

Date of Meeting 13th October 2020

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Exemption applied: None

Review date for release N/A

East Devon's Standards Regime

Report summary:

The report provides a review of the current standards regime in East Devon and considers it in the context of possible forthcoming changes and recommended best practice following the Committee for Standards in Public Life report of January 2019. It also explains the complaints process and invites the committee to consider whether it wants to make changes to it. It also identifies that the Committee could also consider reviewing the nature of interests that are required to be declared and the nature of information disclosed on a member's register of interest form.

Recommendation:

That the Committee;

- 1. Review the Committee on Standards in Public Life best practice recommendations and consider whether any changes need to be made.**
- 2. Decide whether it wants to further review or revise the standards process for dealing with complaints that members have not complied with the Code of Conduct and to determine whether to make any recommendations to Council in that regard.**
- 3. Decide whether to recommend increasing the size of the Standards Committee to Council.**
- 4. If the decision is to recommend adopting a revised complaints process along the lines detailed in the report or to require all decisions to be written up and published to recommend to Council that the Monitoring Officer be provided with extra resources in the likely form of a Grade 7 post (whether full time or part time to be determined).**
- 5. Consider whether to review or revise the Member's Register of Interest forms.**
- 6. Consider whether to review the nature of interests that are currently required to be declared in the Code of Conduct.**

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

Portfolio(s) (check which apply):

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

Financial implications:

To be completed by Finance.

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:

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

[Complaint procedure](#)

[Hearing procedure](#)

[Articles of the Constitution](#)

[Part 3 Section 2 of the Constitution](#)

[13th August 2019 Standards Committee meeting](#)

[22nd January 2019 Standards Committee meeting](#)

[27th October 2016 Standards Committee meeting](#)

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

[LGA Model Code of Conduct](#)

[East Riding of Yorkshire Council Constitution](#)

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

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 requirements of the Localism Act 2011 replaced the previous Standards Board regime for dealing with complaints in relation to member conduct. Section 27 requires the Council to

adopt a code of conduct to govern the conduct that is expected of members and co-opted members of the Council when acting in their official capacity and which must, when taken as a whole, be compliant with the Nolan principles. Section 28(6) of the Localism Act 2011, obliges the Council to have in place arrangements under which allegations about a member's conduct can be investigated and decided upon. This process must involve an Independent Person, who as the name suggests, is independent of the Council. There are certain restrictions on who this person can be.

2. In summary, the arrangements comprise adopting a Code of Conduct and having in place a procedure to deal with complaints. Every year, as part of the adoption of the Constitution, the Member Code of Conduct is adopted by Members. There is also an adopted process and procedure for dealing with complaints. The Code of Conduct and complaint process and procedure can be found in the background links.
3. A fundamental part of the standards regime is the Council's Standards Committee. The Standards Committee is politically balanced (4 Councillors plus the Chairman of the Council) with substitute Councillors for groups entitled to seats, 2 non-voting independent members and 2 non-voting parish council members. It should be noted that the two independent members are different from the Independent Person required under the Localism Act. The Hearings Sub-Committee is drawn from the membership of this committee and comprises three district members, one independent member and one town / parish council representative. The Committee has a wider remit than just considering complaints and has a role (amongst others) in seeking to promote and maintain high standards of conduct by members and reviewing the appropriateness of the code of conduct and the nature of interests to declare and to advise Council on whether there should be changes in that regard. More detail on its purpose and terms of reference can be found in Article 9 and Part 3 Section 2 of the Constitution (see background links).
4. While the Standards Committee is currently politically balanced, it doesn't have to be. However, if it were to be decided by the Committee or the Council leadership that the Standards Committee should not be politically balanced, Council must vote unanimously for this to be the case.
5. Appointments to the committee in terms of the independent members and parish / town council representatives are made by Council at the Annual Meeting. The appointments are for four years but can be extended for a second term of four years. The same is true for the Independent Person. As reported to Council at its meeting on 24th June 2020, currently there is a vacancy for one of the independent members and the Independent Person's two terms have expired this year but a one year extension (due to COVID) was permitted and so this position will need recruitment for appointment at Annual Council next year. The Committee considered the recruitment process at its meeting of 13th August 2019 (see background links for report). It was resolved that the process should be as it is currently but that the interview panel should comprise a maximum of 5 and minimum of 3 Standards Committee members with the Monitoring Officer. The panel shall be open to all committee members and shall comprise 3 district councillors and 1 of each of the independent and parish / town council representatives. If either or both of the independent and parish / town council representatives positions are unable to be filled then their position may be filled by a district council member from the committee. This is the process that will be used to recruit a new independent member and a new Independent Person(s).
6. The appropriateness of the Code of Conduct and the complaints process is regularly reviewed by the Standards Committee. It was last reviewed by the Committee in January 2019 and prior to that October 2016 (see background links), although some amendments have been made outside of those reviews to address changes as a result of a specific review into, for example, gifts and hospitality.

