

Joint Standards Committee

- To:** Councillors Douglas (Chair), Baker, Carr, Fisher and Rowley (CYC Members)
- Cllrs Chambers, Rawlings and Wiseman (Vice Chair)
(Parish Council Members)
- Ms Davies and Mr Laverick (Independent Persons)
- Date:** Wednesday, 22 January 2020
- Time:** 4.00 pm
- Venue:** The King Richard III Room (GO49) - West Offices

AGENDA

- 1. Declarations of Interest**
Members are asked to declare:
 - any personal interests not included on the Register of Interests
 - any prejudicial interests or
 - any disclosable pecuniary interestswhich they may have in respect of business on this agenda.

- 2. Minutes** (Pages 1 - 8)
To approve and sign the minutes of the meeting of the Joint Standards Committee held on 20 November 2019.

- 3. Minutes of Sub-Committees** (Pages 9 - 12)
To approve and sign the minutes of the meeting of the Joint Standards Committee Assessment Sub-Committee held on 18 December 2019.

- 4. Public Participation**
At this point in the meeting, members of the public who have registered their wish to speak, regarding an item on the agenda or an issue within the remit of the Joint Standards Committee,

may do so. The deadline for registering is **5:00 pm on Tuesday, 21 January 2020**. To register to speak please contact the Democracy Officer for the meeting on the details at the foot of the agenda.

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- 5. Monitoring Report on Complaints Received** (Pages 13 - 22)
To receive a routine update report on recent standards complaints.

- 6. Review of the Constitution: Constitution Review Survey, Members' Code of Conduct and Protocol on Officer / Member Relations** (Pages 23 - 56)
This report provides an update on the review of the City of York Council's Constitution, including the Joint Standards Committee's response to the review survey, and seeks Members' views on proposed amendments to the Members' Code of Conduct and the Protocol on Officer/Member Relations.

7. Procedures for dealing with Councillor Code of Conduct Complaints (Pages 57 - 68)

This report presents the final version of the procedures for dealing with Councillor Code of Conduct complaints and invites the committee to consider a question raised by a Member which may have a bearing on the procedures.

8. Update on the Whistleblowing Policy

The Monitoring Officer to provide a verbal update on the progress of the council's new Whistleblowing Policy.

9. Review of Work Plan (Pages 69 - 70)

To consider the Committee's work plan for the current municipal year and decide whether any amendments or additions are required.

10. Urgent Business

Any other business which the Chair decides is urgent under the Local Government Act 1972.

Democracy Officer:

Name: Fiona Young

Contact Details:

Telephone – (01904) 552030

Email – fiona.young@york.gov.uk

For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

**Ta informacja może być dostarczona w twoim
własnym języku. (Polish)**

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

City of York Council

Minutes

Meeting	Joint Standards Committee
Date	20 November 2019
Present	Councillors Douglas (Chair), Baker, Carr, Fisher and Rowley (CYC Members) Cllrs Chambers, Rawlings and Wiseman (Parish Council Members)
Apologies	Ms Davies and Laverick (Independent Persons)

22. **Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, which they might have in respect of business on the agenda.

Cllr Wiseman declared a personal interest in Agenda Item 4 (Monitoring Report on Complaints Received), as a member of the parish council involved in case 719 on the list at Appendix A.

23. **Minutes**

With reference to Minute 17 (Monitoring Report on Complaints Received), the Vice Chair indicated that she had been unaware of the resolution of case 719 and would like the Monitoring Officer to have discussions with the parish council on the timescales of the case before it was formally closed. The MO agreed to do this.

Resolved: That the minutes of the meeting of the Joint Standards Committee held on 4 September 2019 be approved, and signed by the Chair as a correct record.

24. **Public Participation**

It was reported that there had been one registration to speak at the meeting under the Council's Public Participation Scheme.

Gwen Swinburn spoke on Agenda Items 4 (Monitoring Report on Complaints) and 7 (Information Report on the Ethical

Standards in Public Life Review). On the former she raised concerns about delays to cases due to a lack of response from one of the Independent Persons, on the latter she highlighted areas where she considered the council was not following best practice.

25. Monitoring Report on Complaints Received

Members considered a report which provided an update on the current position of ongoing complaints.

Anonymised information on the complaints and the stage each one had reached was set out in the table attached as Appendix A to the report. A number of long-running complaints had been submitted by the same person, and the Monitoring Officer (MO) was minded to convene an Assessments Sub-Committee to deal with all these complaints together, once the views of both Independent Persons had been obtained.

In response to questions from Members, the MO confirmed that:

- Case details must remain confidential unless a breach of the Code had been found;
- The committee's role was to have oversight of the procedures and processes and identify any areas for improvement;
- Notes from the last training session would be circulated to Members.
- Future reports would also identify cases where more than one complaint had been made against the same person.

Resolved: (i) That the report be noted.

Reason: To ensure that the committee is aware of current levels of activity.

(ii) That an Assessments Sub-Committee be convened as soon as possible to consider the multiple complaints submitted by the same complainant and determine whether or not all or any of them should be referred for investigation.

Reason: To enable these multiple complaints to be considered by a wider group than the Monitoring Officer alone.

26. Update on Review of the Constitution

Members considered a report which provided an update on the progress of the review of City of York Council's (CYC) Constitution.

Proposals to undertake a review had been agreed by the Executive at their meeting on 26 September 2019. A copy of the report to that meeting was attached as Appendix 1. The Constitution review was the first part of a two-stage process, the second being a review of CYC's governance arrangements. Consultation with CYC members and Officers was currently in progress and discussions would be held with political groups. It was hoped that the final draft Constitution would be ready for consideration by Full Council on 26 March 2020.

The Monitoring Officer advised that any proposed changes to the documents within the Constitution that fell within the committee's remit, namely the Members' Code of Conduct and the Protocol on Officer / Member Relations, would be brought to the committee in the new year. However, it was also open to Members to respond to the consultation.

The Chair drew attention to the consultation document sent to all CYC members, suggesting that the committee might agree a joint response to this. It was confirmed that the deadline for submission of responses had been extended to 31 December 2019.

Resolved: (i) That the report be noted.

(ii) That a task group be convened to agree a joint response by the committee to the consultation document circulated to City of York Council Members and to submit their response by the 31 December deadline.

Reason: To enable the committee to feed into the consultation process.

27. Procedures for Dealing with Councillor Code of Conduct Complaints

Members considered a report which provided an update on the progress of the task group set up to review the procedures for dealing with Councillor Code of Conduct complaints.

The task group had met on 15 October 2019 and suggested some amendments to the current procedures. These were shown as tracked changes on the document attached as Appendix 1 to the report.

Members gave further consideration to the amended document in the light of the best practice recommendations contained in Annex 2 to the Local Government Ethical Standards report appended to the report at Agenda Item 7 (p.153-156 of the agenda papers).

With reference to 'Best practice 6' in the Ethical Standards report (publishing a public interest test against which allegations are filtered), the Monitoring Officer agreed to look at the practices of other local authorities and advise at the next meeting with regard to this.

Resolved: (i) That the following additional amendments be made to the revised procedures at Appendix 1:

a) Under 'Making a complaint'

- Amend the penultimate paragraph by adding '*or in the interests of clarity*' to the end of the first sentence.
- Amend the last paragraph to include a commitment to inform the complainant of the outcome of their complaint in every case.

b) Under 'Will your complaint be investigated?'

- Re-instate the second paragraph, but with a requirement to consult just one of the Independent Persons and only when the Monitoring Officer is minded to refer a complaint for investigation.

c) Under 'How is the investigation conducted?'

- In the last paragraph, insert '*confidential*' after '*complaint*' in the second line.

d) At the end of the document

- Re-instate the final paragraph (previously included under the heading 'Appeals')

Reason: To reflect the recommendations of the task group while ensuring compliance with best practice.

