

Report to: **Overview & Scrutiny Panel**

Date: **24 January 2019**

Title: **Review of Procedure for Dealing with Standards Complaints**

Portfolio Area: **Cllr Simon Wright**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken: **Council 21 February 2019**

Author: **Catherine Bowen** Role: **Monitoring Officer**

Contact: Catherine.Bowen@swdevon.gov.uk

Recommendations:

That the Overview & Scrutiny Panel RECOMMENDS to Council to:

- 1. adopt the revised 'Dealing with Standards Complaints' procedure attached at Appendix A to this report; and**
- 2. delegate the review of the associated hearing procedure to the Monitoring Officer in consultation with Chairman of the Overview & Scrutiny Panel.**

1. Executive summary

- 1.1 The purpose of this report is to review the Council's 'Dealing with Standards Complaints' procedure. The procedure sets out how the Council deals with complaints that District Councillors and Parish/Town Councillors have broken their respective Codes of Members' Conduct.
- 1.2 The revised procedure is attached as Appendix A to this report and the proposed amendments are shown highlighted in yellow. The contents page and paragraph numbering will be completed once the final document has been agreed. The main proposed changes to the existing procedure are set out below in paragraph 2.

2. Background

- 2.1 The current standards regime was introduced in 2012 by the Localism Act 2011 and the Act required councils to adopt a Code of Members' Conduct and 'principal' councils to adopt a procedure for dealing with complaints that a councillor(s) had broken his/her Code of Conduct. For District Councils, the complaints procedure must also cover Code of Conduct allegations about Parish/Town Councillors within the District Council's area.
- 2.2 The Council's current procedure 'Dealing with Standards Complaints' has worked well since 2012. However, it is considered timely for a review of this process with a focus on improving transparency, management of complainants' expectations earlier in the process (particular in relation to the Council's powers and potential outcomes/sanctions) and improving timescales for the delivery of decisions.
- 2.3 The whole procedure has been reviewed as Members will note from the highlighted parts in Appendix A, but the main proposed amendments are:
 - 2.3.1 Management of Expectations - it is accepted that the current procedure could be clearer through all stages of the process, as to what the standards procedure can and cannot consider, and what the potential outcomes could be if it is decided that the Code of Conduct has been broken. The Monitoring Officer will also amend the complaints form and accompanying guidance notes to ensure further clarity and transparency.
 - 2.3.2 The introduction of an 'Initial Assessment' stage which authorises the Monitoring Officer to reject complaints that do not satisfy three preliminary tests: the complaint must be about a named councillor, the councillor must have been a councillor at the time the allegation was made and, if proven, the complaint would disclose a breach of the Code of Conduct. The Monitoring Officer may also reject complaints at this stage if s/he considers that the complaint falls within one or more of the defined criteria set out on pages 9 and 10 of Appendix A. If there is any doubt at this stage, then the complaint will progress to the formal assessment stage of the complaint process as set out on pages 10 and 11 of Appendix A. The 'formal assessment' process is the procedure which all complaints currently follow.
 - 2.3.3 Finding of breach by the Monitoring Officer without an investigation (please see page 14 of Appendix A). The reasoning behind this provision is that, in some cases, it is not in the public interest to refer a case for investigation. For example, in some complaints it is apparent (and often accepted by the subject councillor) that there has been a breach of the Code during the assessment stage, and in some cases the Councillor has already provided a remedy for the issues raised by the complainant. Where there is any doubt, the matter will be referred for investigation. There will be a right to request a review by the Councillor where the Monitoring Officer has found a breach without an investigation (please see page 16-17 of Appendix A). The complaint will be reviewed by a different officer.
 - 2.3.4 Where a matter has been referred for an investigation and the Investigating Officer has found that there has been a breach of the Code, the Monitoring Officer has power to accept that decision and apply sanctions or make recommendations without the matter being referred to a hearing. Serious and complex matters will be referred to a hearing. The hearing procedure will sit (as it does now) in a separate document and Members are requested to

delegate the review of the hearing procedure to the Monitoring Officer in consultation with the Chairman of the Overview & Scrutiny Panel.

- 2.3.5 It is proposed to publish the outcomes of all decisions where there has been a breach of the Code. A summary of the complaint and the decision will continue to be referred to the Overview & Scrutiny Panel, but also published on the Council's website. Where there is a decision to take no further action at the formal assessment stage, the Councillor has the option to decide whether or not to publish the decision.
- 2.3.6 The inclusion of the sanctions in an appendix to the 'Dealing with Standards Complaints' Procedure together with a more detailed explanation about the limitations on the Council's powers in regard to sanctions. The sanctions are currently set out only in the hearing procedure and complainants are not necessarily aware of the limitations on the Council's powers in relation to standards matters.
- 2.4 Whilst the requirement is to have three Members of the Overview & Scrutiny Panel as members of the Standards Panel that will consider a standards matter, a fourth Member is identified and fully briefed to ensure that we have capacity in the event of conflict or illness etc.

3. Options available and consideration of risk

- 3.1 The Council has the option of retaining the current 'Dealing with Standards Complaints' procedure, adopting the revised procedure as set out in Appendix A, or adopting a different procedure. The risk of retaining the current procedure is that the Council does not adequately manage complainants' expectations which causes frustration to the complainants as to what the standards process can achieve and some complaints will continue to take some months before they are concluded.
- 3.2 The proposed amendments as set out in Appendix A have been arrived at through a discussion with other monitoring officers in Devon and Cornwall as to their current practice, and also following consultation with the Standards Panel and the Council's Independent Persons (these are the independent people appointed by the Council in a consultative and advisory role).

4. Proposed Way Forward

- 4.1 The proposal is to amend the current 'Dealing with Standards Complaints' procedure in line with the amendments set out in Appendix A in order to better manage complainants' expectations, provide more transparency and to make the process both more cost effective and timely.

5. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Overview & Scrutiny Panel is responsible for standards matters including reviewing policies and procedures relating to standards.

		The Localism Act 2011 does not prescribe the process for dealing with standards complaints; it states that relevant Councils must have a process but devolves the details to the relevant Councils. South Hams District Council is a relevant Council and the Localism Act also makes South Hams responsible for dealing with standards complaints made against parish and town councillors within its area.
Financial	Y	Costs are difficult to predict and quantify with standards queries and complaints, as there is no way of knowing how many complaints will be made, or of those, how many complaints will have an outcome of a 'breach'. However, if the proposed amendments are made to the Procedure, this will reduce the amount of officer time spent on standards complaints and significantly reduce the costs of referring a matter for formal investigation. It is also anticipated that through the improved management of expectations and the Initial assessment stage, that fewer formal complaints will be received for matters which do not disclose a potential breach of the Code of Conduct.
Risk	Y	Potential risks are set out in paragraph 3 and the reasons for the proposed amendments are set out in paragraph 2.2
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	These are addressed with in the attached procedure and during specific standards complaints
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A: revised procedure 'Dealing with Standards Complaints'