



North Devon Council

Report Date: Tuesday, 11 June 2024

Topic: Review of the Committee's Terms of Reference

Report by: Simon Fuller, Senior Solicitor and Monitoring Officer

1. INTRODUCTION

- 1.1. The Governance Committee has delegated responsibility for audit and for standards at Council. It is considered that, in respect of the latter, the Governance Committee is lacking suitable powers within the Constitution to determine complaints regarding the conduct of District and Parish Councillors.
- 1.2. Further to, and subject to, the above it is considered appropriate for Governance Committee to establish sub-committees to hold hearings relating to Code of Conduct complaints. In line with this it is considered that such hearing panels should have a clear procedure to follow and that the general arrangements for dealing with standards investigations should be updated to reflect the full Code of Conduct complaints procedure.

2. RECOMMENDATIONS

- 2.1. That the Governance Committee's terms of reference are updated by a recommendation to Full Council to update paragraph 5 Annexe 1 to Part 3 of the Constitution as provided at Appendix 1 to this report.
- 2.2. Subject to paragraph 2.1:
 - 2.2.1. That the Committee appoint three Sub-Committees (hereafter referred to as "Hearing Panels") each with three Members with the delegated powers detailed in Appendix 3 of this report and with the proposed membership as set out in Appendix 4 to this report;
 - 2.2.2. That alternative arrangements be made for the appointment of Members of the Hearing Panels in accordance with the powers set out in section 17 of the Local Government and Housing Act 1989 and the provisions of the Local Government (Committees and Political Groups) Regulations 1990;
 - 2.2.3. That the alternative arrangements provide that, subject to paragraph 2.2.4 below, the membership of the Hearing Panels shall not be politically balanced;
 - 2.2.4. That the Chairs of Hearing Panels be appointed on the day of the meeting and that membership should comprise members drawn from at least two different political parties;
 - 2.2.5. That the appointed Hearing Panels be restricted in that they may not further delegate any of their powers to an officer of the Council or any other body

- 2.2.6. That the Hearing Panels adopt the Local Hearing Procedure as included at Appendix 5 as its terms of reference for hearings related to standards matters and, in accordance with that Procedure, that the Chair of the Hearings Panel is delegated the right to depart from the arrangements (as referenced at paragraph 2.2.7 below) where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter
- 2.2.7. That the arrangements for dealing with standards allegations under the Localism Act 2011 be updated as provided at Appendix 6

3. REASONS FOR RECOMMENDATIONS

- 3.1. The terms of reference for Governance Committee are currently appropriate in terms of its audit function but lack suitable provision as regards its standards function should a standards investigation be referred to the Governance Committee to consider and determine. The provision to update its powers in the Constitution are to match those of the Monitoring Officer in terms of determining complaints regarding the conduct of District and Parish Councillors and making recommendations to Parish Councils or, as applicable, Group Leaders, Committees and Full Council.
- 3.2. Such an amendment requires ratification by Full Council as the power to amend the Constitution is reserved there. Subsequent proposals are dependent on this change being made and so cannot proceed as worded without ratification of this change to the Constitution by Full Council.
- 3.3. Subject to the above it is considered appropriate that suitable sub-committees of the Governance Committee (Hearing Panels) should be formed in the event that a standards investigation progresses to a hearing as it would not be suitable or practical for this to be heard by the Governance Committee as a whole.
- 3.4. It is considered helpful and transparent for complainants and councillors that may be subject to standards investigations to understand the full process in terms of standards complaints and subsequent investigations including where such a complaint is taken before a Hearing Panel. Accordingly the arrangements for dealing with standards complaints and the procedure to be followed by the Hearings Panel is before Governance Committee to approve following which it can be published.

