



## East Devon Standards Regime

### **Report summary:**

This report follows on from the report to the October 2020 committee. It asks members to consider what approach it would like to adopt in relation to East Devon's Members' Code of Conduct in light of the adoption of the LGA Model Code of Conduct and other factors, including what members should be including on their register of interest and declarations at meetings.

The report also details some of the practicalities around the introduction of a Standards Assessment Sub Committee and steps required to achieve this and for a view to be taken on whether this should be progressed towards adoption at Annual Council in May 2021. It is noted that consideration will need to be given about whether there should be stakeholder engagement on any proposed changes.

The report also addresses the issue of sanctions, responsibilities in relation to them and the monitoring of compliance.

Finally, the report addresses the question of co-opted member voting rights in light of a recent question from one of the Town / Parish Council representatives.

### **Recommendation:**

#### **That the Committee:**

- 1. Note the content of the report in relation to the LGA's Model Code of Conduct and East Devon's Members' Code of Conduct and decide whether there should be a further review on the content of the Members' Code of Conduct with a view to possible adoption of a new or revised Code at the Annual Meeting in May 2021.**
- 2. Consider asking the Portfolio Holder for Democracy & Transparency to convene her portfolio team to give detailed consideration to what interests should be required to be disclosed on a Member's Register of Interest.**
- 3. Decide whether it wants to require the Monitoring Officer to bring a report to April's meeting with revised arrangements for dealing with complaints with a view to introducing a Standards Assessment Sub-Committee together with related revisions to the Constitution (including size and representation on the Standards Committee) and complaint handling procedure.**
- 4. Note that if members agree to having a further report proposing revised arrangements along the lines detailed in the report it is probable that the Monitoring Officer will be requesting to be provided with extra resources in the likely form of a Grade 7 post (whether full time or part time to be determined).**

5. The need to consider obtaining the views of stakeholders on the appropriateness of the Code of Conduct, any potential changes to be made in relation to it and the complaint process / procedures.
6. Confirms that where a training requirement is imposed as a sanction that the training requirement is to be specified and that the Committee will monitor compliance with sanctions through the complaint updates presented to Committee.
7. Note that co-opted members of the Standards Committee are precluded from voting on the committee or any sub-committee and consider whether it wishes to introduce an informal vote to obtain their views prior to the formal decision being taken.

**That the Committee recommends to Council:**

8. That the Council will not be responsible for paying for any training imposed by way of sanction and that the complaint process be amended to make this clear.

**Reason for recommendation:**

To appraise the Committee of the current position in relation to standards at East Devon and to enable the Committee to consider whether it wants to make any changes to the existing process or review other matters further

Officer: Henry Gordon Lennox, Monitoring Officer

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Portfolio(s) (check which apply):

- Climate Action
- Coast, Country and Environment
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Finance
- Policy Co-ordination and Regional Engagement
- Strategic Planning
- Sustainable Homes and Communities

**Financial implications:**

The report identifies additional staffing resource will be required if members approve the revised complaints process. This request will come in further report and if approved will be a recommendation to Council for a staffing budget. At a grade 7 post this has a salary range of between £29,577 and £32,234, with on costs the full cost will be between £38,450 and £41,904 for a year as a full time post. This resource is not included in the 2021/22 draft budget proposed.

**Legal implications:**

The legal position is detailed in the report and there are no further implications requiring comment.

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk

**Links to background information**

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

[LGA Model Code of Conduct](#)

[Local Government Ethical Standards – Committee on Standards in Public Life, Jan 2019](#)

[Adopted Member's Code of Conduct](#)

[East Riding of Yorkshire Council Constitution](#)

[East Riding of Yorkshire Standards Committee Assessment Sub-Committee webpage](#)

[Wiltshire Council – arrangements for dealing with alleged breaches of the Code of Conduct](#)

[Standards Hearing Sub Committee decision 12<sup>th</sup> October 2020](#)

[Transcript of Taylor v Honiton Town Council & Anor \[2016\]](#)

[EDDC Complaint procedure](#)

#### **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
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#### **Report in full**

