

Report to: Standards Committee



Date of Meeting 14th September 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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 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 the current position in relation to code of conduct complaints

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That the Standards Committee;

- (1) Determine whether to recommend to Council a revised procedure (Annex 1) for dealing with Code of Conduct complaints and related Constitutional amendments to implement it.**
- (2) Recommend to Council that any training requirement imposed by way of sanction against a District Councillor be paid for by the District Council and that a budget of £5000 be provided for this purpose.**

Reason for recommendation:

To ensure an appropriate standards complaint process is in place.

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](#)

[EDDC's current complaint procedure](#)

[Minutes from Cabinet 17th March 2021](#)

[Minutes from Cabinet 14th July 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 member based assessment of complaints. Such an approach was considered at a meeting of the Standards Committee in April 2021, which unfortunately was inquorate and therefore couldn't make any recommendations to Council to enable due consideration prior to Annual Council.

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 complaints. 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. While the size of the Standards Committee has already been increased to 7 District Council members (from 5), it is recommended that there should be 3 Independent Representatives (from 2) and 3 Town / Parish Representatives (from 2).
9. Should it be agreed to recommend the above changes and October's Council meeting confirms the recommendation then the final detail, including the revisions to the Constitution, will be brought back to December's Council meeting with a view to the new procedure taking effect from 1st January 2022 and the changes to the Constitution to give effect to this being brought in ahead of this date.

Review of Code of Conduct and Protocol for relationships between Members and Officers

10. 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.*

11. The Monitoring Officer has now been able to constitute the Working Group and this Group met on 13th August to commence work on a review of the Code of Conduct against the LGA's model code of conduct. Good progress was made at the first meeting and a further meeting is being organised to continue the process. It is expected that the Working Group will be able to make recommendations to the next Standards Committee meeting.

12. It is also considered that the Working Group should take on the initial role of reviewing the Protocol for relationships between Member and Officers, a piece of work which seems to be generally accepted as being necessary and which would fall within the remit of the Standards Committee. At its 14th July meeting Cabinet considered a report on developing member and staff relationships and (amongst other things) resolved;

2. Note that the Standards Working Group was reviewing the Council's Members' Code of Conduct and request that the Group give specific consideration to the content of the report when conducting their review.

13. An informal agreement to this from this Committee would be helpful prior to the next meeting of the Working Group.

Paying for training costs

14. At the meeting on 19th 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 Working Group at its meeting on 13th August, considered that where a training sanction is imposed in relation to a District Councillor that the District Council should pay for it. The procedure at Annex 1 has been updated to reflect this (see paragraph 8.7.5) and the Committee is asked to make a recommendation to Council for a budget to be provided for this purpose.

16. Irrespective of whether the revised procedure is recommended for adoption, it is recommended that a budget of £5000 be provided to pay for any training imposed by way of sanction to action the recommendation from the Working Group.

Complaint update

17. Attached at Annex 2 & 3 are the complaint update tables for 20/21 and 21/22 respectively. Members are asked to note the updates.

Financial implications:

Financial implications are outlined in the report. A request is made of an additional annual budget of £5k.

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.