

Agenda for Standards Committee

Tuesday, 26 January 2016; 10.00am



[Members of the Committee](#)

Venue: Council Chamber, Knowle, Sidmouth, EX10 8HL

[View directions](#)

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- 1 [Public speaking](#)
- 2 Minutes for 29 September 2015 (page 3 - 6)
- 3 Apologies
- 4 [Declarations of interest](#)
- 5 [Matters of urgency](#) – none identified
- 6 To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

Part A Matters for Decision

- 7 **Whistleblowing Policy Review** (pages 7 - 19)
Strategic Lead - Legal, Licensing & Democratic Services & Monitoring Officer
- 8 **Complaints update (May 2015 – date)** (pages 20-22)
Strategic Lead - Legal, Licensing & Democratic Services & Monitoring Officer

The Committee is asked to note the update on new Code related cases received since the last meeting.

- 9 **Review of Code of Conduct for Employees and Relationship between Officers and Member Protocol** (pages 23 - 24)
Strategic Lead – Legal Licensing & Democratic Services & Monitoring Officer
- 10 **Review of public speaking arrangements**(pages 25- 30)
Strategic Lead – Legal, Licensing & Democratic Services & Monitoring Officer
- 11 **Review of Code of conduct complaints procedure**(pages 31- 41)
Strategic Lead – Legal, Licensing & Democratic Services & Monitoring Officer
- 12 **Forward Plan** (page 42)

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[Decision making and equalities](#)

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EAST DEVON DISTRICT COUNCIL

Minutes of a meeting of the Standards Committee held at Knowle, Sidmouth on Tuesday, 29 September 2015

Attendance list at the end of the document

The meeting started at 10.00am and ended at 10.30am

***1 Public speaking**

There were no questions asked.

***2 Minutes**

The minutes of the meeting of the Standards Committee held on 20 January 2015 were confirmed and signed as a true record. The Chairman welcomed the Committee and others present and invited everyone to introduce themselves.

***3 Declarations of interest**

There were none.

***4 Annual report 2014/15**

Members considered the review of the work of the Standards Committee during 2014/15, which outlined:

- the key areas of work for committee members
- the standards training
- local review of our processes since the Localism Act 2011 changes
- analysis of Code of Conduct complaints.

In response to a question from a member, the Monitoring Officer confirmed that a report on the Review of Public Speaking Arrangements was on the Forward Plan for the Standards Committee meeting on 26 January 2016, when the Service Lead – Planning would be invited to attend to.

It was noted that there was still future work required on the wording in the Code of Practice on planning matters, in respect of lobbying. The Monitoring Officer confirmed that this would be brought back to the Committee for its consideration at their January meeting.

The Chairman thanked the Monitoring Officer for his report.

RESOLVED: that the review of the 2014/15 year be noted.

***5 Complaint update**

The Committee considered and noted the report of the Monitoring Officer, which provided an update for the Committee on new Code related cases received since 1 May 2015. Members noted that there was one Sub Committee hearing to be arranged in the near future which it was suggested that new members may wish to attend to better understand the process and what to expect when asked to sit on Hearings Sub Committee.

RESOLVED:

that more detail be included in respect of the complaint outcomes in future complaint update reports to the Committee to enable Members to understand why a particular outcome had arisen.

*6 **Update on Member Welcome/Refresher Programme**

The Democratic Services Manager presented a report on the Member Welcome Programme, which updated members of the Standards Committee on its on-going delivery following the May 2015 elections and noted the review processes in place.

In response to a request for any additional information/learning that should be provided in the January 2016-onwards Forward Programme for Member Development, Committee Members requested that consideration should be given to include a non-Councillor member of Standards Committee to inform and contribute within a Code/Standards learning session. The Democratic Services Manager reported that additional standards training could be added to the post January 2016 Member Development Programme.

In response to a question regarding Member appraisals for existing Councillors, the Democratic Services Manager reported that she was in the process of undertaking personal development review appraisals for Councillors elected in May 2015. When these had been completed, she would invite longer standing Councillors to attend a review. A Member Development Working Party would be held in November to which Standards Committee members were invited to attend.

Members wished to thank Democratic Services for their hard work in preparing and delivering the Member Development programme.

RESOLVED:

1. that the 6-month member welcome/refresher programme be noted (including the opportunities provided in respect of Code of Conduct and Standards);
2. that members of the Standards Committee be invited to a meeting of the Member Development Working Group meeting in November when feedback from the councillor questionnaire on the programme would be considered;
3. that an independent or parish co-opted member of the Standards Committee be invited to help deliver a Code of Conduct session for councillors and local council representatives in early 2016.

* 7 **Update on Officer roles and membership of the Committee**

The Committee considered the report of the Monitoring Officer, which advised that certain co-opted members of the Committee would not be able to remain on the Committee after May 2016 and to seek the Committee's approval to commence recruitment for their replacement. The Monitoring Officer explained the process for recruitment and confirmed that the Interviewing Panel would consist of himself and the Chairman with possibly one other additional member of the Committee,. The Monitoring Officer advised that the Deputy Monitoring Officer was now in post and that both positions were there to advise Members on standards related issues.

The Chairman wished to thank Mr Ray Davison and Councillor Courtney Richards for their contribution to the work of the Standards Committee over the last 8 years.

RESOLVED:

1. that it be noted that one of the independent members and one of the town/ parish representatives will not be able to sit on the Committee after May 2016;
2. that authority be delegated to the Monitoring Officer to commence and progress the recruitment process for their replacement;
3. that it be noted that the Deputy Monitoring Officer role is carried out by the Principal Solicitor.

***8 Forward Plan**

The Committee noted the contents of the forward plan and future meeting dates.

The following items would be included for consideration at January's meeting:

- Whistleblowing policy
- Revised wording on lobbying in the Code of Practice on planning matters
- Review of public speaking arrangements and how the lobbying advice on the Code of Practice on planning matters works in practice
- Review of Code of conduct complaints procedure
- Complaints update
- Forward Plan

The following items would be included for consideration at March's meeting:

- Recording councillor attendance at meetings
- Review of the following:
 - Employee Code of Conduct
 - Relationship between officers and member protocol
- Complaints update
- Forward Plan.

Attendance list

Present:

Councillors:

Stuart Hughes (Chairman)

Graham Godbeer

Douglas Hull

Dawn Manley

Pauline Stott

Co-opted non-voting members:

Cllr Courtney Richards, Co-opted Parish/Town Council member

Ray Davison, Co-opted Independent member

David Mason, Co-opted Parish/Town Council member

Also present:

Alison Willan, Independent Person

Councillors:

Susie Bond – substitute Committee member

Roger Giles

Tom Wright

Officers:

Henry Gordon Lennox, Monitoring Officer and Strategic Lead - Legal, Licensing & Democratic Services

Anita Williams, Deputy Monitoring Officer and Principal Solicitor

Diana Vernon, Democratic Services Manager
Chris Lane, Democratic Services Officer
Wendy Harris, PA to Strategic Lead Legal & Monitoring Officer

Apologies:

Cllr Alan Dent – substitute Committee member
Tim Swarbrick, Co-opted Independent member
John Walpole, Independent Person

Chairman Date

Report to: **Standards Committee**

Date of Meeting: 26 January 2016

Public Document: Yes

Exemption: None

Review date for release None



Agenda item: 7

Subject: **Whistleblowing Policy review**

Purpose of report: The Council's Whistleblowing Policy requires updating to reflect a change in the law and also it has been given an overall review. The revised Policy is presented to Standards Committee with a recommendation that it is recommended to Cabinet for adoption.

Recommendation: **To note the revised Whistleblowing Policy which will be recommended to Audit & Governance Committee for adoption**

Reason for recommendation: It has been on the Committee's forward plan for a while that there is a review of the Council's Whistleblowing Policy. This has now been carried out. With the assistance of a template policy provided by SWAP a revised Policy is attached (Appendix A) for consideration by the Committee. A link to the existing version of the Policy is contained within the background links. The changes are detailed below;

- The main enforced change relates to the trigger at which the statutory protection applies. Previously this was that the report should be made 'in good faith'. The requirement is now that the report should be made in 'the reasonable belief that the disclosure they are making is in the public interest'.
- The policy has been re-structured so that the policy is presented in a clear and logical order.
- The procedure section was not entirely clear and so has been expanded so that it is now fully explained, is clearer and more user friendly and a flowchart has been incorporated to show how the process works.
- Contacts and senior officers who can be contacted has been updated to reflect the recent restructuring and staffing changes.
- The circumstances in which the policy may apply has been widened to help everyone understand when they could rely on the policy.
- Generally the text of the policy has been revised to make the commitment to protection of the whistleblower stronger than the existing wording.
- The position surrounding anonymity has been expanded and reflects the wording of the SWAP template policy.
- A section has been included on the further steps that can be taken if a whistleblower is not satisfied with the outcomes following a report, again reflecting the SWAP template.

