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Mid Devon District Council

Standards Committee

Wednesday, 9 February 2022 at 6.00 pm
Phoenix Chamber, Phoenix House, Tiverton

Next ordinary meeting
Wednesday, 8 June 2022 at 6.00 pm

PLEASE NOTE: - this meeting will take place at Phoenix House and members of the Public and Press are encouraged to attend via Zoom wherever possible. The attached Protocol for Hybrid Meetings explains how this will work. Please do not attend Phoenix House without contacting the committee clerk in advance, in order that numbers of people can be appropriately managed in physical meeting rooms.

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Membership

Cllr Mrs F J Colthorpe

Cllr R M Deed

Cllr C J Eginton

Cllr D F Pugsley

Cllr C R Slade

Cllr Mrs M E Squires

Cllr L D Taylor

Cllr Mrs N Woollatt

Cllr A Wyer

AGENDA

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

- 1 **APOLOGIES AND SUBSTITUTE MEMBERS**
To receive any apologies for absence and notices of appointment of Substitute Members (if any).

- 2 **PUBLIC QUESTION TIME**
To receive any questions relating to items on the Agenda from members of the public and replies thereto.

Note: A maximum of 30 minutes is allowed for this item.

- 3 **MINUTES** (Pages 5 - 8)
To consider whether to approve the minutes as a correct record of the meeting held on 13 October 2021.

- 4 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT**
To record any interests on agenda matters.

- 5 **CHAIRMAN'S ANNOUNCEMENTS**
To receive any announcements the Chairman of the Committee may wish to make.

- 6 **REVIEW OF PROCEDURES** (Pages 9 - 12)
To receive a report of the Monitoring Officer considering a review of the Council's Procedure Rules.

- 7 **MOTION 577 - COUNCILLOR A WILCE**
The following Motion was forwarded from Council on 15 December 2021 for consideration by the Committee:

A Motion to improve public accountability and to address the inequality of rights of Members of the Council, when compared to members of the public.

This Council resolves that:

When an enquiry is made by a Member at any formal meeting (verbally, or in writing) and a substantive answer is not given at that meeting, a written response shall be sent to the enquiring member within 10 days.

Wherever possible, any written questions submitted in the absence of the Member shall be submitted in advance of the meeting, but a failure to do so will not invalidate that enquiry.

A copy of the question(s) and answer(s) will be circulated to members of the committee (or Full Council) and will also be attached to the minutes.

- 8 **MONITORING OFFICER UPDATE** (*Pages 13 - 16*)
To receive a report from the Monitoring Officer providing an update on conduct matters and to help identify any associated matters for the Committee's future consideration.
- 9 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**
To consider items to add to the Committee's work programme.

Stephen Walford
Chief Executive
Tuesday, 1 February 2022

Covid-19 and meetings

From 7 May 2021, the law requires all councils to hold formal meetings in person. However, the Council is also required to follow government guidance about safety during the pandemic. The Council will enable all people to continue to participate in meetings via Zoom.

You are strongly encouraged to participate via Zoom to keep everyone safe - there is limited capacity in meeting rooms if safety requirements are to be met. There are restrictions and conditions which apply to those in the building and the use of the building. You must not attend a meeting at Phoenix House without complying with the requirements in the new protocol for meetings. You must follow any directions you are given.

Please read the new meeting protocol which is available here:
<https://democracy.middevon.gov.uk/documents/s23135/MeetingProtocolUpdateOct2021nextreviewFeb2022.pdf>

If you want to ask a question or speak, email your full name to Committee@middevon.gov.uk by no later than 4pm on the day before the meeting. This will ensure that your name is on the list to speak and will help us ensure that you are not missed – as you can imagine, it is easier to see and manage public speaking when everyone is physically present in the same room. Notification in this way will ensure the meeting runs as smoothly as possible.