7. While the current regime centres on a locally led, self-regulating regime, it is worth noting that there are concerns around the standards regime and that there may be some changes approaching in respect of it. The Committee on Standards in Public Life carried out a review of local government standards and reported on 'Local Government Ethical Standards' in January 2019 (see background links). This made 26 recommendations for Government to consider. It also included a list of 15 best practice recommendations. As of yet the Government have not formally responded and the Chairman of the Committee wrote to the Secretary of State for Housing Communities and Local Government in June 2020 asking when it might receive a response. In addition the Chairman has written to Councils asking whether the best practice recommendations have been / are being implemented. How this progresses in terms of the Government's response will be interesting to see, although with COVID and the end of the transition period from leaving the EU looming it is not anticipated that this will be imminently.

8. One of the recommendations that is worth touching on - as matters are moving in relation to it - is that there should be a model code of conduct produced by the Local Government Association. The idea is that it would help bring consistency across tiers and geography. It wouldn't be mandatory and could be adapted. The LGA has produced a model code of conduct (see background links) and there were a series of webinars held to discuss it in September. It is worth the Committee noting some of the other recommendations – particularly around sanctions and interests as this may have a bearing on future decisions of this Council irrespective of the approach adopted by the Government. The model codes is still subject to ongoing work at the LGA and is not in final form yet.

Review of East Devon procedures and processes

9. The best practice recommendations are listed below, together with comment;

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

The draft LGA model code of conduct says this;

3. Not bullying or harassing any person.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

Our Member Code of Conduct says this;

You must not –

(c) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);

It is noted that 'harassment' doesn't appear in our Code and could be added as could some specific indications of how bullying might happen.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Interestingly neither of these appear in the draft LGA Model Code of Conduct. They are not in our Code either. Either or both could be easily added and it is suggested that they are.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

The Council does arguably review the Code every year by its adoption as part of the Constitution. However it is not subject to the wider views or specific review by the Standards Committee every year. It is in the Council's Policy Register as subject to review every three years, although this can be revisited. It would be prudent to obtain the views of those outside of the organisation at this time given that it has not happened for some time – if at all – although it is suggested that obtaining the wider views outside of the organisation each year is not likely to be of great benefit and it might be prudent to consider that this happens on a less regular basis once the approach is started now.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

It is considered that this is the case.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

The Council has a 'live' system that members update themselves through Modern.Gov. The public can therefore easily search by member and time period at any time. It is considered that our approach is in excess of the recommended best practice although it is accepted that it doesn't present in CSV format.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

The current process does outline the filters that might apply which leads to no further action and which includes a public interest test. This could be made more prominent on the website to aid potential complainants.

Best practice 7: Local authorities should have access to at least two Independent Persons.

We did previously have two Independent Persons but following the resignation of one it was considered unnecessary to recruit another due to the reducing number of complaints. As the number of complaints has increased / is increasing again there is no reason why two Independent Persons should not be recruited in the forthcoming recruitment process.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

This practice is followed on the whole.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible

on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

This currently does not happen. The process is confidential in the main with the subject-member having the right to keep the decision confidential. There are exceptions to this, where there is a sanction of censure for example. There are pros and cons to publishing all outcomes which have been discussed by the Committee before. On the one hand there is a transparent approach to decisions, but equally there is the possibility of the complaints process being used as weapon simply so it can be said that members have been subject to complaints irrespective of outcome (the saying of 'no smoke without fire' being pertinent). It would be possible to publish an anonymised decision or publish a decision naming a member where there is a finding of breach, or indeed both.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

It is considered that this is currently the case.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Given the experiences of this in the District it is difficult to see how this would work in practice. There is the issue of authority for the relevant member(s) and also the issue of what happens if the complaint is about the Chair or a number of members. It is not considered that this is practicable nor indeed desirable in that it might frustrate a legitimate complaint being made.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

It is considered that this is currently the case.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

This would be a course of action available if required.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

While noted, this is probably outside the responsibility of the Standards Committee. It should be noted that the Portfolio Holder for Democracy and Transparency will be reviewing and reporting on our role on joint and outside bodies and this recommendation could, and probably should, be picked up as part of that process.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

This has happened on an as and when needed basis. Generally the incidences involving district councillors has traditionally been low and more often than not out of specific issues rather than a systemic problem. This could be considered further.