1. The Standards Committee received a report on the East Devon Standards Regime at its meeting of 13<sup>th</sup> October 2020 which provided background on how the standards regime operates locally (report can be accessed from the background links). This report follows on from the decisions taken at that meeting and addresses matters raised and debated by the Committee or which have transpired subsequently and have a bearing on standards related matters.
2. In terms of outcomes from the meeting; the East Devon response to the correspondence from the Chairman of the Committee on Standards in Public Life has been sent, Council agreed to the Members' Code of Conduct being updated to revise the wording in relation to bullying and harassment and that the complaint procedure be modified in relation to publication of breach decision notices, both of which have been done. Council also agreed to the recruitment of two Independent Persons to be appointed at Annual Council, we are now looking to commence the recruitment process together with the recruitment for the Independent Representative vacancy. The revisions to the Member's Register of Interests form, specifically to provide a clear distinction between the member and a relevant person is work in progress. The remainder of the resolutions are picked up below.

[LGA Model Code of Conduct](#)

3. Members will recall from the October meeting that one of the recommendations from the Committee on Standards in Public Life report 'Local Government Ethical Standards' from January 2019 (see background links) was that a model code of conduct be developed by the Local Government Association. The report noted that at that time of writing this was work in progress. That work has now been completed and the LGA have produced and, through a decision of their Board on 3<sup>rd</sup> December 2020, have adopted the final model code (see background links). Unfortunately the LGA have already advised that there is a need for some further guidance to be produced to assist in interpreting the Code which they are working on.

4. There is no obligation on a Council to adopt the model code or if they do to adopt it in its entirety. It can be adopted and amended to suit local requirements or a Council can continue with its current Code. Our Members' Code of Conduct is contained in the background links to enable comparison.
5. Interestingly the LGA Model Code of Conduct does not address all of the recommendations from the Committee on Standards in Public Life (specifically a requirement that Members do not make malicious or trivial allegations for example) and on the whole there is a large degree of synergy with the content of our Code of Conduct. That said, what is determined to be a personal interest and should be contained on a Member's register of interest is reduced in comparison, although there is enhanced detail about when disclosures at meetings should occur and how to deal with them in terms of continued involvement at the meeting. It also has a slightly different approach to disclosure of gifts and hospitality in terms of an increased preclusion in accepting them, a threshold of £50 when compared to East Devon's of £25 and also that rejections of offers should also be included.
6. On 21<sup>st</sup> October 2020 Council debated a motion on 'Towards Gender Equality at East Devon District Council' and one of the resolutions was that Council '*refer to the Standards Committee the Fawcett Society's recommendation that new clauses in the Code of Conduct against sexism be introduced*'. The Code of Conduct now includes revised wording in relation to what constitutes harassment and also has a general obligation in terms of treating others with courtesy and respect but it does not have specific wording in relation to sexism.
7. This Committee, at the October meeting, also concluded that a further report be made on the possibility of implementing a 'personal and prejudicial' interests category in addition to disclosable pecuniary and personal interests. The Committee also resolved to consider whether changes could be made to the Register of Interests to require further information to be included. Members will appreciate that what is contained in the Register of Interest is as a consequence of the requirements of the Code of Conduct.
8. In light of the adoption by the LGA of the Model Code of Conduct, with the differences outlined above taken together with the decisions of Council and this Committee at the last meeting, it is considered that Members should determine whether they consider that the LGA Model Code of Conduct is something that they may wish to adopt and, if so, request a further detailed report specifically on this which will pick up the other points mentioned above. This would come to the next meeting in April and if there is to be a revised / new Code of Conduct then it could be included within the Constitutional amendments presented to Annual Council.
9. In light of the issue surrounding the content of the Register of Interest and link to the requirements of the Code of Conduct, it is recommended that the Committee consider how best to determine what the requirements of the Code of Conduct should be such that it is clear what information should be included on the Register. In this regard the Committee may wish to ask the Portfolio Holder for Democracy & Transparency to utilise her Portfolio Team for this purpose. In passing it should be noted that if Members do wish to see changes to the Code of Conduct / content of Register of Interests, that this may well impact on the delivery of the revised Register of Interests form.