If you would like a copy of the Agenda in another format (for example in large print) please contact Sally Gabriel on:

E-Mail: sgabriel@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held on 13 October 2021 at 6.00 pm

Present

Councillors

C J Eginton (Chairman)
R M Deed, Mrs F J Colthorpe, C R Slade,
Mrs M E Squires, L D Taylor, Mrs N Woollatt
and A Wyer

Also Present

Councillor(s)

Mrs C P Daw, S J Penny and B G J Warren

Also Present

Officer(s):

Karen Trickey (District Solicitor and Monitoring Officer),
Carole Oliphant (Member Services Officer) and Sally
Gabriel (Member Services Manager)

Also in

Attendance:

John Smith (Independent Person)

15 APOLOGIES AND SUBSTITUTE MEMBERS (00-03-38)

Apologies were received from Rob Jeanes (Independent Person).

16 PROTOCOL FOR HYBRID MEETINGS (00-03-47)

The protocol for hybrid meetings was noted.

17 PUBLIC QUESTION TIME (00-03-59)

There were no questions from members of the public present.

18 MINUTES (00-04-17)

The minutes of the previous meeting were approved as a true record and signed by the Chairman.

19 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (00-05-13)

Members were reminded of the need to make declarations of interest when necessary.

20 CHAIRMAN'S ANNOUNCEMENTS (00-05-36)

The Chairman welcomed Karen Trickey (District Solicitor and Monitoring Officer) to her first meeting of the committee.

21 **MODEL CODE OF CONDUCT (00-05-57)**

The Committee had before it the *notes of the Standards Working Group meeting which was held on 15 September together with a draft Code of Conduct that was created following that meeting for consideration..

The District Solicitor (Monitoring Officer) informed the meeting that the working group had considered whether to adopt the Model Code together with the guidance provided by the Local Government Association or keep with the original code or whether a compromise could be reached by amending the existing code. She had provided the meeting with a draft amended code and drew attention to amendments in line with the model code, that of an increase in the limit of any gifts and hospitality to £50 and a cross reference to the guidance with regard to non disclosable pecuniary interests.

Consideration was given to:

- The need to not over complicate the code as it was hoped that the Mid Devon code would be adopted by the Parish Councils
- The amended version of the existing code would fit with other tiers of Local Government
- Whether the Model Code would be easier for all tiers of Local Government to follow
- The need to review the adopted Code on a regular basis (particularly in view of any change to the legislation)

It was therefore:

RECOMMENDED to Council that the existing Code of Conduct (as amended) be adopted.

(Proposed by the Chairman)

Note: *Notes and draft Code previously circulated copy attached to minutes.

22 **OUTCOMES OF THE GOVERNANCE REVIEW (00-14-34)**

The Committee considered issues raised within the Governance Review in particular the membership of the Audit Committee and the outcome of any discussions from the Programming Panel meeting.

The Audit Committee at its meeting on 21 September 2021 had made the following recommendation:

That it is recommended to the Standards Committee that it consider increasing the Audit Committee size from a membership of 7 to a membership of 9 (in line with the membership of the Policy Development Groups).

The Programming Panel had met on 20 September 2021 and made no recommendations to the committee.

The Chairman invited the Chairman of the Audit Committee to address the meeting: Cllr S Penny requested that the membership of the Audit Committee be increased from 7 to 9 as the committee had a heavy workload, much of which was legally required to be completed on an annual basis, it was one of the smallest committee's in terms of size yet had significant responsibility and was technical in nature and training was required before any member could sit.

Consideration was given to:

- Members needed to understand the role and remit of the committee
- The need for the Committee to be politically balanced
- There was no need for members to have a financial background to sit on the committee, but there was a need to have an understanding of the remit, the right mindset and for Members to be prepared to ask appropriate questions of the officers
- The need for members of the committee to be specifically trained
- The need for any increase in membership to take place from the Annual Meeting in May 2022 which would allow any additional members to receive the required training.

It was therefore:

RECOMMENDED to Council that the membership of the Audit Committee be increased from 7 to 9 to take effect from May 2022 subject to all Committee Members and substitutes receiving the relevant training and that the Constitution be amended accordingly from that date.

(Proposed by the Chairman)

Further consideration was also given to the other outcomes of the Governance Review in particular the work of the Policy Development Groups (PDGs) and the Scrutiny Committee; the meeting was informed that the PDGs and the Scrutiny Committee had all held informal workshops and had considered their work plans, regular items such as Performance and Risk and Financial Monitoring and items to be noted had been removed from agendas and the need for each PDG to develop policy had been considered.