10. It is also probably timely, given recent changes, to consider the procedure that is followed on receipt of complaint – see background papers for current process. Essentially the process is led by the Monitoring Officer with the involvement of the Independent Person. It is only if a breach is found both by the Monitoring Officer at the initial stage and then following Independent Investigation but not accepted by the subject member that members become involved in the process through a Hearing Sub-Committee. As the process is locally owned, there are lots of variations in terms of the process followed elsewhere but a large number of Councils operate along similar lines to East Devon. There are other options though, including the use of an assessment sub-committee for example. One such example is East Riding of Yorkshire Council (a unitary Council). They have 67 members and have a Standards Committee of six district councillors, three parish council representative and three independent members. They then have a Standards Committee Assessment Sub-Committee of three district councillors and one parish representative and one independent member whose role as stated in their terms of references is '*to receive and determine whether complaints about Councillors' conduct should be investigated or other action taken.*' They also have a Standards Hearing Committee of three district councillors and one parish representative and one independent member whose role as stated in their terms of references is '*to determine complaints referred for investigation where it is recommended by the Monitoring Officer that a breach of the Code of Conduct has been established or where the Standards Committee considers that a potential breach of the Code of Conduct has been disclosed.*'
11. Attached at Appendix 1 is a more detailed narrative around the process followed to deal with complaints at East Riding of Yorkshire. Attached at Appendix 2 is the assessment criteria used by the Standards Committee Assessment Sub-Committee. If members wished to be more involved in the consideration of complaints at an early stage then this would present a way of achieving this. If so minded members could recommend adoption of this process to Council with a delegation to the Monitoring Officer to put it in place in consultation with the Chair of the Council or it could request that the specific detail is brought back to Committee before a recommendation is made to Council.
12. If the Committee were minded to recommend adoption of a process along the lines of East Riding of Yorkshire, then it would be prudent to consider increasing the size of the Standards Committee in order to ensure that there will be sufficient member availability to be able to convene assessment sub-committees. Current trends of complaint numbers indicate that there will probably be a need to meet fairly regularly. If the Committee were minded to recommend a change to the size of the Committee, it should be considered whether this is recommended to happen now – bearing in mind that it will necessitate redoing the political balance across the committees and committee allocations – or whether it might wait until Annual Council next year.
13. 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.

14. If the decision is not to recommend any changes or to consider the matter further, one change that would be worth considering to our existing process is the publication of decision notices where a breach has been found. It is recommended that this should be agreed. Further consideration could be given to the publication of decisions where there is no breach on an anonymised basis, although the issue of resourcing this will invariably arise if full decision notices are required for all cases.
15. The Committee may also wish to review the member Register of Interests forms. This is an online form completed through Modern.Gov. The requirements, at least as far as disclosable pecuniary interests are concerned, relate not just to the member concerned but also a 'relevant person' (husband, wife or civil partner or person living with them as if husband, wife or civil partner). The form does not clearly delineate between the member interest and those of a relevant person and it is felt that the form could be improved in this regard. Attached at Appendix 3 is an example of the current form and also what a revised form might look like to address this. Attached at Appendix 4 is an example of another authority's form (Ryedale District Council) which seems to go into more detail in terms of their interest declarations. It has been suggested that East Devon may wish to consider doing the same and the committee should consider this. There is a potential issue over the new public website accessibility requirements in that the Ryedale DC is a pdf. However, further work could be undertaken to establish whether further detail could be incorporated within the form used by the Modern.Gov system in addition to separating out the interests of the member from those of relevant person.
16. Finally, the Committee may wish to review declarations of interests. Currently we have disclosable pecuniary interests which are specified by law and which preclude a member from being involved in the decision making – they are required to leave the room during consideration of the matter – and personal interests which must be declared but which do not prevent a member from being involved in discussing or voting on a matter. There are some authorities that still operate a third 'hybrid' interest being the personal and prejudicial. These too effectively preclude someone from deciding a matter that under our current arrangements they would be permitted to vote on. They are more often relevant to the consideration of planning applications but not exclusively so. The obvious examples would be a planning application of a friend or more distant relative or a planning application that was several doors away from a member's own property. If the Committee were so minded this is something that could be subject to further review.