

Agenda for Standards Committee

Tuesday, 17 October 2017; 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 25 July 2017 (page 3 - 5)
- 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 **Councillor interests and Code of Conduct training** (pages 6-10)
Strategic Lead – Governance and Licensing & Monitoring Officer
- 8 **Code Complaints update (May 2017 – date (October 2017))** (pages 11-15)
Strategic Lead – Governance & Licensing & Monitoring Officer
- 9 **Forward Plan** (page 16)

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EAST DEVON DISTRICT COUNCIL

Minutes of a meeting of the Standards Committee held at Knowle, Sidmouth on Tuesday, 25 July 2017

Attendance list at the end of the document

The meeting started at 10.00am and ended at 11.16am

- *1 Public speaking
There were no questions asked.
- *2 Minutes
The minutes of the meeting of the Standards Committee held on 27 October 2016, were confirmed and signed as a true record.
- *3 Declarations of interest
There were none.
- *4 Annual Report
Members considered the review of the 2016/17 year in the life of the Standards Committee and outlined the work done.
Henry Gordon Lennox referred the Committee to issues in paragraph 4 of the report in relation to the treatment of Code complaints, non-code complaints and those termed as 'others'.
Discussion included the following points:
 - That the benefits of streamlining the process and reducing the administrative cost of dealing with different types of complaints had been considered in relation to transparency
 - That numbers of complaints each year were always recorded
 - That a list of non-Code complaints could be retained throughout the year for the re-assurance of the public
 - That all complainants received a response and achieved an outcome
 - That all Code complaints are dealt with according to agreed policy

Henry Gorgon Lennox referred to the Judicial Review relating to matters at Honiton Town Council which had received a lot of press coverage, and the finding of the Judge that EDDC had acted positively in dealing with relevant issues.

The Chairman thanked the Monitoring Officer for his report.

RESOLVED:

1. that the review of the 2016/17 year be noted.
2. that a record of non-Code complaints be retained throughout the year

- *5 Assessment of the new speaking arrangements at Development Management Committee
The Committee considered the report of the Monitoring Officer, which reviewed the public speaking arrangements introduced to Development Management Committee in October 2014.

Henry Gordon Lennox confirmed that the adoption of the Local Plan had not had a significant impact on the length of Development Management Committee meetings or the waiting time experienced by representatives wishing to speak on an item. On average, each application took approximately 24-25 minutes to process. If circumstances changed in future it was within the remit of the Committee to review the arrangements.

The Chairman thanked the Monitoring Officer for his report.

RESOLVED: that the public speaking arrangements become permanent

***6** Code Complaints 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 2017.

Discussion included the following points:

- There had been an increase in complaints largely due to ongoing issues at Honiton Town Council
- That EDDC would continue to work with the Town Council and encourage them to record meetings
- That EDDC does have a policy for the handling of Vexatious Complaints which will be reviewed at a future date

RESOLVED: that the report be noted;

***14** Forward Plan

Committee members were asked to advise of any items for the Forward Plan.

Discussion included the following points:

- Whether the EDDC policy on the interests of Councillors is sufficiently robust to deal with matters such as, but not exclusively local planning applications, compared to other local authorities.
- That one of the aims of the Localism Act 2011 was to facilitate speedier decision making at local level.
- That re-introducing a Personal or Prejudicial Interest would also re-introduce greater complexity into the process of Committee business.
- That the key issue was in relation to whether there was bias or predetermination to specific outcomes, and whether Councillors were following the Code of Conduct by declaring their interests sufficiently clearly.
- That from a public perspective, any decisions could be challenged in court for bias and predetermination and possible breach of the Code of Conduct.
- That whilst officers could provide advice, it is the responsibility of Councillors to adhere to the Code and regularly update their Register of Interest forms.