It is considered that the revised Policy is up to date with legal requirements and with the changes represents a stronger policy in terms of the Council's commitment to protecting whistleblowers. Further the

amendments provide a more robust policy in terms of procedure and which is now also more user friendly for those reading and applying it. For the above reasons the revised Policy is recommended for adoption.

Officer: Henry Gordon Lennox, Strategic Lead Legal, Licensing, Democratic Services & Monitoring Officer hgordonlennox@eastdevon.gov.uk 01395 517401

Financial implications: There are no direct financial implications.

Legal implications: The law has changed so that there is now a different test to when the legal protection for a whistleblower is triggered, accordingly the policy needs to be amended to incorporate this specific change. In addition the policy has been revised (as set out in the report) and these changes make the policy easier to understand and more robust generally in terms of protection for a whistleblower. Accordingly it is advised that the policy is recommended for adoption. It should be noted that the Council must adhere to any adopted policy in the circumstances where it applies. Otherwise there are no legal implications arising.

Equalities impact: Low Impact
If choosing High or Medium level outline the equality considerations here, which should include any particular adverse impact on people with protected characteristics and actions to mitigate these. Link to an equalities impact assessment form if necessary.

Risk: Low Risk
Click here to enter text on risk considerations relating to your report.

Links to background information: • [LINK TO EXISTING WHISTLEBLOWING POLICY](#)

Link to Council Plan: Living in / Working in / Enjoying this Outstanding Place

Whistleblowing Policy

Issue details	
Title:	Whistleblowing Policy
Issue and version number:	Issue 3
Contents:	Previous Policy Page 2 What is Whistleblowing? Page 2 Purpose and scope of policy Page 2 What is the difference between making a complaint and blowing the whistle? Page 3 Safeguarding whistleblowers and dealing with malicious allegations Page 3 Procedure Page 5 Further steps Page 7 Policy consultation Page 8 Assessments and appraisals Page 8 Initial Policy Review Page 8 Related policies and strategies Page 8 Appendix 1 - The seven principles of public life Page 9 Appendix 2 – Process flowchart Page 10 Appendix 3 - Formal whistleblowing report form Page 11
Officer responsible:	Monitoring Officer
Authorisation by:	Audit & Governance
Authorisation date:	3rd March 2016
Review date:	March 2018

Whistleblowing Policy

1. Previous Policy

This Policy was reviewed in January 2016 by the Monitoring Officer. Previously it was reviewed in July 2011.

2. What is whistleblowing?

- 2.1. Someone 'blows the whistle' when they tell their employer, a regulator, customers, the police or the media about a dangerous or illegal activity that they are aware of through their work.
- 2.2. Whistleblowing can inform those who need to know about health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover ups and many other problems. Often, it is only through whistleblowing that this information comes to light and can be addressed before real damage is done.

3. Purpose and scope of the Policy

- 3.1. The Council takes malpractice and wrongdoing in relation to the organisation's procedures and actions very seriously. It is our aim to ensure that as far as possible, our employees are able to blow the whistle and tell us about any wrongdoing at work which they believe has occurred or is likely to occur.
- 3.2. The Council upholds the seven principles of public life and conducts its business with these in mind (see Appendix 1). The Council is committed to the highest possible standards of openness, probity and accountability and this is reflected in the Council's value of being '*open, clear and transparent*'.
- 3.3. It expects all employees (including any agency staff) to maintain these standards in everything they do. Employees, and others that we deal with (so including suppliers and those providing services to the Council), are therefore encouraged to report any wrongdoing by the Council or its employees that falls short of these principles (i.e. they are encouraged to 'blow the whistle').
- 3.4. The Public Interest Disclosure Act 1998 and Enterprise and Regulatory Reform Act 2013 protects employees who report wrongdoing within the workplace. So, any employee or worker who makes a report under this procedure in the reasonable belief that the disclosure they are making is in the 'public interest' will not be subject to any detriment.
- 3.5. We recognise that employees may not always feel comfortable about discussing their concerns within the Council, especially if they believe the Council itself is responsible for the wrongdoing. The aim of this policy is to ensure that employees are confident that they can raise the matter with the Council with the knowledge that it will be taken seriously, treated as confidential and that they will not be the subject of

victimisation, subsequent discrimination or disadvantage for having reported their concerns, irrespective of the outcome.

- 3.6. You are encouraged to use the procedure set out in this policy if you have any concerns at all about wrongdoing at work which could comprise:
- any criminal offence,
 - a failure to comply with our legal obligations (such as our Standing Orders or Financial Procedure Rules) or any other unlawful action,
 - improper conduct,
 - malpractice or acting against established practice / policies,
 - a miscarriage of justice,
 - a health and safety danger,
 - a risk of environmental damage, or
 - concealment of any of the above.

The list is not exhaustive but is intended to illustrate the range of issues which could be raised under this policy.

- 3.7. This policy aims to ensure that the Council investigates and deals with disclosures fairly, promptly and properly.

4. What is the difference between making a complaint and blowing the whistle?

- 4.1. When someone blows the whistle they are raising a concern about danger or illegality that affects others (for example customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern – they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it.
- 4.2. This is very different from a complaint or grievance. When someone complains or raises a grievance, they are saying that they have been personally treated poorly. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and for this reason, is expected to prove their case.
- 4.3. For these reasons, it is not in anyone's interest if an individual uses this policy to pursue a personal grievance. For personal complaints or grievances, please use the Grievance Policy and Procedure instead.

5. Safeguarding whistleblowers and dealing with malicious allegations

- 5.1. In line with the Employment Rights Act 1996 and Enterprise and Regulatory Reform Act 2013, the Council undertakes that no employee

who makes a report under this procedure and who has a reasonable belief that the disclosure they are making is in the 'public interest' will be subjected to any detriment as a result. The fact that there needs to be 'reasonable belief' does not mean that their belief must be correct for the protection to apply.

- 5.2. This means the Council will not tolerate any harassment or victimisation (including any informal pressures) nor any attempt to apply a sanction or any other detriment to a person who has reported any serious and genuine concern that they have of any apparent malpractice. Anyone who victimises a 'whistleblowing' colleague will personally be liable as the affected 'whistleblower' can directly bring a claim against the culprit. Further the employee can refer their case to an industrial tribunal.
- 5.3. In the event that you believe you are being subjected to a detriment by any person within the Council, as a result of your decision to invoke the procedure, you must inform the Monitoring Officer or the Strategic Lead (Organisational Development) immediately and appropriate action will be taken to protect you from any reprisals.
- 5.4. The Council encourages you to put your name to your allegation as this gives weight to the case and helps with the investigation of the issue. However, you may seek to remain anonymous if you wish. All information you provide is held in the strictest confidence and the Council will seek to protect the identity of any employee as far as possible.
- 5.5. It is important to note that if your allegation is of such a serious nature, it may be necessary for your identity to be revealed. This may be because of the need for the identity to be revealed as part of the evidence. Moreover, if the matter is brought to court, a judge may order a name to be divulged. However the Council will do everything possible to protect your anonymity before this stage is reached and will discuss with you before embarking on any course of action whereby your identity will be disclosed. Please note though that once action is initiated, notwithstanding your desire for anonymity and the Council's aim of protecting that anonymity, it may simply not be possible to achieve this.
- 5.6. You may bring a friend or colleague to any meeting arranged in connection with the concern you have raised as long as the friend or colleague is not involved in the matter and agrees to maintain confidentiality. Additionally, if you wish, you may be accompanied by your trade union representative. It will be up to you to arrange this.
- 5.7. It is emphasised that you have nothing to fear by raising your concerns. Provided you are acting in reasonable belief that you are acting in the public interest, it does not matter if you are mistaken. However, disciplinary action may be taken against any member of staff who is discovered to have made allegations frivolously, falsely or maliciously, for example to pursue a personal grudge against another employee.

- 5.8. The Council will try to ensure that any negative impact of either a malicious or unfounded allegation about a person is minimised.

6. Procedure

Background

- 6.1. As a first step, you should normally raise concerns with your immediate manager or their superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. If you prefer (for whatever reason) or if you believe that management is involved, you could approach one of the individuals in section 6.3.
- 6.2. The earlier you express the concern, the easier it is to take action. You should not wait until you have proof. Although you are not expected to prove the truth of the allegation, you will need to demonstrate to the person contacted that there are grounds for your concern.

