

Report to: Council



Date of Meeting 8th December 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Governance arrangements

Report summary:

To seek Council's approval to changes to the Constitution to bring in revised arrangements for dealing with Code of Conduct complaints as well as the makeup of the Audit & Governance Committee. For Council to appoint Councillors to two positions that are being vacated.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Council;

1. Agree the changes to the Constitution as detailed in red in Appendix 1 in relation to the Standards Committee and Audit & Governance Committee.
2. Agree that the new Code of Conduct Procedure will be of effect from 1st January 2022 and apply to complaints submitted after that date.
3. Vote on the appointments identified in paragraph 11, namely; the Planning Committee and Exmouth Queens Drive Community Interest Company.

Reason for recommendation:

To ensure the Council's governance arrangements are up to date and relevant.

Officer: Henry Gordon Lennox, Monitoring Officer

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

[Council 20th October 2021](#)

[Standards 14th September 2021](#)

[Revised complaint procedure](#)

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Standards

1. The Standards Committee have endorsed and Council accepted adopting a revised procedure for dealing with complaints that members (both district and town and parish) have breached the Code of Conduct at their 14th September 2021 and 20th October 2021 meetings respectively.
2. The revised procedure necessitates a number of changes to the constitution which in summary are;
 - a. Revision to Article 9 and the Terms of Reference of the Standards Committee to incorporate reference to the Standards Assessment Sub Committee and to give more detail on its role. This includes a change to the makeup of the Committee in accordance with the report to Standards which is to increase the Independent Member and Parish Member numbers from 2 to 3.
 - b. That 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.
3. Appendix 1 shows the changes to Article 9 and the Terms of References of the Constitution that it is advised are made. The changes are shown in red.
4. It is recommended that the changes are approved and that Council agree that the revised procedure for dealing with Code of Conduct matters takes effect from 1st January 2022 and applies to complaints submitted after that date. Complaints already submitted will be dealt with in accordance with the process in place at the time they were submitted.
5. It will be necessary to recruit an additional Independent Member and Parish Member and this process will be initiated if Council agree the revisions detailed in Appendix 1.
6. Once confirmed, the Town and Parish Councils will be notified of the change and provided with a copy of the revised procedure. The Council's website will also be updated.

Audit & Governance

7. At its meeting on 26th November 2020 the Audit and Governance Committee considered the Redmond Review of Local Authority Financial Reporting and Audit and recommended that;

'the appointment of a suitably qualified, independent member the Audit and Governance Committee to support elected representatives in scrutinising local authority finances.'

8. Council agreed this at its 24th February 2021 meeting. In order to permit this requirement the Constitution needs to be revised to change the Terms of Reference of the Committee. It is therefore proposed that a form of the above wording is inserted in to the Terms of Reference (Part 2, Section 2). The suggested wording is detailed in Appendix 1.

9. It is understood that recruitment will be progressed following approval of the change to the Constitution.

Councillor appointments

10. Cllr Chris Wright is stepping down from the Planning Committee. The Independent Group do not wish to put anyone forward to take their allocated seat on the committee. In accordance with Regulation 15 of the Local Government (Committees and Political Groups) Regulations 1990 where a political group does not wish to fill a seat allocated to it, then it is for the authority to make such appointment as it sees fit.

11. Cllr Sam Hawkins is stepping down from being a Director of the Exmouth Queens Drive Community Interest Company (Sideshore) and therefore a replacement will need to be appointed by Council.

12. The Groups have been asked for nominations to fill the positions and the following nominees have been put forward and Council will be asked to vote to approve appointments;

Planning Committee (**one vacancy**)

Alasdair Bruce (Conservative Group)

Brenda Taylor (Democratic Alliance Group)

Exmouth Queens Drive Community Interest Company (**one vacancy**)

Maddy Chapman (Conservative Group)

Financial implications:

There are no financial implications arising.

Legal implications:

The legal position is detailed in the report, otherwise there are no legal implications requiring comment.

Appendix 1

Article 9: Standards Committee

9.1 Standards Committee

9.1.1 The Council meeting will establish a Standards Committee and an Assessment Sub Committee and a Hearings Sub Committee. The Standards Committee will meet four times each year and is subject to the political balance rules unless full Council has unanimously waived this requirement.

9.2 Composition

9.2.1 **Membership:** The membership of the full Standards Committee shall comprise the Chair of the Council, six Councillors, ~~two~~ ~~three~~ non-voting Independent Members and ~~two~~ ~~three~~ non-voting Parish Council Members; One member of the Cabinet may be a member of the Committee (but excluding the Leader at all times); The independent Members shall be persons who are not Councillors or officers of the Council or any other body having a standards committee; The Parish Members shall be a member of a Town or Parish Council wholly or mainly in the Council's area and who shall not be Councillors or officers of the Council.

