

Joint Standards Committee

- To:** Councillor Claire Douglas (Chair)
Cllrs Baker, Carr, Fisher and Rowley
Angharad Davies (Independent Member) and David
Laverick (Independent Member)
Cllrs Chambers (Parish Council Member), and Rawlings
(Parish Council Member)
- Date:** Wednesday, 30 September 2020
- Time:** 4.00 pm
- Venue:** Remote Meeting

AGENDA

1. **Apologies**
Apologies received for the meeting to be acknowledged.
2. **Appointment of Chair**
The Committee is to agree and appoint a chair for the Committee meeting.
3. **Appointment of Vice Chair**
The Committee is to agree and appoint a vice chair for the Committee meeting.
4. **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 interests

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

5. Exclusion of Press and Public

To consider excluding the public and press from the meeting during consideration of agenda item 10 “Monitoring report in respect of complaints received” on the grounds that it contains information which is likely to reveal the identity of individuals. This information is classed as exempt under Paragraph 2 of Part 1 of Schedule 12 A of the Local government Act 1972, as amended by the Local Government (Access to Information)(Variation) Order 2006.

6. Minutes (Pages 1 - 4)

To approve and sign the minutes of the meeting of the Joint Standards Committee held on 22 July 2020.

7. Urgent Business

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

8. Public Participation

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

Please note that our registration deadlines have changed to 2 working days before the meeting, in order to facilitate the management of public participation at remote meetings. The deadline for registering at this meeting is **Monday 28 September 2020**.

To register to speak please visit www.york.gov.uk/AttendCouncilMeetings to fill out an online registration form. If you have any questions about the registration form or the meeting please contact the Democracy Officer for the meeting whose details can be found at the foot of the agenda.

Webcasting of Remote Public Meetings

Please note that, subject to available resources, this remote public meeting will be webcast including any registered public speakers who have given their permission. The remote public

meeting can be viewed live and on demand at www.york.gov.uk/webcasts.

During coronavirus, we've made some changes to how we're running council meetings. See our coronavirus updates (www.york.gov.uk/COVIDDemocracy) for more information on meetings and decisions.

- 9. Report on Parish Council membership** (Pages 5 - 8)
This report updates the Committee on steps taken to fill the current Parish vacancy on the Joint Standards Committee.
- 10. Monitoring Report on Complaints Received** (Pages 9 - 22)
To receive a routine update report on recent standards complaints.
- 11. Dispensation granted to City of York Council elected Members** (Pages 23 - 26)
This report informs the Committee that dispensation was granted to City of York Councillors on 3 September 2020 to attend and or participate in a meeting of the Customer & Corporate Services Scrutiny Management Committee on 16 September 2020.
- 12. Planning and pre-determination: advice for Council Members and the role of JSC in disseminating this** (Pages 27 - 44)
This report considers planning, in particular, pre-determination in planning matters and identifies potential ethical standards issues which the Joint Standards Committee may wish to discuss, particular ways in which to disseminate this advice across City of York and Parish Councillors.
- 13. Update on whistleblowing policy** (Pages 45 - 62)
This report updates Members on the review of the Council's Whistleblowing Policy.

14. DBS checks and remit of Joint Standards Committee (Pages 63 - 64)

This report provides a brief update as to whether the decision around DBS checks for Councillors sits within the Committee's remit.

15. International travel protocol (Pages 65 - 68)

This report contains a draft International Travel Protocol for the Joint Standards Committee to review and consider.

16. Report on how the Joint Standards Committee and City of York Council can better support Parish Councils in their work (Pages 69 - 78)

This reports outlines possible areas of discussion around how the Joint Standards Committee and the Council can better support Parish Councils.

17. Update on draft annual report (Pages 79 - 80)

This report provides the Joint Standards Committee with an update on the draft Annual Report.

18. Review of Work Plan (Pages 81 - 82)

To consider the Committee's work plan and to make any changes or additions that may be required.

Democracy Officer:
Robert Flintoft

Contact Details:
Telephone – (01904) 555704
Email – robert.flintoft@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

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City of York Council

Committee Minutes

| | |
|-----------|--|
| Meeting | Joint Standards Committee |
| Date | 22 July 2020 |
| Present | Councillors Douglas (Chair), Baker, Carr, Fisher, Rowley, Chambers (Parish Council Member), Rawlings (Parish Council Member) and David Laverick (Independent Member) |
| Apologies | Angharad Davies |

40. Declarations of Interest

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

41. Exclusion of Press and Public

Resolved: That the press and public be excluded from the meeting during consideration of agenda item 8 (Monitoring Report on Complaints Received), on the grounds that it contains information which is likely to reveal the identity of individuals. This information is classed as exempt under Paragraph 2 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

42. Minutes

Resolved: That the minutes of the meeting held on 22 January 2020 be approved as a correct record, to be signed by the Chair at a later date.

43. 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 of her concerns regarding the dismissal of a complaint against a Councillor in just nine days, without an explanation. Ms Swinburn also noted that her own complaint submitted over a week ago had not been acknowledged. Finally, the public participant noted the omission of items on the work plan that had been agreed at a previous meeting.

44. Urgent Business

There was no urgent business reported.

45. LGA Consultation on a Model Code of Conduct for Elected Members

The committee received a report introducing an LGA consultation on the model code of conduct for Elected Members.

Members highlighted the omission of repeat offers of gifts from the model code of conduct, noting that if gifts fell under the £25 limit, they could be accepted without the need to declare. Members also noted the importance of declaring which individual or organisation had offered the gift / hospitality.

Members noted the lack of reference to Parish Councils within the code of conduct and stated that it would be important for them to be included under the relevant authorities' code. The committee asked for this to be included in the response

In response to Member questions, the monitoring officer noted the need for further clarification on the wider definition of 'declaration of interests'. The committee agreed that the response to the consultation should seek clarification on this point.

Members reflected that the 'protected characteristics' no longer included marital status and asked for this to be included within the response. It was also noted that 'socio-economic equality' should be mentioned in the local code at a later date.

Members noted they were pleased with the inclusion of conduct on social media within the LGA's model code, but that more clarity on the definitions of public/private life would be welcomed.

Resolved: That the Monitoring Officer prepare a response to the consultation, taking into account the comments of the committee, that can be finalised by the Chair prior to being submitted.

Reason: To ensure that the points raised by the committee are heard by the Local Government Association in relation to the Model Code of Conduct.

46. Dispensation of the Six Month Rule for City of York Councillors and Attendance at Meetings

The committee received a report from the Monitoring Officer on the dispensation of the 'six month rule' in light of the coronavirus pandemic.

The Monitoring Officer explained that due to the coronavirus pandemic and resulting 'lockdown', there are some Members who, through no fault of their own, have not been able to attend a Council meeting during this period. The dispensation is requested so that those affected Members can avoid potential repercussions for not having attended a Council meeting.

Members did convey concern that the dispensation would allow Members to not attend meetings in protest against remote meetings in general.

Members noted that they would be happier with a fixed date being attached to the dispensation.

Resolved: That a dispensation is granted to all City of York Councillors who have been justifiably unable to attend a constitutionally prescribed meeting so as to ensure that they are exempt from the provisions of Section 85 Local Government Act 1972. This dispensation will expire on 31 December 2020.

Reason: A dispensation is required as it has not been possible to deliver the full suite of constitutionally prescribed meetings under the Remote Meetings Guidance.

47. Review of the Work Plan - 2020/21

The committee reviewed their work plan for the municipal year 2020/2021.

Members asked for the following outstanding items from the previous meeting of the committee be re-added to the committee's work plan for the September meeting:

- Report on how the JSC and CYC can better support parish councils in their work
- Planning and Pre-determination advice for City of York and Parish Councillors
- Update on Whistleblowing Policy
- Update on DBS procedures

Members asked for the following to be added the committee's work plan for a future date to be confirmed:

- Model Code of Conduct
- Member/Officer Protocol
- Member Development (inc. on reduction of complaints and use of social media)

Resolved: That the committee considers agenda items to be included in the work plan for the municipal year.

Reason: To ensure the committee regularly review items to be discussed.

48. Monitoring Report in Respect of Complaints Received

The Monitoring Officer presented a report to the committee outlining the position regarding ongoing complaints.

Resolved: That the report be noted.

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

Cllr Claire Douglas, Chair

[The meeting started at 1600 and finished at 1745].



Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

Report on Parish Council Membership**Summary**

This report updates the Committee on steps taken to fill the current Parish vacancy on the Joint Standards Committee.

