

## Joint Standards Committee

- To:** Councillors Runciman (Chair), Cannon, Hayes, Kramm and Richardson (CYC Members)  
Councillors Chambers, Thornton and Wiseman (Vice-Chair) (Parish Council Members)  
Mr Laverick and Ms Davies (Independent Persons)
- Date:** Wednesday, 21 November 2018
- Time:** 4.00 pm
- Venue:** The Thornton Room - Ground Floor, West Offices (G039)

### AGENDA

#### 1. **Declarations of Interest**

Members are asked to declare:

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

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

#### 2. **Minutes** (Pages 1 - 6)

To approve and sign the minutes of the meeting of the Joint Standards Committee held on 5 September 2018.

#### 3. **Public Participation**

At this point in the meeting, members of the public who have registered their wish to speak, regarding an item on the agenda or an issue within the remit of the Joint Standards Committee, may do so. The deadline for registering is **5:00 pm on Tuesday, 20 November 2018**. To register to speak please contact the Democracy Officer for the meeting. Contact details are at the foot of this agenda.

## **Filming or Recording Meetings**

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at [http://www.york.gov.uk/download/downloads/id/11406/protocol\\_for\\_webcasting\\_filming\\_and\\_recording\\_of\\_council\\_meetings\\_20160809.pdf](http://www.york.gov.uk/download/downloads/id/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809.pdf)

- 4. Monitoring Report on Complaints Received** (Pages 7 - 10)  
To receive a routine update report on recent standards complaints.
- 5. Procedures for dealing with Councillor Code of Conduct Complaints** (Pages 11 - 28)  
This report provides an update on the progress of the Task Group with regard to reviewing the procedures for dealing with complaints about Councillors' conduct.
- 6. Case Law Update - Harvey v Ledbury Town Council Summary** (Pages 29 - 32)  
This report advises Members of a recent High Court decision that has implications for the Committee and the councils for which it has responsibilities.
- 7. Review of Work Plan** (Pages 33 - 34)  
To consider the Committee's work plan for the current year and decide whether any amendments or additions are required.
- 8. Urgent Business**  
Any other business which the Chair decides is urgent under the Local Government Act 1972.

Democracy Officer:  
Name: Fiona Young  
Contact Details:  
Telephone – (01904) 552030  
Email – [fiona.young@york.gov.uk](mailto:fiona.young@york.gov.uk)

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

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

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

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

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

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

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

 **(01904) 551550**

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City of York Council

Minutes

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Meeting	Joint Standards Committee
Date	5 September 2018
Present	Councillors Runciman (Chair), Cannon, Kramm and Richardson (CYC Members) Councillors Chambers, Thornton and Wiseman (Parish Council Members) Mr Laverick (Independent Person)
Apologies	Councillor Hayes (CYC Member) Ms Davies (Independent Person)

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#### 11. **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 additional interests were declared.

#### 12. **Minutes**

Resolved: That the minutes of the meeting of the Joint Standards Committee held on 13 June 2018 be approved and signed as a correct record.

#### 13. **Minutes of Sub-Committees**

Resolved: That the minutes of the Joint Standards Assessment Sub-Committee meeting held on 1 August 2018 (adjourned to 8 August) be approved and signed as a correct record.

#### 14. **Public Participation**

It was reported that no members of the public had registered to speak at the meeting under the Council's Public Participation Scheme, but there had been one request to speak by a ward member.

Cllr Warters spoke in relation to Agenda Item 5 (Monitoring Report on Complaints Received), as a subject member of one of the complaints determined by the Monitoring Officer (MO). He objected to the wording of the MO's decision notice and asked

that it be altered. The Chair confirmed that the committee had no authority to do this and that the decision notice was not a public document.

**15. Monitoring Report on Complaints Received**

Members considered a report which provided an update on recent standards complaints.

The Monitoring Officer corrected an error in paragraph 2 of the report, confirming that three new complaints had in fact been received since the last update in June. Of these, two had been determined and one referred for investigation, as set out in the table. Two ongoing complaints had been referred for hearings.

With reference to complaint no. 711, Members queried whether the advice the Committee had produced in respect of behaviour at planning site visits was still in use. Officers agreed to check this.

Resolved: That the report be noted.

Reason: To ensure that the committee is aware of current levels of activity and that the standards complaints system is being used for its primary purpose.