RESOLVED: that the following report from Henry Gordon Lennox, Monitoring Officer and Strategic Lead - Governance and Licensing would be included for consideration at the next meeting covering the following issues:

- Whether Personal and/or Prejudicial Interests should be re-introduced into the Code of Conduct at EDDC as well as Disclosable Pecuniary Interests
- Whether mandatory training should be introduced on the Code of Conduct for Councillors which would require a change in the Constitution
- Whether Register of Interest forms should be amended to specifically include the extent of land ownership such that it meets the requirement of being easily identifiable

Attendance list

Present:

Councillors:

Andrew Moulding (Chairman)

Graham Godbeer

Stuart Hughes

Douglas Hull

Co-opted non-voting members:

Martin Goscomb, Co-opted Independent member

Jessica Bailey, Co-opted Parish/Town Council member

Tim Swarbrick, Co-opted Independent member

Frances Newth, Co-opted Parish/Town Council member

Also present:

Alison Willan, Independent Person

Councillors:

Susie Bond – substitute Committee member

Steve Gazzard

Officers:

Henry Gordon Lennox, Monitoring Officer and Strategic Lead – Governance & Licensing

Sue Howl, Democratic Services Manager

Apologies:

Alan Dent – substitute Committee member

Dawn Manley

Chairman Date

Report to: **Standards Committee**

Date of Meeting: 17 October 2017

Public Document: Yes

Exemption: None

Review date for release None



Agenda item: 7

Subject: **Councillor interests and Code of Conduct training**

Purpose of report: To consider the nature of interests that Councillors are required to declare, the extent to which land ownership should be identified when Register of Interests forms are completed and whether there should be a mandatory requirement for Member's to receive Code of Conduct training.

Recommendation: **That the Standards Committee;**

- 1. Agrees that there should be no change to the nature of interests that should be disclosed and notes that the scope of personal interests will be revised to be clearer as detailed in the report.**
- 2. Agrees that it is not necessary to require a map to identify a Councillor's property interests.**
- 3. Decide whether to require Councillors to have mandatory training on the Code of Conduct.**

Reason for recommendation: Having considered the issues surrounding declarations of interests it is considered that, other than a minor change to the scope of personal interests, there is no need to change the Code of Conduct or Register of Interests in relation to declaring interests. Members will need to consider whether they wish to require mandatory training on the Code of Conduct as this issue is for the Standards Committee to decide upon.

Officer: Henry Gordon Lennox, Strategic Lead for Governance and Licensing and Monitoring Officer - hgordonlennox@eastdevon.gov.uk & 01395 517540

Financial implications: There are no financial implications arising.

Legal implications: There are no direct legal implications arising from the content of the report.

Equalities impact: Low Impact

Risk: Low Risk

Links to background information:

[Letter from Bob Neill MP \(2 August 2012\)](#)
[Openness and Transparency on personal interests - DCLG Guide](#)
[South Somerset District Council's Code of Conduct](#)