Background

The Localism Act 2011 abolished the previous statutory Standards Committees which automatically included Parish Members. City of York Council was keen to retain Parish and Town Council influence on the Standards Committee and to give Parish Members the same status as City Councillors, including having full voting rights. In order to achieve this, the Council agreed to establish a Joint Committee. Formally, that Committee is a Joint Committee between the City Council and 3 Parish Councils in York, whose Members sit on the committee. Parish Council membership has always been on the basis that the Parish members see themselves as representatives of Parish Councillors generally rather than simply of their own Parish.

A Parish Council vacancy has arisen on the Joint Standards Committee and in order to ensure that Parish Members are representative of Parish Councils as a whole, nominations are being sought through the Yorkshire Local Councils' Association in order to fill this vacancy. Parish and Town Councils within the City of York Council boundary area will be asked to put forward nominations, after which a ballot will take place across those nominated Parish/Town Councils.

Once a Parish/Town Council is elected, that Parish/Town Council will provide the Joint Standards Committee with their Committee representative.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

The Council's constitution requires that the Joint Standards Committee shall be a joint committee consisting of City of York Council and 3 Parish Councils.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are recommended to note the report on the steps being taken in order to ensure that full Membership of the Joint Standards Committee can be maintained which will allow the Council to effectively engage with Parish and Town Councils in promoting high standards of ethical conduct for all local Councillors.

Author:

Rachel Antonelli
Senior Solicitor & Interim
Deputy Monitoring Officer
Tel: 01904 551043

**Chief Officer Responsible for the
report:** Janie Berry
Director of Governance &
Monitoring Officer
Tel: 01904 555385

**Report
Approved**

Date

21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers: None

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Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

Monitoring Report in respect of Complaints Received**Summary**

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

Background

The table attached at Annex A provides information about ongoing complaints and in particular the stage each one has now reached.

Case reference 723 has now concluded, the Monitoring Officer has approved the draft report of the Investigating Officer and has notified the parties of the outcome.

Case references 739, 740 and 741 are still on hold pending the outcome of investigations into the conduct by another party.

Case reference 2020/05 and 2020/06 have both been assessed and no further action is to be taken, therefore, they are now closed.

Case references 2020/04, 2020/07 and 2020/08 are all linked complaints and are currently being investigated. Case references 2020/09 and 2020/11 are also linked and are currently being assessed. Case reference 2020/10 is also currently being assessed, so too is case reference 2020/12, which has only just recently been received.

Going forward it is proposed that after each meeting, any cases which are closed will be moved onto a closed list which can be provided on request by the Committee. This will allow the Committee to see active or recently concluded complaints at each meeting.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

Maintaining standards across the City through the Code of Conduct ensures that an ethical framework can be adhered to.

Legal

As detailed within the report.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

1. That the Joint Standards Committee notes the report, in order to ensure that the Committee is aware of the current levels of activity and is able to provide oversight of the complaints procedure.

Author:

Rachel Antonelli
 Senior Solicitor & Interim
 Deputy Monitoring Officer
 Tel: 01904 551043

Chief Officer Responsible for the

report: Janie Berry
 Director of Governance &
 Monitoring Officer
 Tel: 01904 555385

**Report
Approved**

Date

21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

- **Annex A – Table showing complaints received.**

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| Case ref | City or Parish | Complainant | Date Received | Nature of Complaint | Status | Updates |
|----------|----------------|-----------------------------|---------------|---|--|---|
| 723 | Parish | Former Parish Council Clerk | 24/6/19 | The complainant alleges that the subject members have behaved in a manner that is disrespectful. | Closed – the Monitoring Officer has considered the Investigation Officer’s report and agrees with her findings of no breach of the Code of Conduct. The investigation was initially on hold as it was related to another complaint. | |
| 739 | Parish | Parish Councillor | 15/11/19 | 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. |
| 740 | Parish | Parish Councillor | 13/11/19 | Allegations that the subject member behaved aggressively towards a 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 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. |
| 2020/01 | Parish | Resident | 05/02/20 | The complainant alleges the Parish Councillor was supporting a planning application on a personal level and was not acting impartially. The complainant claims the Councillor did not acknowledge their objections. | Closed - after investigation, the Monitoring Officer advised this matter will not be taken further. | The Chairman of the PC has contacted the Monitoring Officer to discuss this matter. A Parish Councillor has resigned from their post following the incidents with the Parish Councillor. Response sent to the complainant on 28/04/20. Chair of PC also sent a copy. This matter will not be taken further. |

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| 2020/02 | City | Resident | 10/04/20 | The complainant put in a complaint with regards to how a Councillor spoke to him online on Twitter. | Closed – the Monitoring Officer advised the complainant that this complaint does not merit further investigation as it appears that the thread consists of a series of comments between the complainant and the Councillor in which they were both providing views on whether a previous comment made on Twitter was defamatory. | |
| 2020/03 | City | Councillor | 26/06/20 | The complainant alleges a Councillor had a personal and prejudicial interest in the matter of the decision to grant and fund early retirement of a Chief Officer. | Closed – the complaint did not progress to an investigation and the complaint was dismissed. | |
| 2020/04 | Parish | Parish Councillor | 08/07/20 | The complainant has put in 3 complaints about the behaviour of another Parish Councillor towards them. | This complaint is currently being investigated. | This case has been passed to an investigating officer to investigate. |
| 2020/05 | City | City | 11/07/20 | The complainant has submitted a formal complaint with regards to 4 CYC Councillors not submitting a Declaration of Interest at a Planning Committee meeting on 9 th July 2020. It is claimed one Councillor in particular attended with a predetermined and biased mind-set. | Closed - the complaint was assessed and the views of an Independent Person were sought. It was determined the complaint would not be taken further as the points raised do not amount to a breach of the code of conduct. | |
| 2020/06 | City | Resident | 14/07/20 | The complaint concerns a Councillor's participation at the Staffing and Urgency Committee | Closed - the complaint was assessed and the views of an Independent Person were | |

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|---------|--------|-------------------|---------------------|---|---|---|
| | | | | that discussed the early retirement of a Chief Officer and the lack of Declaration of Interest. | sought. It was determined the complaint would not be taken further. | |
| 2020/07 | Parish | Parish | 16/07/20 | The complainants have put in a joint complaint about their fellow Councillor. The complaint focuses on the Councillor's attendance at meetings, his general tone of communication and behaviour amongst other things. | This complaint is currently being investigated. | This case has been passed to an investigating officer to investigate. |
| 2020/08 | Parish | Resident | 23/07/20 | The formal complaint submitted is with regards to the integrity, honesty and bullying behaviour of the Councillor. | This complaint is currently being investigated. | This case has been passed to an investigating officer to investigate. |
| 2020/09 | Parish | Parish | 24/07/20 | The complainant has put in a formal complaint with regards to the Councillor behaving in a 'disrespectful and intimidatory' manner. The complainant has given multiple examples of the behaviour. | This complaint is currently being investigated. | Seeking the views of the independent person. |
| 2020/10 | City | Residents | 12/07/20 - 24/07/20 | Numerous complaints were received with regards to the Councillor's comments and behaviour on social media. | This complaint is currently being investigated. | |
| 2020/11 | Parish | Parish Councillor | 27/08/20 | The complainant has put in a formal complaint with regards to a Councillor's behaviour at council meetings. The complainant has given multiple examples of the behaviour. This is a counter complaint to 2020/09. | This complaint is currently being investigated. | Seeking the views of the independent person. |

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| 2020/12 | CYC | Resident | 11/09/20 / 16/09/20 (officially) | The complaint is in relation to the resident's planning application. The complainant claims the Councillor supported a council officer rather than providing a fair and neutral opinion as a Councillor and was inextricably linked to personal interests in relation to a committee meeting. | This complaint is currently being investigated. | |
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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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30th September 2020

Joint Standards Committee

Report of the Monitoring Officer

Dispensation granted to all City of York Council Elected Members

Summary

To advise the Committee that the Monitoring Officer following consultation with the Chair of the Joint Standards Committee granted a dispensation to all City of York Councillors on 3rd September 2020, so as to enable them to attend and or participate in a meeting of the Customer & Corporate Services Scrutiny Management Committee on 16th September 2020.

Background

A special meeting of the Customer & Corporate Services Scrutiny Management Committee [hereafter CCSMC] on 16th September 2020, has been convened to enable a scrutiny debate on the recently published consultation documents issued by MHCLG, namely Changes to the Current Planning System, August 2020; and White Paper: Planning for the future, August 2020.

Some members of the CCSMC also sit on the Council's Planning Committee and the Area Planning Committee and it was felt that by granting a dispensation to all councillors, all could positively express their views without any future risk of pre-determination.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

Not applicable to this report.

