



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

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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.

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