N.B. If an employee has any personal interest in the matter this should be disclosed at the outset.

- 6.3. If you do have a concern, whether as a member of staff or a member of the public, and however small, where you don't feel comfortable discussing such a sensitive issue with a close colleague or other officers within the Council, you can discuss the matter with any of the following:

Henry Gordon Lennox, Monitoring Officer
Email: hgordonlennox@eastdevon.gov.uk
Tel: 01395 517401
Write to: Knowle, Sidmouth, EX10 8HL

Anita Williams, Deputy Monitoring Officer
Email: awilliams@eastdevon.gov.uk
Tel: 01395 571556
Write to: Knowle, Sidmouth, EX10 8HL

Simon Davey, Section 151 Officer
Email: sdavey@eastdevon.gov.uk
Tel: 01395 517490
Write to: Knowle, Sidmouth, EX10 8HL

Karen Jenkins, Strategic Lead (Organisational Development)
Email: kjenkins@eastdevon.gov.uk
Tel: 01395 517562
Write to: Knowle, Sidmouth, EX10 8HL

Jo George, Assistant Director for the South West Audit Partnership (SWAP):
E-mail: jo.george@southwestaudit.co.uk
Tel: 07720312466
Write to: The Deane House, Belvedere Road, Taunton, TA1 1HE.

- 6.4. Alternatively, you may contact the East Devon District Council Fraud Line number which is 01395 517494.
- 6.5. An informal approach to any of these officers will be treated as completely confidential and will not result in any report to anyone within the Council unless you agree.
- 6.6. In the event that you are unsure whether you should raise an issue under this policy or you need advice, free confidential advice is available from Public Concern at Work (0207 404 6609) www.pcaaw.co.uk, a charity with the objective of promoting compliance with the law and good practice.

Process (a flowchart of the process is contained at Appendix 2)

- 6.7. Initial concerns may be raised orally or in writing, although normally it is preferable to put your concern in writing. You are invited to set out the background and history of the concern, giving names, dates and places where possible, and the reason why you are particularly concerned about the situation. There is an example report form in Appendix 3 of this Policy which you are encouraged to use to formally report a concern.
- 6.8. In order to protect the individual and the Council, an initial investigation will be carried out to decide whether a full investigation is appropriate and, if so, what form it should take. The initial investigation may be carried out internally or the Council may ask another body (e.g. SWAP) to carry it out. Concerns or allegations, which fall within the scope of specific Policies (for example fraud, theft and corruption) will normally be referred for consideration under the procedures in those Policies.
- 6.9. Following the initial investigation, it may be that some concerns can be resolved by agreed action without the need for a full investigation. If urgent action is required, this would be taken before any full investigation is completed.
- 6.10. Within ten working days of a concern being raised, and following the initial investigation, the Monitoring Officer will write to the person raising the concern;
 - acknowledging that the concern has been received,
 - indicating the initial findings and how he/she proposes to deal with the matter; and
 - giving an estimate of how long it will take to provide a final response.

If it is impossible for the initial investigation to be completed within ten working days, or where urgent action is required, the situation will be explained in the letter of acknowledgement. Where a decision is made that a full investigation will take place, the reasons for this will be provided.

- 6.11. If a full investigation is required this will be carried out by the Council internally or the Council may ask another body (e.g. SWAP) to carry it out. Following the full investigation the Council will either resolve by

agreed action or take appropriate further action. This further action could be:

- Agreed steps such as disciplinary process,
- Referral to the Police,
- An independent enquiry

6.12. The amount of contact between the officers considering the issues and the employee raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information may be sought from the person raising the concern. Notwithstanding the initial acknowledgement, you will be kept informed of the progress and outcome of the action and reasons for any decisions, subject to any legal constraints there may be.

6.13. The Council will take appropriate steps to minimise any difficulties, which an employee may experience as a result of raising a concern. For example, if employees are required to give evidence in criminal or disciplinary proceedings, the Council will need to inform them and consider what steps are required to provide support.

6.14. The Council recognises that there may be matters that cannot be dealt with internally and external authorities will need to become involved. Where this is necessary the Council reserves the right to make such a referral without your consent.

7. Further steps

7.1. This Policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied with any action taken. If you are not satisfied with the outcome of your confidential allegation you can write to the Chief Executive and ask for the investigation and outcome to be reviewed. If you remain dissatisfied and you feel it is right to take the matter outside the Council, you may wish to take advice from your trade union, your local Citizens Advice Bureau, any of the external agencies listed in section 7.4 below, or your legal advisor on the options that are available to you.

7.2. Another option is that you may wish to rely on your rights under the Public Interest Disclosure Act 1998. This Act gives you protection from victimisation if you make certain disclosures of information in the public interest. The provisions are quite complex and include a list of prescribed persons outside of the Council who can be contacted in certain circumstances. You should seek advice on the effect of the Act from the Monitoring Officer.

7.3. If you do take the matter outside the Council, you need to ensure that you do not disclose information where you owe a duty of confidentiality to persons other than the Council (e.g. service users) or where you would commit an offence by making such disclosures. This is something that you would need to check with one of the officers mentioned in Section 6.3.

7.4. External Contacts

If for any reason you do not wish to use the internal arrangements set out above, or require additional support and advice, a list of some of the prescribed people and bodies to whom you can make a disclosure and whose functions have particular relevance to councils work are given below.

- The Certification Officer (www.certoffice.org)
- Her Majesty's Revenue and Customs (HMRC) (www.hmrc.gov.uk)
- Serious Fraud Office Confidential (www.sfo.gov.uk)
- The Health & Safety Executive (www.hse.gov.uk)
- The Environment Agency (www.environment-agency.gov.uk)
- The Food Standards Agency (www.food.gov.uk)
- The Homes and Communities Agency (HCA) (www.homesandcommunities.co.uk)
- Relevant professional bodies or regulatory organisations
- A solicitor or legal advisor
- The Police
- The Local Government Ombudsman (www.lgo.org.uk)
- The Council's External Auditors (KPMG)(www.kpmg.com/uk)

8. Initial Policy Consultation

- 8.1. Strategic Management Team, Staff Joint Forum and South West Audit Partnership

9. Assessments and Appraisals

- 9.1. This Policy has had an equality analysis

10. Policy Review

- 10.1. The Monitoring Officer will review this policy in the light of any legislative changes and in any event in January 2018 to consider whether any changes are required.

11. Related Policies and Strategies

- Grievance Policy and Procedure
- Anti-Fraud, Theft and Corruption Policy
- Financial Regulations
- Financial Operating Procedures
- Contract Standing Orders

Appendix 1 - The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

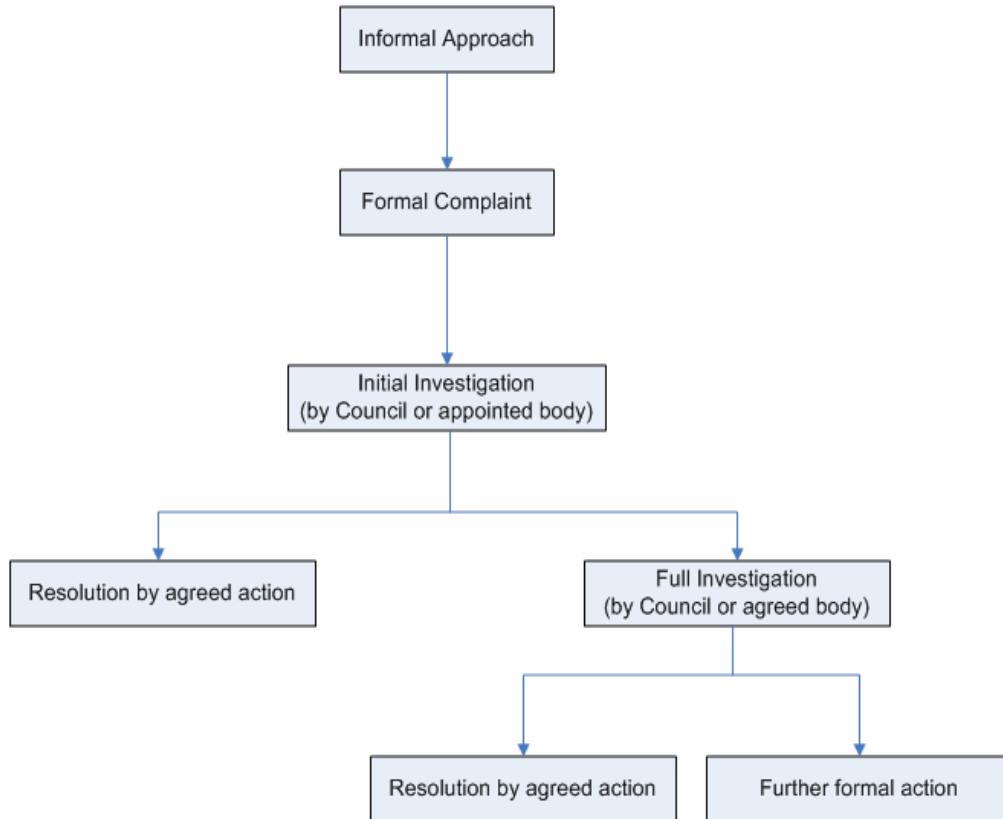
Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix 2 – Process flowchart