(ii) That the document at Appendix 1 be amended to include the above changes and circulated to Committee Members.

Reason: So that all members have an up to date copy of the agreed procedures.

(iii) That officers consider the Code of Conduct in the light of the best practice recommendations before bringing it to the committee as part of the constitution review.

Reason: To ensure that this document complies with best practice.

28. Information Report on the Ethical Standards in Public Life Review and its Impact on Standards Work

Members considered a report which provided an update on the findings of the Committee for Standards in Public Life (CSPL) as detailed in the report of its most recent review, in January 2019. A copy of that report was attached as Appendix 1.

The CPSL had made 26 recommendations and identified 15 areas of best practice to improve ethical standards in local government, as set out on pages 14-19 of their report.

A commentary on the current arrangements at York against each best practice area was provided in the table at Appendix 2. The documents comprising the ethical framework at York – the Members' Code of Conduct, procedures for dealing with complaints, and the Protocol on Officer / Member Relations – were attached as Appendix 3. All were currently being reviewed, as discussed under previous agenda items (Minutes 26 and 27 refer).

Resolved: (i) That the report of the Committee on Standards in Public Life in relation to local government standards, including the recommendations and areas of best practice for the improvement of ethical standards, be noted.

Reason: To confirm that the committee is aware of the review and its outcomes.

(ii) That the Monitoring Officer be asked to consider the Code of Conduct and the Officer/Member Protocol in the light of the best practice recommendations before bringing them to the committee as part of the Constitution review.

Reason: To ensure that these documents comply with best practice.

29. Standards work in relation to Parish Councils (discussion item)

Members discussed matters affecting standards in parish councils (PCs) and how the committee could best support PCs in complying with standards requirements.

The Vice Chair highlighted some specific issues that she considered relevant to PCs in this context, including:

- Recruitment problems, resulting in many members being co-opted rather than elected and thus lacking experience;
- Differences in the size and demographics of PC areas;
- Lack of communication between PCs;
- Lack of awareness within PCs of the standards process and the purpose of the Joint Standards Committee;
- Difficulties in dealing with the public and social media;
- A tendency not to take complaints and sanctions seriously enough.

Members agreed that training and communication were important areas in which the committee could play a role and that the matter should be discussed further at a future meeting.

Resolved: That the Vice Chair draw up some suggestions for discussion with the current or incoming Monitoring Officer, and that a report based on those

suggestions be brought to a future meeting of the committee.

Reason: To enable an informed decision to be made on how best to assist parish councils in dealing with standards issues.

30. Review of Work Plan

Members considered the committee's work plan for the remaining meetings of the current municipal year, to be held on 22 January and 15 April 2020.

With reference to the request made at the 4 September meeting (Minute 21 refers), the Monitoring Officer confirmed that DBS checks for CYC Members did not fall within the remit of the committee but were a risk issue for the council. The matter was currently being discussed with group leaders.

Resolved: That the work plan be approved, subject to the following amendments and additions:

Amendments

Move the following items from 22 January to 15 April:

- Planning and pre-determination: advice for Council Members and the role of the committee in disseminating this
- Discussion on the use of informal processes to minimise the number of standards complaints.

Additions

Add to 22 January:

- Review of the Constitution (report back from task group)

Add to 15 April:

- Report on how the committee and City of York Council can better support parish councils in their work.

Reason: To follow up on the matters discussed at this meeting and ensure that the committee has a planned programme of work in place for the rest of the year.

Cllr C Douglas, Chair

The meeting started at 4.00 pm and finished at 6.33 pm.

City of York Council

Committee Minutes

Meeting	Joint Standards Committee - Assessments Sub-Committee
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Date	18 December 2019
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Present	Councillors Carr, Douglas and Wiseman
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2. **Appointment of Chair**

Resolved: That Cllr Douglas be appointed to act as Chair of the meeting.

3. **Declarations of Interest**

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they might have in the business on the agenda. No interests were declared.

4. **Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during consideration of Agenda Item 4 (Complaints about Members of Councils covered by the Joint Standards Committee), on the grounds that it includes information relating to individuals, which is classed as exempt under paragraph 1 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

5. **Complaints about Members of Councils covered by the Joint Standards Committee**

Members considered a report that presented a series of 11 complaints submitted in relation to the alleged conduct of 10 members of councils covered by the Joint Standards Committee.

Details of the complaints were set out in Annex 1 to the report and the comments of the Independent Persons on each complaint were provided in Annex 2.

The following options were considered in respect of each case:

- To decide that no further action be taken
- To refer the matter to the Monitoring Officer for investigation,
- To consider whether some other action may be appropriate.

Having considered the evidence before them, and taking into consideration the comments of the Independent Persons, Members

Resolved: That no further action be taken in respect of any of these cases, for the reasons detailed below.

Reasons: (i) Case no. 720 – the allegations relating to conduct in 2016 were too old when the complaint was submitted to render any meaningful investigation, and the allegations in relation to conduct in February 2019 do not amount to a breach of the Code of Conduct.

(ii) Case no. 725 – the statements alleged to have been made do not amount to a breach of the Code of Conduct.

(iii) Case no. 726 – there is no evidence to support the allegation of discrimination and, although the allegation regarding failure to declare an interest might possibly warrant investigation, the subject member is no longer a CYC Councillor and the Joint Standards Committee has no powers to investigate former councillors.

(iv) Case no. 727 - these allegations relate to the workings of a political group and do not fall under the Code of Conduct. In addition, the subject member is no longer a CYC Councillor and the Joint Standards Committee has no powers to investigate former councillors.

(v) Case no. 728 – there is no evidence presented to support these allegations. In addition, three of the four subject members are no longer CYC Councillors and the Joint Standards Committee has no powers to investigate their conduct.

(vi) Case no. 729 - there is no evidence presented to support these allegations. In addition, the subject members are no longer CYC councillors and the Joint Standards Committee has no power to investigate their conduct. Although one subject member remains a Parish Councillor, the conduct that is alleged relates to their position as a CYC Councillor which they no longer hold.

(vii) Case no. 733 - it is not clear whether the subject member was acting in an official capacity. The complaint is unclear and there is insufficient information to evidence the allegation of disrespect.

(viii) Case no. 734 - The subject member is no longer a CYC Councillor and the Joint Standards Committee has no powers to investigate their conduct.


(ix) Case no. 735 - while the subject member remains a Parish Councillor, the allegations relate to conduct in their capacity as a CYC Councillor. Since the subject member is no longer a CYC Councillor the Joint Standards Committee has no powers to investigate this allegation.

(x) Case no. 736 - The events occurred at a political meeting and there is no information to substantiate the allegation. In addition, the subject member is no longer a CYC Councillor and the Joint Standards Committee has no powers to investigate their conduct.

(xi) Case no. 738 - the alleged conduct is not covered by the Code of Conduct and there is no evidence to support it so that it can be brought under the standards regime. The allegations relate the administration of a council and the standards regime is not the appropriate way to resolve this complaint.

Cllr C Douglas, Chair

[The meeting started at 3.30 pm and finished at 4.10 pm].

	
Joint Standards Committee	22 January 2020
Report of the Interim Monitoring Officer	

Monitoring Report on Complaints Received

Summary

1. This report is to update the Committee on the position regarding ongoing complaints.

Background

2. The table attached at Annex A provides information about ongoing complaints and in particular the stage each one has now reached.
3. Members will see that there a number of long running complaints all of which have been submitted by the same complainant. Complaint Ref 720 is now linked to Complaint Ref 725 and the Monitoring Officer is seeking to determine if these can be dealt with together. In addition the complainant in relation to Complaint Ref 720 & 725 has also submitted 4 complaints in relation to 10 subject members on 13/8/19 Ref 726 – 729, 4 complaints in relation to 4 subject members on 30/9/19 Ref 733 -736 and a complaint on 7/11/19 in relation to a Parish Councillor Ref 738. In total the complainant has submitted 11 complaints.
4. An Assessment Sub-Committee was convened on 18 December 2019 to consider all these complaints together. The outcome of their deliberations is set out in Annex A.
5. There have been 3 new complaints submitted in relation to one subject member. These are on hold as the conduct is also subject to investigation by another party. Once this investigation is

completed and the outcome known the Monitoring Officer will give further consideration to the appropriate way to deal with these complaints.

