



MINUTES of the meeting of the West Mercia Independent Members' Forum held at the Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday 03 February 2006 at 2.30 p.m.

Present:

Terence Bayliss	Shropshire County Council
Francis Beasland	Telford & Wrekin Council
David Blakey	Worcester County Council
Chris Brighton	Wyre Forest District Council
Neil Brogden	Oswestry Borough Council
Paul Brereton	Shropshire County Council
Joan Casewell	Bridgnorth District Council
John Cox	Wyre Forest District Council
Christine Davenport MBE	Worcester City Council
Colin Emeny	Hereford and Worcester Fire and Rescue Authority
Sheila Garner	Worcester City Council
Richard Gething	Hereford and Worcester Fire and Rescue Authority
June Hoskins	South Shropshire District Council
Paul Leopold	Malvern Hills District Council
Lionel Lovell	Oswestry Borough Council
Tony Lyons	Malvern Hills District Council
Ann McDowell	Wyre Forest District Council
Robert Rogers	Hereford and Worcester Fire and Rescue Authority and Herefordshire Council
Peter Rowland	South Shropshire District Council
Malcolm Smith	South Shropshire District Council
David Stevens	Hereford and Worcester Fire and Rescue Authority and Herefordshire Council
Michael Tebbutt	Shropshire Fire and Rescue Authority
David Turner	Shropshire County Council
Chris Williams	Worcester City Council

In attendance:

Councillor R.J. Phillips	Leader of Herefordshire Council (Introduction only)
Neil Pringle	Chief Executive, Herefordshire Council (Introduction only)
Kevin O'Keefe	Legal Practice Manager and Acting Monitoring Officer, Herefordshire Council
Heather Donaldson	Committee Officer, Herefordshire Council

Apologies for Absence:

Angela Brinton	
Tim Griffiths	Shropshire County Council
Judith Hooker	Redditch Standards Committee
Bob Kimber	Oswestry Borough Council
F.W. Leath	Shrewsbury and Atcham Borough Council
Philip Moore	South Shropshire District Council
Murray Mylechreest	Hereford and Worcester Fire and Rescue Authority
Nicola Trigg	Bromsgrove District Council
Ian Webb	Shropshire Fire and Rescue Authority

WELCOME AND INTRODUCTIONS

Mr Peter Rowland welcomed those present to the meeting, and thanked Herefordshire Council for hosting the meeting.

Mr Robert Rogers, Chairman of the Herefordshire Standards Committee also welcomed those present, and stated his appreciation of his Standards Committee's friendly relationship with Herefordshire Council, which he felt had two key aspects: the Council's enthusiastic acceptance of the Committee's role in ethical governance and standards, and its enormous support with resources.

Robert Rogers introduced Councillor Roger Phillips, Leader of Herefordshire Council. Councillor Phillips indicated that he had taken the important role of the Standards Committee very much to heart, and he felt that there was clear advantage in having locally appointed independent members. He viewed the Code of Conduct as a vital defence mechanism, which encouraged good practice and should be viewed as a help to councillors. He said that independence was the key element in any Standards Committee, because it provided the necessary distance from the Local Authority, highlighted to councillors the importance of their roles, and helped to improve the public perception of how ethical and standards matters were handled.

Neil Pringle, Herefordshire Council's Chief Executive, said that in 1997, prior to Herefordshire gaining unitary authority status, the Shadow Herefordshire Authority had formed its own Standards Committee. The Authority had taken this step ahead of Central Government Legislation, using three independent members in order to

create public confidence. The present-day Standards Committee had emerged from Government Legislation, and had greatly benefited from the contribution made by its independent members. He felt that the Council's early decision to opt out of self-regulation (which would have meant using only Herefordshire Councillors) had shaped its positive attitude to the Standards Committee, and the Council had even sought the Committee's opinion on Constitutional issues, such as the Planning Code of Conduct and the policy on the use of ICT equipment. He had found that there was great value in creating an open approach to independent members.