Appendix 3 - Report form for whistleblowing complaints

<p>EDDC is committed to the highest possible standards of openness, professionalism and accountability. In line with that commitment we expect employees, partners, members of the public and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.</p>			
<p>Description of the concern Where possible include:</p> <ul style="list-style-type: none"> • Dates of incidents • Who was involved • Why this is a concern • What the result was • Whether there were any other witnesses • Whether you have tried to raise this with your/a manager 			
Empty space for description			
<p>You are encouraged to put your name to this report. Concerns expressed anonymously are much harder to investigate but will be considered at the discretion of the Monitoring Officer.</p>			
Name:		Service (if staff member):	
Address:		Your telephone number:	
Date:		Signature:	

Standards Committee, 26 January 2016

Item 8- Code of Conduct complaints update

This paper provides an update for the Committee on Code related cases since the 1st May 2015 to date (any new cases or cases where there has been a change since the last update are marked with '*'):

Case #	TC/PC or EDDC member	Relevant paragraphs in Code of Conduct and outcome following consultation with Independent Person	Detail of complaint
*MO-C075	Town Councillor	<p>Allegation that Town Councillor had made inappropriate comments relating to actions of the Town Clerk.</p> <p>4a – you must treat others with courtesy and respect</p> <p>The Sub Committee found the Councillor to have breached the Code of Conduct and recommended;</p> <ul style="list-style-type: none"> ➤ that the Town Council censure the Councillor for his breach of the Code of Conduct; ➤ that the Town Council publish the findings of the Hearing Sub Committee. ➤ that the Town Council instruct EDDC’s Monitoring Officer to arrange training for the Councillor in respect of Code of Conduct and Councillor conduct – such training to be completed by the end of the current financial year. 	<p>The Town Councillor issued a document concerning the funding of a community project. The statement made a number of claims about the legality and propriety of a loan obtained by the Town Council and, by referring to the Town Clerk, failed to treat them with respect.</p>
MO-CO83	District Councillor	<p>Complaint regarding tone and appropriateness of comments from Councillor in a letter published in the local press.</p> <p>4a - you must treat others with courtesy and respect</p> <p>5h – you must not conduct yourself in a manner or</p>	<p>A letter had been published in the local press questioning the complainant’s right to express his views on the new Party, East Devon Alliance.</p>

		<p>behave in such a way so as to give a reasonable person the impression that you have brought your office into disrepute.</p> <p>No further action. Case closed.</p>	
*MO-C084	District Councillor	<p>Complainant alleges that the Councillor used their position improperly in relation to a planning matter.</p> <p>5a – you must not attempt to use your position as a Member improperly to confer on or secure for yourself or any person, an advantage or disadvantage</p> <p>5h – you must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office into disrepute.</p> <p>No further action. Case closed.</p>	<p>Objected to a planning application to provide quality care home accommodation for dementia sufferers. Used their official position to pursue their own interests and those of their immediate neighbours and did not consider the wider public interest.</p>
*MO-C085	Parish Councillor	<p>Complaint raised regarding a tweet on Twitter.</p> <p>Relevant paragraphs of the code;</p> <p>4a - you must treat others with courtesy and respect</p> <p>5h – you must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office into disrepute.</p> <p>Proposed informal resolution – public apology.</p> <p>Other action - referred to Parish Council for social media training.</p>	<p>The posting of a tweet that contained a link to a pornographic site.</p>
*MO-CO86	Parish Councillor	<p>Complaint regarding the way the Chairman had dealt with various issues relating to an Extraordinary Council meeting.</p> <p>Passed to MO for assessment.</p>	<p>The parish council was brought into disrepute by the way the Chairman had dealt with an Extraordinary Council meeting relating to the A35 improvements and the lack of respect and courtesy the Chairman had shown towards the complainant.</p>
*MO-CO87	Parish	<p>Complaint regarding the lack of respect shown to fellow</p>	<p>Acted in a bullying and disrespectful manner</p>

	Councillor	councillors Passed to MO for assessment	towards the Clerk and showed lack of respect to the Chairman and fellow Parish Councillors during a parish council meeting.
*MO-CO88	Parish Councillor	Complaint regarding the lack of respect shown to fellow councillors Relevant paragraphs of the code; Passed to MO for assessment.	Acted in a bullying and disrespectful manner towards the Clerk and showed lack of respect to The Chairman and fellow Parish Councillors and made inappropriate comments about a councillor during a parish council meeting.
*MO-CO89	District Councillor	Complaint raised regarding a Facebook post. Code not engaged. No further action. Case closed.	The post was a joke and depicted Hitler and the Nazi party making a joke about the recent VW vehicle scandal. Complaint made on 6 th November raised the issue of inappropriate timing given proximity to Remembrance Sunday.
*MO-C090	District Councillor	Complaint regarding the failure to make a declaration of interest. Passed to MO for assessment.	The subject member's business related to matters being discussed at a meeting of the Council.
*MO-C091	District Councillor	Complaint regarding the failure to make a declaration of interest and representing the views of customers/staff at the same meeting. Relevant paragraphs of the code: . Passed to MO for assessment.	Did not declare an interest at a Consultative Committee meeting.
*MO-C092	Parish Councillor	Complaint regarding the lack of respect shown to an individual at a parish council meeting. Passed to MO for assessment.	Did not treat a member of the public with respect or courtesy who attended a parish council meeting to discuss the A35 Feasibility Study.

Report to: **Standards Committee**

Date of Meeting: 26 January 2016

Public Document: Yes

Exemption: None

Review date for release None

Agenda item: 9

Subject: **Review of Code of Conduct for Employees and Relationship between Officers and Member Protocol**

Purpose of report: The Council regularly reviews the policies, codes and procedures that govern the way we operate. This report focuses on two such documents, being (1) the Code of Conduct for Employees, and (2) Relationship between Officers and Member Protocol. Links to both documents are in the background information section. As both of these documents form part of the Council's Constitution they can only be amended, if required, by Full Council.

The Code of Conduct for Employees governs how staff must conduct themselves when working for the Council. It is a condition of employment that they adhere to this Code. The Code was updated relatively recently to include reference to 'not acting as an agent for people pursuing planning matters within the Council's area', but otherwise has remained unchanged for a period of time. There have been no reported issues which would suggest that the Code is defective or ineffective at this time.

The Relationship between Officers and Member Protocol governs the way Members and Officers interact when carrying out their respective roles and governs a fairly wide range of topics. As with the Code of Conduct for Employees there have been no reported issues or incidents that would suggest that this protocol is ineffective or defective at this time.

There have not been any national changes (legislation or guidance) that would necessitate any changes being made to either the Code or Protocol. Accordingly the recommendation is that the Code and Protocol are agreed as fit for purpose and left unchanged.

Recommendation: **That Members agree that the Code of Conduct for Employees and Relationship between Officers and Member Protocol are considered fit for purpose and no changes need to be recommended.**

Reason for recommendation: The report explains that there have been no identified issues to suggest that either the Code of Conduct for Employees for Relationship between Officers and Members Protocol are anything other than fit for purpose.

Officer: Henry Gordon Lennox, Strategic Lead Legal, Licensing, Democratic Services & Monitoring Officer hgordonlennox@eastdevon.gov.uk 01395 517401

Financial implications: There are no financial implications contained in the report

Legal implications: There are no legal issues arising.



Equalities impact: Low Impact

If choosing High or Medium level outline the equality considerations here, which should include any particular adverse impact on people with protected characteristics and actions to mitigate these. Link to an equalities impact assessment form if necessary.

Risk: Low Risk

Click here to enter text on risk considerations relating to your report.

Links to background information:

- [Background links to Part 5.2 \(pg 188\) and Part 5.4 \(pg 208\)of the Constitution](#)

Link to Council Plan:

Click here to enter which of the Council's priorities this report covers – Living in/Working in/ Enjoying/Funding this Outstanding Place.