The Chairman of the Scrutiny Committee stated that the Programming Panel meeting had been effective and that all the current Chairmen were keen to work together.

23 **STANDARDS - UPDATE TRAINING (00-38-25)**

The District Solicitor (Monitoring officer) stated that the Committee was under an obligation to promote and maintain high standards of conduct amongst all the Council's members and that regular training was good practice. As an amended Code of Conduct had been considered earlier in the meeting this was an opportunity to run refresher training. She suggested specific themes involving and engaging with officers and that small in person workshops could take place.

Consideration was given to:

- That any training should involve all of the membership of the Council

- There was a need for interactive, interesting sessions to draw members to the training.
- The involvement of the Independent Persons in the training sessions

RESOLVED that the Committee support the implementation of training with regard to ethical standards and that it was the expectation that all members of the Council attend training when invited to do so.

(Proposed by Cllr C R Slade and seconded by Cllr R M Deed)

Note: Cllr Mrs F J Colthorpe requested that her abstention from voting be recorded.

24 COMPLAINTS

The Chairman indicated that discussion with regard to this item, may require the Committee to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Committee would need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 respectively of Part 1 of Schedule 12A of the Act, namely information relating to an individual

(Proposed by the Chairman)

The Committee considered information from the District Solicitor (Monitoring Officer) with regard to complaints before returning to open session.

25 IDENTIFICATION OF ITEMS FOR THE NEXT MEETING (00-52-12)

It was suggested that the following items be added to the agenda for the next meeting of the Committee to be held in February 2022:

- To consider the complaints process and whether a shortened, clearer process could be created
- Complaints update
- Training update.

(The meeting ended at 6.55 pm)

CHAIRMAN

STANDARDS COMMITTEE

9 FEBRUARY 2022

REVIEW OF PROCEDURES

Cabinet Member: Cabinet Member for Working Environment and Support Services
Responsible Officer: District Solicitor and Monitoring Officer
Reason for Report: To consider a review of the Council's Procedure Rules

RECOMMENDATION: That the Committee RESOLVES that:

- (1) A Task and Finish Group is established to undertake a review of the Council's Procedure Rules as outlined in Section 2 of this report; and**
- (2) The Standards Complaint Criteria be amended as outlined in Section 3 of the report.**

Financial Implications: None directly arising from this report

Legal Implications: None beyond those set out in this report

Risk Assessment: There are no risks directly arising from this report

Equality Impact Assessment: Not directly applicable

Relationship to Corporate Plan: No direct relationship

Impact on Climate Change: None

1.0 Background

- 1.1 Members will appreciate that the Standards Committee's terms of reference include responsibility for overseeing the Constitution. The latter document includes the Council's Procedure Rules, which should facilitate effective and efficient conduct of the Council's business in the public interest. Whilst it is understood changes have been made to the rules in recent times on an ad hoc basis (e.g. in response to Member Motions), such means of endeavouring to keep the rules fit for purpose, can result in inconsistencies with other parts of the Constitution. In the absence of a more wholesale review some rules appear to have been overlooked and thus not kept up to date with good working practices etc.
- 1.2 Over the last 3 months, the following areas have been identified by / and or raised with the Monitoring Officer as warranting deletion or amendment: the application of Public and Member Questions; Members' Business at full Council; Reporting of PDG and committee minutes to full Council (as opposed to simply recommendations); how Member and Public questions are used, applied and presented; rights of non-committee members to speak in committee; how Member Motions are used; the application of Chairs' discretion at odds with the rules; and Planning Committee procedures (e.g.

value of implications reports, public speaking and statutory processes overlap; potential conflict between ward member and committee planning interests; and the length of meetings).