9.2.2 **Independent Members:** An independent Member's appointment shall normally be for a term of four years, and may be extended by the Council for up to a further four years.

9.2.3 **Parish Members:** A Parish Member's appointment shall normally be for a term of four years, and may be extended by the Council for up to a further four years. A Parish Member's appointment shall automatically determine if s/he ceases to be a Member of the Town or Parish Council wholly or mainly in the Council's area.

9.2.4 **Chairing the Committee:** The Chair of the Council shall be the Chair.

9.2.5 ~~The composition of the Assessment Sub Committee shall be three district councillors plus an Independent Member and a Parish Member, drawn by the Monitoring Officer from the Standards Committee, and one of the Independent Persons. The Independent Member, Parish Member and Independent Person shall be non-voting.~~

9.2.6 The composition of the Hearings Sub Committee shall be three district councillors plus an Independent Member and a Parish Member, drawn by the Monitoring Officer from the Standards Committee as required for each hearing. The Independent Member and Parish Member shall be non-voting.

9.2.67 **Quorum:** The quorum for meetings of ~~both~~ the Committee, ~~Assessment Sub Committee~~ and Hearings Sub Committees is specified in the Terms of Reference (Part 3 Section 2) but shall comprise at least three Members with voting rights.

9.3 The role and function of the Standards Committee

9.3.1 Discharging the Council's standards related functions under Part III of the Local Government Act 2000 and the Localism Act 2011.

9.3.2 Promoting and maintaining high standards of conduct by Councillors, co-opted Members and Council officers.

9.3.3 Considering reports referred to the Committee by the monitoring officer and making recommendations concerning the governance and ethical standards of the Council.

9.3.4 Assisting the Councillors and any co-opted Members to observe the Council's Code of Conduct for Members.

9.3.5 Advising the Council on the adoption or revision of the Council's Code of Conduct for Members; a Code for officers, and any related codes or protocols.

9.3.6 Monitoring the operation of the Council's Code of Conduct for Members.

9.3.7 Advising, training or arranging to train Councillors on matters relating to the Council's Code of Conduct.

9.3.8 To grant dispensations to Councillors from requirements relating to interests set out in the Council's Code of Conduct for Members [so far as not delegated to the Monitoring Officer] where:

- a) the committee considers that the dispensation is in the interests of persons living in the authority's area; or
- b) without a dispensation, each Member of the Cabinet would be unable to participate in the matter; or
- c) the committee considers that it is otherwise appropriate to grant a dispensation.

- 9.3.9 To discharge statutory functions relating to compliance with the Code of Conduct for Parish Councils wholly or mainly in its area and the Members of those Parish Councils.
- 9.3.10 To appoint sub-committees to undertake these functions.
- 9.4 The role and function of the Assessment Sub Committee**
- 9.4.1 To receive reports from the Monitoring Officer on valid complaints to determine the appropriate action to be taken.
- 9.4.2 The Assessment Sub-Committee will consider the Monitoring Officer's report and, having regard to the 'Local Assessment Criteria' and the views of the Independent Person, it will take a decision on how a complaint progresses, on the basis of one or more of the following options:
- (a) No further action
 - (b) Monitoring Officer investigation
 - (c) Other action
 - (d) Referral to the Police
 - (e) Referral to Independent Investigation
- 9.4.3 The Assessment Sub Committee may also grant dispensations in the same circumstances as the Standards Committee.
- 9.5 The role and function of the Hearings Sub Committee**
- 9.45.1 To conduct hearings into allegations of breach of the Code of Conduct following an investigation report referred by the Monitoring Officer.
- 9.45.2 The Committee will make findings of fact and determine whether there has been any breach of the Code of Conduct, the Council's Standing Orders, or Financial Regulations.
- 9.45.3 Where appropriate to impose sanctions on a Member found to have failed to comply with the Code of Conduct including:
- a) censuring or reprimanding the Member;
 - b) publishing its findings in respect of the Member's conduct;
 - c) reporting its findings to Council [or to the Parish Council] for information or sanctions;
 - d) recommending to the Member's Group Leader (or in the case of un-grouped Members, recommending to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - e) recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - f) recommending to Council that the Member be replaced as Executive Leader;
 - g) instructing the Monitoring Officer to [or recommend that the Parish Council] arrange training for the Member;
 - h) removing [or recommending to the Parish Council that the Member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish Council];
 - i) withdrawing [or recommend to the Parish Council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
 - j) excluding [or recommending that the Parish Council exclude] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 9.45.4 The Hearings Sub Committee may also grant dispensations in the same circumstances as the Standards Committee.

Section 2 of Part 3

2.6. Standards Committee

- 2.6.1. **Membership:** ~~131 members Councillors~~ comprising Chair of Council (who will be the Chair) and 6 District councillors (subject to the rules relating to political balance / proportionality), ~~32~~ non-voting Parish Councillor representatives and ~~32~~ non-voting independent members. There shall be substitute members for

each political group of the Council entitled to a seat to ensure flexibility in case of any conflict of interest and to ensure political balance.