**16. Standards Committee Terms of Reference and Procedures, Including Vexatious Complaints**

Members considered a report which informed them of the progress made by the task group set up after the meeting on 13 June to review the Committee's terms of reference and procedures.

At their first meeting, on 18 July, the task group had suggested amendments to the complaints procedure, as detailed in Annex 1. These would be sent to political groups and Yorkshire Local Councils Association (YLCA) for comments prior to consideration at a further meeting on 25 September. At their second meeting, on 14 August, they had discussed vexatious complaints and an Independent Persons protocol.

Further work remained to be done on the suggested protocol. The Committee was invited to consider whether current guidance on vexatious complaints (Annex 2) was sufficient, or whether a more detailed process similar to that used by

Leicester City Council (Annex 3) should be adopted. The Monitoring Officer confirmed that in York no complaints had ever been rejected on the grounds they were vexatious.

Resolved: (i) That the work done to date by the task group be noted.

(ii) That the draft procedure at Annex 1 be circulated to political groups and YLCA with no further changes.

(iii) That detailed guidance on vexatious complaints, such as that at Annex 3, not be adopted.

Reason: To ensure that the procedures adopted by the Committee remain fit for purpose.

(iv) That, in cases where an Assessments Sub-Committee takes the place of the Monitoring Officer in deciding whether to refer a complaint for investigation, a legal officer provide independent advice at the meeting and consideration be given to producing step by step guidance for members on procedure.

Reason: To assist members on the rare occasions when this happens.

## **17. Member / Officer Relations Protocol**

Members considered a report which sought their views on proposals to review the City Council's current protocol on Officer / Member Relations.

Previous reviews of the current protocol, attached at Annex A to the report, had not resulted in substantial changes. However, the task group reviewing the code of conduct had recommended that the code include a provision that members must comply with the protocol. It was therefore considered appropriate to review the protocol again, and for that work to be undertaken by the same task group.

Resolved: That the review of the protocol be referred to the task group, and that the review be informed by

consultation with political groups and trades unions, as indicated in the report.

Reason: To promote good Member/Officer relations.

## 18. Civic Gifts and Hospitality

Members considered a report which sought their view on proposed guidance for the Civic Party in respect of gifts and hospitality, as discussed at the meeting on 18 April (Minute 37 refers).

Consultation had been carried out with the current and former Lord Mayors on the draft guidance attached at Annex 1 to the report. In response to their comments, a number of minor amendments had already been made to the draft. Comments and suggestions considered worthy of further discussion were set out in paragraphs 5 to 8 of the report. These related to the acceptance of substantial hospitality not linked to 'traditional' civic functions.

With reference to the suggested amendment at paragraph 7 of the report, Members advised that the words '*...by the Leader, Council Officers or a key partner of the Council*' should be replaced by wording that would enable the Lord Mayor to take a decision based on impartial guidance from an appropriate officer of the council.

Resolved: (i) That the draft guidance be referred back to the current and former Lord Mayors group, for further consultation in the light of the Committee's comments.

(ii) That the matter be then considered again at the next meeting of the Committee.

Reason: To ensure that members of the civic party are supported to make proper decisions about accepting gifts and hospitality.

## 19. Intimidation in Public Life

Members considered a report which advised them of work undertaken by the Committee on Standards in Public Life (CSPL) in respect of intimidation in public life.

At the request of the Prime Minister, the CSPL had conducted a review on the intimidation of Parliamentary candidates in July 2017, making 33 recommendations. Key conclusions of the review were set out in paragraph 5 of the report. Those recommendations felt to be of most interest to the Committee were listed in Annex 1, with a commentary on how the issues were being tackled in York. Four of the recommendations were highlighted as matters that Members might wish to consider further.

Members commented that it was important to address these issues in the guidance to be prepared for elected Members on their behaviour during the election process.

Resolved: That the recommendations highlighted in Annex 1 be referred to the task group for consideration, along with the Executive Summary of the CSPL report.

Reason: To ensure that the Committee can make an effective contribution towards creating a culture in York where intimidatory behaviour is unacceptable.

## **20. Review of Work Plan**

Members considered the Committee's work plan for the remainder of the current municipal year.

Resolved: That the work plan be approved subject to the following addition, and any further additions arising from the meeting:

- 21 November 2018 – Guidance on Civic Gifts and Hospitality.