Recommendations:

6. Members are recommended to:

Note the report.

Reason: To ensure that the Committee is aware of the current levels of activity and to is able to provide oversight of the complaints procedure.

Author:
Suzan Harrington Interim Assistant Director Legal and Governance. Tel No. 01904 554587

Annexes

Annex A – table of complaints

Annex A.

Case Ref.	City or Parish	Complainant	Date Received	Nature of Complaint	Status at 20/11/19	Update at 22/1/20
719	Parish	Parish Councillor	18/9/2018	The complainant alleges breach of confidentiality and attempt to secure an advantage for an individual in relation to a recruitment process.	Meeting was held on 3 September 2019 and a local resolution was discussed. This was not agreed with the complainants.	The Monitoring Officer met with the complainants to discuss their concerns on 9 December 2019. Discussions ongoing to reach an agreed local solution.
720	City	Former City Councillor	26/2/2019	The complainant alleges that the subject member's conduct was disrespectful.	The complainant has submitted further complaints on 30.9.19 (Ref 732 – 736) and another complaint on 7.11.19 (Ref 738). These additional complaints have been sent to the IPs for their views. The MO is minded to convene an Assessment Sub-Committee to consider all these matters together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.

723	Parish (x2)	Member of the Public	24/6/19	The complaint alleges that the subject members have behaved in a manner that is disrespectful.	The investigation was put on hold because a related complaint was submitted (Ref 731). This has now been closed and the investigation is proceeding.	The investigation is ongoing.
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725	City	Former City Councillor	13/8/19	The complainant alleges that the subject member's conduct was disrespectful.	The complainant has submitted further complaints on 30.9.19 (Ref 732 – 736) and another complaint on 7.11.19 (Ref 738). These additional complaints have been sent to the IPs for their views. The MO is minded to convene an Assessment Sub-Committee to consider all these matters together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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726	City	Former City Councillor	13/8/19	The complainant alleges that the subject member failed to declare an interest and discriminated against the complainant.	The complainant has submitted further complaints on 30.9.19 (Ref 732 – 736) and another complaint on 7.11.19 (Ref 738). These additional complaints have been sent to the IPs for their views. The MO is minded to convene an Assessment Sub-Committee to consider all these matters together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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727	City	Former City Councillor	13/8/19	The complainant alleges that the subject member disclosed information about the complainant to other members of council without the consent of the complainant.	The complainant has submitted further complaints on 30.9.19 (Ref 732 – 736) and another complaint on 7.11.19 (Ref 738). These additional complaints have been sent to the IPs for their views. The MO is minded to convene an Assessment Sub-Committee to consider all these matters together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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728	City (x4)	Former City Councillor	13/8/19	The complainant alleges that the subject members discriminated against the complainant.	The complainant has submitted further complaints on 30.9.19 (Ref 732 – 736) and another complaint on 7.11.19 (Ref 738). These additional complaints have been sent to the IPs for their views. The MO is minded to convene an Assessment Sub-Committee to consider all these matters together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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729	City (x4)	Former City Councillor	13/8/19	The complainant alleges that the subject members discriminated against the complainant.	The complainant has submitted further complaints on 30.9.19 (Ref 732 – 736) and another complaint on 7.11.19 (Ref 738). These additional complaints have been sent to the IPs for their views. The MO is minded to convene an Assessment Sub-Committee to consider all these matters together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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730	City (x2)	Member of the Public	19/8/19	The complainant alleges that the subject members failed to respond to emails requesting support and advice in relation to a planning issue.	This matter has been referred for investigation. The complainants and the subject members have been informed.	The investigation is ongoing.
733	City	Former City Councillor	30/9/19	Allegations that the subject member has been disrespectful.	This matter has been referred to the IPs. It is part of a series of complaints. The MO is minded to convene an Assessment Sub-Committee to consider all complaints together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
734	City	Former City Councillor	30/9/19	Allegations that the subject member disclosed confidential information.	This matter has been referred to the IPs. It is part of a series of complaints. The MO is minded to convene an Assessment Sub-Committee to consider all complaints together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.

735	City	Former City Councillor	30/9/19	Allegations that the subject member harassed an employee.	This matter has been referred to the IPs. It is part of a series of complaints. The MO is minded to convene an Assessment Sub-Committee to consider all complaints together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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736	City	Former City Councillor	30/9/19	Allegations that the subject member disclosed confidential information.	This matter has been referred to the IPs. It is part of a series of complaints. The MO is minded to convene an Assessment Sub-Committee to consider all complaints together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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738	Parish	Parish Councillor	7/11/19	Allegations regarding the subject members conduct including disclosing confidential information and attempting to bully the complainant.	This matter has been referred to the IPs. It is part of a series of complaints. The MO is minded to convene an Assessment Sub-Committee to consider all complaints together.	The Assessment Sub-Committee met on 18 December 2019. The matter was not referred for investigation or other action. This matter is now closed.
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739	Parish	Parish Clerk	13/11/19	Allegations that the subject member behaved aggressively towards the complainant.		The complaint is on hold pending the outcome of investigations into the conduct by another party.
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740	Parish	Parish Councillor	13/11/19	Allegations that the subject member behaved aggressively towards the clerk.		The complaint is on hold pending the outcome of investigations into the conduct by another party.
741	Parish	Parish Councillor	15/11/19	Allegations that the subject member has verbally attacked the Chair and the clerk and sent threatening emails.		The complaint is on hold pending the outcome of investigations into the conduct by another party.

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Joint Standards Committee**22 January 2020****Review of the Constitution: Constitution Review Survey, Members' Code of Conduct and Protocol on Officer/Member Relations****Summary**

- 1) This report updates Members on the progress of the review of the Council's Constitution, including the Joint Standard Committee's response to the Constitution Review Survey and seeks Members views on proposed amendments to the Members' Code of Conduct and the Protocol on Officer/Member Relations.

Background

1. On 20 November 2019 Members considered a report which provided an update on the review of the Council's Constitution. A consultation by way of a survey had been circulated and the Joint Standards Committee set up a Working Group to prepare and submit a response to the consultation on behalf of the Committee.
2. The Working Group submitted their response on 23 December 2019 and a copy of the response can be found at Annex 1.
3. The Members' Code of Conduct and the Protocol on Officer/Member Relations are documents within the Constitution which require consideration by the Joint Standards Committee as part of the review.
4. In addition, the Joint Standards Committee agreed amendments to the Members' Code of Conduct in light of the areas of Best Practice recommended by the Committee on Standards in Public Life in their report, dated January 2019. A copy of the Members' Code of Conduct showing the proposed amendments can be found at Annex 2.
5. Best Practice 1 recommends that Local Authorities should include prohibitions on bullying and harassment in Codes of Conduct, which should include a definition of bullying and harassment and a list of examples of the sort of behaviour which would be covered by the definition.

6. Best Practice 2 recommends that Council's should include provisions within their Code of Conduct requiring Councillors to comply with any formal standards investigation and that Codes should also prohibit trivial or malicious allegations by Councillors.
7. The Officer/Member protocol can be found at Annex 3. Minor suggested amendments to this document can be seen as tracked changes; these amendments update officer roles and job titles and also deal with any grammar or spelling issues in the current version of the document.
8. The final draft of the Constitution will be considered by Full Council on 26 March 2020. It is hoped that the Constitution will then take effect from May 2020.

