerations:				
Background Papers:					
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Date: 10/07/18					
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