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

## **21. Chair's Comments**

The Chair queried how the Committee's review of the Code of Conduct would feed into the wider review of the Council's Constitution, to ensure there was no conflict between the two. The Monitoring Officer advised that the Code of Conduct was the responsibility of this committee. The review of the Constitution would involve high level discussions, rather than detailed consideration, at Audit & Governance Committee /

Customer & Corporate Services Scrutiny Management Committee.

The Chair welcomed the two new parish councillor members to the meeting. She invited them to inform the Monitoring Officer if they were interested in being appointed to fill the vacant post of Vice Chair, which was normally held by a parish councillor member.

Cllr C Runciman, Chair

The meeting started at 4.00 pm and finished at 5.00 pm.



**Joint Standards Committee**

**21 November 2018**

**Report of the Monitoring Officer**

**Monitoring Report on Complaints Received**

**Summary**

1. This is a routine report to update the Committee on recent standard complaints.

**Background**

2. The table below gives information about new and ongoing casework handled during the period since the Committee last met in September:

Case ref.	City or Parish	Date complaint accepted	Nature of Complaint	Status
225	City (x2)	29/8/2017	Standards issues raised during investigation of whistleblowing complaint	Assessment sub committee 22/9/2017 referred for investigation  One case referred for hearing. Second case final report expected shortly.
688	City	31/3/2018	Breach of confidentiality	MO referred for investigation  Case considered by Sub Committee 8/8/2018 and referred for hearing.

				Date currently being fixed for pre hearing meeting to consider arrangements in light of parties' comments submitted as part of pre hearing process.
702	Parish	25/6/2018	The case relates to joint work between Parish Councils. The complaint relates to the way the subject Member is alleged to have behaved towards other Councils and councillors	Referred for investigation by MO 18/07/2018  Investigation identified no breach. Closed 5/11/2018
719	Parish	18/09/2018	Alleged breach of confidentiality and attempt to secure advantage for an individual in relation to a recruitment process	Referred for investigation 8/10/2018
718	City	21/09/2018	Complaint relating to Members participating in decision at Executive and Planning Committee in relation to connected matters	MO and IP's agree no breach  Closed 5/10/2018
717	City and Parish	26/9/2018	Offence taken at inaccurate information in correspondence	MO and IP's agree no breach  Closed 1/10/2018

			and its content	
722	City	28/09/2018	Alleged failure to register interest	MO and IP's agree no breach. Interest had been registered but not in the way complainant expected.  Closed 15/10/2018
723	City	19/10/2018	Alleged failure to respond to correspondence and request for a meeting	MO and IP's agree no breach  Closed 2/11/2018
	City	28/10/2018	Alleged failure to declare interest	MO and IP's agree no breach. Any interest adequately declared/  Closed 12/11/2018

3. Members will see that this has been a busy period for case work with six new cases coming forward and an ongoing investigation concluded. Two of the new complaints originated from councillors. The other complaints were submitted by members of the public although one is a former councillor.

### **Recommendations**

4. Members are recommended to:
- 1) Note the report.

Reason: To ensure that the Committee is aware of current levels of activity and that the standards complaints system is used for its primary purpose.

**Contact Details**

**Author:**

Andrew Docherty  
Monitoring Officer  
Customer and Corporate  
Services  
Tel No. 01904 551004

**Report  
Approved**



**Date** 12/11/2018

**Wards Affected:**

**All**



**For further information please contact the author of the report**

**Background Papers: None**



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**Joint Standards Committee****21 November 2018****Procedures for dealing with Councillor Code of Conduct Complaints****Summary**

- 1) This report updates Members on the progress of the Task Group in relation to reviewing the procedures for dealing with Councillor conduct complaints.

**Background**

- 2) On 13<sup>th</sup> June 2018 Members were asked to consider a report seeking their views on the continued sustainability of procedures adopted in York for handling matters relating to ethical governance. A Task Group was established and all of the procedures and documents were reviewed. Consultation also took place with political groups and YLCA.
- 3) The Task Group suggested amendments to the complaints procedure and also created new documents, including a flow chart for dealing with complaints and an Independent Persons Protocol.
- 4) The final version of the complaints procedure can be found at Annex One. The Flow chart can be found at Annex Two and the Independent Persons Protocol is at Annex Three.
- 5) The Task Group has also considered consultation comments on the proposed revised code of conduct. The Task Group is not minded to make any changes but the Committee has previously indicated that it would want to ensure any issues arising from ongoing cases are addressed and so it is intended to bring the code back for approval and recommendation to Council at a later meeting.

