

**Notice of a public meeting of
Joint Standards Committee**

To: Councillors Runciman (Chair), Barton, Scott and Taylor
(CYC Members)
Cllrs Martin (Vice-Chair), Crawford and Simpson (Parish
Council Members)

Date: Wednesday, 28 November 2012

Time: 3.00 pm

Venue: The Guildhall, York

AGENDA

1. Declarations of Interest

At this point, Members are asked to declare:

- Any personal interests not included on the Register of Interests
- Any prejudicial interests or
- Any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. Minutes

(Pages 3 - 8)

To approve and sign the minutes of the meeting of the Joint Standards Committee held on 12 September 2012.

3. 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 27 November 2012.**

- 4. Appointment of Independent Persons** (Pages 9 - 10)
This report updates Members on progress in recruiting independent persons to support the standards function.
- 5. Monitoring report in respect of Complaints Received**
The Monitoring Officer will give a verbal report in respect of complaints received.
- 6. Arrangements for Handling Complaints** (Pages 11 - 26)
This report reminds Members of the procedures for dealing with complaints adopted prior to the new regime being initiated. It proposes some changes to these procedures and also proposes some criteria to be adopted in assessing what action to take in respect of a complaint.
- 7. Dispensations** (Pages 27 - 30)
This report provides Members with information about the dispensation provisions available under the new regime, reminds Members of existing arrangements and identifies some particular issues for consideration.
- 8. Register of Gifts and Hospitality** (Pages 31 - 34)
This report seeks Members' views on guidance relating to the register of gifts and hospitality.
- 9. Review of Work Plan** (Pages 35 - 36)
Members are asked to consider the committee's work plan for 2012/2013.
- 10. Urgent Business**
Any other business which the Chair decides is urgent under the Local Government Act 1972.

Democratic Services Officer responsible for this meeting:

Name: Jayne Carr

Contact Details:

- Telephone – (01904) 552030
- E-mail – jayne.carr@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.

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- find out about the rules for public speaking from the Democracy Officer.

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Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

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The majority of councillors are not appointed to the Cabinet (39 out of 47). Any 3 non-Cabinet councillors can 'call-in' an item of business following a Cabinet meeting or publication of a Cabinet Member decision. A specially convened Corporate and Scrutiny Management Committee (CSMC) will then make its recommendations to the next scheduled Cabinet meeting, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
- York Explore Library and the Press receive copies of **all** public agenda/reports;
- All public agenda/reports can also be accessed online at other public libraries using this link

<http://democracy.york.gov.uk/ieDocHome.aspx?bcr=1>

City of York Council

Committee Minutes

MEETING	JOINT STANDARDS COMMITTEE
DATE	12 SEPTEMBER 2012
PRESENT	COUNCILLOR RUNCIMAN (CYC COUNCIL MEMBER) COUNCILLOR BARTON (CYC COUNCIL MEMBER) COUNCILLOR SCOTT (CYC COUNCIL MEMBER) COUNCILLOR TAYLOR (CYC MEMBER) COUNCILLOR CRAWFORD (PARISH COUNCIL MEMBER) COUNCILLOR MARTIN (PARISH COUNCIL MEMBER) COUNCILLOR SIMPSON (PARISH COUNCIL MEMBER)
IN ATTENDANCE	MRS BAINTON (INTERIM INDEPENDENT PERSON) MR DIXON (INTERIM INDEPENDENT PERSON)

PART A - MATTERS DEALT WITH UNDER DELEGATED POWERS**1. APPOINTMENT OF CHAIR**

RESOLVED: That Councillor Runciman be appointed as Chair of the committee.

2. APPOINTMENT OF VICE CHAIR

RESOLVED: That Councillor Martin be appointed as Vice-Chair of the committee.

3. DECLARATIONS OF INTEREST

Members were asked to declare any personal, prejudicial or disclosable pecuniary interests they may have in the business on the agenda. None were declared.

4. MINUTES

RESOLVED: That the minutes of the Standards Committee held on 26 June 2012 be approved and signed by the Chair as a correct record.

5. MINUTES OF SUB-COMMITTEES

RESOLVED: That the minutes of the Joint Standards Committee Sub-Committee meeting held on 2 August 2012 be approved and signed as a correct record.

6. PUBLIC PARTICIPATION

It was reported that there were no registrations to speak at the meeting under the council's Public Participation Scheme.