Legal

The Council's Constitution authorises the Monitoring Officer to grant a dispensation following consultation with the Chair of the Joint Standards Committee.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

To note that the Monitoring Officer following consultation with the Chair of the Joint Standards Committee granted a dispensation to all City of York Councillors on 3rd September 2020, so as to enable them to attend and or participate in a meeting of the Customer & Corporate Services Scrutiny Management Committee on 16th September 2020.

**Author & Chief Officer
responsible for the report:**

Janie Berry

Director of Governance &
Monitoring Officer

01904 555385

**Report
Approved**

Date

21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

- City of York Council Constitution

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Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

Planning and Pre-Determination: advice for Council Members and the role of Joint Standards Committee in disseminating this**Summary**

This report considers planning, in particular, pre-determination in planning matters and identifies potential ethical standards issues which the Joint Standards Committee may wish to discuss, particular ways in which to disseminate this advice across City of York and Parish Councillors.

Background

Substantial guidance is available both locally and nationally for Councillors involved in determining planning applications and ethical considerations in making such determinations. In addition, City of York Council have implemented a Code of Good Practice for Councillors involved in the Planning Process which can be found at Annex A. Section 4 of this Code deals with pre-determination.

The law on bias and pre-determination, which is a particular form of bias, is part of the general legal obligation on public authorities to act fairly. Decision makers are entitled to be pre-disposed to particular views, however, pre-determination occurs where someone closes their mind to any other possibility beyond that pre-disposition, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision.

Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision, just because:

- (a) The decision maker had previously done anything that directly or indirectly indicated what view the decision maker took or would or might take in relation to a matter, and
- (b) The matter was relevant to the decision.

Councillors must not have a closed mind when they make a decision, as decisions taken by those with pre-determined views are open to legal challenge. At the point of making the decision, Councillors must consider all of the evidence put before them carefully and be prepared to modify or change their initial view in light of evidence presented or arguments put forward. They must then make their final decision at the meeting with an open mind based on all of the evidence before them.

A Member who has completely closed their mind should not participate in decision making.

The Code of Conduct for City Councillors is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership and also contains specific duties which are placed upon Councillors, including a prohibition on compromising the impartiality of anyone who works for the Council and not conducting themselves in a manner which could bring the Council into disrepute, as well as provisions around not using a position of Councillor to obtain an advantage or disadvantage on others.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

The Council's Constitution contains the Code of Good Practice for all Councillors to consider when dealing with planning matters and the rules around bias and pre-determination are a statutory requirement.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are recommended to note the report and any further issues arising from debate and determine whether the Committee should take further steps, in order to disseminate this advice further.

Author:

Rachel Antonelli
Senior Solicitor & Interim
Deputy Monitoring Officer
Tel: 01904 551043

Chief Officer Responsible for the

report: Janie Berry
Director of Governance &
Monitoring Officer
Tel: 01904 555385

**Report
Approved**

Date 21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

- **Annex A – Code of Good Practice for Councillors involved in the Planning Process.**

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Section 5E – Code of Good Practice for Councillors involved in the Planning Process

1 Summary

- 1.1 One of the key purposes of the planning system is to balance private interests in the development and use of land against the wider public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons. The aim of this Code of Good Practice is to promote public confidence in the planning decision making process.
- 1.2 If Members do not abide by this Code of Good Practice, they may put:
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - themselves at risk of being the subject of a standards complaint
- 1.3 Full Council approved this Planning Code of Good Practice on 10 October 2013.

2 When does this Code apply?

- 2.1 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes both Planning Committee meetings, any meetings of the full Council when exercising the functions of the Planning Authority, and less formal occasions, such as meetings with officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications. Although much of the Code applies only to members (including substitute members) of the Planning Committees, some aspects affect any Member who becomes involved with a planning matter.

-
- 2.2 This Code of Practice supplements the Council's Code of Conduct for Members, and gives detailed advice on dealing with planning issues.
- 2.3 If Members have any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer, and preferably well before any meeting takes place.

Advice to Members:

Do apply the rules in the Members' Code of Conduct first.

Do then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control.

Do seek early advice if in doubt

3 Dealing with Interests under the Members' Code

- 3.1 Members must always declare personal, prejudicial and disclosable pecuniary interests in accordance with the Members' Code of Conduct. All Members must follow these rules not just members of the Planning Committees.
- 3.2 A personal interest arises where the business affects the Member, somebody with whom the Member has a close association, one of the outside bodies referred to in the second schedule of the Code of Conduct or someone from whom the Member has received a gift or hospitality valued at £50 or more. Members must declare these interests unless they appear on their register of interests.
- 3.3 A prejudicial interest arises where a Member's personal interest is so significant that it would be likely to prejudice their judgement of the public interest. Members should not participate in the debate or vote where they have such an interest and, if the interest arises in a decision making meeting, they should leave the room. Simply being a member of an outside body will not automatically amount to a prejudicial interest but Members need to think about whether their

involvement is more significant than that and consider taking specific advice.

- 3.4 A disclosable pecuniary interest arises where the business relates to one of the interests prescribed by law and referred to in the first schedule of the Code of Conduct. It is a criminal offence to participate in a Council meeting if Members have such an interest and have not been granted a dispensation.

Advice to Members:

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Disclose your interest at the commencement of discussion on that particular matter.

Where your interest is a prejudicial or disclosable pecuniary interest and you have not obtained a dispensation:-

Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.

Don't get involved in the processing of the application*.

Don't use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so

*A Councillor who has a prejudicial or disclosable pecuniary interest in a matter is permitted to seek to persuade Planning Officers of the merit of the application in the same way as a member of the public but should be careful to avoid creating an impression of placing pressure on an officer for a particular recommendation. See also paragraph 3.3 for advice on speaking at meetings in these circumstances.

4. Keeping an open mind

- 4.1 Members of a Planning Committee must not make up their minds before they have all relevant material and arguments before them at a Planning Committee meeting. The use of a political whip is not permitted for decisions on planning applications.
- 4.2 Members of a Committee are entitled to feel predisposed towards a particular decision, but must still be able to consider and weigh relevant factors before reaching the final decision. Pre-determination arises when Members' minds are closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. That risks making the whole decision vulnerable to legal challenge. It also risks a public perception being created of unfairness in the planning process.
- 4.3 The Localism Act 2011 has built on clarification of the law provided by the Courts in a number of cases and Members can take some comfort that they are entitled to express views on planning matters prior to a decision being made without being challenged on grounds of predetermination. Nevertheless it remains the case that Members must not have closed their mind to possible alternative decisions and must be prepared to consider representations made and the advice of officers and listen to the debate before reaching a final view.

Advice to Members:

Don't make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the officer's presentation and all the evidence and arguments at the Planning Committee when the matter will be considered.

- 4.4 A member of a Planning Committee who is also a Parish Councillor may already have been consulted on a planning application at a Parish Council meeting. It is permissible to express a view at a Parish Council meeting on a matter and still participate at a Planning Committee so long as a Member has not closed their mind to reaching a different view. It is good practice in these cases for the Member to:

- make it clear during the discussion at the consultee body that their views are expressed on the limited information before them only; and
- reserve judgement and the independence to make up their own mind when it comes before the Planning Committee and to hear all of the relevant information; and
- not in any way commit themselves as to how they or others may vote when the proposal comes before the Planning Committee; and
- disclose the personal interest regarding their membership of the Parish Council when the Planning Committee comes to consider the proposal

4.5 If a Member has already made up their mind they must not speak or vote on the business but they are not legally required to withdraw from the meeting (unless they also have a prejudicial or disclosable pecuniary interest). However, they may prefer to do so for the sake of appearances. If they decide to stay in the meeting they should explain that they do not intend to speak and vote because they have (or could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes.

4.6 Executive Members may have been involved in promoting a particular development in their role as Executive Members for the Service. If an Executive Member also sits on Planning Committee it may be difficult for him or her to demonstrate objectivity in dealing with an application relating to that development. In those cases the best course of action would be for the Executive Member to withdraw from the debate and vote.

5 Contact with Applicants, Developers and Objectors

5.1 Members of a Planning Committee should discourage applicants or agents from approaching them in any way, should minimise social contacts with known developers and agents and should refrain altogether from such contacts when developments are contemplated or a planning application has been received.

5.2 All Members should refrain from involving themselves in discussions with developers or potential applicants at the pre-application stage of

proposals unless such discussions are part of structured and recorded arrangements with Officers.