**Recommendations**

- 6) Members are asked to consider whether to accept the amendments within the Complaints Procedure and adopt the document and also to consider whether the complaints flow chart should form part of the procedure to be adopted in York to deal with Code of Conduct complaints.
- 7) Members are also asked to consider whether York should adopt the Independent Persons Protocol.

- 8) Members are asked to recommend that the code of conduct be brought back for approval and recommendation to Council at a later meeting.

**Reason:** To ensure that the procedures adopted by the Committee remain fit for purpose.

**Contact Details**

**Author:**

Rachel Antonelli, Senior Solicitor    **Report Approved**  
Legal Services  
Tel No. 01904 551043                      **Date 12 November2018**

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

**For further information please contact the author of the report**

**Annexes**

Annex One –Complaints Procedure (track change copy)  
Annex Two –Code of Conduct Complaints Flowchart  
Annex Three – Independent Persons Protocol

**Background Papers: None**

## Complaints about the ethical conduct of Councillors

This document is intended to inform those who wish to make a complaint about a City or Parish Councillor where they believe that the Councillor may have breached the Code of Conduct.

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### 1 The Code of Conduct

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

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<http://democracy.york.gov.uk/ecSDDisplay.aspx?NAME=SD569&ID=569&RPID=6449972&sch=doc&cat=12830&path=12830>

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

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

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

### 2 Making a complaint

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

The Monitoring Officer  
West Offices  
Station Rise  
York  
YO1 6GA

Or –

[monitoringofficer@york.gov.uk](mailto:monitoringofficer@york.gov.uk)

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

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

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

### 3. Your Privacy

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

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

The Monitoring Officer will normally though share your name with:

- o The Councillor concerned
- o The Independent Persons who advise on the handling of complaints.
- o The Parish clerk if the councillor concerned is a member of a Parish Council
- o Any investigator appointed to deal with the case
- o Members of any Committee or Sub Committee of the Council who are handling the case
- o Any witnesses to the allegations where that is necessary to enable a proper investigation

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

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

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

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

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

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

Data Protection Officer  
City of York Council  
West Offices  
Station Rise  
York. YO1 6GA.

### **3 4Will your complaint be investigated?**

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

Once the complaint has been accepted the Monitoring Officer will and discuss it with the Council's Independent Persons. Independent

Persons are not Councillors and have no connection with the Council. ~~Though~~ ~~by~~ law the Independent Person must be consulted when a complaint has been investigated. ~~The~~ Council has decided that ~~the~~ at least one of the Independent Persons will also be consulted by the Monitoring Officer when the complaint is received so as to provide an external oversight. If an Independent Person is aware that he or she has a conflict of interest (such as being a friend of a party to the complaint) then the Independent Person will advise the Monitoring Officer and play no part in the consideration of that complaint.

~~He~~ The Monitoring Officer will then normally take a decision as to whether the complaint merits formal investigation. This decision will usually be taken within ~~14~~ 28 days of receipt of your complaint being accepted.

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

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

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

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

Occasionally the Monitoring Officer may decide that the decision as to whether a complaint should be investigated should be made by

members of the Joint Standards Committee. In this case a small Sub Committee of usually 3 Members of the Joint Standards Committee which consists of City and Parish Councillors and Parish Councillors will meet to consider your complaint. At least 1one Independent Person will be present. In the rest of this procedure we have assumed that the Monitoring Officer will use his powers to make decisions but any Sub Committee appointed will have the same powers as the Monitoring Officer.

**43 How is the investigation conducted?**

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

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

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

Unless the case is very straightforward, at the end of his/her investigation, the Investigating Officer will produce a draft report and share it with you and the Councillor concerned on a confidential basis. You will both then be able to identify any matter in that draft report with which you disagree with or which you think needs s more consideration.

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

We aim to complete investigations within three months of the investigator being instructed. There may be very good reasons why that is not possible – where the case is complex or witnesses are not available, for example, or w- Where there are delays though this will be reported to the Chair of the Standards Committee.

