

Report to: Standards Committee



Date of Meeting 13<sup>th</sup> April 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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## East Devon District Council Standards Regime update

### Report summary:

To update members on current actions in relation to standards matters and to obtain the Committee's view on whether it wishes to recommend to Council to revise the makeup and Terms of Reference of the Standards Committee and adopt a new complaint procedure for dealing with complaints that members have breached the Code of Conduct. To note that the Independent Person's tenure is coming to an end and that there is a recruitment process currently underway to secure replacements together with a new Independent Representative co-optee.

### Is the proposed decision in accordance with:

Budget Yes ☒ No ☐

Policy Framework Yes ☒ No ☐

### Recommendation:

That the Standards Committee;

- (1) Consider the content of the report and proposed revised procedure for handling Code of Conduct complaints (Annex 1) and determine whether to recommend to Council to make the necessary Constitutional amendments to implement it and adopt the revised procedure with effect from Annual Council.
- (2) Recommends to Council its support for the recommendation of Cabinet of the 17<sup>th</sup> March to recruit an additional lawyer to support the work of the Monitoring Officer (Cabinet Minute 354 refers).
- (3) Consider whose responsibility it is to pay for any training imposed by way of sanction and incorporate this into the revised complaint procedure.
- (4) Thanks Alison Willan for her service to the Council during her 9 year period as the Independent Person.

### Reason for recommendation:

To ensure an appropriate standards complaint process is in place and to thank the Independent Person for her service.

Officer: Henry Gordon Lennox, Monitoring Officer

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Portfolio(s) (check which apply):

☐ Climate Action and Emergencies

- ☐ Coast, Country and Environment
- ☐ Council and Corporate Co-ordination
- ☐ Culture, Tourism, Leisure and Sport
- ☒ Democracy and Transparency
- ☐ Economy and Assets
- ☐ Finance
- ☐ Strategic Planning
- ☐ Sustainable Homes and Communities

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

### **Links to background information**

[Standards Committee – 13<sup>th</sup> October 2020](#)

[Standards Committee – 19<sup>th</sup> January 2021](#)

[EDDC's current complaint procedure](#)

[Minutes from Cabinet 17<sup>th</sup> March 2021](#)

### **Link to Council Plan:**

Priorities (check which apply)

- ☐ Outstanding Place and Environment
- ☐ Outstanding Homes and Communities
- ☐ Outstanding Economic Growth, Productivity, and Prosperity
- ☒ Outstanding Council and Council Services

### **Report in full**

1. The Committee has previously considered reports from the Monitoring Officer in relation to the Council's standards regime (October 2020 and January 2021). The minutes of those meetings detail the various resolutions. This report provides an update on various matters but particularly looks in more detail at the possible introduction of an initial committee based assessment of complaints.

#### Possible Arrangements for introduction of Standards Assessment Sub-Committee.

2. At the January meeting Members resolved that a further report be brought detailing *'possible arrangements for the introduction of a Standards Assessment Sub-Committee to carry out an initial decision of complaints that should progress to investigation and decision by the Monitoring Officer in accordance with the existing procedure'*.
3. The existing procedure can be found through the background links in this report. In short the Monitoring Officer carries out a preliminary review to make sure the matter should be considered (i.e. it relates to the conduct of an East Devon District Councillor or town or parish councillor, that capacity is engaged etc) and if it passes this then it goes forward on the basis of a number of options – no further action, Monitoring Officer investigation, other action, referral to Police or referral to Independent Investigation. What these mean and how the matter progresses through, and then after, these stages is detailed in the procedure.
4. The Committee have discussed introducing an early member assessment of the complaint. The approach that seemed to be advocated was that the Monitoring Officer would carry out

an initial assessment to ensure that the complaint was valid, which would be against a set of 'basic criteria'. Once determined as valid, the complaint would be presented to an assessment sub-committee to determine how it should progress, with discussion about how this be decided. If it progresses then the decision on breach effectively remains with the Monitoring Officer and the remainder of the process continues in accordance with our current procedure.

