

Report to: Council



Date of Meeting 28 September 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Former Councillor and Honorary Alderman J. Humphreys

Report summary:

At its meeting of 3rd March 2022 - [Printed minutes 03rd-Mar-2022 18.00 Scrutiny Committee.pdf \(eastdevon.gov.uk\)](#) – the Scrutiny Committee made recommendations to Council in relation to the appointment of Honorary Alderman. At its meeting on the 20th April 2022 when considering these minutes, Council accepted a proposal from Cllr Bailey, that the Chief Executive provides a report to Cabinet at the earliest opportunity to enable it to consider commissioning an independent investigation or enquiry by an appropriate independent body; [Printed minutes 20th-Apr-2022 18.00 Council.pdf \(eastdevon.gov.uk\)](#) . I have taken external legal advice about this proposal and although originally scheduled for the July Cabinet meeting, the original version of this report was briefly considered at the September meeting where it was recommended that an updated report be provided to this Council meeting.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

1. That Council note the advice of Mr Peter Oldham Q.C. set out in Appendix A to this report
2. That Council consider whether, in the light of the advice received and the updated contents of this report, it does or does not wish to commission an independent investigation or enquiry into this matter.
3. That if Council does wish to commission an independent investigation or enquiry into this matter it considers the following 2 options: **Either**
 - A) 'This Council hereby commissions Verita to carry out an independent investigation in accordance with Verita's proposal attached ("the Investigation") and instructs Simon Davey the Strategic Lead for Finance immediately to complete (or authorise completion of) the contract and any necessary paperwork with Verita;
Approves a budget of up to £45,000 (exc VAT) for the Investigation.
Approves an exemption to the Council's standing orders that would normally require quotations to be obtained from three suppliers to enable the Council to appoint Verita given their experience and expertise in this highly specialist area.
Requests that Verita treats Simon Davey together with Cllr Ian Thomas Chair of East Devon District Council and Cllr Sarah Jackson the Portfolio Holder for Democracy and Transparency and Cllr Jess Bailey as the relevant contacts for the purposes of any queries or day to day matters relating to the Investigation and who shall in the first instance receive Verita's report following completion of the Investigation'; **Or**
 - B) That Council approves a budget of £45,000 and that a Legal 500 recommended firm of Solicitors is appointed in accordance with contract standing orders to undertake an

investigation and report which will provide the Council with a full understanding of the legal issues and implications arising from the investigation, prosecution and conviction of John Humphreys as far as it relates to the role of EDDC and its officers and members and that delegated authority be given to one of the statutory officers, in consultation with the Portfolio Holders for Council & Corporate Co-ordination and Democracy, Transparency & Communications, to progress the investigation.

4. That the Council agrees to progress Recommendations A – G from the Scrutiny Committee meeting of 3rd March 2022 with the process to be agreed to include a requirement that requires all political groups and/or individual councillors to confirm that where a councillor is nominated or appointed to a position of responsibility or honorary title that a process of due diligence has been carried out such that the reputation of the Council is not likely to be adversely affected if the nomination or appointment is made. Council accept that the finally agreed process shall be included within the Constitution.
5. That the Council commission the Local Government Association to prepare a best practice guidance note for this Council (and the various town and parish councils within the district) addressing the safeguarding obligations of councils and councillors with specific regard to the actions of councillors as ward councillors and that Council approve a budget of £5,000 to facilitate this work
6. That the Council lobby local MPs and also the Local Government Association with a view to a Private Members Bill being introduced to Parliament, the effect of which would be :
 - a) That where a councillor is arrested the Police are under a positive obligation to formally notify the relevant council of the fact of the arrest, and
 - b) That the councillor, if found guilty, is forthwith requested to resign the role of councillor.

Reason for recommendation:

To recommend a way in which the Council can ensure the circumstances leading to the appointment of J. Humphreys as an Honorary Alderman are not repeated and the concerns expressed in the recent Council debate are addressed.

Officer: Mark Williams CEO

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 Refer to hyperlinks in the report

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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Report in full