7. IMPLEMENTATION OF NEW STANDARDS ARRANGEMENTS

[See also Part B minute]

Members considered a report that provided information regarding progress with the implementation of the new standards arrangements by councils in York.

(i) Codes of Conduct

It was noted that the City Council had adopted a Code at its July Council meeting. Each Parish Council had also had to adopt its own Code. They had been asked to confirm that they had done so but a number of these were still outstanding. Members requested that they be notified as to which parish councils had contacted City of York Council with confirmation of the Code they had adopted.¹

City of York Council would be arranging training on this issue and details would be circulated to the committee when these were available.²

(ii) Independent Persons

An update was given on the appointment of the Independent Persons. Four applications had been received to date. Consideration was given to the interview arrangements. It was the intention that the interview panel's recommendation would be considered by Council at their meeting on 11 October 2012.

Consideration was given as to whether the Independent Persons would have speaking rights at meetings of sub-

committees of the Joint Standards Committee. It was agreed that they would but that this would be kept under review.

- RESOLVED:
- (i) That the report be noted.
 - (ii) That the interview panel for the appointment of Independent Persons be:
Chair (or Vice-Chair if Chair not available)
Parish Councillor Crawford
Mrs Bainton or Mr Dixon
Monitoring Officer in an advisory capacity

- REASONS:
- (i) To ensure that Members are kept updated on the implementation of the new arrangements.
 - (ii) To progress the appointment of the Independent Persons.

Action Required

- | | |
|--|----|
| 1. Email committee members with details | AD |
| 2. Circulate details of training session | JC |

8. COMPLAINTS MONITORING

Members considered a report that provided information regarding the processing of complaints that Members of the City or Parish Councils may have breached the Code of Conduct.

It was noted that when complaints were received the initial assessment decision generally fell to the Monitoring Officer in consultation with the independent persons. In order to allow Members to have proper oversight of the decisions being made it was therefore intended that regular monitoring reports would be presented to the Committee. Members were asked to consider the format in which they would wish to received this information.

Discussion took place as to whether or not the data should be made anonymous. Concerns were expressed about the appropriateness of naming a Member if the complaint proved to

be malicious or unfounded. Views were also put forward that making public the name of the Member concerned was one of the few sanctions available if a complaint was upheld. It would also ensure effective scrutiny of the decisions that had been taken. It was agreed that a way forward would be for the Member to be named if the complaint was upheld but that the Member would not be named if the complaint was dismissed unless the Committee requested this information.

It was agreed that a protocol on the handling of complaints should be established. The Monitoring Officer was asked to draft a protocol and circulate this for consideration prior to the next meeting. It was also agreed that decision notices would be emailed to Committee Members to demonstrate the format that was currently in use¹.

- RESOLVED:
- (i) That the report be noted.
 - (ii) That, at the next meeting, consideration be given to a protocol for the handling of complaints that Members of the City or Parish Councils may have breached the Code of Conduct.

REASON: To ensure that effective arrangements are in place to enable Members to monitor complaints.

Action Required

1. Circulate draft protocol and decision notices

AD

9. WORK PLAN

Members were asked to consider a work plan for the year.

It was agreed that the following items would be considered at future meetings:

- Review of new Code of Conduct
- Registering of interests
- Protocol for the handling of complaints and review of assessment criteria
- Quarterly report on complaints
- Dispensations
- Planning Code of Practice
- Review of the Member/Officer Protocol

RESOLVED: That the items listed above be included in the Committee's Work Plan¹.

REASON: To ensure that the Committee has a planned programme of work in place.

Action Required

1. Put in place a work plan

AD

PART B - MATTERS REFERRED TO COUNCIL

10. IMPLEMENTATION OF NEW STANDARDS ARRANGEMENTS

[See also Part A minute]

Members considered a report that provided information regarding progress with the implementation of the new standards arrangements by councils in York.

Independent Persons

An update was given on the appointment of the Independent Persons. Four applications had been received to date. Consideration was given to the interview arrangements. It was the intention that the interview panel's recommendation would be considered by Council at its meeting on 11 October 2012.

RECOMMEND: That Council be invited to make the recommended appointments.

REASON: To ensure that the requirements of section 27 of the Localism Act 2011 are met.

Councillor Runciman, Chair

[The meeting started at 3.00 pm and finished at 4.10 pm].