#### Assessment Sub-Committee

10. At the meeting on 21<sup>st</sup> October the Committee resolved;

*'2. that further investigation be undertaken into the practicalities of setting up a Standards Assessment Sub Committee'*

*5. That consideration of whether to revise the standards process, the size of the Standards Committee and possible extra resourcing be deferred until a future meeting to be considered in relation to the report on a Standards Assessment Sub Committee'*

11. The Committee had considered the implementation of a Standards Assessment Sub Committee based on the East Riding of Yorkshire Council arrangements (see background links). While all of the Devon authorities use the same approach as East Devon in the sense of the Monitoring Officer acting as the initial arbiter without member involvement (there is a degree of local variation thereafter) and as does Cornwall Council and Somerset County Council, arrangements similar to East Riding are used at Wiltshire Council. Although perhaps a useful exercise, in the view of the Monitoring Officer this is not a decision that should be determined by benchmarking information. Crucially, it is about members deciding what process best suits their requirements in terms of how complaints are handled locally.
12. The fundamental difference in approach centres around the role of the Monitoring Officer. Under our current arrangements the Monitoring Officer carries out an initial assessment and, if the matter progresses, then determines whether there has been a breach. With an Assessment Sub-Committee outside of an initial consideration as to whether basic requirements are met (e.g. person was a councillor at the time and remains a member of a council within the administrative area, a code of conduct was in force and that if proven the allegation could amount to a breach of the code of conduct) the decision making on complaints sits with the members of the sub-committee. The specific detail of this process will vary and can be tailored to suit, but essentially the key question for members is whether they are happy with the current arrangements or whether they wish to take the decisions on all complaints that make it past the initial sift.
13. If the Council wants to adopt revised arrangements similar to East Riding of Yorkshire or Wiltshire Councils, then the following practicalities will need to be considered and addressed:
  - a. Constitutional changes to establish the Standards Assessment Sub-Committee. Logically it would sit under the main Standards Committee as the current Standards Hearing Sub-Committee does, which of itself would not therefore affect the political balancing requirements. It is likely that there will need to be rules precluding members sitting on both the Standards Assessment and Standards Hearing Sub-Committees in relation to the same case.
  - b. Consideration of increasing the size of the Standards Committee (both by District Council members and the Independent and Town / Parish Council Representatives) to ensure the effective running of the Assessment Sub-Committee and to avoid the possibility of not being able to ensure appropriate representation on the sub-committees (for reasons such as conflict or previous involvement). Given the interest shown in previous recruitment efforts it is not envisaged that this should be problematic. The previous report identified that East Riding of Yorkshire's Standards Committee comprised six district members and three each of town / parish and independent representatives. Both of their sub-committees had three district members and one each of the town / parish and independent representatives. These seem sensible and workable numbers although if the preclusion around sitting on both assessment and hearing sub-committees is agreed then it would make sense to have seven members from the District Council to ensure potential conflicts don't prevent being able to convene a hearing sub-committee.
  - c. Adopting a revised complaint process to reflect the change in approach to decision making.

- d. Adopting local assessment criteria (to guide Monitoring Officer and Assessment Sub-Committee).
  - e. If it is agreed to increase the size of the Standards Committee with additional Independent and Town / Parish Representatives, recruitment for these will need to be carried out.
14. In the view of the Monitoring, all of the above could be achieved with a view to the arrangements coming into effect at, or shortly after, Annual Council in May 2021. Subject to what follows, this Committee could recommend the changes to Council at its meeting on 13<sup>th</sup> April with Council considering them at the 21<sup>st</sup> April meeting. Council could agree the revised arrangements with all changes being agreed as part of adopting the Constitution and making of committee appointments in May.
15. It should be noted that the Best Practice Recommendations from the Committee on Standards in Public Life advised regularly seeking the views of the public, community, organisations and neighbouring authorities and East Devon's response confirmed we were committed to doing this in the near future. The Committee may therefore wish to consider the need to undertake a consultation / engagement exercise as part of this process (and also in relation to any potential revisions to the Code of Conduct).
16. Should members wish to progress the changes identified above then position in relation to resourcing remains as detailed in the previous report which is set out below for ease:
- 'Finally, the other aspect that the Committee will need to consider is resourcing. There is no doubt reading the process that there will be an increased burden in terms of the administration of the process not least as this will be a formal committee that Democratic Services co-ordinate but more specifically because of the need for the formal report writing process and investigation of complaints that is more involved initially than is currently the case. This can be seen by looking at East Ridings webpage for the Standards Committee Assessment Sub-Committee (see background links). As is noted above there has been an increase in the number of complaints needing to be dealt with. Dealing with these complaints has taken up a lot of time of the Monitoring Officer in terms of dealing with and progressing complaints. It is therefore requested that if there is a recommendation to Council to adopt a similar approach that there is also a recommendation for budget to recruit further support for the Monitoring Officer to enable the duties to be fulfilled. It should be noted, although no doubt Members are already aware, that the Council is under a legal obligation 'to provide [the Monitoring Officer] with such staff, accommodation and other resources as are, in his opinion, sufficient' for the performance of his duties. Is it considered that, subject to job evaluation, this should be no more than a Grade 7.'*
17. Members should therefore note that if the decision is to progress changes then the report to come back in April will include a request for extra resource to support the Monitoring Officer.

