



Audit and Governance Committee

Date: Friday, 28 June 2019
Time: 1.00 pm
Venue: Committee Room A, South Walks House, South Walks Road, Dorchester, DT1 1EE

Membership: (Quorum 3)

Matthew Hall (Chairman), Richard Biggs (Vice-Chairman), Simon Christopher, Susan Cocking, David Gray, Brian Heatley, Nocturin Lacey-Clarke, Mike Parkes, Bill Pipe and Bill Trite

Chief Executive: Matt Prosser, South Walks House, South Walks Road, Dorchester, Dorset DT1 1UZ (Sat Nav DT1 1EE)

For more information about this agenda please telephone Democratic Services 01305 252209 - lindsey.watson@dorsetcouncil.gov.uk



For easy access to the Council agendas and minutes download the free public app Mod.gov for use on your iPad, Android and Windows tablet. Once downloaded select Dorset Council.

Members of the public are welcome to attend this meeting with the exception of any items listed in the exempt part of this agenda. **Please note** that if you attend a committee meeting and are invited to make oral representations your name, together with a summary of your comments will be recorded in the minutes of the meeting. Please refer to the guide to public participation at committee meetings for more information about speaking at meetings.

There is a Hearing Loop Induction System available for public use on request. Please speak to a Democratic Services Officer for assistance in using this facility.

Recording, photographing and using social media at meetings

Dorset Council is committed to being open and transparent in the way it carries out its business whenever possible. Anyone can film, audio-record, take photographs, and use social media such as tweeting and blogging to report the meeting when it is open to the public, so long as they conform to the Protocol for filming and audio recording of public council meetings.

A G E N D A

Page No.

1 APOLOGIES

To receive any apologies for absence.

2 DECLARATIONS OF INTEREST

To receive any declarations of interest.

3 PUBLIC PARTICIPATION

To receive questions or statements on the business of the committee from town and parish councils and members of the public.

4 URGENT ITEMS

To consider any items of business which the Chairman has had prior notification and considers to be urgent pursuant to section 100B (4) b) of the Local Government Act 1972. The reason for the urgency shall be recorded in the minutes.

5 ADOPTION OF MEMBER COMPLAINT PROCESS AND ARRANGEMENTS FOR ASSESSING AND HEARING COMPLAINTS

3 - 18

To consider a report of the Corporate Director – Legal and Democratic Services and Monitoring Officer.

6 EXEMPT BUSINESS

To move the exclusion of the press and the public for the following item in view of the likely disclosure of exempt information within the meaning of paragraph x of schedule 12 A to the Local Government Act 1972 (as amended).

The public and the press will be asked to leave the meeting whilst the item of business is considered.

There is no exempt business.



Date of Meeting: 28 June 2019

Lead Member: None

Lead Officer: Jonathan Mair

Executive Summary:

Reflecting legal requirements contained in the Localism Act 2011 Dorset Council has included within the terms of reference of the Audit and Governance Committee the responsibility for promoting and helping to maintain high standards of conduct by elected members of the Council, co-optees and parish and town councillors.

In addition to requiring the Council to adopt its own Code of Conduct the Localism Act also requires the Council to put in place procedures for dealing with alleged breaches of the Code of Conduct.

This report recommends a process for addressing complaints about alleged breaches of the Council's Code of Conduct and also recommends the creation of sub-committees of the Audit and Governance Committee to enable complaints to be assessed and if necessary heard.

As relevant local authorities subject to the requirements of the Localism Act parish and town councils are also required to adopt their own Codes of Conduct. However, the Act requires that any complaints about any Dorset parish or town councillors are to be dealt with by Dorset Council as the principal local authority for the area. It is recommended that the same consistent approach should be applied to dealing with complaints about members of Dorset Council and members of parish/town councils.

Equalities Impact Assessment:

A screening assessment has been carried out. It is not considered that the process and the arrangements for assessing and hearing complaints will impact more upon anyone with any protected characteristic than upon those without such a characteristic. On this basis a full equalities impact assessment is not considered necessary.

Budget:

The proposals in this report reflect the legal duty upon the Council to promote high standards of conduct. There is a cost to assessing, investigating and hearing complaints. The arrangements set out in this report are thought to be proportionate but they will need to be matched with an appropriate staffing resource in the

transition structure for legal and democratic services (this is currently under development). The member complaint process and how it is resourced will need to be kept under review in the light of the numbers and types of complaint about councillor behaviour.