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Standards Committee**28th November 2012**

Report of the Monitoring Officer

Appointment of Independent Person**Summary**

1. This report updates Members on progress in recruiting independent persons to support the standards function.

Background

2. The Council has agreed to appoint two independent persons who will be consulted when decisions are being made in respect of the handling of standards complaints. An Appointments Panel met in October and proposes to recommend the appointment of Mr. David Laverick to fill one of those roles. Mr. Laverick is currently the Principal Judge of that part of the First Tier Tribunal which deals with local government standards. His former roles have included being a local authority chief officer, a director of the Local Government Ombudsman and the Pensions Ombudsman. He has been a York resident for 37 years.
3. Disappointingly the Council received only two other applications meeting the essential criteria. The Panel felt that efforts should be made to see whether more applications could be secured before making a further recommendation.
4. Until a full complement of independent persons has been appointed the existing former independent members have all indicated a willingness to continue to act. The Committee is invited to consider whether this would be appropriate.

Recommendations

4. Members are recommended to:

- 1) Note and endorse the recommendation for appointment as an independent person of Mr.David Laverick.
- 2) Consider the position of the current interim independent persons
- 3) To advise on ways of securing further interest in and applications for the position.

Reason: To ensure that the Council has appropriate arrangements in place for handling complaints against Members.

Contact Details

Author:
Andrew Docherty
Monitoring Officer
CBSS
Tel No. 01904 551004

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Report
Approved

Date 18/10/12

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

All

For further information please contact the author of the report

Background Papers:

None

Annexes

None



Joint Standards Committee**28th November 2012**

Report of the Monitoring Officer

ARRANGEMENTS FOR HANDLING COMPLAINTS**Summary**

1. This report reminds Members of the procedures for dealing with complaints adopted prior to the new regime being initiated. It proposes some changes to those procedures and also proposes some criteria to be adopted in assessing what action to take in respect of a complaint.

Procedures

2. In anticipation of the new arrangements the previous statutory Standards Committee approved the procedures for handling complaints which appear at Annex A.
3. The current procedures do not specifically refer to the possibility of the Monitoring Officer (MO) referring the decision as to whether to investigate to a Sub Committee. It would seem appropriate to make that reference in section 3 of the procedures.
4. A minor drafting change is required to section 5 of the procedures to clarify that, where an investigation has resulted in a finding that the Code has not been breached, the independent person will be consulted before the MO accepts the report as final.
5. The procedure does not provide for a circumstance where the MO, having consulted the independent persons, accepts that the investigation is complete but does not accept a conclusion that the Code has not been breached. It is suggested that the MO should retain the right to refer such a case to a hearing or seek a local resolution.
6. If a case has been formally investigated and a breach identified the procedure allows the MO to seek an informal resolution only with

the consent of the complainant. Where the breach is one that directly affects the individual – for example where that person has been treated with disrespect – it does seem appropriate that the complainant should be asked to consent to any informal resolution. There is perhaps a question as to whether that is necessarily the right approach where the breach does not relate directly to the individual. For example an investigation might establish that a Councillor had failed to declare an interest having received incorrect advice. On balance there does seem to be a case for building additional flexibility into the criteria.

Criteria for undertaking an investigation

7. The statutory Standards Committee had assessment criteria which were applied by the Sub Committees which conducted the initial assessment of complaints. Those criteria appear at Annex B. Those criteria may be an appropriate starting point in making the initial judgment on a complaint. Of course references to Sub Committees would need to be changed to reflect the new procedures.

Recommendations

8. Members are recommended to:
 - 1) Ask the Monitoring Officer to make the changes referred to in the report to sections 3 and 5 of the Procedures for handling complaints.

Reason: To add further clarity to the procedures
 - 2) Agree that additional flexibility should be added to the procedures allowing for informal resolutions to be achieved following an investigation.

Reason: To ensure that the procedures operate in a fair way
 - 3) Agree that the former assessment criteria, updated to reflect the current procedures, be adopted for use in making the initial judgment in respect complaints

Reason: To ensure consistency in the judgements made about complaints.

Contact Details

Author:

Andrew Docherty
Monitoring Officer

CBSS

Tel No. 01904 551004

|

Report
Approved

Date 18/10/12

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

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex A – Procedures for handling complaints

Annex B – Assessment Criteria

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Complaints about the ethical conduct of Councillors

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>

or inspect a paper copy by contacting the Democratic Services team who are based at the Guildhall 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 an Independent Person who is not connected with the Council or Councillors and is 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
The Guildhall
St Helen's Square
York

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 the Guildhall.