Report to: **Standards Committee**

Date of Meeting: 26 January 2016

Public Document: Yes

Exemption: None

Review date for release: None



Agenda item: **10**

Subject: **Review of Public Speaking arrangements at Development Management Committee**

Purpose of report: To review the public speaking arrangements introduced to Development Management Committee in October 2014.

Recommendation: **That the Standards Committee acknowledge the success of the trial and recommend that the public speaking arrangements be continued unchanged for a further a year (to see whether the new Local Plan adoption has an effect on the number of applications referred to the Committee) but with a view to permanent adoption thereafter if the success continues.**

Reason for recommendation: The public speaking trial at Development Management Committee meetings has been in place since October 2014. It was introduced to try to address the length of Development Management Committee meetings and the waiting time experienced by representatives wishing to speak on an item. This is an opportunity to review the trial arrangements.

Officer: Henry Gordon Lennox, Strategic Lead for Legal, Democratic Services and Licensing and Monitoring Officer
hgordonlennox@eastdevon.gov.uk 01395 517540

Financial implications: Additional officer time incurred by the new arrangements is currently being absorbed by the teams. Additional resources are not anticipated due to revision of efficiencies within working practices.

Legal implications: There are direct legal implications arising out of the content of the report.

Equalities impact: Low Impact

Risk: Low Risk

Links to background information:

- [Standards Committee minutes – 18 June 2013](#)
- [Report to DMC - 10 December 2013](#)
- [Report to DMC – Working Party recommendations 1 April 2014](#)

Link to Council Plan: Living in this Outstanding Place

Report in full

1. The Standards Committee first considered a review of Development Management Committee (DMC) public speaking arrangements, as part of a wider review of public speaking at all Committees, in June 2013.
2. In February 2014, Council set up a Working Party to further consider public speaking arrangements for the Committees, together with agenda meeting management, following a significant increase in the length of Development Management Committee (DMC) meetings and the number of applications being considered; this was despite there being no change in the meeting arrangements or the scheme of delegation. The Working Group met in March 2014 and made a number of recommendations, which were then taken forward through the various Committees (with slight amendment) for consideration. In July 2014, Council agreed to introduce new trial public speaking arrangements for the DMC and Planning Inspections Committee from October 2014 on a year's trial (the Planning Inspections Committee function was absorbed by the DMC during the trial period and no longer exists).
3. Outline of pre-trial public speaking arrangements: Members of the public wishing to speak on an application were required to enter their name on sheets located near the entrance to the Council Chamber on the day of the meeting. There was no requirement to register the wish to speak before the day of the meeting. Applications were considered in the order listed on the agenda (alphabetically). All individual contributions were limited to a period of 3 minutes – interested groups of objectors or supporters were asked to appoint a spokesperson for the group, although in reality this rarely happened. There were no thresholds set for the number of objectors or supporters that could speak on an application. In addition, Members of the public were not entitled to speak on non-application items.
4. The Working Group made a number of recommendations regarding speaking arrangements at the Committee and management of the meeting. The key recommendations were that there should be pre-registration of public speakers, together with the other measures, to try and structure the agenda to make best use of committee time and to limit the waiting time experienced by members of the public and the applicant. The reasoning for the recommendations was outlined as:
 - To avoid repetition from many of the same issues being highlighted. Instead it was anticipated that those registered would act as representatives of those in opposition or support of the application and emphasise key points rather than simply reiterate those already made in written representations.
 - The representations received through the consultation process are all documented in the committee report and addressed in the officer's analysis - speakers were therefore often reiterating points that Members were already aware of and would be considering. Furthermore, comments on each application can all be read in full by Members through the Council's web-site – having these comments read out at committee is therefore unnecessary.
 - The Working Group considered that given that the elected ward members were also available to represent the views of the community at committee meetings that it was not necessary to hear from everyone who had commented on the application to understand the community's views.
 - The recommendations were in line with the Planning Officers Society guidance note: "Public Speaking in Planning Committees" and the procedures at the majority of other nearby local authorities many of whom have fewer applications to consider.
 - Pre-registration of speakers would enable the agenda to be structured to enable those that wish to speak to have the relevant item heard early in the meeting making it more convenient for residents to speak and/or listen to the item being debated.

- The proposed changes bring the public speaking arrangements more in-line with those of other authorities in Devon.
- A higher number of speakers should be allowed on major applications where there is likely to be a greater number of issues to consider and a higher number of affected residents whose views need to be considered.
- The Working Party recognised public participation as being at the heart of the development management process and that the recommendations sought to increase contributions by allowing the public to register to speak on non-applications (the previous arrangements did not allow this) and improving the arrangements to make better use of meeting time for the benefit of the public, the committee and officers.

5. The trial arrangements are set out below, along with comments as to how these have been implemented:

- a) *Pre-registration of all public wishing to speak at Development Management Committee (DMC) and Planning Inspections Committee (PIC) on planning applications so that the public (meaning those who have submitted written comment on an application prior to agenda publication) are required to register, with Democratic Services, their wish to speak on an item 3 or more working days before the meeting.*

Following publication of the committee agenda, anyone who has commented on an application listed for consideration is notified by letter or email. The letter/email includes a reference number which is required in order to log as a speaker – this is to try to ensure that only requests from those who have commented on the application, during the consultation period, are accepted. The correspondence includes details of how and when requests to speak can be made. Requests to speak are received via the dedicated email or phone number, then logged and acknowledged by a Democratic Services Officer. Speakers are registered on a first come first served basis. Speaker lists are published in advance of the meeting.

- b) *We will welcome speakers but, due to time constraints the number of speakers is to be limited to:*
- *Parish/Town Council representative, up to 2 objectors, up to 2 supporters, applicant or agent, Ward Member(s) on minor applications*
 - *Parish/Town Council representative up to 5 objectors, up to 5 supporters, applicant or agent, Ward Member(s) on major applications*

Speakers will be registered on a first come, first served basis. Registered speakers will be advised that their contact details, unless they tell Democratic Services otherwise, will be posted on the Council's website to allow others, who may have wished to speak, to contact them. Speaking by the public to remain limited to 3 minutes per contribution and 5 minutes for Ward Member(s).

During the trial, it has only been necessary to advise a handful of people that the maximum number of speakers for an application had been reached. Those people were advised to contact a registered speaker or their ward member to put forward their views. Applicants are advised that only one person connected with the application may speak – a highways consultant could not register as a supporter for example.

- c) *Planning applications to be numerically ordered on the published agenda, with a revised order to be published by 12 noon the day before the meeting prioritising*

applications on which people have registered to speak (all items where there are registered speakers to be taken before items where there are no registered public wishing to speak. Where there are registered speakers for major applications these be taken first.)

When acknowledging requests to be speak, the person registering is advised to check the website to view the revised order of applications. In order to give plenty of notice, when possible, the revised order has been published on the Thursday or Friday before the meeting the following Tuesday. The agenda also clearly states that the items will not necessarily be taken in the order that they are listed.

d) Non-committee members be allowed to speak on Part A non-planning applications, limited to 3 minutes per contribution.

This provides an opportunity for non-committee members to put forward their local knowledge/expertise and express views on particular issues the Committee might be considering.

e) A maximum of two speakers from the public (to register 3 or more working days in advance of the meeting) to be permitted on non-planning application items on which DMC is making a decision (this does not include items where a recommendation will be made to Council, items for information or items responding to government guidance). To be made clear on the agenda the items on which the public can register to speak.

There have been few items (for example the East Devon Villages Plan – Proposed criteria for reviewing Built-up Area Boundaries (BUAB's) report) considered by the Committee where this arrangement has applied, however where it does apply this has been made clear on the agenda and members of the public have been able to register and speak on the item.

f) In respect of planning applications, to hear from adjacent Ward Members or other non-committee members if there is time and subject to Chairman's discretion.

As in any meeting, the Chairman has the right and discretion to control questions and irrelevant points being raised to avoid disruption, repetition and to make best use of the meeting time.

g) Development Management Committee (special meetings for non-planning application items) - Speaking arrangements appropriate to the meeting continue to be put in place for special meetings at the discretion of the Chairman in consultation with Democratic Services, Legal Services and the Development Manager.

This arrangement was carried over from the previous arrangements and continues to work well.

Analysis of the trial arrangements

6. Despite initial concerns, there have not been any significant issues arising from the introduction of pre-registration with regard to people being able to register – instructions are clearly laid out in the correspondence and the Council's website includes details on speaking at the Committee. There have been some minor issues with people registering ahead of the specified registration dates; however these were introduced to ensure fairness to those notified by letter. To date there have been no formal complaints received relating to the trial arrangements.