Risk Assessment:

None

Other Implications:

N/A

Recommendation:

The Audit and Governance Committee is asked:

1. To agree the appended member complaint process.
2. To agree the terms of reference for an Audit and Governance Assessment Sub-Committee and an Audit and Governance Hearings Sub Committee as set out in the section 6 of the report.
3. To agree the proposal to establish 4 sub-committees of named members of the Audit and Governance Committee in order to undertake the Assessment and Hearings Sub-committees (appendix 2)

Reason for Recommendation:

To put in place arrangements which support the obligation upon Dorset Council to promote and maintain high standards of member conduct.

Appendices:

Appendix 1 - Draft Member Complaint Process (article 9.02(a) of the Constitution).
Appendix 2 - Proposal to establish 4 sub-committees of named members of the Audit and Governance Committee

Background Papers:

The Localism Act 2011

Officer Contact:

Name: Jonathan Mair

Tel: 01305 224181

Email: jonathan.mair@dorsetcouncil.gov.uk

1. Context

- 1.1 As a relevant local authority Dorset Council must promote and maintain high standards of conduct by its members and co-opted members and must adopt a code dealing with the conduct expected of its members when they are acting in that capacity.
- 1.2 At its meeting on 24 January 2019 the Shadow Dorset Council adopted a constitution in readiness for the new Dorset Council, including the adoption of a members' Code of Conduct.
- 1.3 Dorset Council's Code of Conduct applies to its 82 elected members and to any co-optees. In addition to the 82 Dorset Councillors there are some 1,300 parish and town councillors serving on 163 parish and town councils. Parish and town councils are required to adopt their own codes of conduct but Dorset Council must deal with any complaints that parish/town councillors have breached their codes of conduct.

2. The Member Complaint Process

- 2.1 The proposed complaint process appended to this report sets out arrangements that I believe to be proportionate and flexible to enable the Council's resources to be concentrated upon the most significant complaints.
- 2.2 It is proposed that all complaints must be made in writing to the Monitoring Officer and that in order to be considered any complaint must identify:
 1. The member or members complained about.
 2. The relevant provisions of the Code of Conduct said to have been breached.
 3. Sufficient information to enable an initial assessment to be made.
 4. A description of the remedy sought as a result of making a complaint.
- 2.3 It is proposed that complaints made anonymously will not be considered. However, there may be circumstances where it is appropriate for the Monitoring Officer to withhold the identity of a complainant from the councillor who is complained about. The identity of the person making the complaint would only be withheld in exceptional circumstances.
- 2.4 The complaint process describes the role of the Monitoring Officer or a deputy in carrying out an initial assessment (paragraph 4.1 of the process) including an ability for the Monitoring Officer/a deputy to conclude that any investigation would be disproportionate to the subject matter of the complaint. A decision not to investigate on that basis could only be taken after consultation with an independent person.

3. Assessment Criteria

- 3.1 If a complaint is to proceed beyond initial assessment then it is proposed that it would be considered by an assessment sub-committee comprising of three

members of the Audit and Governance Committee (other than a member who is the subject of a complaint before the sub-committee).

- 3.2 The assessment criteria set out in appendix A to the Member Complaint Process would be applied by the Assessment Sub-Committee in order to determine whether a complaint should be:
- Rejected (with reasons) or
 - Referred for an informal resolution or
 - Referred for investigation
- 3.3 Any complaint involving an allegation of a breach of the legal requirements in relation to disclosable pecuniary interests will be referred automatically to the Police and will not be within the Terms of Reference of the Assessment Sub-Committee and this process. In particular, the Monitoring Officer will not seek to filter such complaints and test whether an offence has been committed as these are matters for the Police.

4. Investigations and Hearings

- 4.1 The proposed arrangements for investigations and hearings are described in paragraphs 4.8 to 4.11 of the process.
- 4.2 In order to promote public confidence and to ensure fairness and transparency hearings should normally take place in public. However, for the purposes of agenda circulation papers will be treated as exempt, in order to give the hearing the freedom to choose and in exceptional circumstances to exclude the press and public.