Link to Council Plan: Living in this Outstanding Place

Report in full

Declarable interests

1. Prior to the Localism Act 2011 coming into force, Councillor's interests were effectively covered by a nationally governed set of rules which required Councillors to declare what were known as Personal and Personal & Prejudicial interests. If declared the former allowed Councillors to be involved in debate and voting, while the latter did not.
2. The Localism Act 2011, due to what was viewed as a system that had led to "*petty, partisan and malicious complaints that dragged down the reputation of local government, as well as suppressing freedom of speech*", brought in a new standards regime. This regime, rather than being nationally led, put the onus on local authorities to adopt their own code (and investigation processes) which when viewed as a whole was to be consistent with the Nolan Principles. In addition it put on a legislative footing a requirement for Councillors with certain financial interests (called disclosable pecuniary interests) to declare them and the creation of a criminal offence for a Councillor to be involved in the debate / vote on a matter in which they have a disclosable pecuniary interest.
3. The intent behind the change in rules was to free up local decision making thereby ensuring electoral accountability while also protecting personal privacy. In essence the then Coalition Government were concerned that Councillors were being frustrated in their roles and so the new arrangements were brought in so that '*instead of having hundreds of expensive and frivolous investigations hanging over their heads, local councillors should now be free to get on with their jobs*'.
4. With the content of the Code of Conduct left to each individual authority, it is fair to say that there is no uniform approach to their content. However, there are two approaches that are generally used (with small variations within them). Firstly, there is the code that covers personal interests and disclosable pecuniary interests only, then there is the code that has personal interests, disclosable pecuniary interests and also a further category of prejudicial interests. East Devon's Code is an example of the first, whilst South Somerset's is an example of the second.
5. As Councillors will know, a personal interest does not prevent one being involved in the debate / vote on a matter (subject to rules on bias or predetermination) while a disclosable pecuniary interest means one must leave the room for the discussion / vote on a matter (subject to the ability to be granted a dispensation to remain and then in any event subject to the rules on bias or predetermination). The prejudicial interest effectively creates a third option which means that, while the interest does not amount to a disclosable pecuniary interest, the interest is such that a Councillor should not be involved in the discussion or vote in the matter. South Somerset's definition of prejudicial interest is quite extensive (see link in background papers) but ultimately relates to the situation where the financial position of a Councillor or that of a significant person (which is defined) would be affected or where it relates to the determination of any approval, consent, licence etc in relation to the Councillor or a significant person.

6. The Devon authorities have been benchmarked in terms of their approach and the following can be noted;
- Personal / DPI (Devon, Torbay, Plymouth, Mid Devon & East Devon)
 - Personal / DPI & Prejudicial as South Somerset (North Devon)
 - Personal / DPI & Prejudicial but less restrictive than South Somerset (Exeter, Teignbridge, South Hams & West Devon)

As can be seen there is a fairly even approach to interests across Devon.

7. It ought to be noted that East Devon's Code of Conduct does include, as a personal interest, the situation where *'a reasonable person with knowledge of the relevant facts would regard the interest as greater than would affect the majority of residents or inhabitants in the affected area such that it is likely to prejudice your judgment of the public interest'* (see paragraph 8.2 of the Code of Conduct). This is effectively the same test as the prejudicial test, although I accept it could be made more robust by clearly stating that it also related to relatives and close friends of the Councillor. It should also be moved into Section 7 so that it is clear that it is a personal interest, as opposed to appearing on the section dealing with declarations of interests and participation at meetings.
8. However, even if this was done, it would still only amount a personal interest meaning that Members would need to declare the interest but would then be able to proceed to be involved in the debate and vote on the matter.
9. The key issue here is about ensuring transparent decision making and that elected representatives are able to represent their electorate, as per Government's intention when bringing in the changes introduced by the Localism Act 2011. In that regard the advice from the Minister when the changes came in was that *'any heavy bureaucratic, 'gold plated' approach has no place in the new localist standards arrangements'*.
10. I am satisfied that the Code of Conduct, when viewed as a whole, does reflect the Nolan Principles, indeed they are enshrined within it. The key point is that it is the responsibility of Members to adhere to the Code and ensure that their involvement in decision making follows the requirements of the Code, including declaring personal / disclosable pecuniary interests. Provided they are open and transparent and do declare personal interests, then in my view they should be permitted to continue to debate and vote on an item, provided they have satisfied themselves that they are capable of acting in the public interest and subject always to the requirement on basis and predetermination, which acts as an important safeguard in the system. To do otherwise I feel would be contrary to the intention of Government and would start to replicate the previous position and potentially become more like the *'heavy bureaucratic, 'gold plated' approach'* that Government was seeking to avoid. Ultimately this is about trust in the Members and their approach to decision making. To adopt a prejudicial interest category would essentially mean a precautionary approach to decision making and would suggest that Councillors cannot be trusted to determine whether they can act in the public interest.
11. Subject to the Committee's views, I do not propose any changes to the nature of interests, but I will propose that the Code is revised in May next year (as part of the annual changes to the Constitution) to move paragraph 8.2 into Section 7 and for it to be revised to give clarity to its scope so that it reads;

