

Report to: Council



Date of Meeting 28th April 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Standards Complaints Procedure

Report summary:

To seek Council's approval to a revised complaint process for dealing with complaints that Members have breached the Member's Code of Conduct together with related revisions to the Constitution.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Council;

1. **Adopts the revised Member Code of Conduct Complaints Procedure (Annex 2) and agrees to the Constitutional amendments required to implement this with effect from Annual Council;**
2. **Thanks Alison Willan for her service to the Council during her 9 year period as the Independent Person.**

Reason for recommendation:

Over its past few meetings the Standards Committee has been considering revising the process for considering complaints that Members have breached the Code of Conduct. The background information section contains the links to the meetings of 12th October 2020 and 19th January 2021 together with our existing procedure.

The most recent Standards Committee met on 23rd April 2021 – the link to the agenda is contained in the background links – having been postponed from 12th April (following the death of HRH Duke of Edinburgh) and 19th April (due to concerns over the issuing of agendas during the mourning period). The meeting of 23rd April 2021 was called at short notice. The reason being that were the Committee to make recommendations to Council to revise the membership of the Standards Committee, it was prudent to obtain Council's approval to this ahead of preparation for Annual Council. Unfortunately the late calling of the meeting meant that three voting members of the Committee were unable to attend and therefore while the meeting went ahead it was technically inquorate.

The intention was for the minutes from the Standards Committee to be added to the Council agenda as a late item. The meeting did consider the complaints procedure and did make recommendations to Council. However, given that the meeting was inquorate the minutes can't be presented. The draft minutes from the committee are appended to this report and the recommendations above are based on the Committee's views. While inquorate the meeting was attended by the Independent Representative and one of the Town / Parish Representatives who gave their views to the Standards Committee.

There were a number of revisions required to the procedure which have been made and the updated procedure is attached at Annex 2. The Constitutional changes required are detailed in paragraph 8 of the report to the 23rd April meeting and are summarised below;

- a. The specific arrangements for the Standards Committee (Article 9 and its Terms of Reference (Section 2 of Part 3 of the Constitution)) be revised to include a Standards Assessment Sub Committee and to give more detail on its role. It will comprise 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. The Hearings Sub-Committee Terms of Reference be 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. 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).

Officer: Henry Gordon Lennox, Monitoring Officer

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 – 13th October 2020](#)

[Standards Committee – 19th January 2021](#)

[Standards Committee – 23rd April 2021](#)

[EDDC's current 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

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.

ANNEX 1 – Draft minutes from inquorate Standards Committee 23rd April 2021

EAST DEVON DISTRICT COUNCIL

Minutes of the meeting of Standards Committee held at Online via the zoom app on 23 April 2021

Attendance list at end of document

The meeting started at 10.00 am and ended at 11.20 am

35 Public speaking

There were no members of the public registered to speak.

36 Minutes of the previous meeting held on 19 January 2021

The minutes of the meeting held on the 19 January 2021 were agreed as a correct record.

37 Declarations of interest

40. East Devon District Council Standards Regime update.

Councillor Eleanor Rylance, Personal, member of Broadclyst Parish Council.

40. East Devon District Council Standards Regime update.

Councillor Pauline Stott, Personal, Member of Exmouth Town Council.

38 Matters of urgency

There were no matters of urgency.

39 Confidential/exempt item(s)

There were no confidential/exempt items.

40 East Devon District Council Standards Regime update

The committee considered the report of the Monitoring Officer, which set out an update on the Council's standards regime. The report set out:

- The possible arrangements for an introduction of a Standards Assessment Sub-Committee;
- Review of code of conduct;
- Deferral of training costs decision;
- Recruitment of co-opted Independent Representative and Independent Person.

The Monitoring officer outlined that the composite procedure document was included in the agenda papers, and that it introduced member assessment early in the process.

The suggested new procedure takes on board the Best Practice Recommendations from the Committee for Standards in Public Life. Any revised procedure would necessitate Constitutional changes to include reference to a Standards Assessment Sub Committee and its role; and to increase the size of the Standards Committee from five members to seven.

There would also be a need to make additional appointments to the two co-opted positions, specifically the Parish representative and Independent representative.

The Monitoring Officer pointed out that there were two changes needing to be made to the flowchart in Appendix 1. Reference to Stage 6 in a box referring to Standards Hearings Sub-Committee should be amended to Stage 5, and Stage 1 should include reference to informal resolution as an option.

The recommendations are to be presented to Council for approval as a new process. Cabinet had recommended an additional lawyer be appointed to support the work of the Monitoring Officer in dealing with complaints, so the Standards Committee need to endorse the recommendation before it goes to Council.

The procedure as written advocates that Members pay for their own training if imposed by way of a sanction, but this had not been formally decided. The committee debated where the responsibility lay for payment of training.

The report outlined the work undertaken to recruit to the vacancies of co-opted representatives. The Chair confirmed that interviews had been held this week to recruit, so the Committee would soon have two new members sitting on it.

This meeting was the last to be attended by Alison Willan as the Independent Person, her tenure extended by an additional year due to the pandemic. The Standards Committee thanked Alison for her many years of service (nine) and the amazing contribution that she had made. She had also offered to meet with the new representatives to explain the role required of them.