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

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

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

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

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

**6.15.1** Local Resolution

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

~~In making a decision about whether a matter can be resolved locally to the satisfaction of the Monitoring Officer, the complainant's views will be given considerable weight. Although yourthe complainant's views will be carefully considered but the~~

decision as to whether a complaint can be resolved without a hearing rests with the Monitoring Officer if the breach is minor.

#### 6.25.2 Local Hearing

If the complaint is not resolved through the local resolution process, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel. Ordinarily a sub-committee will be chaired by the Chair or Vice-Chair of the Joint Standards Committee and comprise of other members of the Joint Standards Committee. ~~selected to demonstrate their impartiality.~~ The Council's usual practice is to seek to avoid where possible using Members of the Committee who belong to the same political party as Members involved in the complaint. At least one Member will be a Parish Councillor where the complaint relates to a Parish matter. Subject to that Hearings Panels are appointed by approaching Members of the Standards Committee in rotation with the Member being appointed if they are available to attend the hearing.

One or more Independent Persons will be present at the hearing.

The Hearings Panel will take evidence ~~from yourself, the Investigating Officer and the Councillor as well as any witnesses~~ and reach a decision. This is not a Court process but, in order to be fair to everyone, formalities are followed so that a proper decision can be reached. A detailed hearings procedure is available for you to view.

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

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

The Hearings Panel may –

7.16.1 Censure the Councillor;

7.26.2 Formally report its findings to the City Council or Parish Council for information;

7.36.3 Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

7.46.4 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;

7.56.5 Recommend to Council that the Leader be removed from Office

7.66.6 Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;

7.76.7 Remove *[or recommend to the Parish Council that the Councillor be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;

7.86.8 Withdraw *[or recommend to the Parish Council that it withdraws]* facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access.

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

## **87 What happens after the hearing?**

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

## **98 Who are the Hearings Panel?**

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

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

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## **109 Appeals**

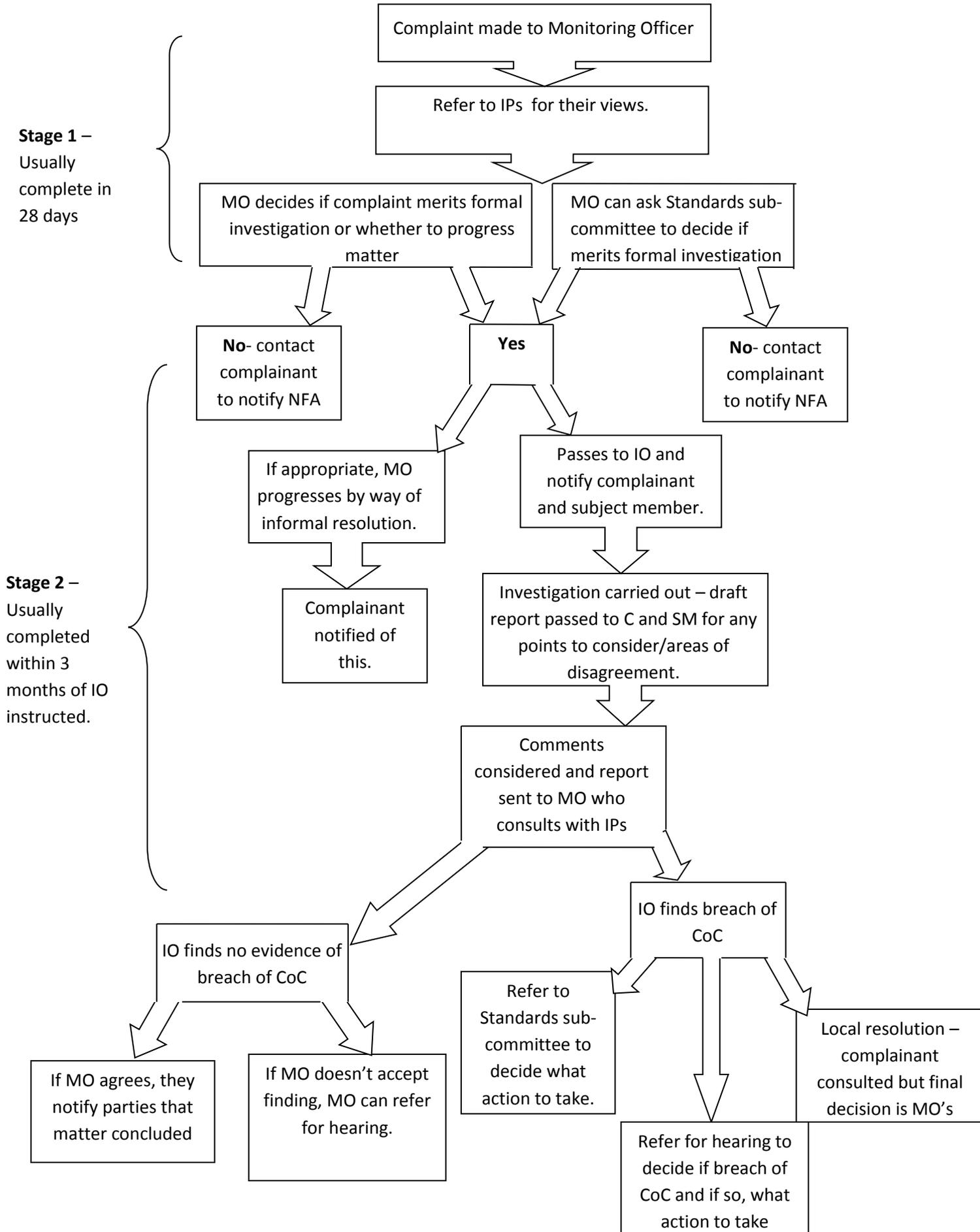
There is no right of appeal for ~~you either the~~ complainant or for a Councillor against a decision of the Monitoring Officer.