4. REPORT

- 4.1. On reviewing the Governance Committee's powers as set out in Annexe 1 to Part 3 of the Constitution (also known as its "terms of reference") it has been noted that there is an inconsistency with the powers of the Monitoring Officer, namely there is no express delegated power for the Governance Committee to determine complaints regarding the conduct of District and Parish Councillors. It is therefore proposed to change the delegated powers in

paragraph 5 of Annexe 1 to Part 3 of the Constitution as provided at Appendix 1. To allow members to see precisely what has been added a tracked changes version has been included as Appendix 2 to this report.

- 4.2. It is standard practice at local authorities for a Committee with the standards function to establish sub-committees to hear code of conduct cases if they cannot be suitably resolved at an earlier stage. At present only the Monitoring Officer holds the delegated power to determine such cases and in the vast majority of cases the Monitoring Officer will do so because Code of Conduct complaints made will normally be resolved or determined at an earlier stage. However it is appropriate practice that this power should be held in common with Governance Committee and, further, that the potential for a fair hearing to be carried out before a panel of members be put in place should a case reach this point in the future.
- 4.3. In common with the practice adopted by the sub-committees for the Licensing and Community Safety Committee, the membership of a Hearing Panel is likely to be based upon a combination of availability and suitability depending on the case being brought before it (particularly if a member of Governance Committee is under investigation themselves) and therefore the proposal presented is that three Hearing Panels are appointed with the membership as proposed and that these Hearing Panels are not politically balanced, with the Chair appointed at the meeting in line with the appended proposed Procedure (Appendix 5).
- 4.4. The Governance Committee has delegated power to consider the arrangements for dealing with standards (also known as Code of Conduct) allegations under the Localism Act 2011 and it is proposed that these are reviewed as part of this process. The proposed arrangements are included as Appendix 6. Since taking on the role of Senior Solicitor and Monitoring Officer I have noted some confusion and misunderstanding, among both customers, officers and councillors, in what the Monitoring Officer does, what the Code of Conduct procedure is and when and how to complain and also what happens following receipt of a complaint. It is considered that these arrangements, which will be published, should serve to clear up any misunderstandings and provide a transparent process for all. Such arrangements reference the above Hearing Panel and so cannot proceed with the wording as proposed at present without Full Council ratification of the amendment to the Constitution as proposed above.

5. RESOURCE IMPLICATIONS

- 5.1. There will be an implication on the Council's Corporate and Community Services Team in the establishment of a further sub-committee and providing administrative and secretarial services to such sub-committees, however it is



likely that this will be minimal given a standards complaint reaching this stage is very infrequent.

6. EQUALITIES ASSESSMENT

6.1. It is not considered that there will be any equalities implications as a result of the recommendations in this report. The recommendations should increase the awareness of the standards regime and how it functions to the wider public.

7. ENVIRONMENTAL ASSESSMENT

7.1. There is no environmental implications arising from the proposals in this report.

8. CORPORATE PRIORITIES

8.1. What impact, positive or negative, does the subject of this report have on:

8.1.1. The commercialisation agenda: None

8.1.2. Improving customer focus: It is considered that this will have a positive impact on the understanding of how a complaint made against a district or parish councillor will be handled by the Council, what the role of the Monitoring Officer is, how any hearing related to a standards investigation will be handled and sanctions that can potentially be imposed.

8.1.3. Regeneration or economic development: None

9. CONSTITUTIONAL CONTEXT

9.1. Save as provided in paragraph 9.2 below, the decision in respect of the recommendations in this report can be made by this Committee pursuant to delegated powers provided in Part 3 Annex 1 paragraph 5 of the Constitution.

9.2. As noted in the report, the power to decide on one or more of the recommendations in this report is reserved to Council pursuant to Article 4.5.1 and as such the recommendation must be referred to Council to ratify.

10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.



11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

North Devon Council's Constitution

The Local Government Association's "Guidance on Local Government Association Model Councillor Code of Conduct" and "Guidance on Member Model Code of Conduct Complaints Handling"

12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Simon Fuller, Senior Solicitor and Monitoring Officer