5. Remedies

- 5.1 The Localism Act limits the range of available remedies against a councillor who has been found to be in breach of the Code of Conduct. In particular, there is no ability to suspend a councillor or to withhold the basic allowance.
- 5.2 The range of remedies likely to be available to the Hearing Sub-Committee are set out in paragraph 4.2 of the process. These remedies may be applied individually or in combination with other remedies. For instance the Hearings Sub-Committee could choose both to censure a councillor and to expect the councillor to give an apology.
- 5.3 The standards regime which preceded the Localism Act 2011 was mired in considerable delay. The recommended process is an attempt to be fair and proportionate. In order to ensure a proportionate process and to secure closure in relation to complaints it is proposed that there should be no right of appeal against a decision of the Hearings Sub-Committee.

6. Terms of Reference

6.1 Audit and Governance Assessment Sub-Committee

1. At the request of the Monitoring Officer to undertake the assessment of any complaint that a parish, town or Dorset councillor has breached the requirements of his or her council's code of conduct and to decide whether a complaint should be:
 - Rejected
 - Referred for an informal resolution
 - Referred for investigation
2. The sub-committee will provide reasons for its decision.
3. Membership: Each Audit and Governance (Assessment) Sub-committee shall consist of 3 members and the quorum of each sub-committee shall be 3.

Note:

There will be 4 sub-committees appointed to consider either an Assessment or Hearing of Code of Conduct Complaints, and they will sit in rotation. Where relevant, a sub-committee that sits and considers an Assessment will be precluded from participating at the Hearing stage of the complaint.

Substitutes can be appointed from the membership of the Audit and Governance Committee.

6.2 Audit and Governance Hearings Sub-Committee

1. Following the completion of an investigation into a complaint referred for investigation by the Assessment Sub-Committee the Hearings Sub-Committee may:
 - Dismiss the complaint
 - Refer the complaint to the Monitoring Officer to seek informal resolution
 - Hold a hearing into the complaint
2. The role of any hearing will be to make a final decision on whether or not a councillor has breached the Code of Conduct and if so whether any sanction will be imposed.
3. The sub-committee will provide reasons for its decisions.
4. There is no right of appeal from a decision of the Hearings Sub-Committee.

5. Membership: Each Audit and Governance (Hearings) Sub-committee shall consist of 3 members and the quorum of each sub-committee shall be 3.

Note:

There will be 4 sub-committees appointed to consider either an Assessment or Hearing of Code of Conduct Complaints, and they will sit in rotation. Where relevant, a sub-committee that sits and considers an Assessment will be precluded from participating at the Hearing stage of the complaint.

Substitutes can be appointed from the membership of the Audit and Governance Committee.

MEMBER COMPLAINT PROCESS (Article 9.02(a))

1. INTRODUCTION

- 1.1 The Localism Act 2011 requires the Council to adopt its own Code of Conduct and to agree procedures for dealing with alleged breaches of that Code of Conduct. The Code of Conduct sets out the general standards of behaviour that are expected of Councillors and also the arrangements for the registration and declaration of financial and other interests
- 1.2 Parish and Town Councils within the Council's area are also required to adopt their own Code of Conduct. The Localism Act 2011 requires any complaints about breaches of those Codes by Parish or Town Councillors to be dealt with under the Council's arrangements.
- 1.3 References to 'councillors' include elected members and co-opted members of the Council and Town and Parish Councils in its area.

2. MAKING A COMPLAINT

- 2.1 Complaints should be made in writing to the Monitoring Officer, using a form provided by him/her if possible.
- 2.2 Anonymous complaints will not be considered.
- 2.3 In order for it to be considered a complaint must also:
 - Identify the member(s) complained about
 - Identify the provisions of the code of conduct said to have been breached
 - Provide sufficient information for an initial assessment of the complaint to be made
 - Be clear about what remedy is being sought.
- 2.3 In the interests of fairness and natural justice, the Councillor who is the subject of the complaint will normally be told who has complained about them and the details of the complaint. There may be occasions where the complainant requests that their identity is withheld. Such a request will only be agreed in exceptional circumstances.

3. WHO WILL DEAL WITH THE COMPLAINT?

- 3.1 The Initial Assessment of any complaint will be dealt with by the Monitoring Officer or by a deputy Monitoring Officer.
- 3.2 Any investigation under Stage 2, will be conducted by the Monitoring Officer, a deputy Monitoring Officer or a person appointed by the Monitoring Officer

("the Investigating Officer"). His/her investigation report will be considered by the Council's Audit and Governance (Hearing) Sub-Committee, who will also conduct any hearing under Stage 3.

- 3.3 The Independent Person will be able to attend any meetings held under stages 2 and 3 of the process.