EXPERIENCES OF LOCAL HEARINGS

Robert Rogers, the Chairman of Herefordshire Standards Committee, provided information on the current situation in Herefordshire, and the Standards Committee's remit. He reported that the Committee, which comprised two independent members, two parish and town council representatives, and two Herefordshire councillors, had held four local determination hearings to date. It was responsible for a considerable ethics and standards constituency comprising 138 Parish and Town Councils, and up to 1,800 Parish and Town Councillors. Herefordshire's predominantly rural fabric meant that planning issues often affected small communities, and issues tended therefore to be comparatively more abrasive.

Robert Rogers said that he reported regularly to Council on the Committee's progress, and this had proved to be of fundamental importance to keep members up-to-date and involved, and to open up to them a process which might have otherwise been perceived as sinister. He felt that the Standards Committee had ownership of the Council's policies and Codes of Conduct as a direct result of its input into the Council's consultation process.

Local Investigating in Herefordshire: Kevin O'Keefe, Legal Practice Manager and Acting Monitoring Officer, provided an outline of Herefordshire's approach to local investigations, and shared the experiences and practices of his particular investigative role, summarised thus:

- Clear processes and procedures were important tools to ensure effective investigation and a sense of fairness. For this reason, many of the documents used in investigation had been standardised. Kevin emphasised that it was imperative for him to demonstrate that his investigation had been thorough, fair, just, and non-adversarial throughout, and that all parties had had the opportunity to say everything that they wanted as early as possible.
- The first step was to write to the Councillor who was the subject of the investigation (hereafter referred to as "the Councillor"), emphasising that the investigation was confidential at this stage, and that no conclusions had yet been drawn. The nature of the allegation would be clearly spelled out to the Councillor. Kevin would also notify the Chairman of the Standards Committee in writing.
- The next step would be to pay a personal visit to the Councillor, the complainant(s) and any witnesses.
- As evidence was gathered, it might become apparent that additional information was required, and so further consultation with other bodies might be necessary. For example, if the allegation centred on a planning matter, it might be necessary to establish land ownership, in which case Kevin would need to contact Land Registry.
- After all evidence had been gathered, Kevin would then return to the Councillor and show him/her the evidence. It was vital to explain that this was not a criminal investigation, and showing all of the evidence to the Councillor made the process transparent, fair, and gave the Councillor an opportunity to talk about the circumstances which led to the complaint. Kevin

would then take a written statement from the Councillor, which was not meant to be a “tripping-up” method; rather, the purpose of the statement was to enable the Councillor to give their version of events, admit to any possible mistakes, and give any mitigating reasons. It was important to produce the Councillor’s statement word-for-word without summary or omissions, again to ensure fairness and transparency.

- Kevin’s final stage would be to produce an investigation report. Again, he relied on a standard format for this, which included the Councillor’s full statement, any relevant extracts from the Code of Conduct, and his opinion on whether the Code had been breached.

The Role and Experiences of the Standards Committee: Robert Rogers shared the following key points about the experiences of the Herefordshire Standards Committee:

- It was important to use the resources from the Standards Board (SBE) effectively, such as the guidance booklet on conducting local hearings, and the recently released DVD on hearings (although this appeared to be a little stilted and did not adequately reflect the true complexities and depth of most hearings). In addition, Standards Committees had access to an ever-increasing library of case summaries on the SBE website, and to the Parish and Town Councils’ Code of Conduct.
- Adequate preparation before a hearing would help to eliminate any potential problems. Independent members had the additional responsibility of chairing the hearing, and it was essential to realise the time commitment involved, and to gain a mastery of all the documents to be used. Invariably, the three-month period from whistle to hearing went by quickly, and it was essential that the Monitoring Officer followed a timeline.
- There would always be unexpected issues, such as a last-minute request to hear an additional witness, and it would always be necessary to balance procedure with human nature. In practice it would probably be fair to hear additional witnesses, but wise to be rigorous and establish whether they are likely to be saying something new, as opposed to gong over old ground. SBE guidance suggested adopting a “forensic” approach to the investigation, but this might not happen in practice. In addition, there was also the possibility that the Standards Committee’s decision might be appealed against.
- The Herefordshire Standards Committee was small, which meant that every member was part of the hearing panel. This carried the benefit of ensuring that the hearing experience was corporate. Robert Rogers suggested that the panel should always include two independent members and two parish/town council representatives.
- The Herefordshire Committee met with officers prior to the hearing to discuss housekeeping arrangements. Things to consider included:
 - Room layout. Is it too oppressive? Can people hear each other?
 - Does everyone have access to refreshments, toilet facilities, and disabled facilities?
 - Where will the public and press sit?
 - Is there an adequate number of rooms? In addition to the Council Chamber, Herefordshire always had one room for the panel to retire to, and another room for witnesses.
- The Herefordshire Committee also met with the Monitoring Officer before the start of the hearing in order to promote the correct mindset, and to ensure that everyone had all the necessary paperwork. It was imperative, however, that the pre-hearing discussion was not prejudicial in any way.
- The welcome and introduction at the hearing should include all administrative announcements, health and safety matters, an indication of fire exits, and a

request to turn off mobile phones. Everyone should be included in the introduction so that there was no sinister “unnamed” party. There should also be reference to the fact that although not on oath, participants were expected to be frank, fair and truthful.

- Because the paperwork was available to the Committee beforehand, it should be possible to spot any potential declarations of interest in advance. Declarations of interest were made at the start of the hearing and in public. Also in the public domain, the Chairman would ask the Councillor whether he/she objected to the Investigation Report being in the public domain, stating that there would have to be firm data protection reasons for withholding the report.
- Each participant was given a laminated procedure sheet which guided them through every stage of the hearing, and gave an indication of timings and what to expect. The sheet also allowed for potential recesses and breaks.
- The Clerk to the hearing took notes, and in addition, the proceedings were recorded and a full transcript was made post-hearing. The purpose of the transcript was twofold: a learning aid for the Committee, and an invaluable resource in the event of an appeal.
- It was worth bearing in mind that the hearing did not afford total privacy like a court of law or Parliament did, and any party could be sued for comments that they made. If a potentially libellous or quarrelsome situation occurred, the best practice would be to stop the hearing, allow the Committee to retire, and the Monitoring Officer to address the situation.
- If a penalty included a recommendation of training, it might be wise to consider making the imposition of the penalty dependent upon the councillor undertaking the training. This was because a councillor might refuse to undertake training, and in circumstances where a penalty had already been imposed, there was no further sanction available to the Committee or the Standards Board. A councillor might be more willing to undertake the recommended training if, in doing so, this meant that any penalty would be waived.
- If the Committee suspended a Councillor, it was necessary take into account how often the parish/town council met when deciding the length of suspension, so that the penalty would be valid. The Forum expressed the general view that three months was an insufficient maximum penalty, and that it ought to be a minimum of one year.
- At the conclusion of the hearing, it was good practice for the Committee to retire to a different room immediately, to avoid any potential discussions or conflicts with the councillor or other parties. It was also helpful to write the Full Decision at the same time as the Short Decision while Committee members were all together.

A general discussion ensued, during which the following principal points were made:

- The SBE guidance did not give any indication of whether to accept hearsay as evidence. It was necessary to apply common sense to any words that might be subjective, and to weigh up the extent to which the evidence could be proved.
- The Forum could not report any instances where Counsel had represented a councillor, although one member referred to a hearing which had lasted for thirteen hours, due to the length of time taken by the councillor’s representative. The SBE had not given any guidance on whether a hearing should last for more than one day. Members felt it was best to make timings clear in advance to avoid this, and where possible, produce a hearing timetable to be seen by all.
- In respect of a hearing that had involved a planning matter, one member had

found it helpful to hold a site inspection as part of the hearing preparation. This made the process easier, and enabled the Committee to gain an understanding of the properties involved.