#### Sanctions from Standards process

18. The Standards Hearing Sub-Committee in October 2020 (see background links) determined that one of the sanctions should be that the subject member undertake training. It should be noted that the Sub-Committee did not specify what that training should be. In passing, Members may recall that East Devon was involved in High Court litigation (*Taylor v Honiton Town Council & Anor [2016]* – see background links) with the purpose of seeking confirmation that training as a sanction was lawful, which was indeed confirmed. In that case East Devon had recommended to Honiton Town Council that it should require Cllr Taylor to undertake training.
19. The question that has arisen now is whose responsibility it is to ensure that appropriate training is undertaken. This is because in the most recent case the training requirement was imposed on a District Councillor. There are two aspects to this specifically. Firstly, what training is

required? Secondly, ensuring that the sanction is complied with – this is wider than just training and goes to all sanctions. Specifically with respect to training, if the Sub-Committee require a member to undertake training, should the District Council pay for it?

20. The first aspect is relatively easily dealt with in that whoever imposes training as a sanction should be specific about what that training should cover or address. Whether the Monitoring Officer or Standards Hearing Sub-Committee (as things currently stand) the decision should be specific about the training requirement. In relation to the second aspect, the recommendation is that the Standards Committee should, as part of the complaint update, receive details about whether sanctions have been complied with and, if so, whether sufficiently. Bearing in mind that the procedure has now changed so that breach decisions are published, it is not considered that this should cause any difficulties although it will only relate to new complaints. In relation to training specifically, it is also recommended that where the training requirement cannot be delivered internally or at no-cost, then the responsibility for paying for the training should rest with the individual concerned and not the District Council. This is particularly pertinent in relation to decisions in respect of Town or Parish Councillors given the number within the district and therefore the potential cost exposure. Moreover there is the argument of why public money should be spent on what will in all likelihood be seen as punitive steps. If this position is agreed then it is recommended that the complaint procedure is updated to reflect this.

#### Co-optee voting rights

21. Cllr Bob Nelson (Town / Parish Council representative) has asked about the voting rights of co-optees. There are four co-optees on the Standards Committee, being the two Independent and two Town / Parish Council Representatives. All of the co-optees sit on the main committee and (again as things stand) one of each sit on the Standards Hearing Sub-Committee.
22. The Standards Committee is appointed by virtue of Section 102 of the Local Government Act 1972 and that section permits the appointment of non-Council members, also known as co-opted members, to any committee. This is the power used to appoint the co-optees to the Standards Committee. Unfortunately, Section 13 of the Local Government and Housing Act 1989 specifically precludes co-opted members on any committee appointed by virtue of Section 102, or any sub-committee appointed by it, from having voting rights either on the committee or sub-committee appointed by it. So unfortunately the co-opted members are not permitted to vote on either the Standards Committee or on the Standards Hearings Sub-Committee. This position is reflected in our current arrangements.
23. It is acknowledged however that the input of the co-opted members can be extremely important and their views should be respected. If members were so minded it would be possible to introduce an approach of 'informal voting'. This would mean the committee taking an initial informal vote including the co-optees (which could be minuted) so that the co-optees are able to demonstrate their views particularly to the Council members. There would then be a second formal vote which would be the formal decision of the voting members of the committee. Naturally, voting members would not be bound by the informal vote and would be free to change the way they vote in the formal decision, not least because of having seen how the co-optees voted in the informal vote. While it might be permissible for an informal vote to take place when the Standards Hearing Sub-Committee is retired, it should be noted keeping a record of this would not be appropriate and care would need to be taken to ensure that the rules around natural justice were not infringed. This would require further consideration and therefore it is considered that if agreed the approach should initially be limited to the main Standards Committee.
24. An approach such as set out above wouldn't require any formal agreement beyond the Standards Committee agreeing it as a way forward.