2.0 Task & Finish Group (Council Procedure Rules): Recommendation (1) above

2.1 As the procedure rules (in contrast to the decision making structure) have not been reviewed for some time, it is proposed that the Committee sets up a small member task and finish group to consider the matter with the District Solicitor and Member Services Manager. It is suggested that the group is cross party, with no more than four members plus the Chair of Standards, with each Group Leader being invited to fill one of the remaining four places (or to appoint a representative). An informal group of the nature proposed should consider the issues already identified and any others it considers appropriate taking account of the views of other Members who can be consulted informally. The meetings may be held remotely or in person.

2.2 The group would not make any decisions. It would only make recommendations to the Committee in public, the latter of which would in turn put forward its final recommendations to full Council. Taking account of the current meeting calendar, in the absence of any additional Standards Committee meeting, it won't be possible for the Standards Committee to formally consider the Task & Finish Group's report until 8 June, any recommendations to full Council being presented at the Council on 6 July. If the Committee wishes to expedite the matter so that any new rules take effect by the start of the 2022/23 civic year, an additional Standards Committee meeting will need to be arranged for April 2022.

3.0 Standards Investigation Procedure: Recommendation (2) above

3.1 At its last meeting the Committee resolved to review the current standards investigation procedure, in particular the length and inconsistencies in the presentation of the legal and local assessment tests. In accordance with the current procedure, these two tests need to be met for a complaint to be referred for investigation. The tests' criteria is generally helpful in that such ensure that complaints comprise a prima facie case of a breach of the relevant code of conduct which is in the public interest to investigate.

3.2 The following paragraphs set out the two tests with some amendments to ensure that they are easier for the public to follow. The suggested changes to the current procedure are shown in italics and crossed through as appropriate in paragraph 3.3 below. The deletions seek to avoid duplication with other criteria and provide consistency in the drafting so it is clear that all the criteria need to be answered with a "yes" for the complaint to be referred for further action. As there is no material change to the criteria, the Committee may resolve these, the Monitoring Officer having delegated authority to make changes she considers minor subject to notification being given to all Members.

3.3 In assessing whether any Members' Code of Conduct complaint is referred for investigation or other action, complaints need to meet the following two tests:

Legal Jurisdiction Test:

- (a) ~~Did~~–The alleged conduct occurred *since before* the adoption of the *relevant* Code of Conduct?
- (b) ~~Was~~–The person complained of was a member of the *relevant* council at the time of the alleged conduct?
- (c) ~~Was the person complained of was acting in an official capacity at the time of the alleged conduct?~~
- (d) ~~Did~~–The alleged conduct occurred when the person complained of was acting (or giving the impression he was acting) as a member of ~~another authority the District Council or a parish / town council within the District ?~~
- (e) If the facts could be established as a matter of evidence, ~~could~~ the alleged conduct ~~is be~~ capable of *amounting to* a breach of the Code of Conduct?
- (f) The complaint is about *the councillor's conduct and not* dissatisfaction with the Council's decisions, policies and priorities etc.

Local Assessment Test:

- (a) *If* the complaint is a 'repeat complaint' or *anonymous*, ~~unless it is~~ supported by *materially* new or ~~further-independent~~ evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) ~~the complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;~~
- (c) ~~There is no or~~ insufficient information/evidence to substantiate a *reasonable case for* the complaint *which* has been submitted by the Complainant *or on his behalf*;
- (d) The complaint is not malicious, *vexatious*, trivial, politically motivated or 'tit-for-tat';
- (e) ~~The Complainant is unreasonably persistent, malicious and/or vexatious;~~
- (f) The alleged misconduct happened within the last ~~more than~~ 3 months ago;
- (g) The complaint is relatively ~~minor~~ *significant in that taking further action would be proportionate to the impact and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;*
- (h) The circumstances have *not materially* changed *since the incident so much that there would be little benefit arising from an investigation or other action;*
- (i) The complaint has *not previously* been the subject of an investigation or other *similar action so that and there is nothing more to be gained by further action being taken;*
- (j) ~~The complaint is such that~~ It is unlikely that an investigation will be able to come to a firm conclusion on the matter e.g. where there is ~~no~~ firm evidence on the matter;
- (k) ~~the complaint is about a deceased person;~~
- (l) The complaint is about a person who is still ~~no longer~~ a council or co-opted member.