- 5.3. If an approach is received from an applicant/agent in relation to a particular planning application or a matter that may give rise to a planning application, the Member should:
- Refer the applicant or agent to the relevant officers of the Council, and notify officers of the approach.
 - Avoid giving any commitment or impression of a commitment or that they hold any particular view about the development or the future of the site in question.
 - Confine themselves to providing information on the Council's general planning policies or procedures only, where the Member is fully aware of these.
 - If they do express an opinion they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.
- 5.4 When any Member speaks at a meeting of the Committee on the subject of a particular planning application, they should disclose the fact that they have been in contact with the applicant/agent, if this is the case. Members are able to articulate their own views on proposals, but should not speak on behalf of the applicant or the agent who will have their own opportunity to speak to Committee.
- 5.5 Any written information received by a Member of the relevant Committee from the applicant or agent, objectors or any other third party, should be passed or copied immediately to the relevant Planning Officer and declared at the start of the consideration of the particular application.

Advice to Members:

Do seek to minimise social contacts with known developers particularly when the developer is known to be contemplating development in the City

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| <p>Do refer an applicant, developer or objector who approaches you about a planning application to Officers, if they need planning, procedural or technical advice.</p> |
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6 Contact with neighbours, objectors, supporters, third parties or fellow Councillors

- 6.1 In order for the planning system to work effectively public concerns must be adequately aired. It is an important part of a Member's role to listen to residents' views and put these views forward within the Council. However, it is important that Members of the Planning Committees make decisions based on the full facts having considered all representations made and all other relevant considerations. Members will usually need a report from officers to help them to do this.
- 6.2 Members of a Planning Committee should be wary of giving the impression that they have made up their mind about a particular matter. Discretion is always advisable. A good approach is to say something like: "From what I know at the moment I support (or have reservations about) this application, but I won't make a final decision until I have all the facts before me at Planning Committee".
- 6.3 All Members should advise anyone lobbying them that the Committee can only effectively consider representations if they are made in writing to the Assistant Director (Planning and Public Protection). Members can also advise objectors of the rights they have for speaking at meetings. If there are technical issues or alternatives to be considered, then Members should either ask the applicant/objector to raise these matters with officers or ask officers to consider such matters when reporting to Committee.
- 6.4 No Member should accept gifts or hospitality of any value from anyone who is lobbying them. Members should inform the Monitoring Officer if they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 6.5 No Member should take part in negotiations with applicants or potential applicants regarding their proposals for development except

where such negotiations are part of a structured arrangement with officers.

Advice to Members:

If you are lobbied

Do explain that you are not in position to express a firm intention to vote one way or the other

Do explain how representations can be made formally

Don't accept any gifts or hospitality

7 Lobbying by Members

- 7.1 Members are quite entitled to join general interest groups which may have an interest in planning matters such as the Civic Society or the Victorian Society. If Members are present at a Committee meeting where a group to which they belong has adopted a view on a particular matter then they need to declare a personal interest when the matter is discussed.
- 7.2 There may be circumstances where a political group has a policy commitment to a particular development. It may have been contained within the party's manifesto. This alone does not prevent a Member participating in decision making so long as they have not closed their mind to considering the planning arguments.
- 7.3 If a Councillor, whether or not a member of the Planning Committee, speaks on behalf of a lobby group at a Committee meeting they should withdraw from the meeting after the public speaking session.

8 Site Visits

- 8.1 Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However care must be taken to ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting. Site visits should only be requested where there is a clear and substantial benefit in having one.

- 8.2 Members will have the opportunity to ask questions of officers, the applicant and objectors at the site visit but they should avoid expressing opinions at this stage.
- 8.3 In addition it is important for officers and Members to hear all the discussion and visit all parts of the site as a single group so as to ensure that any information which they gained from the site visit can be reported back to the Committee, and that all Members have the same information.
- 8.4 While visiting sites Members must not accept any form of gift, hospitality or refreshment.
- 8.5 Members of a Planning Committee should not normally accept invitations to visit a site unless this is in the company of a planning officer. This does not prevent Members from going alone to view a site from public land.
- 8.6 Councillors have no rights to enter on private land. A Councillor might be invited to enter the site by the owner. It is not good practice for a member of a Planning Committee to do so as this can lead to a perception that the Councillor is no longer impartial. If a Member feels that they need an explanation of the proposal then they should request a formal site visit by contacting the Case Officer at least 10 days before the Committee meeting.

Advice to Members:

Don't request a site visit unless you feel it is strictly necessary

Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

Do ask the Officers at the site visit questions or seek clarification from them on factual matters which are relevant to the site inspection.

Don't express opinions or views on the proposal to anyone.

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| <p>Don't enter a site which is subject to a planning application unless you can comply with the good practice rules in this Code</p> |
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9. Presentations to Members

- 9.1 It may be that on larger, more complex, or design sensitive applications, it would be appropriate for a prior presentation to be made to the relevant Committee.
- 9.2 If so, such presentations will not be held less than two weeks in advance of the meeting. This is to allow Members due time for reflection on the proposal, and to allow any questions and issues to be followed up by officers and covered in the agenda report to Members at the subsequent Committee.
- 9.3 The role of Members at such presentations is to listen to the presentation, and to raise questions on the details presented. It is important that Members do not promote or oppose the application at this stage, since not all the relevant information may be before them.

10 Decision Making

- 10.1 The Council's Constitution specifies that certain applications must be brought before the Committee and others may be determined by officers. Members, including those who are not on the Committee, can request that a particular application should be brought to Committee rather than being determined by officers under delegated powers.
- 10.2 Members should ensure that they only request that an application be brought to Committee in accordance with Constitutional requirements, and for proper planning reasons which are reported to the Committee.
- 10.3 In making decisions on planning applications, the law requires the application to be determined in accordance with the development plan and the requirement to comply with national planning guidance unless material considerations indicate otherwise. Adequate reasons

must be given for any decision. It is particularly important to ensure that these are fully articulated and recorded where a decision is made contrary to an officer recommendation or contrary to established policy. Where a decision is made contrary to policy it is Members' responsibility to explain their reasons in full. Pressure should never be put on officers to "go away and sort out the planning reasons".

- 10.4 Members must come to a decision after proper consideration of all the information reasonably required. Members should not participate in a vote if they have not been present for the full presentation and debate. Members should not attempt to answer e-mail, monitor or contribute to social media discussions or engage in any other activity which may distract them from giving the proceedings their full attention.
- 10.5 Members should ensure that they have had sufficient time to digest any new material which has been presented. Members may need to ask for an adjournment to do so. Occasionally it may be necessary to defer an item to allow for proper consideration or for additional information to be obtained.
- 10.6 Messages should not be passed to individual committee members either from other Members or members of the public. This could create an impression that a Member is being improperly influenced.

Advice to Members:

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do make decisions in accordance with the Development Plan unless material considerations indicate otherwise

Do come to your decision only after due consideration of all of the information reasonably required.

Do make sure that if you are proposing, seconding or supporting a decision that you clearly identify the planning reasons leading to this conclusion and can identify the supporting evidence

11 Officers

- 11.1 Members, whether or not they sit on a Planning Committee, must not put improper pressure on any officer to put forward a particular recommendation and should not do anything which compromises or is likely to compromise his or her professional integrity and impartiality. Doing so may be a breach of the Code of Conduct.
- 11.2 Planning Officers must act within officer and professional codes of conduct. The Royal Town Planning Institute requires its members to fearlessly and impartially exercise their independent professional judgment to the best of their skill and understanding. Accordingly there may be occasions where officers make recommendations which may be contrary to the views and wishes of Members.

Advice to Members:

Do not apply improper pressure on Officers to make a particular recommendation

Do respect the professional obligations of planning Officers.

12 Members as developers or applicants

- 12.1 If a Member has an interest in land that may be the subject of redesignation or other decision in the Development Plan process, or if a Member, or someone with whom they have a close association is making a planning application to the Council, then they should discuss this at the earliest opportunity with the Assistant Director (Planning and Public Protection). The planning application should contain a declaration (in the form of a covering letter) of the Member's position in relation to the planning application, so that all those consulted are aware of the relationship. The Assistant Director (Planning and Public Protection) will oversee the consideration of the application with the case officer, including any discussions that may involve other Members.
- 12.2 Any applications by a Member will be reported to the Planning Committee or the Planning Area Sub-Committee as appropriate and will not be dealt with by an officer under delegated powers. The Member's interest should be made clear at the Committee.