7. There have been some instances where a Parish/Town Council has attended a meeting to speak and not been registered and therefore if it is decided adopt the trial arrangements, it is recommended that a reminder of the arrangements be sent to clerks.
8. The clear benefit from the introduction of pre-registration is that applications with registered speakers are now dealt with much earlier in the agenda, which has resulted in less waiting time for members of public and applicants and has led to an improvement in the flow of the meetings. Contributions from speakers have been well co-ordinated resulting in less repetition. Increasingly meetings have been held over a day (morning and afternoon) to accommodate the number of applications, with members of the public advised which applications would be considered in the morning or afternoon. This approach has avoided meetings going late into the evening.
9. The average length of meeting during the trial period was 4 hours, 32 mins (average of 10.5 applications considered), compared with an average of 7 hours, 24 mins (average of 13.4 applications considered) in a 12 month period prior to the trial. The reduction in average number of applications should be taken into account in that the reduction in timing of meetings is not only due to the trial speaking arrangements. It should also be noted that the number of non-application items considered at each meeting varies and that the calculations do not take into account lunch/comfort breaks – therefore they should only be used as a guide. However it does appear that generally the meeting lengths have reduced and the meetings are run much more effectively in that any applications where there is public speaking have been heard ahead of those where there are none. There has not been any negative feedback from Ward Members to say that the re-ordering the agenda's has caused any inconvenience to them.
10. It is fair to say that the trial arrangements has placed an increased burden on planning support and democratic services as a result of the additional administration including amending letter templates, logging speakers and revising the order of the agenda and plans and photographs, which didn't exist before the change. However, the increased administration needs to be weighed against the overall benefits of the trial arrangements. In this case it is considered that this increased burden is justified given the clear benefits arising in terms of meeting lengths and the flow of committee meetings. If it is recommended that the trial be continued then officers will review the administrative burden issue with a view to improving practices to further minimise administration.
11. The trial arrangements have occurred at a time when the Council has not had a 5 year land supply and whilst pursuing a new Local Plan. Therefore it is not known what impact having a newly adopted Local Plan will cause. Given that adoption of the Local Plan is relatively imminent, if it is considered beneficial to keep some or all of the existing measures, that these should be trialled for a further one year period to see what impact, if any, having a Local Plan has.
12. Alternative options the Committee may wish to consider include:
 - Reverting back to previous arrangements of no pre-registration and not set thresholds for the number of speakers - There is concern that with no significant reduction to applications referred to the committee that this would lead to increased meeting length and waiting times experienced by members of the public.
 - Officers ordering applications according to the number of comments received during the consultation period (with applications with the highest number of contributions being listed in the earlier in the agenda) - This approach could negate the need for pre-registration of speakers and the need to alter the order of the agenda, however it should be noted that there is no guarantee that a high number of contributions means that there be a large number of people that will want to speak on the application or attend the meeting.

- Maintain pre-registration / re-ordering but remove thresholds – This approach would maintain the ability to revise the order of the agenda based on the number of speakers registered, however would remove the limits on the numbers of objectors and supporters that could speak. As advised earlier in the report, under the trial arrangements there have been few times that a speaker needed to be informed that the threshold has been met, however, it has meant that those registered appear to be acting as representatives of those in opposition or support of the application, with speakers emphasising key points instead of reiterating those already made in written representations (which are summarised and analysed in the Officer report), leading to less repetition and better use of meeting time.

13. In conclusion, Officers consider that the trial arrangements, in particular the re-ordering of applications based on the number of pre-registered speakers and introduction of thresholds for the number of speakers that can register, have achieved the desired aims of addressing the length of Development Management Committee meetings and the waiting time experienced by representatives wishing to speak on an item and have led to a more appropriate balance of public involvement and efficient conduct of the meeting. Although noted, the additional administration created is considered to be outweighed by the benefits they bring; however, if the Council agrees to adopt the trial arrangements unchanged, it is recommended that ways to streamline the administration processes be looked into by officers.

14. Given the unknown impact of the new Local Plan on the number of applications being reported to Committee (they may increase and therefore increase meeting length or potentially decrease) there is merit in continuing with the trial arrangements for a further year but provided that the success continues then it is recognised that the arrangements should become permanent.

Report to: **Standards Committee**

Date of Meeting: 26 January 2016

Public Document: Yes

Exemption: None

Review date for release None



Agenda item: 11

Subject: **Review of Code of Conduct Complaints Procedures**

Purpose of report: To review the Code of Conduct complaints procedures and to consider whether any changes are required.

Recommendation: **It is recommended that there is no change to the Councillor Complaint Procedure (Appendix A) but that the revised Sub Committee Hearing procedure (Appendix B) is adopted for the reasons set out in the report.**

Reason for recommendation: [Click here to enter reasons for recommendation\(s\).](#)

Officer: Henry Gordon Lennox, Strategic Lead Legal, Licensing, Democratic Services & Monitoring Officer hgordonlennox@eastdevon.gov.uk 01395 517401

Financial implications: There are no financial implications contained in the report

Legal implications: There needs to be a robust procedure to deal with the handling of complaint hearings. While the current procedure is robust, the written document identifying the procedure to be followed would benefit from updating to make certain aspects clearer. The revised document (Appendix B) is clearer and fuller in explaining how the procedure will be applied in each case and should be adopted. Upon adoption it will be necessary to ensure that the procedure is adhered to in each case, otherwise this could lead to challenge.

Equalities impact: Low Impact
If choosing High or Medium level outline the equality considerations here, which should include any particular adverse impact on people with protected characteristics and actions to mitigate these. Link to an equalities impact assessment form if necessary.

Risk: Medium Risk
As the recommendation relates to putting in place clear procedures it is essential that the procedure is followed. If not any Sub Committee decision could be open to challenge.

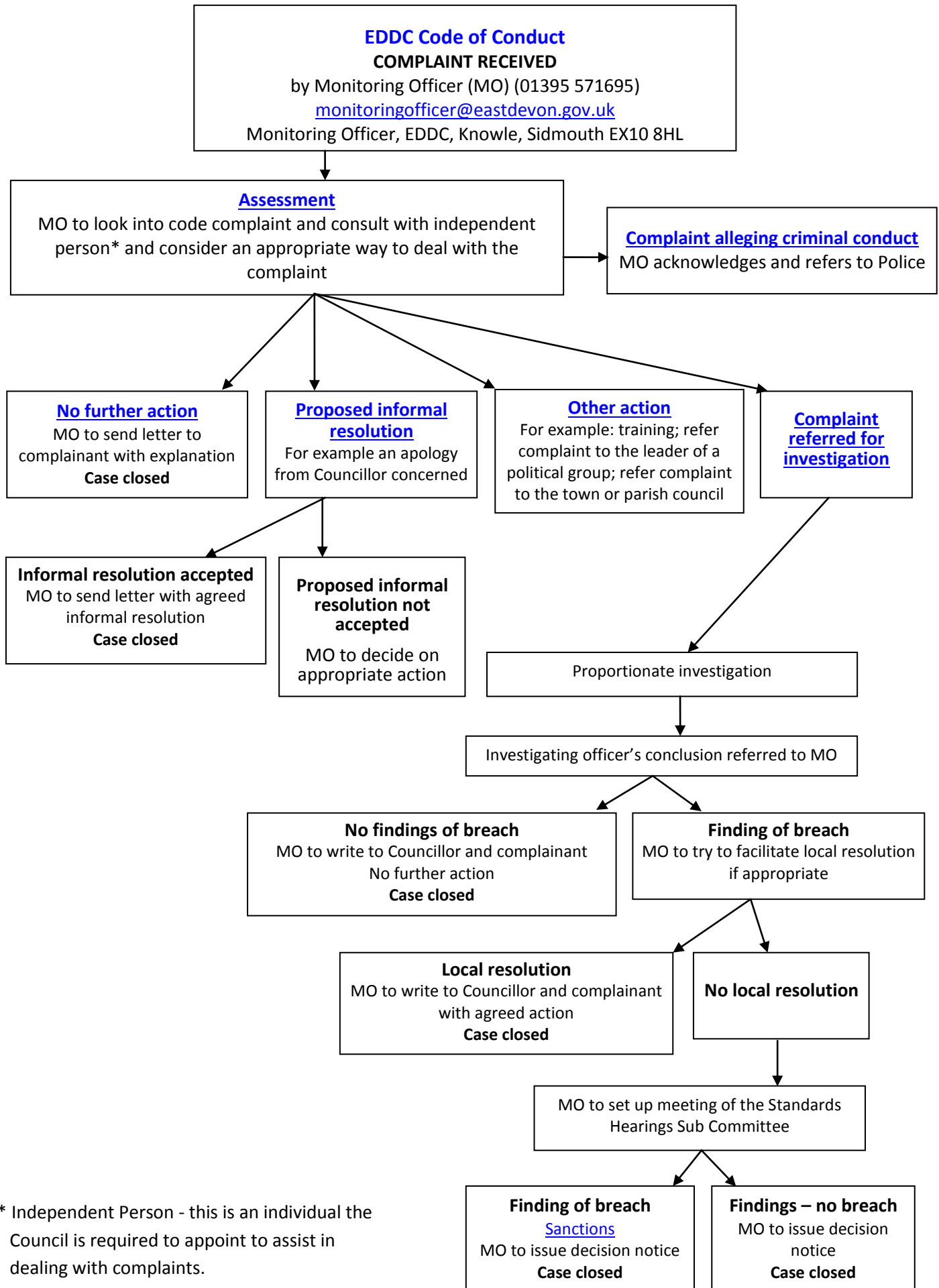
Links to background information: • [Link to current hearings procedure](#)