Recommendations

9. Members are asked to:
 - 9.1. Note the Working Group response to the Constitution Consultation Survey.
 - 9.2. Consider the proposed amendments to the Members' Code of Conduct document in light of the Best Practice Recommendations of the Committee on Standards in Public Life and also consider whether any further amendments need to be made to the document.
 - 9.3. Consider the Officer/Member protocol and propose any further amendment or alteration to this document as part of the review of the Council's Constitution.

Reason:

To ensure that the Council's Constitution is accurate, up to date and effective.

Author:

Rachel Antonelli, Senior Solicitor
& Interim Deputy Monitoring Officer

Tel No. 01904 551043

**Report Approved: Janie Berry,
Director of Governance &
Monitoring Officer**

Date 13 January 2020

Wards Affected: *List wards or tick box to indicate all*

All

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For further information please contact the author of the report

Annexes

Annex 1 – Constitution Review Survey Document

Annex 2 - Members' Code of Conduct

Annex 3 – Officer/Member Protocol

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City of York Council Constitution Review 2019/2020

Welcome to the City of York Council Constitution Review Survey

On 26 September 2019, the Council's Executive Committee resolved on to undertake a review of the Constitution at City of York Council. The purpose of the review will be to ensure that the Constitution document is accurate, up to date and effective. The Committee resolved that the review of the Constitution would include consideration of the provisions regarding key decisions, to ensure that legal requirements are met.

The timetable for this review will include consultation with all City Councillors and those involved in Committees which form the basis of the Constitution, as well as Chief Officers. The draft Constitution document will then be presented to Audit and Governance Committee for recommendation to Council. It was anticipated that this could be completed within 2 months; however, this will be subject to the dates of those Committees who wish to review the Constitution, Audit and Governance Committee and Council.

The Constitution is a framework of rules and procedures governing how City of York operates and makes decisions, in delivering its priorities transparently to York Citizens. Views will be sought on how the Constitution can be improved in the following ways:

1. An initial Member consultation and involvement process, by way of an online survey during November 2019.
2. Discussions in political group meetings during December 2019.
3. A report to a Council meeting in early 2020 (it is hoped it can be brought to Council on 26 March 2020) with proposals for an amended Constitution to be agreed to take effect from May 2020.

Questions

1. The City of York Council Constitution should provide guidance on how the Council provides leadership to the community and partnership with citizens, businesses and other organisations.

Comments:

N/A

2. The City of York Council Constitution should support and include active involvement of citizens in the process of Council decision making and should be easy to understand and up to date.

Comments:

N/A

3. The City of York Council Constitution should help Councillors to represent their constituents more effectively.

Comments:

N/A

4. The City of York Council Constitution should enable decisions to be taken efficiently and effectively.

Comments:

The Joint Standards Committee has been considering and discussing the current version of the Procedure for dealing with Councillor Code of Conduct Complaints and is in the process of finalizing an updated procedure. We feel it is of the utmost importance to ensure timely consideration and decision making within the complaints procedure and good procedures for keeping complainant and subject member fully informed of the progress of the complaint. The revised procedure should and does incorporate these principles. We have also agreed to incorporate as many of the recommendations of good practice from the January 2019 Report 'Local Government Ethical Standards: A Review by the Committee on Standards in Public Life'. We feel this is a highly important review of current standards procedures and protocols and want to see its recommendations reflected in the update of the CYC Constitution.

5. The City of York Council Constitution should ensure that those responsible for decision-making are clearly identifiable to local people and reasons for decisions are explained.

Comments:

The Joint Standards committee is in full agreement with this. The constitution should include a statement committing that local people should be easily able to find information on how and to whom to make complaints and all decisions should be clearly communicated to those directly involved in a complaint. Where a breach of the Code of Conduct is found to have been made the decision should be clearly communicated and available to the public.

6. The City of York Council Constitution should create an effective means of holding decision makers to public account.

Comments:

The Joint Standards Committee has discussed and agreed during this municipal year that in order to best hold decision makers and members to public account the independence of decision making by the Joint Standards Committee is highly important. The committee members believe and have agreed that the role of members of the committee should not be politically biased. The current makeup of the committee with proportionality not being imposed is correct. We also believe that in order to best show the public our commitment to independence the constitution should state words to the effect that membership of the Joint Standards Committee is a non-political role and that substitutes should not be allowed for any member to ensure consistency of approach and parity of treatment between all committee members.

7. The City of York Council Constitution should ensure that proposals and decisions are effectively and fairly reviewed.

Comments:

N/A

8. The City of York Council Constitution should provide a means of improving the delivery of services to the community.

Comments:

N/A

9. If there any specific areas within the Constitution where you have experienced difficulties, please specify in the comments box below.

Comments:

- a. **The Committee believes there should be strengthening of the constitution (Members Code of Conduct) around Members Register of Interests. The constitution should include a requirement for members to update their Register at minimum on an annual basis and 28 days after any change in their circumstances requiring a new or revised entry on their Register of Interests.**
- b. **The Register of Interests should include the requirement to register a declaration of payments received due to membership of external bodies.**
- c. **The requirement to declare both offers and receipt of gifts and entertainment needs strengthening. It appears that few members understand the need to declare offers of gifts and entertainment.**
- d. **The Register of Interests should include the requirement to declare travel undertaken in an official capacity as a member.**

Please complete this survey and send it to Robert Flintoft by email (Robert.flintoft@york.gov.uk) by **31 DECEMBER 2019**.

This response was submitted on 23/12/2019 by Claire Douglas, Chair of Joint Standards Committee on behalf of the committee.

Signed:



23/12/2019

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Section 5A: Members' Code of Conduct

Part 1: General Provisions

Introduction

1. (1) This Code sets out the standards of behaviour required of you whenever you are acting as a Councillor of the City of York Council.
- (2) This Code also applies to any person appointed as a co-opted member of the City Council or any of its Committees when acting as such.
- (3) A person will be acting as a Councillor or as a co-opted member when:
 - Present at formal meetings of the Council.
 - Performing duties entrusted to them by the Council
 - Performing functions associated with the ordinary role of Councillor – such as undertaking casework for residents
 - Otherwise acting, claiming to act or giving the impression that they are acting as a Councillor

But a person will not be acting as a Councillor or as a co-opted member when acting as a trustee or director of another organisation even where the appointment to that role was made by the Council.

- (4) The Code has been adopted by the City Council and is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Definitions

2. (1) A "co-opted member", is a person who is not an elected member of the authority but who –

-
- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority and
- in either case is entitled to vote at any meeting of that committee or sub-committee
- (2) "meeting" means a meeting of the Council or of any committee, sub-committee, joint committee or joint sub-committee of the authority or of the Executive or any committee of the Executive.
- (3) A "sensitive interest" is one where you consider that disclosure of the details an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees.

General Duties as to Conduct

3. (1) You must treat others with respect, including Council Officers and other elected Members.
- (2) You must not do anything which may cause the Council to breach any equality enactment.
- (3) You must not bully or harass any person (including specifically any Council employee) and you must not intimidate, or improperly influence any person, or attempt to bully or intimidate or improperly influence any person who is involved in any complaint about any alleged breach of this Code of Conductthem.

NOTE: Bullying may be characterised as:

- Offensive, intimidating, malicious or insulting behaviour, or,
- An abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone.

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Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

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Bullying and/or harassment may take many forms and may relate to a variety of issues. For example, bullying and harassment may relate to:

- Age
- Disability
- Gender reassignment
- Race
- Religion
- Belief
- Sex
- Sexual orientation.

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However, this list is not exhaustive and any form of bullying or harassment is prohibited by this Code of Conduct.