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

If ~~you a complainant~~ feels that the authority has failed to deal with your complaint properly, ~~you they~~ may make a complaint to the Local Government Ombudsman. There may also be the possibility of an application for Judicial Review of the decision if there has been a legal flaw in the process followed.

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**Code of Conduct Complaints**



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## **Independent Person Protocol**

### **Introduction**

1. The Localism Act 2011 requires the Council to promote and maintain high standards of conduct by its members and co-opted members. To this end the Council has adopted a Councillors' Code of Conduct and has agreed arrangements for dealing with allegations that a member or co-opted member has breached the Code. In accordance with the requirements of the Act these arrangements include provision for the appointment of at least one Independent Person to undertake the duties described in the arrangements.
2. Disciplinary proceedings against the Council's Head of Paid Service, Monitoring Officer or Chief Finance Officer requires the undertaking of a statutory procedure and as part of that an Independent Panel must be established, the views, advice or recommendations of which must be considered by Full Council prior to any decision being made. The Independent Panel must include at least two Independent Persons.

### **Appointment**

3. To be eligible for appointment as Independent Person a person must not be or have been within the previous five years a member, co-opted member or officer of the Council or of a Parish Council of which the Council is the principal authority, nor a relative or close friend of such member or officer.
4. The person should not be involved actively in party politics and should be independent of local government. It is essential that the Independent Person demonstrates a keen interest in promoting high ethical standards in local government, have a general understanding of the principles behind the members' Code of Conduct and must be a person of good standing in whose impartiality and integrity elected members and the general public can have confidence. The Independent Person must also have good communication and interpersonal skills, be able to operate with tact and diplomacy, must be able to use logical reasoning and bring qualities of open-mindedness and impartiality and it is vital that the Independent Person understands and complies with confidentiality requirements.
5. An Independent Person may only be appointed pursuant to a formal recruitment process requiring a public advertisement, submission of applications and selection by interview. A person's appointment must be approved by Full Council. The term of office for each Independent Person will be 5 years and re-appointment will be for no more than 2 consecutive terms. An Independent Person is the holder of a statutory office and not an employee of the Council. No salary is payable but the Council may pay the independent Person's expenses by way of an allowance or expenses in connection with the duties of the appointment.