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. The Monitoring Officer will normally tell the Councillor that a complaint has been received and who from. If you are concerned about your identity being revealed please advise the Monitoring Officer and he will discuss this with you before processing the complaint.

The Monitoring Officer will normally acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

3 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and discuss it with the Council's Independent Persons. Independent Persons are not Councillors and have no connection with the Council. By law they must be consulted when a complaint has been investigated. However, the Council has chosen to involve them at other stages of the process as well to provide external oversight.

He will then take a decision as to whether the complaint merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint.

Before reaching a decision the Monitoring Officer may request further information from you or obtain information which is readily available to him such as notes of Council meetings. If the complaint relates to a Parish Councillor he may consult the Parish Council.

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 intends to investigate your complaint. If he decides not to he will explain why. There is no right of appeal against this decision but the Monitoring Officer reports his decisions to the Council's Standards Committee so there is oversight of how he deals with these matters.

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

4 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he 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 which you disagree with or which you think needs more consideration.

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

5 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 investigations to take place if he feels that is

needed. If, however, he is satisfied that the report is sufficient, the Monitoring Officer send a copy of the Investigating Officer's final report to you and the Councillor concerned. If the case concerns a Parish councillor he will also send a copy to the Parish Council concerned. That will be the end of the matter.

6 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 Person, seek local resolution.

6.1 Local Resolution

If the Monitoring Officer thinks that the complaint can reasonably be resolved without the need for a hearing he will consult with the Independent Person 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 Standards Committee (and the Parish Council, where relevant) for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

6.2 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.

The Hearings Panel will take evidence from yourself, the Investigating Officer and the Councillor as well as any witnesses. 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.

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, the Hearings Panel should take. In doing this, the Hearings Panel will consult the Independent Person.

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

The Hearings Panel may –

- 7.1 Censure the Councillor;
- 7.2 Formally report its findings to the City Council *or* Parish Council for information;
- 7.3 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;
- 7.4 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 7.5 Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;
- 7.6 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]*;
- 7.7 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; or

The Hearings Panel has no power to suspend or disqualify the Councillor or to withdraw Councillors' 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.

8 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, to the Councillor and to the Parish Council. The decision notice will be available for public inspection.

9 Who are the Hearings Panel?

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

The Independent Person is invited to attend all meetings of the Hearings Panel and his/her 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.

10 Appeals

There is no right of appeal for you as complainant or Councillor against a decision of the Monitoring Officer.

If a Hearings Panel finds that a Councillor has breached the Code then they have a right of appeal to a differently constituted Panel made up of members of the Standards Committee.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

City of York Council

Standards Committee Local Assessment Sub Committee

Terms of Reference and Assessment Criteria

ASSESSMENT SUB-COMMITTEE

1 Composition

- 1.1 The Assessment Sub-Committee shall comprise all members, for the time being, of the Standards Committee. These members shall, in effect, form a panel from which members will be drawn to populate the sub-committee as required.

2 Quorum

- 2.1 The quorum shall be 3 of which at least 1 must be a Co-opted Independent Member and at least one a CYC member. Where the complaint in hand concerns the conduct of a person acting in their capacity as a parish council member, the quorum must include a parish council representative.

3 Chair

- 3.1 The meetings of the Assessment Sub-Committee shall be chaired by an independent Co-opted Member.

4 Terms of Reference

- 4.1 To consider allegations that a member of CYC, or any parish within the administrative area of CYC, has failed to comply with the Code of Conduct.
- 4.2 On receipt of each allegation and any accompanying report by the Monitoring Officer, the Assessment Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:-
- 4.2.1 Refer the allegation to the Monitoring Officer, with an instruction that s/he arrange a formal investigation of the allegation; or
- 4.2.2 Refer the matter to the Monitoring Officer directing that s/he arrange training, conciliation or such other appropriate alternative steps as permitted by the Regulations; or

- 4.2.3 Refer the allegation to the Standards Board for England;
or
 - 4.2.4 Decide that no action should be taken in respect of the allegation; or
 - 4.2.5 Where the allegation is in respect of someone who is no longer a member of CYC or one of its parishes, but is a member of another relevant authority, refer the allegation to the Monitoring Officer of that other authority.
- 4.3 Upon completion of an investigation of a complaint, the Assessment Sub-Committee shall be responsible for determining whether:
- 4.3.1 It accepts the Investigating Officer's finding of no failure to observe the Code of Conduct;
 - 4.3.2 The matter should be referred for consideration at a hearing before the Hearings Sub-Committee; or
 - 4.3.3 The matter should be referred to the Adjudication Panel for determination.
- 4.4 Where the Assessment Sub-Committee resolves to do any of the actions set out in para 4.2 or 4.3 above, the Sub-Committee shall state its reasons for that decision.