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- (4) You must not do anything which compromises the impartiality of anyone who works for or on behalf of the **Authority Council**, or do anything that is likely to compromise their impartiality.
- (5) You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
 - (a) You have the permission of a person authorised to give it; or
 - (b) You are required by law to disclose the information; or
 - (c) You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees

not to disclose the information to any other person; or

- (d) The disclosure is reasonable; and is in the public interest; and is made in good faith.
- (6) You must not prevent another person gaining access to information which that person is entitled by law.
- (7) You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.
- (8) You must not use your position as a Councillor improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.
- (9) When you use or authorise the use by others of the resources of the Council you must:
 - (a) abide by the Council's reasonable requirements; and
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (10) You must have regard to relevant advice given by the Council's Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.

(11) You must comply with any Protocol adopted by the Council which seeks to regulate the conduct of its elected Members or co-opted Members and which the Council has specifically declared should fall within the provisions of this Code of Conduct. This includes the Protocol on Officer/Member Relations and the Code of Good Practice for Councillors involved in the Planning Process.

(12) In the event of a complaint being made alleging a breach of this Code of Conduct, you must co-operate fully and honestly with any formal standards investigation carried out by the Council. You should not instigate complaints under this Code which are politically motivated, malicious or trivial in nature where further action would be disproportionate or not in the public interest.

Part 2: Interests

Disclosable Pecuniary Interests

Registration of disclosable pecuniary interests

4. (1) Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'. These will be included in the register of interests which is published on the Council's website

Definition of disclosable pecuniary interests

- (2) A 'disclosable pecuniary interest' is an interest of a kind described in the first schedule to this Code. An interest is disclosable if the interest is of yours or of your partner. Your partner means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Non participation in items of business in the case of disclosable pecuniary interest

- (3) Where a matter arises at a meeting which relates to one of your disclosable pecuniary interests,
 - (a) You may not participate in any discussion of the matter at the meeting.
 - (b) You may not participate in any vote taken on the matter at the meeting.
 - (c) If the interest is not registered, you must disclose the interest to the meeting.
 - (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition, Standing Orders require you to leave the room where the meeting is held while any discussion or voting takes place.

Non participation in individual executive decision making in case of disclosable pecuniary interest

- (4) Where an Executive Member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Executive Member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

Notification of Interests

5. (1) In addition to the disclosable pecuniary interests you must, notify the Monitoring Officer of any interests you have of a kind described in the second schedule. You must make that notification within 28 days of this Code coming into effect or of you becoming a Member or co-opted Member if that is later.
- (2) You must notify the Monitoring Officer of any changes to these interests or of any new interests within 28 days of becoming aware of them.

Disclosure of Interests

6. (1) You have a personal interest in any business of your authority where it relates to or is likely to affect you, a body named in the second schedule or any person with whom you have a close association.
- (2) If you are present at a meeting and you have a personal interest in any matter to be considered or being considered at the meeting:
 - (a) If the interest is not registered, you must disclose the interest to the meeting.
 - (b) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

- (3) If you have a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it would be likely to prejudice your judgement of the public interest then you have a prejudicial interest. This is subject to the exceptions set out in paragraph 6.4.
- (4) You do not have a prejudicial interest in any business of the authority where that business:
 - (a) does not affect your financial position or the financial position of a person or body named in the second schedule;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in the second schedule; or
 - (c) relates to the functions of your authority in respect of;
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

- (5) A member with a prejudicial interest must leave the room during the debate and voting on the matter in question.

Sensitive Interests

7. (1) If you have a sensitive interest which is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.
- (2) If you are required to declare a sensitive interest at a meeting you need only declare the fact of the interest and not the details of the interest itself.

Dispensations

8. (1) The Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if he or she has an disclosable pecuniary interest or a prejudicial interest. The Council may grant such a dispensation if:
- It believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or
 - considers that without the dispensation the representation of different political groups would be so upset as to alter the likely outcome of any vote relating to the business
 - It is in the interests of the inhabitants in the Council's area to allow the member to take part; or
 - It is otherwise appropriate to grant a dispensation.
- (2) The Council has granted the Monitoring Officer in consultation with the Chair of the Joint Standards Committee the power to grant dispensations. These can only be granted following a written request from the Member and the existence of and

[Annex 2](#)

Section 5: Codes and Protocols
5A: Members' Code of Conduct

reason for the dispensation should be recorded in the minutes of the meeting.

First Schedule – Interests which are Disclosable Pecuniary Interests

<i>Interest</i>	<i>Description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to your knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the</p>

	relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and (b) either— i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“relevant period” means the period of 12 months ending with the day on which you give a notification for the purposes of section 30(1) of the Act;

“relevant person” means you or any your partner as defined in paragraph 4.2

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000() and other securities of any description, other than money deposited with a building society.

Second Schedule – Other Interests

1. Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
2. Any body —
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
3. Any person from whom you have received the offer of a gift or hospitality with an estimated value of more than £50 (whether or not you accept the offer) which is attributable to your position as an elected or co-opted member of the Council.

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Section 5C - Protocol on Officer/Member Relations

1 Introduction and Principles

- 1.1 The purpose of this protocol is to provide a set of principles to guide Members and officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 This Protocol should be read in conjunction with the Members' Code of Conduct, Employees' Code of Conduct, the Council's Constitution, Whistle-blowing Policy and any guidance issued by the Joint Standards Committee, Audit and Governance Committee and/or the Monitoring Officer.
- 1.3 Certain employees, e.g. Head of Paid Service, Monitoring Officer, Chief Financial Officer (Section 151 Officer) and the statutory Chief Officers have responsibilities in law over and above their obligations to the Council and its Members that they must be allowed to discharge.

2 The Relationship: General Points

- 2.1 Both Councillors and officers are servants of the public, and they are indispensable to one another. But their roles and responsibilities are different.
- 2.1.1 Councillors are responsible to the electorate and serve only so long as their term of office lasts. Members are representatives of the ward constituents and they also develop policies which will be implemented by the officers.
- 2.1.2 Officers are responsible to the Council as a whole, they are employed by and ultimately responsible to the Chief Executive as Head of Paid Service. Their job is to provide professional advice and support to relevant parts of the Council in developing and implementing the policies and decisions.
- 2.2 These are very different roles and this may in some circumstances give rise to tensions and, as such, it is essential

that the working relationship between officers and Members is businesslike and founded upon mutual respect.

- 2.3 Member/officer relationships should be conducted in a positive and constructive way. Therefore it is important that any dealings between Members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influences on the other party.

3 Expectations

- 3.1 What can Members expect from officers:

- Political neutrality;
- A commitment to act in the interests of the Council as a whole and not to any one political group;
- A professional approach to the working relationship;
- An understanding of their role and its pressures;
- Timely response to enquiries;
- Professional advice;
- Confidentiality where appropriate;
- Courtesy and respect;
- Compliance with the Officers' Code of Conduct.

- 3.2 What can officers expect from Members:

- Understanding of the requirements of their roles and an appreciation of competing calls on their time;
- A partnership working approach;
- Courtesy and respect;
- Political leadership and direction;
- Not to be bullied or subjected to inappropriate pressure;
- Respect for their professional advice.
- Members shall act within the Code of Conduct at all times.

4 Specific Issues

- 4.1 Officer advice and preparation of reports: – The provision of advice and the preparation of reports are central to the roles of many senior officers and they are under a duty to give their best

advice in the interests of the Council as a whole. When carrying out these duties it is essential that they feel able to give full and frank advice even where this may not be supportive of a particular policy or decision promoted by a Member. Members must not seek to unduly influence the content of any report or try to persuade an officer to change their professional advice when drafting their reports.

- 4.2 Social contact between Members and officers:- Mutual respect between employees and Members is essential to good local government. Close personal familiarity between employees and Members that transcends the normal employer/employee relationship can potentially undermine Members' confidence in the political neutrality or even-handedness of an officer, and therefore, care should be exercised.

