

CITY OF YORK COUNCIL CASE HANDLING PROCEDURE

Background

Under Section 28 of the Localism Act 2011, City of York Council must have in place “arrangements” under which allegations that an elected or co-opted councillor of the Council or of a town or parish council within the Council’s area (herein after referred to as the ‘subject member’) has failed to comply with the Council’s Code of Conduct can be considered and decisions made on such allegations.

These arrangements provide for the Council to appoint at least one Independent Person whose views must be sought by the Council before it takes a decision on an allegation that it has decided to investigate, and whose views can be sought by the Council at any other stage, or by the subject member against whom an allegation has been made.

The Council has adopted a Code of Conduct for councillors (the Code), which is published on the Council’s website and is available for inspection on request from the Council’s office.

Each town and parish council is also required to adopt a Code of Conduct which should be available on their website.

Initial assessment

1. All allegations, including those against a town or parish councillor, must be made in writing, ideally by completing the complaints form available on the Council’s website, to the monitoring officer of City of York Council (MO).
2. Within 3 working days of receipt of the complaint the MO will acknowledge the complaint.
3. Anonymous complaints will not be accepted unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward.
4. The MO will apply an initial filter to an allegation – for example, to check that the complaint is against a councillor, that they were in office at the time of the alleged incident and that the matter would be capable of being a breach of the Code. The Council has no authority to deal with complaints which relate solely to a councillor’s private life or things they do which are not related to their role as a councillor or as a representative of the council. The MO will keep a record of all complaints made including those which do not pass the initial filter.
5. If the MO has a conflict of interest they should refer the matter to the Joint Standards Committee assessment sub committee to take the decision in their place. Circumstances where this would be done include (but are not limited

to) where the MO has a conflict of interest – for example as the complainant, a key witness or where the MO has already advised on matters which are the subject of the complaint; or where the subject member or complainant is a member of the Executive or Shadow Executive or a committee chair or deputy. Where this is done, references to the MO in this section should be substituted by JSC.

6. The MO may also delegate the decision to the deputy monitoring officer (DMO) where there is a conflict of interest as outlined above.
7. Complaints which identify criminal conduct or breach of other regulations by any person may be referred by the MO to North Yorkshire Police for consideration, or any other regulatory agency. In such cases the MO may pause the consideration of the complaint pending action by the other body.
8. If the MO decides the matter is within scope, they will invite an Independent Person (IP) to give their views on what action should be taken at this stage. That IP will then remain the IP who will be consulted on that case throughout this process, except in exceptional circumstances. Where a matter has not been referred to the JSC, the MO will also consult with the chair or vice chair of the JSC.
9. The MO will also notify the subject member of the complaint within three working days unless there are compelling reasons not to, together with a copy of the complaint (or relevant extracts) and a summary of the process to be followed, and invite them to submit any relevant comments. The subject member will be given 10 working days to respond from the date of the notification. In parish council cases the MO may also notify the clerk and may ask for relevant factual information. However, the MO, in consultation with an IP, may withhold the complainant's identity if they can be satisfied that there are reasonable grounds for granting confidentiality, for example a belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.
10. At the end of the 10 working days from notifying the subject member (regardless of whether any comments have been received from the subject member), if the MO is assessing the complaint, after seeking the views of the Independent Person and also having consulted with the Chair or Vice Chair of JSC, the MO will decide one of the following outcomes:
 - a. to take no further action;
 - b. to seek to resolve the matter informally; or
 - c. to refer the matter for investigation.
11. If the JSC is assessing the complaint, they will decide one of the outcomes set out above.
12. In deciding what action is necessary the MO (or the JSC) will consider the following non - exclusive factors:

- a. does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?;
 - b. are there alternative, more appropriate, remedies that should be explored first?;
 - c. where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse or “unparliamentary” language) may be given;
 - d. is the complaint in the view of the MO malicious, politically motivated, or ‘tit for tat’?;
 - e. whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction;
 - f. whether the complaint is the same as one which has previously been considered and no new material evidence has been submitted within the current administration;
 - g. whether the same complaint has been submitted and accepted;
 - h. does the complaint relate to conduct in the distant past (over six months before)? This would include any reason why there had been a delay in making the complaint;
 - i. does the complaint actually relate to dissatisfaction with a Council (or parish council) decision rather than the specific conduct of an individual?; and
 - j. is it about someone who is no longer a councillor or who is seriously ill?
13. All parties (and the clerk for parish cases) will be notified of the decision and there is no internal right of appeal against that decision.
14. A decision notice will be produced as a matter of record but will not be published at this stage though the Council may issue a public statement if details of the complaint are already in the public domain.
15. The MO will report to the JSC for information on cases in which there has been no further action taken.

Informal resolution

16. Where the MO has decided to seek to resolve the matter informally, they may do one or more of the following:
- a. ask the subject member to submit an apology in writing to the complainant;
 - b. convene a meeting between the subject member and the complainant in order to try to resolve the issue informally;
 - c. notify the subject member’s group leader (where they are a member of a political group) and suggest that they may wish to take some internal group action;
 - d. suggest that the subject member undergo relevant training;
 - e. other such action that the MO deems appropriate.