Link to Council Plan: Living / Working in this Outstanding Place

Report in full

1. The Councillor Complaint Procedure (Appendix A) is a very lengthy and full document setting out the entire process for the dealing of complaints received regarding Councillor conduct. The document is available on the Council's website and is available for anyone wishing to make or understand the complaint process. While it is a long document, we have not received any comment regarding its contents or that it is not readily understandable. In light of this it is not recommended that any changes should be made to this document.
2. Similarly with the Hearings Procedure (see background links) the document sets out the process that is to be followed in respect of any Sub Committee Hearing which needs to be held because it has not been possible to informally resolve the situation where, following investigation, a breach of the code of conduct has been found.
3. Following a recent Sub Committee Hearing, and having applied the procedure, it is considered appropriate to amend the Procedure to make it clearer in certain regards. This has been done and is attached as Appendix B.
4. The main changes can be summarised as follows;
 - a. Inclusion of a general principles section which sets out the basis for the Sub Committee and its membership and the role of Chairman. It clarifies that both the Complainant and Subject Member may have persons attending in support (their lawyers for example) but that where they do formal cross examination of those giving representations is not permitted. Only those directly involved can make representations, although the Chairman can on occasion (and it is suggested rarely) permit others to make representation.
 - b. Inclusion of a section dealing with what happens prior to the hearing itself. This formalises what has been the approach of liaising with the Subject Member to determine the areas where they disagree with the Investigator's report (to help the Sub Committee focus on the salient issues) and to set out what other factors the Subject Member thinks the Sub Committee should have regard to. It also clarifies the approach to written statements – which is that both the Complainant and Subject Member are able to provide written statements from other people wishing to comment on the matter but otherwise who cannot be involved (subject to the Chairman's discretion to permit others to speak at the Hearing). It also covers the current practice of preparing a committee report and pre hearing summary report to aid the Sub Committee's deliberations on the matter and sets out what paperwork the Sub Committee will be presented with. This section also clarifies, and introduces a procedure for, establishing whether the meeting should be held in private or public. Previously the presumption was that it would be public but as there was always the opportunity for either the Complainant or Subject Member to request that it be held in private on the day, the committee papers were not released in advance of the meeting in case it was subsequently decided that it should be in private. The revised procedure seeks to confirm in advance of the meeting whether there will be any request for it to be in private.
 - c. Amends the formalities at the Hearing section to make who the attendees to the Hearing are and also to make changes to reflect the new procedure for privacy.
 - d. The Hearing section is amended to make it clear who can ask questions of whom and it is made clear that the Monitoring Officer may also ask questions (on the basis of assisting the Committee in drawing out salient facts or for helping to provide clarity). It also makes clear that it is not essential, for a Hearing to go ahead, for the Independent Person to be in attendance.

5. In order to ensure clarity in the process it is recommended that the amended Hearings Procedure (Appendix B) is adopted.



* Independent Person - this is an individual the Council is required to appoint to assist in dealing with complaints.

Guidance on how the Monitoring Officer (MO) will deal with your complaint

After a complaint is received by the MO, we will:

- acknowledge the complaint by email or letter
- write to the subject member (councillor complained about) to let them know that a complaint has been made against them and by whom (unless there are good reasons for the complainant's name not being disclosed).

Please note the Council has no powers to suspend or disqualify councillors or to withdraw members' or special responsibility allowances.

What happens next?

Assessment stage – at this stage the complaint is confidential and the complainant and subject member are asked not to disclose information about the complaint to anyone else.

What are we trying to achieve in the assessment phase?

- What is the action/behaviour complained about?
- What aspect of the Code is breached?
- What evidence is there to support the complaint?
- Is there a straightforward way to resolve the complaint?
- Help the complainant to understand the limited [sanctions](#) available
- A response to the complainant in 4 weeks

What does the MO take into account during the assessment stage?

- Independent Person view and comments
- Severity of the complaint
- Attitude of the complainant and subject member and the potential for informal resolution
- Circumstances and severity of the events – for example was the subject member acting in their official capacity as a councillor when the events took place

Using information gathered during the assessment stage the MO will then make a decision about how the complaint should be progressed. There are 5 options:

1. Refer to the Police - complaint alleges criminal conduct.

Where the complainant alleges criminal conduct (including failure to register or declare a Disclosable Pecuniary Interest, or voting at a council meeting where such an interest exists), this is a matter for the police and cannot be dealt with under the Code of Conduct.

2. No further action – The case is closed and a letter will be sent to both the complainant and subject member with an explanation why. The subject member has the option to request that details of the complaint and outcome be published on the EDDC website. If not, details of the complaint remain confidential

Circumstances where no further action may be appropriate:

- The complaint is the same or substantially the same as a complaint previously dealt with
- The period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- The complaint is trivial
- The complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- The complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose

- sufficiently serious potential breaches of the Code to merit further consideration
- The complaint is covered by the Council's persistent and vexatious complaints policy and the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
 - The councillor has provided a satisfactory remedy to the complaint
 - The complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration
 - There is evidence to suggest a potential breach of the Code but the circumstances do not warrant further action.

3. Informal resolution - Where appropriate the aim is to help facilitate conciliation and local settlement - to find a fair way to resolve the complaint informally to both parties' satisfaction. If agreement is reached a letter is sent to the complainant and the subject member setting out the agreed resolution. The subject member has the option to request that details of the complaint and outcome be published on the EDDC website. If not, details of the complaint remain confidential. Where it is not possible to find an agreeable way to resolve the complaint informally the MO will make a decision on what, if any, further action should be taken.

Issues that may result in informal resolution:

- Less serious complaints where the councillor wishes to put their actions right
- A general breakdown in relationships at the Council where other action such as mediation might help
- Complaints where the public interest in conducting an investigation does not justify the costs of such an investigation

4. Other action – Where action such as training or referral to the political group leaders or parish/town council would be the most appropriate way to address the issues raised by the complainant.

Where other action may be appropriate:

- Where there is a lack of experience or the councillor(s) may benefit from additional training or mentoring
- Where the issue appears to be in the political arena and therefore appropriate for referral to a leader(s) of a political group to deal with
- Where it appears that the town/parish council would be best placed to resolve the issue
- Where there is the same alleged breach of the Code by many of the council's councillors, indicating a poor understanding of the Code and authority's procedures

Where other action is taken a letter is sent to the complainant and the subject member setting out the action taken with an explanation. The subject member has the option to request that details of the complaint and outcome be published on the EDDC website. If not, details of the complaint remain confidential.

5. Investigation due to there being a potential breach of the Code of Conduct - Where the complaint has raised an issue that the MO, in consultation with the Independent Person, decides cannot be resolved informally and is serious enough to warrant investigation, she will appoint an investigator. This could be an appropriately skilled council officer from this or another council, or an external investigator. The investigation will be proportionate and include interviews with everyone the investigator decides will help them assess the complaint and reach a conclusion on whether there has been a breach of the Code of Conduct. In exceptional circumstances, we may keep the identity of the complainant confidential if we agree it is necessary, or we may delay notifying the councillor of the investigation where this may prejudice the investigation.

What happens when the investigator issues their final report?

Where the Investigator finds that the councillor hasn't breached the Code of Conduct, the MO will write to the subject member, the complainant and the Town/Parish Council if relevant to end the matter. The subject member is given the option of whether they wish for details of the complaint and outcome to be published on the EDDC website. If not, details of the complaint remain confidential.

Where the Investigator concludes that there has been a breach of the Code, the MO will try to facilitate a local resolution where appropriate. If this is not appropriate or possible, she will arrange a Hearings Sub Committee. This will be a public meeting in which the Investigator and the councillor concerned will be able to make representations to the Sub Committee members before the Committee decides what, if any, sanction is appropriate. In cases where the councillor persuades the Hearing that there are legitimate reasons for holding the Hearing in confidential session, the public will be excluded from all or part of the Hearing. There is a written procedure for the hearing itself.

