

NON-EXEMPT

EAST HAMPSHIRE DISTRICT COUNCIL

Standards Committee

10 October 2019

Report on the Standards Investigation Process & Code of Conduct
David Brown, Head of Legal Services

FOR DECISION

Portfolio: Governance & Legal, Cllr N Drew

Key Decision: No

1.0 Purpose of the paper

- 1.1 This paper is submitted to the Committee to consider the potential revision to the process of considering and investigating complaints.
- 1.2 The paper also seeks agreement from the Standards Committee to review the Code of Conduct within the constitutional review with policy input from this Committee.

2.0 Recommendations

- 2.1 The Monitoring Officer is requested to review the current process and, if required, present a revised process for consideration by the committee.
- 2.2 The Monitoring Officer is requested to review the current Code of Conduct and, if required, present a revised Code for consideration by the committee and further inclusion into the constitutional review.

3.0 Executive summary

- 3.1 This council has a historic process which finds its roots in the pre-localism act 2011 legislation. The standards regime changed significantly but the requirement for a fair and transparent process still exists.
- 3.2 Along with the other wider changes the underlying process should be reviewed to consider both a streamlined and transparent process.
- 3.3 The Localism Act S.28 requires the local authority to maintain a code of conduct. The code of conduct must make provision for the registration and disclosure of pecuniary interests (which are defined by regulation) and attract a criminal sanction. The section also requires a register for 'other interests' as specified by S.28 (2). 'Other interests' do not have a statutory definition. It seems the policy rationale was to allow a local council to develop
1) a definition of 'other interests' best suited to that organisation and 2) to

allow the council to decide how best to resolve those potential conflicts of 'other interests'. This essentially is to allow a local balance to be struck between the knowledge and experience of local councillors who through experience and commitment to the community have specialist knowledge which may add value to the debate or decision and the perception of bias or infringement on any individual members ability to act in the public interest.

- 3.4 Our code of conduct only requires declarations of Pecuniary Interests, which is written into statute and are criminal offences. This means that when you have a clear 'other interest' which should be declared at the meeting there is no guidance on what you should then do, nor is there any guidance on it being included on any register. By looking at other codes they usually contain a definition of 'other interests' e.g. to external appointments, a controlling function of a club or society a committee member, trustee etc.
- 3.5 The codes often go on to set out the behaviour expected from the member when an 'other' interest is identified. This varies from requiring members to leave and not take part in debate or vote, (as for pecuniary interests), some allow participation on points of clarification via the chairman only but not to vote, others allow a statement in debate subject to the clear declaration. I have not seen any code that suggests the member takes part in the vote.
- 3.6 The only guidance from the EHDC constitution relates to quasi-judicial function such as planning) and indicate the test is 'Members should not participate if a reasonable member of the public who is neither complacent nor unduly sensitive or suspicious would in the circumstances conclude that there is a real possibility of bias by a Councillor'. In reality this is an objective reasonable bystander test, and the essential element is would a reasonable member of the public think there is a real possibility that the interest (whatever it is) may influence your understanding or perception of the public interest.
- 3.7 The lack of guidance has generated correspondence from members who are unsure of the boundaries and wish to ensure they are acting within the wording and spirit of the code and seeking clarity on how to act in any circumstances. EHDC code of conduct has been adopted by many parish councils and the ambiguity creates a difficulty for parish council clerks and councillors, who seek guidance from EHDC, which has a consequential impact on the use of EHDC resources in advising and considering matters at Parish level.

4.0 Additional budgetary implications

- 4.1 None

5.0 Background and corporate strategy and directorate business plan(s)

- 5.1 This aligns with the constitutional review.

6.0 Options and reasons for recommending relevant option

- 6.1 Option 1: Do Nothing. This option is the simplest, but it does not address members enquiries or the resource input required at parish level.
- 6.2 Option 2: This will provide an opportunity for members to consider and adopt an approach they believe best fits the needs of this Council

7.0 Resource implications

- 7.1 This will require time commitment from the Monitoring Officer and Democratic Services.

8.0 Legal implications

The will depend on the recommendation made.

9.0 Significant risks

The do-nothing option risks stagnation, an early review will evidence a commitment to high standards in public life. Ensuring the Council's standards regime is kept up to date also assists in educating members and reducing the resource impact and reputational risk to the authority.

10.0 Consultation

Any outcome will require full member engagement to be adopted.

11.0 Communication

Any recommended changes will be fully published to all members

Agreed and Signed off by:

Monitoring Officer: 01.10.19

S151 Officer: 02.10.19

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