'You also have a personal interest in any business of your authority where a reasonable person with knowledge of the relevant facts would regard your interest (including those of a relative or close friend) as greater than would affect the majority of residents or inhabitants in the affected area such that it is likely to prejudice your judgment of the public interest'

Register of Interests

12. The Committee wanted to consider whether or not the Register of Interests form should be accompanied by a plan identifying the extent of land ownership.
13. The Register of Interests form includes a section dealing with land ownership and also tenanted / licenced land. The reason for this is because these categories of land interests are disclosable pecuniary interests. The purpose of the Register of Interests is to ensure transparency and openness in relation to the carrying out of a Councillor's role. The Register requires either 'the address or other description of the land (sufficient to identify the location)' to be provided. Notwithstanding what is on the register, it is still a criminal offence to be involved in the discussion and / or vote in a matter in which there is a disclosable pecuniary interest.
14. The giving of an address or description sufficient to identify the land meets the objective of openness and transparency as to interests, it means a member of the public can readily find out what interests someone has and so be aware of them. Whether or not the full extent is revealed by a plan, it doesn't absolve the Councillor of having to declare a disclosable pecuniary interest and leave the room during consideration of the item and, if they don't, they potentially commit a criminal offence.
15. To me there would seem little sense in requiring someone who owns a standard residential property to show it on a map (the address would suffice) but the same principle should therefore apply to those who have wider property interests. Provided the whereabouts of the property is capable of being identified by the address or other description that should suffice. This is particularly so given that it is the Councillors responsibility to ensure compliance with the Code and legal requirements. The potential administrative burden on EDDC officers dealing with Councillors and with the Town and Parish Members / clerks should be appreciated too, as it is likely that their work load will increase as a consequence.
16. I accept that it is capable of being required, however the administrative burden and pros and cons of requiring this does not bear out in its favour in my view. Obviously, if Members disagree and do require it, then it should be a requirement for all Members to do. That said, the register of interest form could nonetheless be amended to say that a plan could be provided if preferred to aid in completing the relevant section.

Code of conduct training

17. At the last meeting of the Standards Committee Members raised whether it should be a mandatory requirement for Councillors to attend training on the Code of Conduct and, by extension, its application in relation to declaring interests.
18. There is nothing to stop such a requirement if Members were so inclined. The positives are that it should help Councillors understand and remember their responsibilities under the Code of Conduct. It should therefore increase openness and transparency – if nothing else through better declarations of interest. It should also help reduce complaints through Councillors being more mindful of their responsibilities and because they will have received a consistent message from those partly responsible for administering the system. The negatives are that possibly not all Councillors will attend leading to reputational issues. If the mandatory element was secured through the Code of Conduct itself, then should Councillors not attend then it would need to be pursued as a breach of the Code of Conduct, inadvertently leading to more complaints. Should a complaint be made, the range of sanctions is very limited and may not be effective in achieving compliance in any event. Training may not prevent poor application of the principles set out in the Code of Conduct.

19. Ultimately it is for the Committee to decide whether to require mandatory training and if so to seek approval from Full Council to amend the Constitution to require Councillors to attend mandatory training on the Code of Conduct. Should Councillors so wish, then it is recommended that following the District Council elections there is a requirement for all Councillors (both new and re-elected) to attend Code of Conduct training. The training will only be provided once each elected term unless there is a change to the Code itself which Members will need to be appraised of and for which further training will be given at the appropriate time. If Members are elected 'in term' then training will be provided by me or the Deputy Monitoring Officer.