Serious issues that are such a concern that investigation seems appropriate:

- Disclosure of confidential information, except where allowed by the Code
- Behaviour that is disrespectful, bullying or intimidating
- Conduct that might breach equality laws
- Conduct that would bring the office of councillor or the Council into disrepute, especially where the conduct is deliberate, dishonest or duplicitous

What action can the Standards Hearings Sub Committee take where a councillor has breached the Code of Conduct?

The Council has delegated to the Assessment and Hearings Sub Committee powers to take action to promote and maintain high standards of conduct. Sanctions available to the committee:

- a. Censure or reprimand the councillor
- b. Publish its findings in respect of the councillor's conduct
- c. Report its findings to Council [or to the Parish Council] for information
- d. Recommend to the councillors' Group Leader (or in the case of un-grouped councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council
- e. Recommend to the Leader of the Council that the councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities
- f. Recommend to Council that the councillor be replaced as Executive Leader
- g. Instruct the Monitoring Officer to [or recommend that the Parish Council] arrange training for the member
- h. Remove [or recommend to the Parish Council that the councillor be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish Council]
- i. Withdraw [or recommend to the Parish Council that it withdraws] facilities provided to the councillor by the Council, such as a computer, website and/or email and Internet access
- j. Exclude [or recommend that the Parish Council exclude] the councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Please note that in relation to complaints about parish and town councillors the Hearings Sub Committee can only recommend a particular sanction to the relevant parish/town council – the Committee and the MO do not have any power to enforce compliance.

Appendix B

Standards Hearings Sub Committee Hearings Procedure

(a) General Principles

1. The Standards Sub Committee is a formal committee meeting of the Council. However it does act in a quasi judicial manner in that it is obliged to objectively determine facts and draw conclusions from them so as to provide the basis, where justified, for official action, which may affect the legal rights, duties or privileges of the Councillor whose actions led to the investigation (“the Subject Member”).
2. Notwithstanding this, the Sub Committee is not a court of law and therefore the general principle (which is subject to the proviso in paragraph 9 below) is that the Sub Committee will only hear representations directly from the relevant parties as further detailed in Section (c) below. While both the Subject Member and Complainant may have persons attending in support / representation, formal cross-examination of anyone making representations will not be permitted, any questions from the parties shall be directed through the Chairman of the Sub Committee. The Chairman may, at his absolute discretion, permit oral representations from other persons if it is considered necessary and appropriate to do so.
3. The Sub Committee will comprise a Chairman and two other voting members. It will also comprise two non-voting Members being one of the Independent Members and one of the Parish Council Members. The Committee will be advised by a Legal Officer and supported by a Democratic Services Officer (“the clerk”). The Monitoring Officer (or Deputy) and Investigator will also be in attendance. One of the Independent Persons may be in attendance but it is not essential that they are present for the Sub Committee to proceed.

(b) Prior to the Hearing

4. In advance of the Hearing the Monitoring Officer (or his Deputy) will write to the Subject Member and ask them to respond indicating the areas of the Investigator’s report which they disagree with and to detail other information that they think is relevant to the Sub Committee’s deliberations on the matter (“the Subject Member’s Response”). This will enable the Sub Committee to focus on the relevant areas when the Hearing is held.
5. Both the Subject Member and Complainant may provide supporting written statements (either their own or from others) to be provided to the Sub Committee, although there is no obligation on either of the Subject Member or Complainant to provide their own representations in written form, if they are intending to make oral representations at the Hearing.
6. The Monitoring Officer (or his Deputy), having received all the relevant paperwork, will prepare the Hearing Papers which will be presented to the

Sub Committee as part of a formal agenda with a covering committee report. The Hearing Papers comprise a Pre-Hearing Summary Report (providing detail in respect of the allegation including a summary of the allegation and events and also highlighting the areas of disagreement with the Investigator's report), the Investigator's report, the Subject Member's Response, any written statements provided by the parties and a copy of the Hearing's procedure.

7. The presumption will be that the hearing will normally be held in public unless the Sub Committee exercises its discretion to exclude the public from all or part of the hearing in accordance with the Local Government Act 1972. Accordingly once the Hearing Papers have been compiled they will be provided to the Subject Member and Complainant who will have the opportunity to request that the Hearing be held in private. If no such request is made, then the agenda, including the Hearing Papers, will be published and made available in the normal way. If such a request is made, then the Sub Committee will hear representations on the day of the Hearing and then determine whether the matter should be held in public or private. Where such a request is made the formal agenda will be published in the normal way but without the committee report / Hearing Papers available to the public. In the event the Sub Committee determine that the meeting should be held in public then the Chairman will explain that the committee report / Hearing Papers will be published online after the Hearing has taken place.

(c) Formalities at the Hearing

8. The Chairman of the Sub Committee will introduce the members of the Sub Committee, the officers supporting them, the Subject Member, the Complainant, the Monitoring Officer (or Deputy) the Investigator and Independent Member (if present).
9. The Chairman will explain the reason for the meeting and outline the procedure to be followed. The Chairman may choose to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.
10. The Chairman will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the Hearing begins. Should either the Complainant or Subject Member have sought to have the meeting held in private, the Sub Committee will consider that at this stage.
11. If any procedural issues are raised, including whether the Hearing should be held in private, the Sub Committee will hear representations on them, before determining them.
12. If the Subject Member is not present at the start of the meeting, the Sub Committee will consider any reasons given by them for his/her non-attendance. If the Sub Committee is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed if it has been requested to do so by the Subject Member.

13. If the Sub Committee is not satisfied that there is good reason for the Subject Member's non-attendance, or if the Subject Member failed to give any reason for his/her non-attendance, the Committee can decide:

- whether to consider the matter and make a determination in the absence of the Subject Member, or
- agree to adjourn the Hearing to another date.

(d) The Hearing

14. The Committee will identify the areas of disagreement between the Investigator and the Subject Member on the Investigation report's facts or conclusions.

15. The Investigator will be invited to make representations in support of his/her report and on anything contained in the Subject Member's Response. The Subject Member shall have the chance to ask questions of the Investigator. The Sub Committee and the Monitoring Officer (or Deputy) will have the opportunity to ask questions of the Investigator.

16. The Subject Member will then be invited to make representations in support of the fact(s) concerned and whether the evidence gives rise to a breach or breaches of the Code of Conduct. The Investigator shall have the chance to ask questions of the Subject Member. The Sub Committee and the Monitoring Officer (or Deputy) will have the opportunity to ask questions of the Subject Member.

17. The Complainant will then be invited to comment on representations made by the Investigator and Subject Member.

18. The Sub Committee has the discretion to question or permit questions of any of the parties at any point, as it sees fit. The Sub Committee shall seek the views of the Independent Person before reaching any conclusion, although this shall not prevent the Sub Committee from continuing with the Hearing if the Independent Person is not in attendance.

19. The Sub Committee will consider what it has heard in private accompanied only by its Clerk. The Sub Committee may ask the Legal Officer to advise them when required.

20. The Chairman will then announce to all present at the Hearing the Sub Committee's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.

21. If the Sub Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee will then consider whether it should make any recommendations to the Council.

(e) Sanction

22. If the Sub Committee decides that the Subject Member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Monitoring Officer and the Subject Member as to:
 - a. whether or not the Sub Committee should impose a sanction and/or recommend to Council that a sanction be imposed; and
 - b. what form of sanction(s) is/are appropriate.
 - c. Any mitigation the Subject Member wishes the Sub Committee to take into account
23. The Sub Committee will consider in private, accompanied only by its Clerk [and legal advisor if required] whether or not to impose/recommend the imposition of a sanction on the Subject Member and, if so, what form.
24. The Sub Committee will also consider whether or not it should make any recommendations with a view to promoting high standards of conduct among members of the relevant authority.

(d) Issue of decision

25. In announcing its decision in public at the conclusion of the hearing the Sub Committee will also provide a short written decision.
26. The Sub Committee will issue a full written decision including reasons within two weeks of the hearing.

Agenda Item 12

Standards Committee

26 January 2016



Standards Committee

Forward Plan 2015/16

1.

22 March 2016	1. Review of code of Practice on planning matters and lobbying. 2. Recording councilor attendance at meetings. Policy and procedure for vexatious and unreasonable customers Review of the following; - Employee Code of Conduct - Relationship between officers and Members protocol Complaints update Forward Plan
First committee post 1 st May 2016	Annual report Complaints update Forwards plan

These are the main items, but there may be other matters arising through the year that members want to include too.