- Some members elected a Chair at every hearing in front of the public, and they felt that this helped to give the public confidence in the process.
- Members had to be aware of the fact that some issues would be of particular interest to the media, and deal with that accordingly.
- There was merit in forming a close working relationship with the Association of Local Councils, particularly because Standards Committees had a joint interest in councillors' training.
- Careful thought should be applied to parish/town council representation on Standards Committees, to ensure that each part of the Local Authority's area was evenly represented. This would minimise the possibility that more than one parish/town council representative would be exempted from participating in a hearing due to a prejudicial interest.
- The impetus must always be to conduct the business in a timely manner, and avoid adjournments where possible. Some requests for adjournments might be merely tactical; some valid. If a request were thought to be valid, it would be important to allow the adjournment in the interests of natural justice.
- Two or three days before the hearing, it was worth checking that all Committee members were still able to attend, and that anyone who had been away had returned as planned.

PROPOSED CHANGES TO THE FRAMEWORK GOVERNING STANDARDS OF CONDUCT

Peter Rowland circulated his summary of the ODPM discussion paper: "Standards of Conduct in English Local Government", and asked the Forum for its opinion on the best means of conveying independent members' views on the matter to the ODPM. He expressed concern that it might be harder for independent members to get their views across because of their relatively new roles in Local Government. Members of the forum expressed the following views:

- Some independent members were being heavily sidelined and were not able to convey their opinions. Some were not permitted to claim expenses in line with their colleagues; some were not invited to attend the Annual Assembly of Standards Committees, and were left out of training. It was felt that the ODPM must address this in the interests of fairness.
- "Independent" was a confusing term, because as well as its meaning in lay terms, it could refer to political independence. An official definition of "Independent" was required, which clearly explained it in the context of Standards Committees. Members felt strongly that the definition needed to be bound by legislation.
- The ODPM paper suggested that hearings would be determined locally rather than by the Standards Board, and this might create a significant increase in the workload of committees. It had also suggested that some Standards Committees might combine. The Forum felt that this move might also increase workloads, and would generate an extra commitment in terms of time and distances travelled.
- The Forum agreed that it was excellent practice to involve independent members in any reviews of a Local Authority's Code of Conduct, because it distanced the procedure from the Local Authority.
- Members felt that appointing independent members through a formal application process was a good thing. Some had experienced problems with recruitment, and members suggested ways to raise awareness of vacancies, such as submitting a feature article to a newspaper rather than advertising on

the job opportunities page. Another suggestion was to seek an interview with a local radio station.

- Peter Rowland commented that the Standards Board would eventually require members to relinquish their Standards Committee posts after serving a particular term, and would not be re-appointed to the same Committee. The Forum felt there was merit in being able to appoint members to a Standards Committee in another area upon expiry of the term, as a way to retain valuable experience.
- The Forum wished to urge the Standards Board to hold a central register of independent members.
- Members noted that no deadline for receipt of comments had been indicated in the ODPM paper.
- The Forum agreed that its views should be channelled through the convenor, Peter Rowland. It would be necessary to approach the ODPM and find out how it wanted the consultation to be done, because this would determine the mechanism used by the Forum. It was important to encourage the ODPM to offer a route for independent members to enter into the discussion process. Robert Rogers felt that the best way to do this would be to write to Sir Anthony Holland, Chair of the SBE, expressing the Forum's views, and asking for a written statement on the process from the Minister for Local Government, Phil Woolas MP.

Peter Rowland agreed to write to Sir Anthony Holland expressing the Forum's views, and report to the next meeting.

ADMINISTRATIVE MATTERS

Database: Peter Rowland asked members to fill in a data sheet so that he could arrange for the Forum database to be completed. Richard Thomas of Shropshire County Council had offered to hold and maintain the database.

Next Meeting: The next meeting would be hosted by Oswestry Borough council, on Wednesday 07 June 2006 at 6.00 p.m.

Peter Rowland said that he would welcome offers to host the next meeting after that, which was likely to be in February 2007.

The meeting ended at 4.25 p.m.