5 When Things Go Wrong

- 5.1 Procedure for Members:- From time to time the relationship between a Member and an officer may become strained for various reasons, including the tensions mentioned above. In such circumstances, it is essential that the Member should not raise such matters in a manner that is incompatible with the objectives of this protocol. An officer has no means of responding to such criticisms in public. If a Member feels he/she has not been treated with proper respect, courtesy, or has any concerns about the conduct or capability of an officer he/she should raise the matter with the respective Head of Service/Assistant Director. The Head of Service/Assistant Director will then look into the facts and report back to the Member. If the Member continues to feel concern then he/she should report the facts to the appropriate Director, or if, after doing so is still dissatisfied, should raise the issue with the Chief Executive. Any action taken against an officer in respect of a complaint will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.

- 5.2 Procedure for Officers:- Where an officer feels that he/she has not been properly treated with respect and courtesy by a Member, he/she should raise the matter with his/her Head of Service/Assistant Director, Director or the Chief Executive as appropriate, especially if they do not feel able to discuss it

directly with the Member concerned. In these circumstances the Head of Service/ Assistant Director, Director or the Chief Executive will take appropriate action either by approaching the individual Member and/or Group Leader or by referring the matter to the ~~Assistant~~ Director ~~Legal and of~~ Governance for advice on how to proceed.

6 Officer Support: Member and Party Groups

6.1 It must be recognised by all officers and Members that in discharging their duties and responsibilities, officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.

Party groups are a recognised part of local authorities and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality.

6.2 In providing this support to party groups certain points must be understood by both officers and Members:

- (a) Officer support must be limited to providing information and advice in relation to matters of a Council business. Officers must not be involved in advising on matters of party business. It is recommended that officers are not present at meetings or parts of meetings where matters of party business are to be discussed.
- (a) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- (b) Where officers provide information and advice to a party group meeting in relation to a matter of Council business,

this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.

- 6.3 Special care needs to be exercised whenever officers are involved in providing information and advice to party groups or other meetings which include persons who are not Members of the Council or Elected Members. Such persons are not bound by the Members' Code of Conduct (in particular, the provisions concerning declarations of interest and confidentiality) and, for this and other reasons, officers may not be able to provide the same level of information and advice as they would to a Member only meeting.
- 6.4 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group, but officers must have regard to a Member's right of access to information and Council documents which are referred to in paragraphs 9.1 and 9.2 below. However the confidentiality of information discussed in the presence of an officer cannot be guaranteed in all cases as it may be subject to the Freedom of Information Act.
- 6.5 In relation to budget proposals;
- (a) The administration shall be entitled to confidential discussions with officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of the Executive /Council meetings, whichever is the earlier;
- (b) The opposition groups shall be entitled to confidential discussions with officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Executive/Council meetings, whichever is the earlier.

-
- 6.6 Any particular difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

7 Officer Support: The Executive

- 7.1 It is important that there should be a close working relationship between Executive Members and the officers who support and/or interact with them. However such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other Members and other party groups.
- 7.2 Whilst Executive Members will be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an officer will be under a professional duty to submit a report. A Director, Head of Service/Assistant Director will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report.
- 7.3 Under Executive arrangements, individual Members of the Executive may, in some situations, take decisions. The Council has put in place mechanisms to ensure that the individual Executive Member seeks advice from relevant Members and officers before making a decision with his/her delegated authority. This includes taking legal advice, financial advice and professional officer advice as well as consulting the Monitoring Officer where there is doubt about powers to act.
- 7.4 Officers will continue to work for and serve the Council as a whole. However, as the majority of functions will be the responsibility of the Executive it is likely that in practice many officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the officers.

Officers must ensure that their political neutrality does not appear to be compromised.

8 Officer Support: Overview and Scrutiny

8.1 It is not the role of scrutiny to act as a disciplinary tribunal in relation to the actions of Members or officers. Neither is it the role of officers to become involved in what would amount to disciplinary investigations on a panel's behalf. This means:

(a) Overview & Scrutiny's questioning about the conduct of individuals should be in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, not to imply criticism or blame;

(b) In these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview & Scrutiny may ask (but not require) him to do so.

8.2 Overview & Scrutiny should not act as a "Court of Appeal" against decisions or to pursue complaints by individuals, as other procedures exist for this. These are internal, eg the Corporate Complaints Procedure, and external/statutory, eg Local Government Ombudsman or appeal to the Courts. However:

(a) Overview & Scrutiny may investigate the manner in which decisions are made but should not pass judgement on the merits of a decision in individual cases;

(b) They can comment on the merits of a particular policy affecting individuals.

8.3 Wherever possible Overview & Scrutiny should provide written questions or details of indicative topics to someone invited to appear before a panel to ensure they have adequate time to prepare for the meeting. In addition, invitees ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel has previously indicated.

9 Members' Access to Information and to Council Documents

9.1 Members need to have access to information held by the Council in order to perform their roles but their rights to access are not absolute. The starting point is that Members have the same rights as any other person and, as such, they are entitled to copies of any published information held by the Council. They can also make a request under the Freedom of Information Act 2000 if they wish.

9.2 Members also have additional legal rights to access information held by the Council which would not normally be made public. They are given these extra rights of access in order to enable them to undertake their roles as Councillors. However, care should be exercised in this regard as Councillors are only entitled to confidential information where they either, have a right under S.100 of the Local Government Act 1972 or, where they can show that they have a 'need to know' the information in order to conduct their council duties.

9.3 S.100(F) LGA 1972.

This provides that any document held by the Council containing material relating to any business to be transacted at any meeting of the Council, committee or sub-committee must be available for inspection by any member of the Council unless it is deemed by the proper officer to fall within certain categories of 'exempt' information as defined by Schedule 12A to the Local Government Act 1972. This applies to all categories of exempt information except those under paragraph 3 (except to the extent that the information relates to proposed terms of a contract), and paragraph 6 of Schedule 12A.

9.4 Need to Know

Even where the above statutory rights do not apply to the information in question the Member also has a common law right to inspect information which it is necessary for them to inspect in order to carry out their function as a Councillor. ~~This will normally cover all the information~~

- 9.5 In cases of doubt Members should approach the ~~Assistant~~ Director ~~Legal and of~~ Governance for assistance.
- 9.6 The common law rights of Members are based on the principle that any Member has a right to inspect Council documents so far as his or her access to the documents is reasonably necessary to enable the Member properly to perform his or her duties as a Member of the Council. This principle is commonly referred to as the “need to know” principle.
- 9.7 The exercise of this common law right depends upon an individual Member being able to demonstrate that he or she has the necessary “need to know”. In this respect a Member has no right to a “roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must be determined by the particular Director or Assistant Director with advice from the ~~Assistant~~ Director ~~Legal and of~~ Governance.
- 9.8 In some circumstances the Member will be expected to justify the request to inspect a document. In addition there will be a range of documents, which, because of their nature are either not accessible to Members or are accessible only by the political group forming the administration and not by the other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council’s and/or the public interest.
- 9.9 Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member’s duties as a Member of the Council. Therefore, for example, early drafts of Committee reports/briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied, i.e. to brief the Member.
- 9.10 The Members Code of Conduct also contains specific rules about confidential information held by councils which prohibit members from disclosing such information unless it can be shown that it is in the public interest to do so.