Contact for more Information:

District Solicitor and Monitoring Officer: ktrickey@middevon.gov.uk

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STANDARDS COMMITTEE

9 FEBRUARY 2022

MONITORING OFFICER UPDATE

Cabinet Member: Cabinet Member for Working Environment and Support Services

Responsible Officer: District Solicitor and Monitoring Officer

Reason for Report: To receive an update on conduct matters and to help identify any associated matters for the Committee's future consideration.

RECOMMENDATION: N/A

Financial Implications: None directly arising from this report

Legal Implications: None beyond those set out in this report

Risk Assessment: No risks directly arising from this report

Equality Impact Assessment: Not directly applicable

Relationship to Corporate Plan: No direct relationship

Impact on Climate Change: None

1.0 Standards Training

1.1 At its last meeting the Committee decided to hold joint officer and member workshops following the adoption of the updated Members' Code of Conduct. The Committee will recall that these events sought to contribute to upholding the Council's duty to promote and maintain high standards of Member conduct, ensuring that officers and members have a shared understanding of the updated guidance on ethical standards. The majority of officers and members took up the Committee's invite to attend one sessions arranged or (in the case of some members) a possible further evening session. As the workshops had to be cancelled following the 'work from home' guidance, a Standards Update sheet was sent to all members and lead officers on 7 January 2022. That highlighted key points which were intended to be covered in the workshops namely: Members' role in upholding the standards duty; the new guidance on the general obligation to treat others with respect; and the revised definition of Personal Interests within the Code.

1.2 The Local Government Association has more recently indicated that it will be arranging training on its standards guidance which the Committee will recall has been incorporated into the Council's Code of Conduct. On receipt of substantive details, the Monitoring Officer will review the content of that

training, for the benefit of the future in-house officer / member standards workshops.

2.0 Complaints

- 2.1 Since October 2021, eight member standards complaints have been received by the Monitoring Officer, alleging breaches of the relevant code of conduct by district, town or parish councillors. All of the complaints have been considered and concluded. Further, all but two of the complaints, centred round alleged disrespectful conduct and the often linked allegation of bringing the office of councillor or the council into disrepute. This latter breakdown in terms of the type of complaints, is not unusual. Indeed similarly, informal concerns about conduct that have been raised with the Monitoring Officer, have also focused on the potentially disrespectful manner in which a small minority of members communicate with others, alleged failure to declare interests (including predetermination) accounting for the remainder. Where practicable, these informal concerns have largely been dealt with by flagging them up and discussing them with the members themselves, as well as listening and providing support to those raising the concerns.
- 2.2 Returning to the formal complaints made, these were largely resolved via communication with one or more of the parties concerned. Only one of the complaints needed formal sign off at the request of the complainant; in that instance the conclusion being 'no further action', on various grounds illustrating the absence of a prima facie case of a breach warranting investigation in the public interest. In the cases where a potential standards breach was illustrated by the complainant, resolution included provision of an apology and / or guidance on the matter. Further, in relevant cases it was pointed out that any similar conduct in the future would likely result in investigation and referral to the Standards Committee often leading to public censure.
- 2.3 Consistent with many districts, in the case of the parish / town councillor matters, the complainants' concerns tended to be about the operation of the relevant council, as much if not more than the particular member. Whilst it is hoped that supporting or providing some guidance to relevant council clerks or the complainant will prevent further incidents, any subsequent complaints which lead to investigation will probably necessitate offers of potentially chargeable training to relevant parish / town councils or groups of councils, within in their locality.

3.0 Sanctions

- 3.1 By way of update, despite previous indications as part of the report produced by the Committee into Standards in Public Life in 2019 that legislation might be introduced to reinstate powers for local councils to suspend councillors for breaching codes of conduct, there are still no proposals to do so. Consequently, the ability to promote and maintain high standards will continue to rely primarily on reminders of standards (e.g. on predetermination and respect as done in January 2021) and challenging poor conduct when it occurs as advocated by the Nolan Principle of Leadership.

Contact for more Information:

District Solicitor and Monitoring Officer: ktrickey@middevon.gov.uk

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