12.3 If a Member's planning application comes before the Planning Committee they will have a disclosable pecuniary interest in relation to the application. This must be declared and means that you may not participate in the discussion or vote on the application. Government guidance suggests that the prohibition on discussing the item would prevent Members making representations to the Committee as an ordinary member of the public. While some lawyers have questioned this guidance there is a degree of uncertainty and the safest option would be for the Member to either seek a dispensation allowing them to make representations or ask someone else to make those representations on their behalf.

13 Enforcement cases

13.1 Planning enforcement is particularly sensitive since it can ultimately result in Court proceedings. All Members are encouraged to report breaches of planning control to officers or to support their constituents in doing so. They may seek updates on progress which is being made to resolve matters but should avoid playing too proactive a role such as by involving themselves in meetings between enforcement officers and developers.

14 Member Training

14.1 In order to ensure that Members are fully aware of the requirements placed on them when sitting on Planning Committees it is the policy of the Council to require Members to attend prescribed training before sitting as a Member or Substitute Member.

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Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

Update on Whistleblowing Policy**Summary**

This report updates Members on the review of the Council's Whistleblowing Policy.

Background

Veritau conducted a review of the Council's Whistleblowing policy in 2018-2019. On 6 February 2019 the Head of Internal Audit at City of York Council asked the Audit and Governance Committee to consider a new draft policy. The document was being shared with the Committee for comment before being taken forward for approval. It was suggested that the views of the Joint Standards Committee should be sought, because a whistleblowing report may involve a Councillor.

The Joint Standards Committee convened a Task Group in order to discuss the draft policy and the Committee's views were fed back to Veritau. The policy was again considered by the Audit and Governance Committee on 4 December 2019. The views of the Joint Standards Committee were taken into account and minor amendments were made to the draft policy.

In January 2020, the draft policy was considered by the Council's Corporate Management Team who made some final amendments to the policy before the policy was approved by the Council's Interim Head of Paid Service. A copy of the policy, which has now been implemented by the Council, can be found at Annex A.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

As detailed within the report.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are asked to note the report.

Author:

Rachel Antonelli
Senior Solicitor & Interim
Deputy Monitoring Officer
Tel: 01904 551043

Chief Officer Responsible for the report: Janie Berry

Director of Governance &
Monitoring Officer
Tel: 01904 555385

**Report
Approved**

Date 21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

- **Annex A – Whistleblowing Policy**

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WHISTLEBLOWING POLICY

1.0 INTRODUCTION

- 1.1 City of York Council is committed to achieving high standards of integrity and accountability. This policy provides a framework for employees and contractors, to raise concerns which they believe are in the public interest and may relate to illegal, improper or unethical conduct. The whistleblowing policy forms part of the Council's overall counter fraud framework. There are different mechanisms for members of the public or others with concerns to report them to the Council, for example through the counter fraud hotline or complaints procedures. Whilst many of the principles covered in the whistleblowing policy relate to any report of wrongdoing at the council, this policy is designed solely for the use of employees and contractors.
- 1.2 The Council tries to create an open environment in which employees and those working on behalf of City of York Council are encouraged to raise issues with the confidence that they will be acted upon appropriately. Our message to employees is straightforward - If in doubt, raise it!
- 1.3 The Public Interest Disclosure Act 1998 (PIDA) protects employees against detrimental treatment or dismissal as a result of any disclosure of information in the interests of the public. This policy is designed to conform to legislation¹ as well as guidance from the government and relevant bodies².
- 1.4 This policy should be used where there are concerns about consequences for other employees or the public, and does not apply to matters relating exclusively to one's own employment.
- 1.5 A guide for managers or other employees on how to proceed if they receive a whistleblowing report is contained in Appendix A of this policy.

2.0 AIMS AND SCOPE OF THE POLICY

2.1 The policy aims to:-

- encourage employees to raise any serious concerns they have about their workplace or working practices;
- ensure that employees get a response to their concerns and that they are aware of how to pursue them if they are not satisfied with any action or inaction; and

¹ PIDA 1998 was updated by the Enterprise and Regulatory Reform Act 2013.

² Whistleblowing guidance has been issued by the Department for Business, Energy & Industrial Strategy, the National Audit Office and the charity, Public Concern at Work.

- assure employees that if they raise any concerns in the public interest then action will be taken to protect them from possible reprisals or victimisation.
- 2.2 This policy applies to any person working for the Council. This includes both permanent and temporary staff, staff from maintained schools, and also covers agency personnel and staff seconded to or from a third party. Contractors working for the Council may also use the provisions of this policy to make the Council aware of any relevant concerns.
- 2.3 Protection under PIDA is not provided to job applicants, self-employed workers or volunteers, however concerns can still be reported through whistleblowing channels.
- 2.4 Set out below is a list of circumstances that should be reported through this policy and qualify for protection under legislation:
- a) a criminal offence has been committed, is being committed, or may be committed, e.g. corruption, theft, or fraud³;
 - b) a person has failed, is failing, or may fail to comply with any legal obligation to which they are subject, e.g. breach of any statutory Code of Practice;
 - c) a miscarriage of justice has occurred, is occurring, or may occur;
 - d) the health or safety of any individual has been, is being, or may be endangered, e.g. abuse of any vulnerable adult or child;
 - e) the environment has been, is being, or may be damaged; or
 - f) information tending to show any matter falling within any of the above categories has been, is being, or may be deliberately concealed, e.g. failure to take reasonable steps to report or resolve any situation which is likely to cause significant financial loss to the Council.
- 2.5 This whistleblowing policy is intended for people to raise concerns that are in the public interest and where the interests of others or of the organisation itself are at risk. It is intended to supplement, rather than to replace, other employment procedures whereby employees of the Council may already raise complaints or matters of genuine concern relating to their own employment.

3.0 SAFEGUARDS

³ If clarification is required as to whether an issue constitutes a criminal offence or comes under any other section on this list then employees and contractors can contact Veritau for advice.

- 3.1 The Council recognises that the decision to report a concern can be a difficult one to make. In many cases it is employees who are most likely to be in the best position to learn of any malpractice or wrongdoing within the Council or school setting and to identify something which falls below the standards which the Council and the public are entitled to expect. The Council is grateful to all employees who report their concerns.
- 3.2 Employees should have nothing to fear by reporting their concerns, if what they are reporting is true (or they honestly believe the information is true even if it is later found out to be incorrect). No action will be taken against anyone genuinely reporting a concern.
- 3.3 Deliberately providing false or misleading information however is a serious matter which may result in action being taken under the Council's disciplinary policy. Equally, deterring another employee from reporting their concerns is a serious matter and also may result in disciplinary action.
- 3.4 The Council will not tolerate the harassment or victimisation of anyone who has raised a concern. However, it is recognised that an individual may nonetheless want to raise a concern in confidence under this policy. If a member of staff asks the Council to protect their anonymity, efforts will be taken to protect their identity from being disclosed. If a situation arises where a concern cannot be resolved without revealing their identity (for instance, because evidence is needed in Court or will be revealed as part of a subsequent investigation) this will be fully discussed with the employee in question.
- 3.5 The policy encourages employees to put their names to allegations. Concerns expressed anonymously will still be considered by the Council, however complaints of this type can be harder to substantiate and therefore have to be treated with a degree of caution. It will also not be possible provide feedback to the member of staff reporting the concern during or following any investigation. Anonymous reports are preferred to silence however.

4.0 **HOW TO RAISE A CONCERN**

- 4.1 Whistleblowers should normally raise concerns with their immediate line manager. However, if it is believed that their line manager is involved in the malpractice being reported or has failed to take appropriate action when the matter has been raised previously, then their concern should be raised with their Assistant Director, or in the case of school based staff, the Chair of Governors. Contractors should report concerns to their contract manager.
- 4.2 It is, however, appreciated that there may be times when whistleblowers, including contractors, feel unable to use the above procedure; the

issue may involve line managers and senior officers (e.g. AD or Director) or the issue was already raised through the normal channels but had not been addressed or resolved. In these cases they can contact the Council's independent whistleblowing hotline on 0800 9179 247, which is overseen by Veritau Ltd.

- 4.3 If anonymous concerns are raised through social media then they will be considered under the more general counter fraud framework or complaints policy unless it is beyond doubt that the person raising the concern is an employee or contractor of the Council.