### **Role of the Independent Person**

6. The primary role of the Independent person is to be available for consultation at various points in the arrangements for dealing with breach of code of conduct complaints as follows:
  - a. The Monitoring Officer will review every complaint received and once accepted will consult the Independent Person before taking a decision as to whether or not the complaint merits investigation. The Independent Person should provide an objective and impartial opinion which the Monitoring Officer will take into account in making the decision.
  - b. Where an investigation has been undertaken, a draft report will be submitted by the Investigating Officer to the Monitoring Officer. The Monitoring Officer will ask the Independent Person for a view upon whether the report is satisfactory, whether further investigation is necessary and whether or not the report should be submitted to the Standards Committee. The Monitoring Officer will take the Independent Person's view into account when deciding the next step to take. The Monitoring Officer may consider that the matter can reasonably be resolved without a hearing and may consult the Independent person for their view on this.
  - c. Where a complaint is the subject of a Standards Committee hearing, at least 1 Independent Person must attend. After all the evidence has been presented the panel will seek the views of the Independent Person before determining whether or not the member breached the Code of Conduct and if so, what action should be taken. The Independent Person does not take part in the final decision made nor vote upon the decision.
  - d. The Independent Person may be consulted by the Monitoring Officer or other authorised representative of the Council at any stage in the arrangements for dealing with Code of Conduct complaints. In such instances, the Independent Person does not represent the Council or any other party to a complaint and is an impartial point of reference and source of advice. Consultations with the Independent Person are confidential between the parties and the content or outcome of such consultation may only be disclosed, if both parties agree to such disclosure.
  - e. Occasionally the Council may need to use the services of a neighbouring Local Authority, for example, where there is a conflict of interest involving the Independent Person(s).
7. When the Council has more than one Independent Person, the Monitoring Officer shall ensure that the workload is shared out between those persons as the Monitoring Officer considers appropriate.

8. The Independent Person is also invited to attend meetings of the Standards Committee and may participate in all aspects of the Committee's work in a non-voting capacity. The Independent Person will be consulted in respect of changes to the Council's ethical framework.
9. A further role of the Independent Person arises from the Local Authorities (Standing Orders (England) Regulations 2001 (as amended). There is a prescribed statutory process for disciplining or dismissing an authority's Head of Paid Service, Monitoring Officer or Chief Finance Officer. A decision to discipline or dismiss must be taken by Full Council which must consider, amongst other things, advice, views or recommendations from an independent panel. That panel must include at least 2 Independent Persons appointed under Section 28(7) of the Localism Act 2011 by the Council or by another local authority.

#### **Declaration of Interests**

10. The Independent Person shall promptly disclose in writing where possible, any actual or potential declaration of interest that they have in a matter at any stage, including instances where the Monitoring Officer asks the advice of the Independent Person at any stage. The Independent Person shall also disclose any actual or potential declaration of interest they have at the beginning of any Hearing Panel.

#### **Right of Access to Documentation**

11. The Independent Persons shall have a right of access of such files and other documents as are necessary to fulfill their duties and obligations as set out in this protocol and the arrangements adopted by the Council for dealing with standards complaints. Access to files will be through the Monitoring Officer or their Deputy, or other officer appointed on their behalf.

#### **Training**

12. Training for the roles of the Independent Person with particular reference to local government governance and practice will be provided in-house by the Monitoring Officer and other senior officers and where appropriate through external courses. Training for disciplinary and/or dismissal proceedings against a statutory officer will be provided externally.

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**Joint Standards Committee****21 November 2018****Report of the Monitoring Officer****Case law update – Harvey v Ledbury Town Council Summary**

1. This report advises Members of a recent High Court decision which has implications for the Committee and the Councils for whom it has responsibilities.

**Background**

2. Councillor Harvey was a member of Ledbury Town Council. The town clerk and deputy town clerk brought grievances alleging that Councillor Harvey had bullied, intimidated and harassed staff. These grievances were heard by a panel of Town councillors. Councillor Harvey did not attend, stating that she did not recognise the authority of the Panel, and she requested that the matter be investigated under the standards procedures. Councillor Harvey made a self referral under those procedures. However, the Panel upheld the grievance in her absence. The Town Council then resolved to impose a number of restrictions on Councillor Harvey, including that:
  - She should not sit on any committees, sub-committees, panels or working groups;
  - She should not represent the council on any outside body;
  - That all communications between her and its clerk and deputy clerk should go through the mayor.
3. The Monitoring Officer advised the Town Council that although these allegations were made under the grievance procedure, they were in fact allegations that a member had failed to comply with the authority's Code of Conduct and so had to be dealt with in accordance with the standards regime. The Town Council decided to maintain its restrictions on Councillor Harvey and subsequently expanded them to prevent her from communicating with all staff.