5. Frequency of Meetings

- 5.1 The Assessment Sub-Committee shall meet as and when required.

Assessment Criteria

1. Background and Context

- 1.1 **Irrelevant Complaints:** It is likely that complaints will be received which do not relate to the Code of Conduct for members. Such complaints might include complaints relating to the provision of services by the Council or the manner in which matters have been dealt with by the Council which should properly be dealt with through the Council's Corporate Complaints Procedure. They

may be matters relating to other authorities or matters relating to a member's private life which do not therefore fall within the remit of the Standards Committee.

- 1.2 Such complaints will not be referred to the Assessment Sub-Committee but will instead be dealt with by the Monitoring Officer who, if appropriate, will refer it to the appropriate avenue for further consideration.

2. Local Resolution

- 2.1 The Standards Committee is acutely aware that investigations are costly and time consuming. Moreover complaints can often be dealt with more effectively if an early resolution of the matter can be achieved.
- 2.2 The Standards Committee would therefore encourage complainants to explore whether the matter can be resolved locally prior to a formal written complaint being made to the Standards Committee.

3. Initial Tests

- 3.1 Before the assessment of a complaint begins, the Assessment Sub-Committee should be satisfied that the complaint meets the following tests: -
 - 3.1.1 Is the complaint about the conduct of a member?
(The complaint must relate to one or more named elected or co-opted members of the district or parish councils covered by the Standard Committee i.e. within the City of York Council Area)
 - 3.1.2 Was the named member in office at the time the alleged misconduct took place?
 - 3.1.3 Was the Code of Conduct in force at the time the alleged misconduct took place?
 - 3.1.4 If the complaint is proven, would there be a breach of the Code under which the member was operating at the time of the alleged misconduct?
- 3.2 If the complaint fails one or more of these tests it cannot be investigated and no further action will be taken.

4. Sufficiency of Information

- 4.1 The complainant must provide sufficient information to enable the Assessment Sub-Committee to conclude that there is prima facie

evidence of a breach of the Code of Conduct. If insufficient information is available, the Assessment Sub-Committee will not refer the complaint for investigation or other action.

5. Seriousness of the Complaint

- 5.1 The Assessment Sub-Committee will not normally refer a matter for investigation or other action where the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.

6. Length of Time Which Has Elapsed

- 6.1 The Assessment Sub-Committee will have regard to the length of time which has elapsed since the events the subject of the complaint occurred. It will not normally investigate or pursue other action where the events took place more than 6 months prior to the complaint being submitted other than in exceptional circumstances (for example, where the conduct relates to a pattern of behaviour which has recently been repeated).

7. Public Interest

- 7.1 The Assessment Sub-Committee will determine whether the public interest would be served by referring a complaint for investigation or other action. They may consider that the public interest would not be served where, for instance, a member has died, resigned or is seriously ill. Similarly if a member has offered an apology or other remedial action the Assessment Sub-Committee may decide that no further action should be taken.
- 7.2 Similarly, if the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.

8. Anonymous Complaints

- 8.1 Anonymous complaints will not normally be entertained unless there is additional documentary evidence to support the complaint.

9. Multiple Complaints

- 9.1 It is not uncommon that one event may give rise to similar complaints from a number of different complainants. Whenever possible these complaints will be considered at the same meeting

of the Assessment Sub-Committee. However each complaint will be separately considered.

10. Confidentiality

10.1 As a matter of fairness and natural justice, a member should usually be told who has complained about them. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances that the Assessment Committee consider to be exceptional, for example: -

10.1.1 the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.

10.1.2 the complainant is an officer who works closely with the member and they are afraid of the consequences to their employment if their identity is disclosed.

10.1.3 the complainant suffers from a serious health condition which might be adversely affected if their identity is disclosed. The Assessment Sub-Committee may wish to request medical evidence.

11. Withdrawing Complaints

11.1 A complainant may ask to withdraw their complaint before the Assessment Sub-Committee has made a decision on it. The Sub-Committee will have to decide whether to grant the request.