5.0 HOW THE COUNCIL WILL RESPOND

- 5.1 All whistleblowing reports will be carefully considered and initial enquiries will be made to help decide whether an investigation is appropriate, and if so what form it should take.
- 5.2 The council will aim to acknowledge all whistleblowing reports within two working days. The officer(s) assigned to carry out the whistleblowing investigation will endeavour to write or speak to the whistleblower promptly to provide additional information on how the investigation will progress.
- 5.3 Officers assigned to investigate a whistleblowing report will be determined by the nature of the report, e.g. safety issues could be investigated by the Health & Safety Team, alleged fraud or criminality by the Counter Fraud Team, employment issues by a manager from another service with support from Human Resources.
- 5.4 The amount of contact between the officers considering the issues and the whistleblower will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information may be sought from the whistleblower.
- 5.5 If a face to face meeting is necessary or desirable the whistleblower has the right, if they so wish, to be accompanied by a Union representative or a colleague who is not involved in the area of work to which the concern relates.
- 5.6 The Council will, as far as it is able, take steps to minimise any difficulties which the whistleblower may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings, the Council will, where appropriate and as far as it is able to do so, provide advice about the process.
- 5.7 The Council accepts the whistleblower needs to be assured that the matter has been addressed. Thus, subject to any legal constraints, e.g. data

protection, information about the outcomes of any investigations will be provided.

- 5.8 All whistleblowing reports will be logged centrally. The Chief Executive (Head of paid service), Section 151 Officer and Monitoring Officer will be notified of relevant whistleblowing reports. An annual report on whistleblowing issues will be presented to CMT by Veritau. Numbers of whistleblowing reports and significant trends in reporting will also be reported annually to the Audit and Governance Committee.

6.0 HOW MATTERS CAN BE TAKEN FURTHER

- 6.1 This policy is intended to provide staff with an appropriate avenue to raise concerns within the Council. If employees have reported concerns in accordance with the Council's whistleblowing policy but are not satisfied that the issues have been properly addressed then they may contact:

- The Council's External Auditor - Mazars⁴;
- The NSPCC or Ofsted (for concerns about children at risk of abuse)⁵;
- Relevant professional bodies or regulatory organisations⁶, for example, the Information Commissioner's Office, Care and Quality Commission (CQC), and the Health and Safety Executive.

- 6.2 Disclosure of a concern to a non-prescribed body (e.g. newspapers or social media) is not covered by whistleblowing legislation and the protections it offers. Before undertaking this type of action it is recommended that staff seek specialist advice.

7.0 INDEPENDENT ADVICE

- 7.1 Free confidential advice on how to raise a concern about malpractice at work can be sought from the independent charity Public Concern at Work on 0207 4046609, at www.pcaw.co.uk, or via email whistle@pcaw.co.uk. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

8.0 GENERAL DATA PROTECTION

⁴ Mazars act as the council's external auditor (see www.mazars.co.uk for further details).

⁵ The NSPCC and Ofsted offer dedicated national whistleblowing hotlines (see www.nspcc.org.uk and www.gov.uk/government/organisations/ofsted for further details).

⁶ The Department for Business, Innovations and Skills maintains a list of prescribed persons and organisations who may be contacted, www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies.

- 8.1 When managing whistleblowing reports, the Council processes personal data collected in accordance with its Information Governance policies. Data collected from the point at which a report is made is held securely and accessed by, and disclosed to, individuals only for the purposes of managing and investigating the concern raised.

9.0 REVIEW OF THE POLICY

- 9.1 The Policy will be reviewed at least every 3 years or when significant changes to whistleblowing legislation, the organisation or case law occurs.



Managers Guidance on Whistleblowing

1.0 Introduction

- 1.1 The Council's whistleblowing policy is designed to encourage and support employees and contractors in expressing their concerns about the workplace.
- 1.2 All Council employees in managerial or supervisory positions are expected to take employee concerns seriously and follow the process set out in this guidance.

2.0 What is a whistleblowing complaint?

- 2.1 Any concern about working practices or malpractice that is reported in confidence should be considered under the whistleblowing policy. It is not necessary for a member of staff or contractor to use the term "whistleblowing" in order for a report to be considered under the policy.
- 2.2 Whistleblowing relates to concern for others rather than oneself. If a member of staff is reporting that they solely have been mistreated, then this should be considered under other Council policies, e.g. Grievance Procedure.
- 2.3 Whistleblowing reports must come from Council workers (including temporary members of staff and contractors). Reports from members of the public are not considered to be whistleblowing and should be directed to the Council's Complaints and Feedback Team or the counter fraud hotline.
- 2.4 Whistleblowing reports are often made anonymously. However, where possible (e.g. where reports are taken over the phone or by email) the person making it should be informed that reporting concerns in this way may make it more difficult to follow up (see section 3.5 of the whistleblowing policy).
- 2.5 Any report that falls within the categories set out by legislation (see section 2.4 of the whistleblowing policy) afford the whistleblower protection under law. It is important to make this determination at an early stage in order to ensure that the whistleblower is given correct advice and the Council acts in accordance with legislation.
- 2.6 Concerns or complaints raised about councillors are not covered by the whistleblowing policy, but rather come under Standards procedures. Any issues relating to councillors should be referred to the Monitoring Officer for advice.

2.7 If, after consulting the whistleblowing policy, there is a doubt as to whether a report constitutes whistleblowing then advice should be sought from Veritau and/or the Human Resources department in order to reach a conclusion.

3.0 **Reporting receipt of a whistleblowing concern**

3.1 All whistleblowing reports should immediately be reported to three parties:

- Assistant Director in charge of area or Chair of Governors in the case of a school.
- Human Resources advisor responsible for area;
- Veritau – Internal Audit & Counter Fraud Service⁷.

3.2 If the report involves any of the people or groups named above then the report should be escalated to a more senior officer, e.g. Director, Chief Executive, Head of Internal Audit, or Assistant Director for Education (in the case of schools).

3.3 Veritau maintains the Council's central log of all whistleblowing reports. They should be updated at the beginning and the end of any whistleblowing investigation in order to keep a complete record of the report and how it was dealt with. Where managers receive details of whistleblowing concerns raised with external bodies (the prescribed persons and organisations set out at 6.1 in the policy), details should also be forwarded to Veritau for recording in the central log.

3.4 In some cases, the details of the initial report will be sufficient to determine that it will not fall under whistleblowing policy. In this situation the member of staff making the report should be informed of the reasons why their concern is not covered and be signposted to an alternative route. A record of this discussion should be kept and an outline of the matter should be sent to Veritau to be entered in the central log.

4.0 **Taking a concern forward**

4.1 The person who first receives the whistleblowing report (i.e. supervisor or manager) should acknowledge it immediately and arrange a meeting with the whistleblower as soon as possible (see section 5.2 of the whistleblowing policy) to gather additional information on the issues. This meeting should flesh out the initial report and help determine how the issue should be investigated.

⁷ Veritau should be contacted via whistleblowing@veritau.co.uk

- 4.2 This initial meeting can be done in person, in or outside Council offices, or via telephone. It is important to find an environment that the member of staff feels comfortable with. They may be supported by a trade union representative or colleague. A note taker can be brought to the meeting with prior agreement from the whistleblower.
- 4.3 If anonymity is requested then every effort should be made to keep the whistleblower's identity concealed. Anonymity however cannot be guaranteed. If there is a possibility due to the circumstances of the report that the whistleblower's identity will become known, then they should be advised of this at the earliest possible stage.
- 4.4 All information relating to a whistleblowing report and any information gathered during an investigation should be kept confidentially. Information should be shared on a strictly need to know basis.
- 4.5 A record of this meeting should be written either contemporaneously or shortly following the meeting. These notes must be kept securely.
- 4.6 No commitments should be made about the process or outcome of the whistleblowing report, however they should be reassured that their concerns will be taken seriously.
- 4.7 Following the meeting further details should be provided to the Assistant Director (or more senior manager) in charge of the area and Veritau. The relevant Assistant Director (or more senior manager), with advice from Veritau, will assign the investigation to a suitable person. This may be the manager who initially took the whistleblowing report or a member of staff from another area. In cases of potential criminality or health and safety then Veritau and the Health and Safety Team respectively will normally take the responsibility for investigating the concern.

5.0 **Conducting an investigation**

- 5.1 At the outset of an investigation the person responsible for looking into the concern should inform the whistleblower that they are taking the matter forward.
- 5.2 Updates during the course of the investigation should be provided to the whistleblower but only if it is appropriate (e.g. is data protection observed) and does not prejudice the investigation. If this is the case then it may be appropriate to only update the whistleblower once the investigation has concluded.
- 5.3 It is advisable that notes are taken throughout the investigative process in terms of actions taken and conclusions reached.