5. The current procedure has been reviewed and a new composite procedure (which includes the hearing procedure which currently sits separately) has been produced. The draft procedure document is annexed to this report (Annex 1). It also provides extra general information that currently isn't detailed or which sits separately from the published procedure.
6. In summary the suggested new procedure is very similar to our current arrangements but with the following changes;
  - a. At Stage 1 the Monitoring Officer receives the complaint and reviews it against 'the Basic Criteria'. These are listed in Appendix 2 of the procedure, but cover the technicalities such as the subject member being a member of the district or town / parish council at the time of the complaint and that they remain a councillor, there is a code of conduct in force, the code is engaged, it is timely and it is not a repeat complaint. All of the criteria must be satisfied but discretion is reserved for the Monitoring Officer to refer complaints in certain circumstances which may not otherwise comply but which are considered to be in the public interest to pursue.
  - b. Once satisfied that there is a valid complaint, the Monitoring Officer has the option to seek informal resolution (such as an apology for example) with a view to concluding the matter.
  - c. Any complaint that passes the Basic Criteria sift and which isn't informally resolved is passed to Stage 2 which is to the Assessment Sub-Committee for a decision on how it should proceed (this decision currently rests with the Monitoring Officer). The same options apply as currently, namely - no further action, Monitoring Officer investigation, other action, referral to the Police or referral to Independent Investigation. The Assessment Sub-Committee (comprising three district councillors) will be presented with a report from the Monitoring Officer and hear his views and those of the Independent Person and Independent Representative and Town / Parish Representative before taking a decision on how the complaint progresses having regard to the 'Local Assessment Criteria'. The Local Assessment Criteria are contained in Appendix 2 of the procedure and cover whether there is sufficient evidence of a potential breach, outcomes, seriousness of the complaint, public interest, length of time elapse since the breach and anonymity.
  - d. The procedure to be followed by the Sub-Committee is contained at Appendix 3 of the procedure. It will receive a normal agenda but the complaint will be anonymised and provided confidentially. The decision will be formally minuted.
  - e. Decisions that result in no further action, other action or referral to the Police will be dealt with and progressed by the Monitoring Officer. In relation to other action, if the Sub-Committee clearly expect an outcome and this is not achieved then the matter will be referred back to the Sub-Committee for further decision. Referrals for Monitoring Officer Investigation or Independent Investigation are dealt with as Stages 3 & 4 respectively and hereafter the complaint progresses in the same way as the current procedure.

7. This procedure takes on board the Best Practice Recommendations from the Committee for Standards in Public Life Report relating to (i) publishing a clear and straightforward public interest test against which allegations are filtered, (ii) consulting the Independent Person on whether to undertake a formal investigation and giving them an option to comment on allegations which are intended to be dismissed as being without merit, vexatious or trivial, (iii) publishing a decision notice on the website, (iv) straightforward and accessible guidance on how to make a complaint, the process to be followed and estimated timescales for the various stages and (v) having procedures in places for addressing conflicts of interest including asking Monitoring Officers from other authorities to undertake investigations.
8. If the Committee agree to recommend the revised procedure to Council, this will also necessitate Constitutional changes as follows;
  - a. The specific arrangements for the Standards Committee (Article 9 and its Terms of Reference (Section 2 of Part 3 of the Constitution)) will need revision to incorporate reference to the Standards Assessment Sub Committee and to give more detail on its role. It is recommended that the Sub-Committee comprises a three member panel drawn from the membership of the Standards Committee with one Independent Representative and one Town / Parish Representative plus one of the Independent Persons. The Chair and membership to be rotated and it can be called on an ad hoc basis.
  - b. It is recommended that Hearings Sub-Committee Terms of Reference are revised to say that membership shall be drawn from the Standards Committee but shall not include any member who sat on the Assessment Sub-Committee that considered the complaint at the earlier stage, save where to do so would mean that the Hearing Sub-Committee is incapable of being constituted.
  - c. In light of the foregoing, the recommendation is to increase the size of the Standards Committee to 7 District Council members (from 5), 3 Independent Representatives (from 2) and 3 Town / Parish Representatives (from 2).
9. Should it be agreed to progress the above changes, it is recommended that the Committee recommend to April's Council meeting that the changes are adopted with effect from the Annual Council meeting. This will permit the Council to express its agreement to the changes and to allow the changes to the Constitution and related change to the number of committee seats to be factored into the preparation work for Annual Council.
10. Members will recall that the previous reports have raised the issue that extra resource was likely to be necessary to support such revisions. The Monitoring Officer remains of the view that this revised process will necessitate additional work. However, Member's attention is drawn to the Cabinet meeting of 17<sup>th</sup> March 2021 and the report of the Monitoring Officer considered at that meeting. Minute 354 makes a recommendation to Council to recruit an additional lawyer to support the work of the Monitoring Officer. Accordingly there is no specific requirement for an additional recommendation from this Committee for extra resource but the Committee is asked to support the recommendation from Cabinet.