- 2.6.2. **Meetings:** 4 times per year (or more frequently as appropriate).
- 2.6.3. **Quorum:** 4 committee members (of which three shall be Members with voting rights).
- 2.6.4. **Terms of Reference:** All elected Members (and any co-opted members) are subject to the Code of Conduct for Councillors. The Standards Committee will exercise the roles and functions referred to in Article 9 of the Constitution. It is a committee that is subject to the procedural rules of the Local Government Act 1972 and shall be politically balanced unless full Council votes to the contrary unanimously. In addition the Standards Committee will:
- (a) Advise on the discretionary elements of the Local Code; including monitoring and updating.
 - (b) Advise on the implementation of the Local Code, including the training of Members in matters of conduct and advice to Members on such issues as the treatment of Disclosable Pecuniary Interests and personal interests and more general conduct issues.
 - (c) To the extent allowed by law make arrangements for Members to receive dispensations to speak on, or participate in, matters in which they have interests.
 - (d) Appoint such Sub Committees (including Membership thereof) as appropriate to discharge the functions.
- 2.6.5. The Committee will support and be supported by the Council's Monitoring Officer, reinforcing his/her informal role of helping to maintain standards of conduct by encouragement, advice and persuasion.
- 2.6.6. Council will appoint at least one Independent Person to discharge the relevant functions under the Localism Act 2011 and the Council's internal procedures.
- 2.6.7. The Council will appoint members of the Standards Committee at its annual meeting.
- 2.6.8. The Committee will report directly to the Council, and reports to Council shall be under the name of the Chair. The Committee shall receive guidance from the Monitoring Officer or his Deputy. The Committee may make recommendations to the Council on changes to the Code of Conduct, procedure, or guidelines relating to the conduct of Members.
- 2.6.9. **Assessment Sub Committee**
- 2.6.10 **Membership:** 3 Councillors drawn as necessary from the Standards Committee, and one non-voting Independent Member, one non-voting Parish Member and one Independent Person. **The Chair and membership to be rotated and it can be called on an ad hoc basis.**
- 2.6.11 **Quorum:** 3 District Councillors.
- 2.6.12 **Terms of Reference:** To consider investigation reports referred to the sub-committee by the Monitoring Officer concerning complaints of breaches of the Code by District councillors or Parish councillors within East Devon.

Hearings Sub Committee

- 2.6.10. **Membership:** 3 Councillors drawn as necessary from the Standards Committee, and one non-voting independent Member, and one non-voting Parish Council Member. **The membership shall be rotated and it can be called on an ad hoc basis. The Chair of Council shall Chair if sitting. The membership 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.**
- 2.6.11. **Quorum:** 3 District Councillors.
- 2.6.12. **Terms of Reference:** To consider investigation reports referred to the sub-committee by the Monitoring Officer concerning complaints of breaches of the Code by District councillors or Parish councillors within East Devon.

2.9. Audit and Governance Committee

- 2.9.1. **Membership:** 10 Councillors (subject to the rules relating to political balance / proportionality) and **a co-opted non-voting Independent Member who shall be suitably qualified to support elected representatives in scrutinising local authority finances.**
- 2.9.2. **Meetings:** 5 per year (or more frequently as required).

2.9.3. Quorum: 3.

2.9.4. Terms of Reference: The purpose of the Audit and Governance Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority's financial and non-financial performance to the extent it affects the authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process. The Committee shall:

- a) Consider the effectiveness of the authority's risk management arrangements, the control environment and associated anti-fraud and anti-corruption arrangements.
- b) Seek assurance that action is being taken on risk related issues identified by auditors and inspectors.
- c) Be satisfied that the authority's assurance statements, including the Statement of Internal Control, properly reflect the risk environment and any actions required to improve it.
- d) Following review of the effectiveness of the system of internal control, and in consultation with Cabinet approve the annual governance assurance statement.
- e) Approve internal audit's strategy, annual work plan and monitor performance.
- f) Review a summary of internal audit reports and the main issues arising, and seek assurance that action has been taken where necessary.
- g) Receive the annual report of internal audit and review the effectiveness of internal audit.
- h) Consider those reports of external audit and inspection agencies not the province of the Cabinet in addition to those referred to it by the Cabinet.
- i) The monitoring of the use of the Regulation of Investigatory Powers Act.
- j) Ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.
- k) Review the external auditor's opinion and reports to Members, and monitor management action in response to issues raised by external audit.
- l) Approving the Council's annual statement of accounts, income and expenditure and balance sheet or record of receipts and payments.
- m) To receive any issue referred to it by the Chief Executive, Monitoring Officer, Strategic Lead (Finance), or any Council body.