Standards Committee, 17 October 2017

Item *8* - Code of Conduct complaints update

This paper provides an update for the Committee on Code related cases since the 1st May 2017 to date:

Case #	TC/PC or EDDC member	Relevant paragraphs in Code of Conduct and outcome following consultation with Independent Person	Detail of complaint
2017-C12	Town Councillor	Complaint regarding the lack of respect shown at a town council finance meeting Relevant paragraphs of the code; 4a - you must treat others with courtesy and respect 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. No findings of breach. Case closed.	Acted in a bullying and disrespectful manner
2017-C13	Town Councillor	Complaint regarding the lack of respect shown at a town council finance meeting Relevant paragraphs of the code; 4a - you must treat others with courtesy and respect 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. No findings of breach. Case closed.	Acted in a bullying and disrespectful manner
2017-C14	Town Councillor	Complaint regarding the lack of respect shown at a town council finance meeting Relevant paragraphs of the code; 4a - you must treat others with courtesy and respect	Acted in a bullying and disrespectful manner

		<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 findings of breach. Case closed.</p>	
2017-C15	Town Councillor	<p>Complaint regarding the lack of courtesy and respect shown to others.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>Resignation received. Case closed.</p>	Made a disrespectful remark that was inappropriate and unacceptable and failed to treat others with courtesy and respect and acted in a rude and belittling manner.
2017-C16	Town Councillor	<p>Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Acted in a bullying and disrespectful manner
2017-C17	Town Councillor	<p>Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Acted in a bullying and disrespectful manner

2017-C18	Town Councillor	<p>Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Acted in a bullying and disrespectful manner
2017-C19	Town Councillor	<p>Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Acted in a bullying and disrespectful manner
2017-C20	Town Councillor	<p>Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Acted in a bullying and disrespectful manner

2107-C21	Town Councillor	<p>Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Acted in a bullying and disrespectful manner
2017-C22	Town Councillor	<p>Complaint that has brought office into disrepute</p> <p>Initial stages Complaint regarding the lack of respect shown at a town council finance meeting.</p> <p>Relevant paragraph of the code;</p> <p>4a – you must treat others with courtesy and respect.</p> <p>5c – you must not bully any person</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 findings of breach. Case closed.</p>	Failed to provide a correct official town council email address leaving his contact pathway ineffective and failing to respond to communications
2017-C23	EDDC Councillor	<p>Complaint regarding the lack of courtesy and respect shown to others.</p> <p>Complaint withdrawn. Case closed.</p>	Made a disrespectful remark.
2017-C24	EDDC Councillor	<p>Complaint regarding the lack of courtesy and respect shown to others.</p> <p>Passed to MO for assessment</p>	Acted in a disrespectful manner.
2017-C25	Town Councillor	<p>Complaint regarding the lack of courtesy and respect shown to others.</p> <p>Initial stages</p>	Acted in a bullying and disrespectful manner.

2017-C26	Parish Councillor	Complaint regarding the lack of courtesy and respect shown to others. Initial stages	Acting in a bullying and disrespectful manner
2017-C27	Town Councillor	Complaint regarding the lack of courtesy and respect shown to others. Initial stages	Acted in a bullying and disrespectful manner
2017-C28	Town Councillor	Complaint regarding the lack of courtesy and respect shown to others. Initial stages	Acting in a bullying and disrespectful manner
2017-C29	Town Councillor	Complaint regarding the lack of courtesy and respect shown to others. Initial stages	Acted in a bullying and disrespectful manner
2017-C30	EDDC Councillor	Complaint regarding the lack of courtesy and respect shown to others. Initial stages	Acted in a bullying and disrespectful manner

Complainants who have made more than 2 complaints

2017-C27/28/29

One complainant has made two sets of complaints arising out of two separate incidents against multiple councillors;

Incident One – Complaints 2017-C12/13/14

Incident Two – Complaints 2017-C16/17/18/19/20/21

Subject Members who are subject to more than 2 complaints

None

Agenda Item 9



Standards Committee

17 October 2017

Standards Committee

Forward Plan 2017/18

23 January 2018

Committee members to advise of any items for the Forward Plan.