- 5.4 The anonymity of the whistleblower should be considered before any and all actions are taken in connection with the investigation. If a situation arises where it is not possible to resolve the whistleblowing report without the identity of the whistleblower becoming known, then this should be reported to and discussed with that person before the action is taken. The person's name should only be made known to other employees on a need to know basis. Equally if the whistleblowing report is about a specific person then that person's identity should be also be protected.
- 5.5 Investigations instigated following a whistleblowing report should be dealt with as quickly as possible. Appropriate levels of resource should be made available to deal with the matter expeditiously. Where a whistleblowing investigation leads to other council processes being required (e.g. a disciplinary investigation) then relevant officers should be made aware at an early stage.
- 5.6 At the conclusion of an investigation a report should be drafted outlining any supporting or non-supporting evidence, conclusions reached, and recommendations. This report should be sent to the senior responsible manager (i.e. Assistant Director), Veritau, and if relevant the HR advisor assigned to the case.

6.0 **Special Circumstances**

Safeguarding Concerns

- 6.1 If a concern includes issues relating to safeguarding, the relevant assistant director, director, or Veritau should ensure that the matter is raised immediately through normal council safeguarding arrangements.

Anonymous Concerns

- 6.2 If a concern has been made anonymously then it must still be treated as credible and dealt with through the procedure detailed in this guidance.

Victimisation

- 6.3 If the whistleblower reports that their identity has become known and they are being victimised then this should be reported to the relevant HR advisor as soon as possible. The Council may be in contravention of whistleblowing legislation if action is not taken to address this.

Vexatious / Malicious reports

- 6.4 If a whistleblower acts in bad faith or raises malicious, vexatious, or knowingly untrue concerns in order to harm colleagues, their department or the Council then they may face disciplinary action. If you suspect this is the case then this should be reported to the relevant HR advisor as soon as possible.

External Disclosures

- 6.5 It is important to be supportive and encouraging to those raising a concern. However, if an employee indicates that they are considering taking their concerns outside of the Council, for example to the media or social networking sites, you should advise them that:
- you will not be able to support them if they do so;
 - external disclosures to outside bodies may not be covered by the whistleblowing policy and relevant legislation;
 - their actions may represent an unauthorised disclosure;
 - they could jeopardise any legal protection they may have; and
 - they could face disciplinary action themselves.
- 6.6 If a whistleblower does make an external disclosure then this should be reported to the relevant HR advisor and Veritau as soon as possible. Some types of disclosure are covered by national legislation but a consideration of whether an appropriate action has taken place or not should be considered on a case by case basis.

Support

- 6.7 If you have any queries or issues concerning whistleblowing then seek advice from your manager, the HR department or Veritau.

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Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

DBS Checks and remit of Joint Standards Committee**Summary**

This report provides a brief update to the Joint Standards Committee as to whether the decision around DBS checks for Councillors sits within the Committee's remit.

Background

The Joint Standards Committee asked the Monitoring Officer to establish whether decisions around DBS checks for Councillors fell within the remit of the Committee. This was on the agenda for the April 2020 meeting, however, due to the Coronavirus pandemic that meeting was cancelled.

The Council's constitution contains the functions which may be exercised by the Joint Standards Committee, the function of determining DBS Checks for Councillors does not fall within the remit of the Committee. It is understood that DBS Checks is under discussion by Group Leaders.

Implications**Financial**

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

The Council's Constitution provides the functions which may be exercised by the Joint Standards Committee.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Note the update contained within the report.

Author:

Rachel Antonelli
Senior Solicitor & Interim
Deputy Monitoring Officer
Tel: 01904 551043

Chief Officer Responsible for the report: Janie Berry

Director of Governance &
Monitoring Officer
Tel: 01904 555385

**Report
Approved**

Date

21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers: None



Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

International Travel Protocol**Summary**

This report contains a draft International Travel Protocol for the Joint Standards Committee to review and consider.

Background

In January 2020 the Joint Standards Committee considered a report outlining the review of the Council's constitution. International travel was raised as a potential area for further discussion by the Committee. In light of the discussions around this area, a draft protocol has been created and the views of the Committee are sought on this draft document.

Implications**Financial**

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

As detailed within the report.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are recommended to note the report and provide their views on the draft protocol document.

Author:

Rachel Antonelli

Senior Solicitor & Interim

Deputy Monitoring Officer

Tel: 01904 551043

Chief Officer Responsible for the report: Janie Berry

Director of Governance & Monitoring Officer

Tel: 01904 555385

Report Approved

Date

21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

- **Annex A – Draft International Travel Protocol**



Protocol for Members and Officers in respect of International Travel

Applicable to both Councillors and Officers

- All international travel journeys shall be undertaken for legitimate council business reasons only.
- All travel arrangements will be confirmed as “economy class” or at the lowest costs to the public purse. Councillors and Officers would be able to upgrade their ticket but do so at their own personal expense.
- Councillors and Officers will provide the Council with confirmation that they are no known medical reasons which could prevent them from undertaking international travel, flights etc.
- Subject to meeting health and any other requirements which may be deemed necessary in respect of the proposed travel arrangements and destination, the Council will provide appropriate insurance for the Councillor or Officer.

Applicable to Councillors only

Authorisation for expenditure for international travel shall be sought from the s151 Officer.

Applicable to Officers only

The Council’s Corporate Management Team will authorise expenditure for international travel for officers following consultation with the s151 Officer.

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Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

Report on how Joint Standards Committee and City of York Council can better support Parish Councils in their work**Summary**

This reports outlines possible areas of discussion around how the Joint Standards Committee and the Council can better support Parish Councils.

Background

A discussion around how the Committee and the Council can support Parish Councils was due to take place in the previous municipal year, however, due to the Coronavirus pandemic, the meeting scheduled for April could not take place. Earswick Parish Council have provided the following suggested discussion points on this subject:

- Parish Charter finalisation;
- Council Officer and Parish Council communications, including who to speak to if an enquiry is not resolved;
- Information around adoption of NALC Code of Conduct and membership of YLCA;
- Training for Parish Councillors

Parish Charter – a Parish Charter has been in existence for some time now, it was last reviewed in 2016 and is currently again under review, which is between City of York Council and all of the Parish and Town Councils within the York Local authority area, as represented by the York Branch of the Yorkshire Local Councils Association (YLCA). The Communities and Equalities Team within City of York Council are leading on finalising this Charter. A copy of the current draft Parish Charter can be found at Annex A. The Parish Charter is approved by the Executive Member for Culture, Leisure and Communities.

Council and Parish Council Communications – the Parish Charter also contains provisions around working together and improving ways of working. Parish Councils have an input into this Charter and can put forward proposals to strengthen this further if required. Members may also wish to recommend that the Communities and Equalities Team look to strengthen these links going forward.

NALC Code of Conduct – at present, Parish Councils do not have to adopt the NALC Code and neither the Council nor the Joint Standards Committee can force any Parish or Town Council to adopt this Code. This has resulted in every Parish Council having their own Code across the City. The LGA review of the Code of Conduct may address this going forward, therefore, Members may wish to review this once the review has been finalised and the outcome published.

YLCA – Parish and Town Councils do not have to become members of YLCA, however, there is a wealth of information and guidance available should they choose to become members. A representative from the York branch of YLCA has previously attended Joint Standards Committee meetings and Members may again wish the Monitoring Officer to invite a representative to attend a future meeting in order to assist with further support available for Parish Councils, this could include possible training which is available to members.

LGA Review - The LGA, when they publish their Model Code, may also publish guidance which could assist Parish Council's further.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

As detailed within the report.]

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are recommended to note the report and any further issues arising from debate and determine whether the Committee should take any further steps in supporting Parish Councils.

Author:

Rachel Antonelli
Senior Solicitor & Interim
Deputy Monitoring Officer
Tel: 01904 551043

Chief Officer Responsible for the report: Janie Berry

Director of Governance &
Monitoring Officer
Tel: 01904 555385

**Report
Approved**

Date

21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers: Annex A – Draft Parish Charter

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Charter between City of York Council and the Local (Parish and Town) Councils

The Objectives

1. The main objectives of this Charter are to:
 - Set out how the parties aim to work together and to continue existing best practice
 - Continually review and establish improved ways of working
 - Confirm the principles of democratic local government
 - Continually review and improve the system of local democracy
 - Encourage greater public participation in the system
 - Promote sustainable social, economic and environmental development
 - Advance the provisions of the Equality Act 2010 including the Public Sector Equality Duty
 - Encourage the sharing of information and data to improve outcomes for residents

Local Governance

2. City of York Council and the Local Councils are committed to the principles of democratic local government. They will continue efforts to improve the system of local democracy and to see greater participation in and appreciation of this system.
3. City of York Council acknowledges and recognises that parish and town councils are the grass roots level of local government. By working with Local Councils, City of York Council aims to act in partnership with local communities, while balancing the needs of the wider locality.
4. Local Councils offer a means of shaping the decisions that affect their communities. They offer a means of revitalising or sustaining local communities. In turn, Local Councils recognise the strategic role of the principal authority and the equitable distribution of services which it has to achieve.
5. City of York Council will work with Local Councils to promote sustainable social, economic and environmental development in the area of the City of York.