For example, the Sub-Committee may consider the following:-

11.1.1 Does the public interest in taking some action outweigh complainants request to withdraw the complaint?

11.1.2 Could action, such as an investigation, be carried out without the complainants participation?

11.1.3 Is there a reason why the complainant has been asked to withdraw the complaint? (For example, have they been pressurised by a member against whom the allegation has been made?)

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Joint Standards Committee**28th November 2012**

Report of the Monitoring Officer

Dispensations**Summary**

1. This report provides Members with information about the dispensation provisions available under the new regime, reminds Members of existing arrangements and identifies some particular issues for consideration.

Background

2. The Localism Act introduces two distinct provisions for dispensations allowing Members to depart from the normal requirements. A further measure has been introduced under the recently produced Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
3. If the Monitoring Officer considers that the registration of an interest could lead to the member or a person connected with the member, being subject to violence or intimidation then details need not be recorded in the public register.
4. Separately a member who has a disclosable pecuniary interest in a matter may be granted a dispensation allowing them to participate in the discussion and/or vote on the matter. To obtain the dispensation the Member must make a written application to his or her Authority's "Proper Officer" and it is then determined by the Authority.
5. The grounds on which an application may be granted are that:
 - a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) granting the dispensation is in the interests of persons living in the authority's area,

(d) without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

(e) that it is otherwise appropriate to grant a dispensation.

6. For the City of York Council applications will be made to the Monitoring Officer. The previous statutory Standards Committee expressed a view that it might be appropriate to delegate powers to the Monitoring Office to grant dispensations falling within paragraphs 5 (a), (b) and (d) above. Those will be matters of fact and the decision may be made administratively. Cases falling within (c) and (e) may be considered to be quasi judicial and should be a Member decision. It may though be appropriate to delegate those decisions to a Sub Committee to enable speedier decision making.
7. The previous statutory code of conduct and, indeed, the City Council's own code contain exemptions confirming that a Member would not have a prejudicial interest in various matters including, importantly decisions in respect of functions affecting housing where the Member is a Council tenant and decisions in respect of Council tax setting functions. The Regulations in respect of disclosable pecuniary interests contain no such exemption. Similarly the NALC model code does not include an automatic exemption.
8. In relation to the budget setting process many Members will have a disclosable personal interest. They may have a partner who works for the Council, they may rent an allotment or a house. In the scheme of the overall budget such interests may be regarded as minimal (as they were previously) and it would seem appropriate for dispensations to be granted and for the Monitoring Officer to have the power to do so. Similarly, it might be appropriate to maintain a dispensation for Council tenants when participating in decisions

affecting housing generally as opposed to their property in particular.

9. This may well be less of an issue for Parish Councils but they need to be aware of it when setting their precepts and the Monitoring Officer has written to all the Parish Clerks.
10. The latest part of this jigsaw is the provision in the 2012 Access to information Regulations. These only apply to Executive decision making so not to Council or to Ordinary Committees or to Officer decisions which may fall within the remit of a Committee – such as planning or licensing issues. The important provision for this committee relates to the recording of executive decisions made at Cabinet meetings, by individual Cabinet Members and by Officers. A new requirements has been introduced which states that the decision record must include a record of certain conflicts of interest relating to the matter being decided. For Cabinet meetings the requirement applies to members of the Cabinet. For individual Cabinet Member or Officer decisions the requirement applies to any conflict declared by a Cabinet Member who has been consulted on the decision.
11. In addition to recording that declaration the record must also include a note of dispensation granted by the Council's head of paid service.
12. The term "conflict of interest" is not defined in the Regulations although it seems likely that the existence of a prejudicial interest would amount to a conflict.

Recommendations

13. Members are recommended to:
 - 1) Delegate powers to the Monitoring Officer to grant dispensations in the circumstances described in the report
 - 2) Establish and delegate powers to a Sub Committee to deal with dispensations which fall outside the powers delegated to the Monitoring Officer.