1. At its meeting on the 20th April, Council debated a proposal that was tabled on the night and on the basis of that proposal I sought legal advice as to how the Cabinet/Council might best take forward the intent behind that proposal.
2. A copy of the Advice received is attached to this report as Appendix A and members are referred to its contents and the advice set out in response to the questions posed. As part of the preparation for obtaining the advice I did seek the views and opinions of the Group Leaders. At the meeting of Council I can clarify any queries there may be regarding the contents of the advice which is clear, cogent and answers the concerns and questions posed.
3. Regard should also be had to my report to the Scrutiny Committee on the 3rd March this year and in particular the information provided about the procedure the Council adopted for the appointment of honorary alderman, ([\(Public Pack\)Agenda Document for Scrutiny Committee, 03/03/2022 18:00 \(eastdevon.gov.uk\)](#)). I would also refer to emails sent to all councillors on the 11th and 12th May 2022 (see Appendix B) which confirms the limited extent of information that was understood to be in the public domain at all material times. In this report I include a recommendation to Council to consider regarding the obligation of political groups and councillors regarding their nomination to positions of responsibility in the Council which seeks to address this issue.
4. The circumstances leading to the concerns expressed by councillors at the Council meeting in April arose from acts of sexual violence committed by an individual who went onto become a district councillor, a town councillor and also for a brief period an honorary alderman.
5. According to rapecrisis.org.uk ([Statistics about sexual violence and abuse | Rape Crisis England & Wales](#)) circa, 1 in 5 women have been raped or sexually assaulted as an adult; 1 in 6 children have been sexually abused; and 1 in 20 men have been raped or sexually abused as an adult. If we relate this to the district, then according to the ONS 2020 mid year population estimates (latest data set) the population of males is 71,415, women is 76,662 and children aged 0-16 is 25,075. So that would be just over 15,000 women, just over 4,000 children and nearly 4,000 men all affected by sexual violence or abuse in East Devon.
6. Where a complaint is made against an individual of sexual violence, the legal and policy framework is complex and involved. This involves not only the Police but also the Council (and other public sector organisations) in a variety of considerations which ultimately seek to balance out the competing rights of victim and accused. A recent [BBC article](#) involving Sir Cliff Richard which references the limitations that the Police are subject to in terms of naming individuals under investigation/the subject of an arrest summarises these considerations. The following two links [document 1](#) and [document 2](#) are copies of relevant police procedural guidance regarding the disclosure of information relating to investigations and arrests. It should be noted that one of these is revoked and the other was approved prior to the enhanced requirements of the Data Protection Act 2018 being in force and this is particularly so in relation to the handling of criminal offence data.
7. From my officers perspective the safeguarding obligations referred to in Counsel's advice are understood and are the subject of regular training. In accordance with the adopted joint Devon District Councils policy ([Devon District Councils Joint Safeguarding Policy - East Devon](#)) it is the case that where appropriate, referrals are made to the County Council where concerns are raised and need to be assessed by social services (reference is made to the Devon Safeguarding Children Board and the LADO procedure). Most frequently this

happens in the context of our housing service. It is important however that safeguarding training for both councilors and officers is regularly reviewed and updated (including those aspects that are considered to be mandatory). This work is already in hand and hence is not the subject of a specific recommendation. Although the joint policy has recently been reviewed ([see minute 38 of Cabinet agenda for 14/07/21](#)) it is appropriate, in the light of our recent experience, that we invite our partners (the County Council and the other Devon Districts) to further review the policy. In this respect I can confirm that following a request from the Devon Children's and Families Partnership, the County Council and the Devon districts are currently carrying out a Devon wide safeguarding audit. We are providing all the details we have of the Humphreys issues as part of this Audit. In addition I can confirm that DCC are carrying out a review/investigation of the LADO procedures that were engaged between 2014 and the date of conviction. The review is being carried out by a former OFSTED Inspector who has been involved in other safeguarding reviews on behalf of the County Council.

8. Having reflected on the various comments and representations that I have seen as a result of the concern arising from the Council's decision to make Humphreys an Honorary Alderman I think there are 2 key issues to address. One is the gap in officer knowledge and awareness of what councillors do in their own ward as ward councillor. Mindful of the comments made by one of Humphreys victims it is apparent that the status that Humphreys achieved as a councillor was arguably used by Humphreys as a shield or badge of respectability. Reflecting on the publicised actions of other convicted paedophiles this is not unusual as a tactic in building trust and the potential to manipulate a victim. The second is that the legal framework regarding what can or can't be said when a person is under investigation or arrest is uncertain. As a member of the public commented at Cabinet's June meeting; he was aware of the fact that Humphreys was under investigation but was concerned that it might be malicious homophobic gossip.
9. What is clear from the minutes of the April Council meeting is that members are concerned at the possibility of a similar set of circumstances happening again in the future but also a strong belief that there are circumstance in which the normal presumption of innocent until proven guilty should not apply. For this reason, and reflecting the general assumption of the public that elected councillors should set an example to society of how to behave, I am recommending that the Council should lead the way in lobbying for a clear and transparent obligation and expectation of appropriate action where a councillor has been arrested.
10. Since this report was originally drafted the Council has further debated this matter by way of motion to Council. In particular, at its meeting on the 20th July, Council requested that I write to Simon Jupp MP on this matter. A reply to that letter has been received and is attached as Appendix C. The details in the letters speak for themselves but do confirm that Humphreys was less than truthful in the information he provided to the Conservative Party.
11. In the middle of August Cllr Bailey and other Cllrs made a request of the Chair for an EGM to debate the wording that is set out in option 3A of the recommendations to this report, which the Chair agreed to. In support of the request Cllr Bailey also included the following narrative:

John Humphreys a former East Devon District Councillor, Lead Member for Exmouth, Exmouth Town Councillor, Mayor of Exmouth and Alderman was convicted of sexual abuse of two boys in August 2021 and sentenced to 21 years in prison. John Humphreys was arrested in May 2016 but continued as a district councillor until May 2019, an Exmouth Town Councillor until August 2020 and East Devon District Council bestowed the honour of alderman on him in December 2019.

A letter from one of the victims of John Humphreys which was read out on his behalf by Cllr Eileen Wragg at the Council's meeting on 8th December 2021 included the following statement "The police say that Humphreys knew that the case was live during this time, 2016 to 2021. His [Humphreys] legal team communicated with the officer in charge and at no time was he told that the case was not being proceeded with. This leaves me wondering 'who else knew and how was he allowed to carry on as usual being a councillor at Exmouth and East Devon?' These questions remain unanswered.

In light of the seriousness of the offences and the period of more than four years between arrest and conviction during which John Humphreys continued carrying out councillor activities, it is essential that EDDC reviews its actions including its safeguarding response. It is now a year since John Humphreys was convicted and sentenced. During the course of the year councillors have repeatedly attempted to initiate an independent investigation into the Council's actions over John Humphreys. This includes voting in support of a motion at the Council Meeting on 20th April 2022 calling on the chief executive to provide terms of reference in order for an investigation to be carried out. Instead the report for the (cancelled) cabinet meeting of 27th July 2022 recommended that no investigation be carried out. By contrast with the actions of East Devon District Council, Devon County Council immediately announced an independent investigation in relation to their own safeguarding response to John Humphreys when on 16th June 2022 issues were uncovered with their handling of a safeguarding referral by the NSPCC'.

12. The proposal from Verita is set out in Appendix D. Cllr Bailey did not discuss her proposal with any of the statutory officers. We have highlighted our concerns to Cllr Bailey in correspondence but in summary form, having reviewed the Verita website, the Verita proposal and also read the report that Verita did for the Green Party, it does not suggest that Verita have relevant legal expertise and knowledge or experience of local government to warrant an exemption being made to contract standing orders. For example, the aim of investigation section displays a fundamental misunderstanding in that it assumes the Council was in the position (assuming it had knowledge) to take decisions in relation to John Humphreys continuing as a councillor.
13. I have included in this report at Option 3B an alternative recommendation that Council may wish to adopt. My reflection on what has been said so far in Cabinet and Council is that members are not sufficiently sighted on the legal framework, issues and implications of this issue. If it is considered that a sum of £45,000 is an appropriate sum to incur then we should ensure that we have a reliable, publishable document at the end of it which helps current and future councillors understand how the criminal law, practice and procedure interacts with local government administrative law and also safeguarding procedure and practice. Reference is made to the 'Legal 500' which is a national publication containing recommendations for specific areas of legal work. In terms of the south west and local authority investigations Bevan Brittan are recommend as a tier 1 firm. If this option is adopted then I would see the sponsoring portfolio holders being Cllrs Jackson and Loudoun. As a final point for member's information, we are currently spending significant sums on member related behavior issues; the Monitoring Officer Investigation budget is overspent by some 50% already and we are also recruiting an additional lawyer at a cost of circa £55,000 to help with capacity issues in terms of the Standards Committee and Code of Conduct issues.

Financial implications:

The recommendation options presented 3A or 3B if agreed by Council require a supplementary budget of £45k to be met from the General Fund. Contract Standing Orders require quotations to be obtained in writing from a minimum of 3 suppliers who have responded to a written tender specification by a defined deadline with those quotations formally evaluated. Selection can be made from a call off arrangement or holding a mini competition under a Framework Agreement. Council can waive these requirements if it wishes with an exemption to Contract Standing Orders but a reason should be determined by members, this would normally be related to a limited market or urgency of appointment. The concerns raised in the report with option 3A do need to be carefully considered and acknowledged in the decision made as £45k is a significant sum of public money and Council needs to ensure it will achieve value for money in that an outcome will be achieved as required by members in the interest of its area and residents.

Legal implications:

The advice note from Counsel details much of the legal position. It is permissible for Council to agree to commission an investigation in accordance with either option although the concerns over pursuing the option in Recommendation 3A should be noted. The suggestion of lobbying local MPs and the LGA to encourage a Private Members Bill are within the powers of Council, otherwise the recommendations do not raise any specific implications requiring comment.