10 Correspondence

- 10.1 Correspondence between an individual Member and an officer should not be copied (by the officer) to any other Member. Where exceptionally it is necessary to copy to another Member, this should be made clear to the original Member.
- 10.2 Official letters and electronic communications on behalf of the Council should be sent in the name of the appropriate officer, rather than in the name of the Member. It may be appropriate in certain limited circumstances (eg, representations to a Government Minister) for a letter to appear in the name of an Executive Member or the Leader, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

11 Communication of Officer Delegated Decisions

- 11.1 Notwithstanding the rights of Members to information and to Council documents set out in this protocol, officers taking decisions under delegated authority from the Executive must ensure that relevant Members have prompt information regarding the decision, the reasons for the decision and the impact of the decision.
- 11.2 For the purposes of this protocol “relevant Member” will include:
- (a) Members of any Ward upon which the decision is likely to impact.
 - (b) Members of the Executive where the decision falls within their portfolio area.
 - (c) Members of any relevant Committee where if it was not for delegation to officers, the decision would be taken by that Committee.
 - (d) All Members of the Council where the decision is likely to have a corporate impact.

-
- 11.3 If any Member becomes aware that they have not been provided with the information in accordance with this protocol the matter should be raised with the appropriate Director and/or the Chief Executive.

12 Publicity and Press Releases

- 12.1 Local Authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Council, explaining its objectives and policies to the electors and customers. Local Authorities use publicity to keep the public informed and to encourage public participation. The Council needs to tell the public about the services it provides. Good effective publicity should aim to improve public awareness of the Council's activities. Publicity is a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential to ensure that decisions on publicity are properly made in accordance with the Code of recommended Practice on Local Authority Publicity and the Council's Media Protocol.
- 12.2 Officers and/or Members should seek advice from the Assistant Director Customer ~~Services~~ and Digital Services when making decisions on publicity, and particular care should be paid to any publicity used by the Council around the time of an election.

13 Involvement of Ward Councillors

- 13.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. In addition officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

14 Monitoring and Review

- 14.1 The application and implementation of this Protocol will be monitored and reviewed by the Council's Joint Standards Committee in consultation with the Council's Monitoring Officer.



Joint Standards Committee**22 January 2020****Update: Procedures for dealing with Councillor Code of Conduct Complaints****Summary**

- 1) This report provides Members with the final version of the procedures for dealing with Councillor Conduct complaints.

Background

1. On 20 November 2019 the Joint Standards Committee reviewed proposed amendments to the complaints procedure. Further amendments were made to the document, which is attached as Annex 1.
2. The previous report outlined that the procedure would need the approval of Full Council; however, this is not the case, the Code of Conduct requires Council approval, the complaints procedure merely requires the approval of the Joint Standards Committee. Members were made aware of this in December 2019.
3. Since the last meeting a question has been raised by a Member of the Committee relating to the composition of any sub-committee or hearings panel which requires consideration of the Joint Standards Committee and may impact upon the complaints procedure.

Recommendations

4. Members are asked to:
 - 4.1. Consider the proposal relating to sub-committee and hearing panel composition from the Committee Member.
 - 4.2. Finalise the procedure document.

Reason:

To ensure that the procedures adopted by Council for dealing with complaints concerning the conduct of elected Members are compliant with legal requirements and remain fit for purpose.

Author:

Rachel Antonelli, Senior Solicitor
& Interim Deputy Monitoring Officer

Tel No. 01904 551043

**Report Approved Janie Berry,
Director of Governance &
Monitoring Officer**

Date 13 January 2020

All

Wards Affected: *List wards or tick box to indicate all*

For further information please contact the author of the report

Annexes

Annex 1 –Complaints Procedure

Complaints about the ethical conduct of Councillors

This document is intended to inform those who wish to make a complaint about a City or Parish Councillor where they believe that the Councillor may have breached the Code of Conduct. The Council want to ensure that the process is as transparent as possible and that complaints are dealt with as quickly as possible.

1 The Code of Conduct

All City and Parish Councillors must follow a Code of Conduct which their Council has agreed. You can find a copy of the City Council's Code on the Council's website on this link:

[http://democracy.york.gov.uk/ecSDDisplay.aspx?NAME=SD569&ID=569&RPID=6449972&sch=doc&cat=12830&path=12830,](http://democracy.york.gov.uk/ecSDDisplay.aspx?NAME=SD569&ID=569&RPID=6449972&sch=doc&cat=12830&path=12830)

or, inspect a paper copy by contacting the Democratic Services team who are based at West Offices telephone number (01904) 551550.

Parish Council's Codes of Conduct can be inspected by contacting the Clerk to the relevant Parish Council.

The City Council is responsible for putting in place arrangements for dealing with complaints that a Councillor from either the City Council or a Parish Council within York may have breached the Code of Conduct. In dealing with complaints the Council consults with Independent Persons who are not connected with the Council or Councillors and are appointed to deal with these matters.

2 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
West Offices
Station Rise
York
YO1 6GA

Or – monitoringofficer@york.gov.uk

The Monitoring Officer is a senior officer of the City Council who is responsible for administering the system in respect of complaints of Councillor Misconduct.

So that we have all the information which we need to be able to process your complaint, we ask that you complete our complaint form, which can be downloaded from the authority's website and is available on request from the Democratic Services team at West Offices.

This complaints procedure allows for a Councillor to refer themselves if they so desire, or if they feel it is in the interests of clarity. The referral will be dealt with in the same way as a complaint made by anyone else using this procedure.

The Monitoring Officer will normally acknowledge receipt of your complaint within 7 working days of receiving it, and will keep you informed of the progress of your complaint, including reasons as to why they decide to close the complaint or not progress further. Regardless of the outcome of your complaint or the stage the complaint is concluded, you will be advised as to the outcome of the complaint.

3 Privacy

We ask you to provide your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. This also guards against malicious complaints. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. We only use the information you provide for the purposes of dealing with your complaint.

Your contact details will not normally be shared unless it is essential for the handling of the complaint – such as where knowing your address is important to understanding the context of the complaint.

The Monitoring Officer will normally share your name with:

- The Councillor concerned;
- The Independent Persons who advise on the handling of complaints;
- The Parish clerk if the councillor concerned is a member of a Parish Council;
- Any investigator appointed to deal with the case;

- Members of any Committee or Sub Committee of the Council who are handling the case;
- Any witnesses to the allegations where that is necessary to enable a proper investigation.

We may be required or permitted, under data protection legislation, to disclose your personal data without your explicit consent, e.g. if we have a legal obligation to do so, such as law enforcement, regulation and licensing, criminal prosecutions and court proceedings.

If you are concerned about your identity being revealed please advise the Monitoring Officer and he/she will discuss this with you before processing the complaint.

The identity of the Councillor who is the subject of the complaint should remain confidential, particularly during the assessment and investigation stages of the complaints process. This is vital to ensure that the investigation is not prejudiced; therefore, you should not divulge the identity of the Councillor, nor the nature of the complaint to the public whilst the complaint is being investigated. The Monitoring Officer will also request that the Councillor maintains privacy and confidentiality, particularly in relation to your personal details whilst the complaint is being investigated.

You should note that if your complaint is investigated and results in a hearing these are usually conducted in public, that would mean your identity or personal data would be in the public domain.

We will retain details of standards complaints for 6 years and will then delete or destroy those details securely.

You can find more information about your rights at <https://www.york.gov.uk/privacy> and further information is available from the Information Commissioners Office (ICO) <https://ico.org.uk/for-the-public/>.

If you have any questions about this privacy information, want to exercise your rights, or if you have a complaint about how your information has been used, please contact us at foi@york.gov.uk or on [01904 554145](tel:01904554145) or write to:

The Data Protection Officer
City of York Council

West Offices, Station Rise
York, YO1 6GA.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received. He/she may ask you to clarify aspects of it before deciding whether to accept it as a formal complaint.

The Monitoring Officer will then take a decision as to whether the complaint merits formal investigation. Where the Monitoring Officer feels that the case does merit formal investigation, he/she will consult with 1 of the Independent Persons in order to provide an external oversight. This decision will usually be taken within 7 working days of your complaint being accepted. The Monitoring Officer will also notify the Councillor involved in the complaint within 7 working days of your complaint being accepted.