17. The MO will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.
18. If either the subject member or complainant refuses to engage with the informal resolution proposed by the MO, or the MO deems the action taken by the Subject Member insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with an IP, whether the case should be closed, whether an investigation is necessary or whether some other action should be taken. If the MO and the IP are not in agreement about how to proceed the case will be referred to the chair or vice chair of the JSC for a decision.
19. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution.
20. The MO will report to the JSC on the outcome of any informal resolutions proposed and/or implemented.

Investigation

21. Where a matter is referred for investigation, the MO may carry out the investigation themselves, delegate it to another officer or contract it out to an outside body.
22. The investigation must normally be completed within 3 months of the MO decision to refer the complaint for investigation. If an extension of time is needed the MO must agree that extension with the JSC chair and the IP and notify the subject member, complainant (and clerk in parish cases) of any extension with reasons.
23. The subject member is notified who the relevant IP is for the case and may seek their views at any stage during the investigation.
24. The complainant is also notified who the IP is and may make a request to the MO to seek the views of the IP. However, such a request will only be granted at the discretion of the IP in consultation with the MO.
25. At any time while the investigation is underway the MO, the subject member or the complainant may ask for an informal resolution. The MO will consult with the relevant IP whether to agree with the request.
26. Before concluding the investigation, a draft report will be produced and the complainant, subject member and IP will be invited to comment. Witnesses may also be asked to comment as appropriate on parts of the draft report relevant to them.
27. Where the investigation has not been personally conducted by the MO, the final decision as to the findings of the report can be made by the MO unless there is a conflict of interest, in which case the decision will be taken by the

DMO. The MO may also decide that they wish for the decision to be made by the JSC.

28. There may be exceptional circumstances when the MO decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. This may include, for example that the subject member is seriously ill or is no longer a councillor or other action has led to the matter being resolved. In such cases the MO should consult the IP before deciding that the file be closed. A record of the complaint will be kept on file in the event that the subject member returns to office in the future and a subsequent complaint is lodged against them.
29. At the end of the investigation the MO (or JSC) may conclude:
 - a. that there has been no breach of the Code;
 - b. to seek to resolve the matter informally; or
 - c. to refer the matter to the JSC for determination.
30. In cases where the MO (or JSC) has concluded that there has been no breach of the Code all parties (and the clerk in parish cases) will be notified of the decision and there is no right of internal appeal against that decision. The MO will report the finding to the JSC and issue a public decision notice.
31. Where the MO decides to seek to resolve the matter informally, they shall seek the views of the IP and complainant before concluding whether such an outcome is appropriate. The possible resolutions are those outlined above at paragraph 15. If the subject member or complainant refuses to engage with the informal resolution directed by the MO, the MO deems the action taken by the subject member insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with the IP and chair or vice chair of the JSC, whether the case should be closed or whether a hearing is necessary. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution and any further steps.
32. Where the matter is referred for determination, the hearings panel of the JSC will convene within 2 months. The MO will notify the subject member and complainant of the date of the hearing and provide them with a written outline of the hearing procedure.

Hearings panel

33. A matter referred for determination by the MO will be heard by a hearings panel, made up of members of the JSC.
34. At the start of the hearing the MO will ask the hearings panel to consider whether the matter should be heard in public or in private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. The hearings panel will always, however, retire in private to consider its findings and possible action.

35. The views of the IP will be sought by the hearings panel and made public before the hearings panel reaches its decision.
36. The hearings panel may decide:
- a. that there has been no breach of the Code;
 - b. that there has been a breach but to take no further action; or
 - c. that there has been a breach and a relevant sanction should be imposed or recommended.
37. If the hearings panel decides that a relevant sanction should be imposed or recommended it may impose or recommend any one or more of the following:
- a. report its findings in respect of the subject member's conduct to Council (or the relevant parish council);
 - b. issue (or recommend to the parish council to issue) a formal censure;
 - c. recommend to the subject member's group leader (or in the case of ungrouped councillors, recommend to Council) that they be removed from any or all committees or sub-committees of the Council (or recommend such action to the parish council);
 - d. recommend to the Leader of the Council that the subject member be removed from positions of responsibility.
 - e. instruct the MO to (or recommend that the parish council) arrange training for the subject member;
 - f. recommend to Council (or recommend to the parish council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by the parish council);
 - g. recommend to Council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the Council for a specified period, such as a computer, website and/or email and internet access; or
 - h. recommend to Council (or recommend that the parish council) that it excludes the subject member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
 - i. if relevant, recommend to the Council that the subject member be removed from their role as Leader of the Council;
 - j. if relevant recommend to the secretary or appropriate official of the group that the councillor be removed as Group Leader or other position of responsibility.
38. All parties (and the clerk in parish cases) will be notified of the hearing panel's decision and there is no right of internal appeal against that decision.
39. A decision notice will be published on the Council website within 5 working days of the hearings panel decision.