Discussion included the following points;

- Possible rotation of members on the Standards Committee in future balanced against the building up of knowledge and experience gained over time.
- Better to start a new procedure, if it is approved by Council, with a set membership to embed the process, with the expectation that changes may be required and that the situation is reviewed in future.
- Political Groups are entitled to appoint representatives to committees, so rotation by thirds may prove difficult.
- On page 19, 'information' needs to be replaced by 'informal' resolution.
- On page 21, the reference to an external investigator, is to retain the option and flexibility in certain circumstances to use other parties, such as Monitoring Officers in other Councils if it proved difficult to progress matters in-house. The flexibility is to be retained but without any intention of so doing unless proven to be necessary.
- On page 22, clarification was given in relation to the fact that decision notices will be published in cases of a breach, but in cases of a finding of no breach the subject Member has a choice of whether the decision is published or not. At stage 3, the finding of the Monitoring Officer will already be published.
- On page 26, paragraph k, the Monitoring Officer will provide additional wording to clarify that there should be no actions which impede the democratic process, or the ability of Members to undertake their Council duties.
- In relation to recommendation 3 in the report relating to training which may be imposed as a sanction;
 - A Council cannot be required to pay for training

- A Member cannot be forced to pay for training
- There is no training budget available for the purposes of implementing sanctions imposed by Standards Committee Hearings
- Town & Parish Councils are unlikely to have budgets for such purposes
- Public expectations will not necessarily be that public money is used to provide training for Members imposed as a sanction, since the Standards Regime is essentially a punitive one
- Money cannot be deducted from a Member's Allowance for training currently

Following discussion the Monitoring Officer will undertake some benchmarking with other Councils in relation to whether training is provided under the circumstances referred to, and to provide wording which will include the option for this Council to pay for training.

In relation to the Review of the Code of Conduct, the Monitoring Officer said that he was awaiting the nomination from one of the Political Groups to the proposed Working Party, but that Guidance was also still awaited from the Local Government Association (LGA) and so it was not necessary to adopt the new Code immediately. Committee members agreed that it would be included on the Committee's Future Work Programme, to be addressed after the Elections and Annual Council in May.

At the conclusion of debate Cllr Rylance proposed and Cllr Gardner seconded Recommendation 1, and following a vote this was carried.

The Chair then moved Recommendation 2, and following a vote this was carried.

The Chair moved Recommendation 3, and following a vote, this was carried.

Already raised at the start of the meeting, the Chair moved Recommendation 4, and following a vote, this was carried.

RESOLVED TO RECOMMEND to Council

- 1. that the necessary Constitutional amendments are agreed to adopt and implement the proposed procedure for handling Code of Conduct complaints, subject to the amendments agreed;**
- 2. that the recommendation of Cabinet of 17 March 2021 to recruit an additional lawyer to support the work of the Monitoring Officer be supported;**
- 3. that the responsibility for any training imposed by way of sanction determined, and as set out in the revised complaint procedure be adopted.**
- 4. To thank Alison Willan for her service to the Council during her 9 year period as the Independent Person.**

41 Code of Conduct Complaints update 1 January 2020 - 31 December 2020

The committee considered the report of the Monitoring Officer, which provided an update on Code related cases received for the last calendar year.

The Monitoring Officer referred to the backlog of cases, and that the Committee would receive updates until all cases were closed. Some cases would run for some time given their nature and complexity, and there are a number of complicating factors which provide reasons for delays, including the length of time it takes to receive information required from those involved. If Council approves the new procedure, it will then become operational after

Annual Council and has rigorous timescales to adhere to, and time will be set aside to clear cases which are outstanding.

The Monitoring Officer also outlined how he would be refining the reporting of complaints to Committee in future, to include identifying the source of the complaint in general terms, for example from a Member, member of the public or other, and to distinguishing between closed and outstanding cases.

Other points made during discussion included the need to consider Member-Officer relations; training after elections of Members in how to handle situations where they might disagree with officers, such as at Planning Committees; and how to resolve issues of understanding informally between Members and Officers outside of formal meetings.

RESOLVED that the report be noted.

42 **Code of Conduct Complaints update 1 January 2021 - 31 March 2021**

The Committee considered the report of the Monitoring Officer on Code related cases for the first quarter of 2021.

The Monitoring Officer pointed out that the first nine complaints of the report related to EDDC councillors, which was a situation he had not experienced in six years of working for the Council and was not good for the public to see.

Following discussion on the Member-Officer Protocols, the need for training and a more prescriptive approach being required to guide communications between Members and Members, and Members and Officers which included the use of social media the following recommendations were proposed.

RECOMMENDED;

That the Standards Committee;

- 1) Request that the Monitoring Officer reviews the Member–Officer Protocols
- 2) Request that Group Leaders convene a meeting in the next Council year to consider ways to temper the behaviours between Members and Members, and Members and Officers, including training and a protocol into the use of social media which may reduce the number of complaints

The Chair moved the recommendations and following a vote they were carried.

RESOLVED that;

- 1) **the report of the Monitoring Officer be noted.**
- 2) **the Monitoring Officer reviews the Member–Officer Protocols.**
- 3) **Group Leaders convene a meeting in the next Council year to consider ways to temper the behaviours between Members and Members, and Members and Officers, including training and a protocol into the use of social media which may reduce the number of complaints.**

Attendance List

Councillors present:

C Gardner (Chair)

E Rylance

Co-opted Members present:

Mr Martin Goscomb

Cllr P Stott

Councillors also present (for some or all the meeting)

A Moulding

P Arnott

Officers in attendance:

Henry Gordon Lennox, Strategic Lead Governance and Licensing (and Monitoring Officer)

Susan Howl, Democratic Services Manager

Amanda Coombes, Democratic Services Officer

Councillor apologies:

D Barrow

P Twiss

S Bond

B Nelson

Chairman

Date:

ANNEX 2 – Standards Process