4. HOW WILL ANY COMPLAINT BE DEALT WITH?

5.1 Stage 1 – Initial Assessment

The Monitoring Officer or a deputy Monitoring Officer will consider the complaint and in particular will consider whether:

- (a) the complaint is about the conduct of a councillor or lay or co-opted member of the Council or a town or parish council within the Council's area;
- (b) the Councillor was a councillor at the time of the incident giving rise to the complaint;
- (c) the Councillor was a councillor at the time of the complaint; and
- (d) the matters giving rise to the complaint would, if proven, be capable of breaching the Code of the relevant local authority.

- 4.2 If the complaint fails one or more of these tests, or if the Monitoring Officer or a deputy Monitoring Officer in consultation with the Independent Person is satisfied that it would be disproportionate to investigate the complaint, no further action will be taken.

- 4.3 Unless the complaint is about a failure to disclose a Disclosable Pecuniary Interest or other criminal behaviour (see paragraph 4.7 below), if the complaint satisfies the tests in paragraphs 4.1 or 4.2 the Monitoring Officer or a deputy Monitoring Officer will prepare a report for the Audit and Governance (Assessment) Sub-Committee to consider. The Councillor, and if they are a Town or Parish Councillor, the relevant Town or Parish Clerk, will be informed of the receipt of the complaint and that a report is being prepared for the Audit and Governance (Assessment) Sub-Committee.

- 4.4 In considering the report and assessing the complaint the Audit and Governance (Assessment) Sub-Committee will have regard to the criteria set out in Appendix A.

- 4.5 The Audit and Governance (Assessment) Sub-Committee may:

- (a) reject the complaint or to decide to take no action – in which case the Sub-Committee will give their reasons for doing so;

- (b) seek an informal resolution (including, for example, an apology, or mediation); or
- (c) require the complaint to be investigated.

- 4.6 A copy of the complaint and a summary of the Audit and Governance (Assessment) Sub-Committee will be sent to the Councillor and to the complainant by the Monitoring Officer or the deputy Monitoring Officer.
- 4.7 A complaint that involves an allegation of a breach of a Disclosable Pecuniary Interest will be referred to the Police and will not at that stage be subject to any further investigation by the Council. Where a complaint involves allegations in addition to one relating to a Disclosable Pecuniary Interest, those additional allegations will not usually be investigated following the completion of any police investigation.

4.8 **Stage 2 – Investigation**

The Investigating Officer will examine any available evidence of the alleged breach. He/she will usually interview the complainant, the councillor and, if appropriate any witnesses. The Investigating Officer will prepare a report setting out:

- (a) the agreed facts;
- (b) any facts which are not agreed and the conflicting evidence; and
- (c) their conclusion on whether or not there has been a breach of the Code of Conduct.

4.9 **Stage 3 – Hearing**

The Investigating Officer's report will be circulated with the agenda as an exempt item. Having resolved to exclude the press and public from the meeting, the Audit and Governance (Hearing) Sub-Committee will consider whether the press and public should continue to be excluded further from all or any part of the hearing. Before making its decision the Sub-Committee may ask the Investigating Officer and the councillor complained about (if present) for their views.

NOTE: To promote public confidence and ensure fairness and transparency, the hearing will normally be held in public. However, the Sub-Committee may resolve to exclude the public and press for any part of the hearing where confidential or exempt information is considered and will usually do so when coming to its decision (see Appendix B).

- 4.10 The Audit and Governance (Hearing) Sub-Committee will reach a view on disputed facts and decide whether or not to accept the conclusion of the Investigating Officer on the alleged breach of the Code of Conduct. The Sub-Committee may:

- (a) dismiss the complaint;
- (b) refer the complaint to the Monitoring Officer to seek an informal resolution;
- (c) hold a hearing of the Sub-Committee (which depending on the circumstances may or may not be held on the same day as the initial consideration of the Investigating Officer's report).

4.11 The hearing will be to make a final decision on whether or not a Councillor has breached the Code of Conduct and, if so, to decide whether any sanction should be imposed.

4.12 The Sub-Committee may decide:

- (a) to take no further action;
- (b) to seek an informal resolution between the complainant and the subject councillor (if agreed by both parties);
- (c) to censure the Councillor;
- (d) to request the Councillor to give an unequivocal apology ;
- (e) to instruct the Monitoring Officer to request the Councillor to attend training;
- (f) to refer the matter to the full Council (in the case of a Town and Parish Councillor refer the matter to the relevant Town or Parish Council).