Before reaching a decision, the Monitoring Officer may request further information from you or obtain information which is readily available to him/her such as notes of Council meetings. If the complaint relates to a Parish Councillor the Monitoring Officer may consult the Parish Council. If they consider it appropriate to do so, the Monitoring Officer may put the complaint to the Councillor involved and seek their comments.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. If a Councillor makes a reasonable offer to settle a complaint informally, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Monitoring Officer will advise you whether he/she intends to investigate your complaint. If the Monitoring Officer decides not to he/she will explain why. There is no right of appeal against this decision but the Monitoring Officer reports their decisions to the Council's Joint Standards Committee so there is oversight of how these matters are dealt with.

If there is evidence that a crime may have been committed the Monitoring Officer has the power to report matters to the Police and other regulatory agencies.

Occasionally, the Monitoring Officer may decide that the decision as to whether a complaint should be investigated should be made by members of the Joint Standards Committee. In this case a small Sub Committee of 2 Members of the Joint Standards Committee which consists of City and Parish Councillors will meet to consider your complaint. At least 1 Independent Person will be present or will be consulted ahead of the Sub Committee considering your complaint.

Examples of matters which the Sub Committee will consider include multiple complaints made about the same Councillor, counter complaints made by Councillors about each other, vexatious or repeated complaints or where special procedures may need to be implemented to classify complaints.

In the rest of this procedure we have assumed that the Monitoring Officer will use their powers to make decisions but any Sub Committee appointed will have the same powers as the Monitoring Officer.

If the Monitoring Officer makes the decision to investigate your complaint, he or she will advise you of this within 7 working days. If the decision has been referred to a Sub Committee, a decision will be made as soon as is practicable.

3 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer. The Investigating Officer may be another officer of the authority, an officer of another authority or an external investigator.

The Investigating Officer will usually need to speak to you to discuss your complaint and may need to see relevant documents or interview other witnesses. You will be able to suggest what documents and which witnesses the Investigating Officer should consider seeing.

The Investigating Officer will also normally see the Councillor and provide him or her with the same opportunity to identify sources of evidence.

Unless the case is very straightforward, at the end of his/her investigation, the Investigating Officer will produce a draft report and share it with you and the Councillor concerned on a confidential basis.

You will both then be able to identify any matter in that draft report with which you disagree or which you think need more consideration.

The Investigating Officer will consider any comments you make before sending his/her final report to the Monitoring Officer.

Investigations will be completed within 3 months of the investigator being instructed. There may be very good reasons why this is not possible, for example, where the case is complex or witnesses are not available. Where there are delays, this will be reported to the Chair of the Standards Committee, the complainant and the Councillor who is the subject of the complaint prior to the end of the 3 month period.

The complainant and Councillor are expected to keep the circumstances of the complaint confidential and failure to do so could have a detrimental impact on the complaint or the complaints process.

4 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and may ask for further investigation to take place if he/she feels that is needed. The Monitoring Officer will consult the Independent Persons on the draft report and following such consideration, if he/she is satisfied that the report is sufficient and accepts the finding, the Monitoring Officer will send a copy of the Investigating Officer's final report to you and the Councillor concerned. If the case concerns a Parish councillor he/she will also send a copy to the Parish Council concerned. That will be the end of the matter.

It is possible that the Monitoring Officer may accept that the report is complete but does not accept the Investigating Officer's judgment that there has been no breach of the Code. In that case the Monitoring Officer may refer the case for a hearing following the procedures set out below.

5 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer may either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Persons, seek local resolution.

5.1 Local Resolution

If the Monitoring Officer thinks that the complaint can reasonably be resolved without the need for a hearing he/she will consult with the Independent Persons and with you and seek to agree what you consider to be a fair resolution. It is important though that any resolution also helps to ensure higher standards of conduct for the future. Possible local resolutions might include the Councillor accepting that his/her conduct was unacceptable and offering an apology or a Councillor voluntarily giving up a position on a particular body. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Joint Standards Committee (and the Parish Council, where relevant) for information, but will take no further action.

Although the complainant's views will be carefully considered the decision as to whether a complaint can be resolved without a hearing rests with the Monitoring Officer if the breach is minor.

5.2 Local Hearing

If the complaint is not resolved through the local resolution process, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel. Ordinarily a Sub Committee will be chaired by the Chair or Vice-Chair of the Joint Standards Committee and comprise of other members of the Joint Standards Committee. At least one Member will be a Parish Councillor where the complaint relates to a Parish matter. Subject to that, Hearings Panels are appointed by approaching Members of the Standards Committee in rotation with the Member being appointed if they are available to attend the hearing. 1 or more Independent Persons will be present at the hearing.

The Hearings Panel will take evidence and reach a decision. This is not a Court process but, in order to be fair to everyone, formalities are followed so that a proper decision can be reached. A detailed hearings procedure is available to view.

The Hearings Panel is not bound to accept the Investigating Officer's finding that the Code has been breached but if it does conclude that the Councillor failed to comply with the Code of Conduct, it will consider what action, if any, should be taken. In

doing this, the Hearings Panel will consult the Independent Person(s).

6 What action can the Hearings Panel take where a Councillor has failed to comply with the Code of Conduct?

The Hearings Panel may –

- 6.1 Censure the Councillor;
- 6.2 Formally report its findings to the City Council or Parish Council for information;
- 6.3 Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub Committees of the Council;
- 6.4 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 6.5 Recommend to Council that the Leader be removed from Office;
- 6.6 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Councillor;
- 6.7 Remove (or recommend to the Parish Council that the Councillor be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- 6.8 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access.

The Hearings Panel has no power to suspend or disqualify the Councillor or to withdraw Councillors' basic or special responsibility allowances. If the Panel decides to withdraw facilities from the Councillor it must ensure that the Councillor is not thereby prevented from undertaking his/her representative duties.

7 What happens after the hearing?

The Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, the Councillor and if applicable, to the Parish Council. The decision notice will be available for public inspection.

8 Who are the Hearings Panel?

The Hearings Panel is a Sub Committee of the Council's Joint Standards Committee. It normally consists of 3 Members.

The Independent Persons are invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel takes any decision on whether the Councillor's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The decision is that of the Hearings Panel, however, if the Independent Person's advice is contrary to the Panel decision, this will be recorded.

9 Appeals

There is no internal right of appeal for either the complainant or for a Councillor against a decision of a Monitoring Officer, however, if, as a complainant you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman. There may also be the possibility of an application for Judicial Review of the decision.

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Work Plan for Joint Standards Committee 2019-2020

<u>Meeting Date</u> (4.00pm start time)	<u>Items</u>	<u>Notes</u>
Wednesday 24 July 2019	<ul style="list-style-type: none"> • Monitoring report in respect of complaints received and any 2018/19 cases still ongoing. • Update on the committee's recent work, including items on the last work plan for 2018/19. • Update on the review of the whistleblowing policy. • Discussion on how the committee can feed into the review of the Constitution. • 2019/20 work plan. 	Standard item
Wednesday 4 September 2019	<ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Review of the Code of Conduct • Update on Whistleblowing Policy • Update on the position re substitutes on JSC • Review of transparency of JSC meetings 	Standard item
Wednesday 20 November 2019	<ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Update on review of the Constitution • Feedback from the task group on review of the Complaints Procedure • Information report on the Ethical Standards in Public Life review and its impact on standards work • Review of standards work in relation to parish 	Standard item

	councils (discussion item)	
Wednesday 22 January 2020	<ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Update on the Whistleblowing Policy • Review of the Constitution 	Standard item
Wednesday 15 April 2020	<ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Planning and pre-determination: advice for Council Members and the role of JSC in disseminating this • Discussion on the use of informal processes to minimise the number of standards complaints • Report on how the JSC and CYC can better support parish councils in their work 	Standard item