Reason: To ensure that the Council business may proceed effectively

Contact Details

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Report
Approved

Date 12/11/12

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

All

For further information please contact the author of the report

Background Papers:

None

Annexes

None



Joint Standards Committee**28th November 2012**

Report of the Monitoring Officer

Register of Gifts and Hospitality**Summary**

1. This report seeks Members' views on guidance relating to the register of gifts and hospitality.

Background

2. Under the new standards arrangements there is no longer a legal requirement to register the receipt of gifts and hospitality. However, both the City Council's Code and the model code for Parish Councils do include such requirements. Historically very few (if any) notifications have been made by Parish Councillors. From time to time issues have arisen within the City Council as to whether gifts and hospitality should properly be recorded. It seems appropriate for the Committee to give guidance on this issue.
3. The City Council's code requires Members to notify the Monitoring Officer of:

"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".

The NALC model code requires the notification of:

"any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his or her office"

4. Some questions which have come up in the past or could in the future and suggested answers are as follows:

- 1) Q. *Do I have to register gifts from friends?*
- A. *No. The Code only applies to gifts you receive by virtue of your Office of Councillor.*
- 2) Q. *Do the Lord Mayor and Sheriff have to register gifts and hospitality they receive?*
- A. *Where the invitation hospitality is clearly being extended to the office holder for the time being hospitality does not need to be registered. Similarly gifts made to the City and to be retained by the Council need not be registered. Any gifts to be retained by the Lord Mayor should be registered. Gifts and hospitality offered to the Sheriff, his Lady or the Lady Mayoress do not need to be registered.*

The answer as drafted reflects the fact that the Sheriff may or not be a Councillor. Members may wish to consider whether different advice should be given where the Sheriff is, in fact, a Councillor.

- 3) Q. *Does the Leader have to register hospitality he receives to events to which he is invited as the Leader?*
- A. *Yes, as do other Cabinet Members and Committee Chairs.*

The Leader will be invited to attend events because of his position. The Lord Mayor may have attended the same event in his official capacity. Current practice would be for the Leader to register such hospitality. There is an argument that the logic which states that the Lord Mayor does not have to register this hospitality should apply equally to the Leader. However, given the decision making powers that lie with the Leader and Cabinet Members it is suggested that there should be no relaxation of the general rule in these cases.

- 4) Q. *I have been provided with hospitality arising from an outside body appointment. Should I register it?*
- A. *If you have received hospitality because you are a member of another body then it is not attributable to your role as a Councillor. It does not need to be registered. You need to be careful to ensure that any*

eligible member of the outside body is or would be treated in the same way. You also need to ensure that you comply with any requirements of the outside body in respect of accepting such hospitality. You should also, of course, have registered your membership of the outside body.

- 5) Q. *How should I assess the value of hospitality?*
- A. *You should consider how much a person could reasonable expect to pay for an equivalent function. If in doubt you should err on the side of caution and register the hospitality.*
- 6) Q. *Do I have to register hospitality received at official dinners or business lunches?*
- A. *You do not need to register hospitality provided by the Council such as at a civic reception. Reasonable hospitality provided by a third party which is directly ancillary to business should not normally need to be registered. In most cases reasonable hospitality will not be valued in excess of £50 in any event although that figure may properly be exceeded if, for example, the business requires an overnight stay or a series of meetings takes place. However, more significant hospitality such as a meeting at a sports event should be registered.*
- 7) Q. *Does £50 apply to one gift or to the total value of gifts?*
- A. *If a series of gifts is received from the same source within a short period of time then the cumulative value should be registered. The same would apply to hospitality. If in doubt guidance should be sought from the Monitoring Officer.*
- 8) Q. *Do I have to register gifts or hospitality which I have refused?*
- A. *The City Council's Code requires the registration of hospitality which has been offered but refused. The NALC model only requires hospitality to be registered where it has been accepted.*

Recommendations

5. Members are recommended to approve the model questions and answers as guidance to Councillors and consider whether any further guidance may be required.

Reason: To ensure that Members and the public can be clear as to the Joint Standards Committee's expectations.

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Report **Date** 12/11/12
Approved

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

For further information please contact the author of the report

Background Papers:

None

Annexes

None

20012/2013 Work Plan for Joint Standards Committee

<u>Meeting Date</u>	<u>Items</u>	<u>Notes</u>
28 November 2012 at 3.00pm	Monitoring report in respect of complaints received Protocol for handling complaints and assessment criteria Dispensations Registers of gifts and hospitality	
20 February 2013 at 3.00pm	Monitoring report in respect of complaints received Review of the new Code of Conduct Planning Code of Good Practice Meeting with Group Leaders	
17 April 2013 at 3.00pm	Monitoring report in respect of complaints received Review of Member Officer Protocol	

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