5. IS THERE A RIGHT OF APPEAL?

5.1 There is no right of appeal against the decision of the Audit and Governance (Hearing) Sub-Committee.

6. HOW WILL THE DECISION BE PUBLICISED?

6.1 A summary of complaint, the Audit and Governance (Hearing) Sub-Committee's findings and decisions shall be sent to the Councillor and in the case of a Town and Parish Councillor to the clerk of the relevant Town or Parish Council, and unless the Sub-Committee agrees otherwise due to exceptional circumstances, be published on the Council's website.

APPENDIX A – ASSESSMENT CRITERIA**1 Initial Tests**

- 1.1 The complaint is about the conduct of a councillor or lay or co-opted member of a council within the Council's area;
- 1.2 The Councillor was a councillor at the time of the incident giving rise to the complaint;
- 1.3 The Councillor was a councillor at the time of the complaint;
- 1.4 the matters giving rise to the complaint would, if proven, be capable of breaching the Code of the relevant local authority.

2 Sufficiency of information

- 2.1 Has the complainant provided sufficient information to allow the Sub-Committee assessing the complaint to understand the issues complained of? If insufficient information is provided, the Sub-Committee will not normally proceed with assessment of the complaint.

3 Seriousness of the Complaint and proportionality

- 3.1 Does the complaint appear, on the available information, to be trivial, vexatious, malicious, politically motivated or 'tit for tat'?
- 3.2 Other than in particularly serious cases a complaint will not generally be referred for investigation if the Councillor has offered an apology, or if the view is taken that the complaint can reasonably be addressed by other means.
- 3.3 Given the public interest in financial and other resources being used efficiently referral for investigation is generally reserved for more serious complaints where alternative options for resolution are not considered by the Sub-Committee to be appropriate. A complaint may be regarded as serious in its own right or when considered in conjunction with a serious of incidents/complaints.

4 Length of Time Elapsed

- 4.1 Except in exceptional circumstances a complaint will not be referred for investigation when it is made more than 20 working days from the date upon which the event giving rise to the complaint took place.

5 Multiple Complaints

- 5.1 A single event may give rise to similar complaints from a number of complainants. These will generally be treated as a single complaint with multiple complainants.

APPENDIX B – GUIDANCE ON THE EXCLUSION OF THE PRESS AND PUBLIC AT HEARINGS

1 Initial Considerations

- 1.1 The purpose of publicity in the determination of complaints that a councillor has breached the code of conduct is to:
- (a) promote the public interest;
 - (b) maintain public confidence in local government;
 - (c) maintain proper standards of conduct; and
 - (d) is consistent with the proper discharge of the Council's functions in accordance with the Human Rights Act 1998 which provide for a public hearing .

2 Presumption in favour of openness

- 2.1 Given the purpose of publicity, there is a presumption that the Audit and Governance (Hearings) Sub-Committee will proceed with the hearing in public.

3 Exceptional circumstances

- 3.1 The Sub-Committee may however override the presumption in favour of openness if it is satisfied that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public before excluding the press and public and proceeding in private for all or part of the hearing. Common examples of exceptional circumstances include the following (the list is not exhaustive):
- (a) health;
 - (b) sexual allegations;
 - (c) vulnerable third parties;
 - (d) public order;
 - (e) the protection of the private life of the parties requires; or
 - (f) where the complainant is an employee of the authority to which the councillor complained about is a member.

4 Announcement of decision

- 4.1 Even if the whole or part of a hearing has been held in the absence of the press and public, the Sub-Committee will normally announce its decision in

public. If necessary, there may be a public and a private record of the decision made.

This page is intentionally left blank

Audit and Governance Sub-committees (Assessment and Hearings)

Proposal to establish 4 sub-committees of named members of the Audit and Governance Committee as follows:

Sub-committee 1

Matt Hall
Noc Lacey-Clarke
Bill Pipe

Sub-committee 2

Richard Biggs
Simon Christopher
Brian Heatley

Sub-committee 3

Matt Hall
Mike Parkes
Susan Cocking

Sub-committee 4

Richard Biggs
Bill Trite
David Gray

Note:

The above 4 sub-committees are appointed to consider either an Assessment or Hearing of Code of Conduct Complaints, and they will sit in rotation. Where relevant, a sub-committee that sits and considers an Assessment will be precluded from participating at the Hearing stage of the complaint.

Substitutes can be appointed from the membership of the Audit and Governance Committee.

This page is intentionally left blank