#### Review of Code of Conduct

11. At the January 2021 meeting, Members resolved as follows;

*(1) That the Committee noted the content of the Monitoring Officer's report in relation to the LGA's Model Code of Conduct and East Devon's Members' Code of Conduct and agreed that there*

*should be a further review of the content of the Members' Code of Conduct with a view to possible adoption of a new or revised Code at the Annual Council Meeting in May 2021.*

*(2) That a working group be established comprising ten members, politically balanced, and that delegated authority be given to the Monitoring Officer in consultation with Group Leaders to agree the membership, for the purpose of progressing a further review of the Members' Code of Conduct and that stakeholder engagement should be included both during the review and as part of the final review of any proposals.*

12. The Monitoring Officer sought nominations from the Political Groups on 16<sup>th</sup> March for nominations to establish the Working Group. At the time of writing nominations were still awaited from two of the Groups.
13. At this stage it seems unlikely that the review will happen in time for any changes to be adopted at the Annual Meeting. However, once the Group is established, the work will commence and it may be possible, with the Chair's consent, for an extraordinary meeting of the Standards Committee to discuss possible changes and / or adoption of a revised Code with a view to recommending this to Council at the (now delayed) Annual Council meeting.

#### Deferral of training costs decision

14. At the meeting on 19<sup>th</sup> January 2021, the issue of who was to pay for any training recommendation was discussed. The Monitoring Officer's report (this can be accessed from the background links – see paragraphs 18 - 20) details the background. The resolution of the Committee was;

*'6. That consideration of who should pay the cost of any training imposed by way of sanction be deferred to the next Committee meeting in April.'*

15. The Committee is asked to determine the approach it wishes to recommend to Council. The procedure that is appended to this report includes wording to confirm that the responsibility rests with the Subject Member to fund (see paragraph 8.7.5) as advocated in the recommendations previously. If the Committee are minded to take a different approach then the procedure will need revision to reflect this.

#### Recruitment of various positions

16. The Committee has previously been advised of the intention to recruit to the vacancy of co-opted Independent Representative of the Standards Committee. This process is underway with adverts in the local press and on the Council's website.
17. Should the Committee recommend that the revised procedure and Constitutional amendments are adopted by Council then this will necessitate further recruitment to the two representative positions and this will be progressed following any decision by Council.
18. At the last Annual Meeting, the tenure of Alison Willan as the Independent Person was extended for an additional 1 year due to COVID. The Committee has agreed to appoint two Independent Persons (in accordance with the Best Practice Recommendations from the Committee for Standards in Public Life Report) and the adverts for these positions are also in the local press and on the Council's website and being promoted through social media.
19. The interviews are intended to take place mid-April with appointments to be confirmed at the Annual Council meeting. As previously agreed, members of the Standards Committee will be involved in the interview process.

20. Subject to the need for any extraordinary meeting (as mentioned above) this is Alison Willan's last Standards Committee meeting. From the Monitoring Officer's perspective, I would like to take this opportunity to place on record my thanks to Alison for her unerring dedication and commitment to this role. I have very much valued her input and assistance in dealing with complaints. It is also considered appropriate for the Committee, on behalf of the Council, to thank Alison for the role she has performed over the last 9 years.

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**Financial implications:**

There are no direct financial implications from the recommendations.

**Legal implications:**

It is for Council to adopt any revised Standards procedure and to make Constitutional amendments. Otherwise there are no other specific legal implications requiring comment.