6. Arrangements for engagement of Local Councils in City of York Council's governance arrangements and for liaison between councils will be as follows:
 - City of York Council will maintain its close working relationship with the York Branch of the Yorkshire Local Councils Association.
 - City of York Council shall identify one of its Officers to be responsible for the liaison work with Local Councils and who shall report to Members such matters as are relevant to this charter.
 - Local Councils will invite, as appropriate, Members and Officers of City of York Council to their meetings giving adequate notice to facilitate attendance.

Communications

7. City of York Council will ensure that the Clerk of the relevant Local Council receives copies of any newsletters which it circulates in the parish of the Local Council and will ensure that the Clerk is sent an invitation to attend any public meeting organised by City of York Council in the parish.
8. City of York Council and Local Councils will acknowledge and respond to correspondence between organisations. Further to this City of York Council will respond to communications in line with current customer care standards:
9. Written correspondence including electronic correspondence to City of York Council will be either acknowledged or responded to fully within 5 working days. If information is not readily available the customer will be kept informed of progress.
10. Planning application consultations will have their own period of time, currently twenty-one days for Local Councils to respond. However, in recognition of Local Councils' meeting schedules, planning officers will make every effort to accommodate Local Councils' comments in a mutually agreeable timescale.
11. Should Local Councils experience an issue with the above response times from City of York Council, details of this should be sent to the Assistant Director (Customers and Employees) in the Customer and Business Support Services Directorate.

Consultation

12. City of York Council will aim to give Local Councils the opportunity to comment before making a decision which affects the local community. Specifically, City of York Council posts agendas of meetings and decision sessions on its website, giving five clear days' notice. A facility is provided for Local Councils to receive electronic notifications of agendas and supporting papers.
13. If consultation does not take place, a written explanation will be given on request to the Head of Communities and Equalities at City of York Council
14. To help achieve the objectives laid down in this Charter, liaison and consultation (both formal and informal) will be further developed at Local Council level through regular meetings or specific consultative groups and at officer level, individually or through working parties and groups, as resources permit.
15. Local Councils will send, where possible electronically, a copy of the minutes of their meetings to the relevant Community Involvement Officer and to the Designated Officer at City of York Council. Copies of the agenda and minutes will also be sent to all City Ward Councillors elected for the respective area.
16. Officers and Members of the City of York Council will be given an opportunity to speak at Local Council meetings on matters of mutual interest by prior arrangement and at the discretion of the Local Council.

Practical Support

17. City of York Council will, at its discretion, offer Local Councils access to support services, to enable them to deal with planning applications and to take advantage of facilities such as professional services, specialist knowledge, printing and purchasing, at a mutually agreed price.
18. The awareness needs for City of York Councillors and Officers to understand the roles and procedures for Local Councils will be carried out by Yorkshire Local Councils Association on behalf of Local Councils.

Standards Committee

19. Both City of York Council and the Local Councils have adopted Codes of Conduct, with Local Councils adapting the model provided by the National Association of Local Councils (NALC). Local Councils will work with City of York Council's Joint Standards Committee to promote and maintain high standards of ethical conduct. Three councillors from Local Councils, who are not city councillors, will be appointed to the Joint Standards Committee. A Local Council Member must be present when ethical standards matters relating to Local Councils or their members are being considered.

Financial arrangements

20. Elections – Where Local Council elections take place at the same time and venue as elections for City of York Council, the City Council will meet the full costs including any additional costs attributable solely to the Parish election. Financial arrangements for the carrying out of parish polls and the like will be made by City of York Council in consultation with the Local Councils with a view to limiting the costs of holding such events.
21. Arrangements for remedy of “Double Taxation” – If a service is provided by the Local Council rather than City of York Council and City of York Council charges taxpayers in the parish for equivalent services which it provides elsewhere then this may be a case of Double Taxation. City of York Council wants to ensure that residents of York do not have to pay twice for the same service. However, the existence of concurrent functions does not in itself mean that double taxation is occurring. Any Local Council that believes a service that it is providing creates Double Taxation is invited to put the case for remedy to City of York Council. A written proposal should be submitted in the first instance to the Head of Communities and Equalities for assessment and consideration.

Complaints Procedure

22. If in the event of a Local Council being dissatisfied with the actions of City of York Council, the Local Council shall use the City of York Council's feedback and complaints procedure and if required contact the designated liaison officer as point 6.

- 23. In the case of City of York Council being dissatisfied with the actions of a Local Council then a letter should be sent to the Clerk of the individual Local Council requesting further information or a meeting to discuss the issue.
- 24. Any issues arising regarding the relationship between the two parties in general shall be an agenda item for discussion at the YLCA Liaison Group bi monthly meetings.

Review

- 25. This Charter Agreement shall be revised as and when appropriate to ensure its compliance by the parties hereto and its effectiveness. Local Councils recommend that this is no longer than at three yearly intervals.

Attestation

- 26. To signify agreement of the parties to this Charter it was signed by

.....

Elected Member of City of York Council having responsibility for
Community Engagement

and

.....

as Chairman of the York Branch of the Yorkshire Local Councils
Associations

Appendix

The following are the Local (Parish and Town) Councils being parties to this agreement.

1. Acaster Malbis
2. Askham Bryan
3. Askham Richard
4. Bishopthorpe
5. Clifton Without
6. Copmanthorpe
7. Deighton
8. Dunnington
9. Earswick
10. Elvington
11. Fulford
12. Haxby Town Council
13. Heslington
14. Hessay
15. Heworth Without
16. Holtby
17. Huntington
18. Kexby
19. Murton
20. Naburn
21. Nether Poppleton
22. New Earswick
23. Osbaldwick
24. Rawcliffe
25. Rufforth with Knapton
26. Skelton
27. Stockton-on-the-Forest
28. Strensall with Towthorpe
29. Upper Poppleton
30. Wheldrake
31. Wigginton



Joint Standards Committee**30 September 2020**

Report of the Monitoring Officer

Update on draft Annual Report**Summary**

This report provides the Joint Standards Committee with an update on the draft Annual Report.

Background

It is good practice for the Monitoring Officer to prepare an Annual Report at the start of each municipal year, setting out work undertaken by the Joint Standards Committee during the previous year.

The Monitoring Officer is currently preparing this report which will be circulated to Members in readiness for the next meeting of the Joint Standards Committee.

The Annual Report will provide include a breakdown of complaints received during the municipal year, work carried out and also outlines any dispensations granted.

Implications**Financial**

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

The Annual Report will ensure an oversight on the functions of the Joint Standards Committee, including the promotion and maintenance of high standards of conduct by Members of the Council and Parish Councillors and also aids future work planning.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are asked to note the contents of this report.

Author:

Rachel Antonelli
Senior Solicitor & Interim
Deputy Monitoring Officer
Tel: 01904 551043

Chief Officer Responsible for the

report: Janie Berry
Director of Governance &
Monitoring Officer
Tel: 01904 555385

**Report
Approved**

Date 21
September
2020

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers: None

Work Plan for Joint Standards Committee 2020-21

| Meeting Date (4.00pm start time) | Items | Notes |
|---|--|---------------|
| Wednesday 22 July 2020 | <ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Dispensation of the 6 month rule for City of York Councillors and attendance at meetings • LGA consultation on a Model Code of Conduct for Elected Members • Review of work plan | Standard item |
| Wednesday 30 September 2020 | <ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Report on Parish Council membership • Dispensation granted to City of York Council elected Members • Planning and pre-determination: advice for Council Members and the role of JSC in disseminating this • Update on whistleblowing policy • DBS checks and remit of JSC • International travel protocol • Report on how the JSC and CYC can better support Parish councils in their work. | Standard item |

| | | |
|-----|---|---------------|
| TBC | <ul style="list-style-type: none"> • Monitoring report in respect of complaints received • Annual report for municipal year 2019-20 | Standard item |
| TBC | <ul style="list-style-type: none"> • Monitoring report in respect of complaints received | Standard item |

Other items to be added to work plan – awaiting update from LGA

- Model of Code of Conduct
- Member/Officer Protocol
- Member Development (including reduction of complaints and use of social media)