4. The Code of Conduct investigation found no breach by Councillor Harvey of the Town Council's Code of Conduct and so no further action was taken on the standards complaint.
5. Councillor Harvey then applied for judicial review to challenge the Town Council's decision to impose sanctions under its grievance procedures on the basis that:
  - The restrictions were 'ultra vires' as they constituted sanctions which could only be imposed as a result of a standards process under the Act
  - The decision making process was substantively unfair and in breach of the human rights
  - Procedurally unfair as the process followed was improper in that there was an absence of investigation, absence of identified basis, absence of disclosure to the decision-making body of full evidence, absence of an opportunity to respond or to defend herself
6. The Town Council argued that it was entitled to conduct an investigation as part of an employee grievance process and to take action to fulfil its obligations as an employer.

### **The decision**

7. The Court found in favour of Cllr. Harvey on all three issues. In relation to the vires point the Judge was clear that sanctions had been imposed on Cllr. Harvey and these could only properly be imposed having followed a standards process. Circumventing this removed the protection afforded by the Act – in particular that provided by the involvement of Independent Persons.
8. The Judge also considered whether all investigation needed to be carried out under the standards process. She said that what was contemplated was actually a four stage process:
  1. the making of an allegation;
  2. (optionally) a non-formal investigatory or mediation stage ("informal resolution") or a pause pending other relevant steps being taken (e.g. criminal proceedings);
  3. a formal stage, involving an independent person, leading to a decision on breach;

4. (if breach is found) a formal stage, again involving the independent person, dealing with action.

Once a case reached stage 3 it must be handled formally under standards procedures. Earlier stages could be informal. This approach supports the City Council's encouragement of the informal resolution of complaints.

9. The Judge also found that had the procedures followed by the Town Council were deficient and that the sanctions were unreasonable and disproportionate.

### **Implications of the decision**

10. To a large extent the decision is not a surprise. The Act is clear that breaches of the code are to be considered under procedures established by the Principal Authority. Any investigatory process must be fair and any sanctions must be proportionate.
11. Where there is now some uncertainty is the extent to which grievance procedures can be used to deal with complaints by employees against councillors. This is, of course, relevant to both the Parish and City Councils. Some commentators have argued that all cases must now be considered under the Code.
12. NALC have said:

*This decision confines most complaints about councillors to the code of conduct process. Employees will now not generally be able to use their councils' grievance procedures if the subject of their grievance is a complaint about a councillor. Inevitably, this will lead to more principal authority involvement in local council matters and place additional burdens on already hard-pressed Monitoring Officers. It is also likely that matters which previously would have been dealt with fairly quickly within a council will take substantively longer when dealt with by the principal authority.*

13. NALC have written to the Ministry of Housing, Communities and Local Government, the Committee on Standards in Public Life and the Local Government Association to highlight their concerns.

14. Other commentators have said that complaints may still be investigated under a grievance procedure but no findings can be made about a breach and any resolutions must not amount to a sanction. Clearly this leaves considerable room for grey areas.
15. Councils do still have a responsibility to ensure grievances are dealt with in a timely way. They must also continue to be mindful of their responsibilities to protect their employees from bullying, intimidation and harassment, since the authority may be liable for the actions of its councillors.
16. Given that the Committee on Standards in Public Life are currently reviewing local government arrangements, it may well be that this issue will be picked up by them.

### **Recommendations**

17. Members are recommended to:

- 1) Note the report.

Reason: To ensure that the Committee is aware of this important case.

### **Contact Details**

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**Report  
Approved**



**Date** 12/11/2018

**Wards Affected:**

**All**



**For further information please contact the author of the report**

**Annexes: None**

**Background Papers: None**

## Work Plan for Joint Standards Committee 2018-2019

<b><u>Meeting Date</u></b> (4.00pm start time)	<b><u>Items</u></b>	<b><u>Notes</u></b>
Wednesday 21 November 2018	<ul style="list-style-type: none"> <li>• Monitoring report in respect of complaints received</li> <li>• Updating the Member Code of Conduct (following consultation with groups)</li> </ul>	Standard item
Wednesday 13 February 2019	<ul style="list-style-type: none"> <li>• Monitoring report in respect of complaints received</li> <li>• Guidance for elected Members on their behaviour during the election process</li> <li>• Guidance on Civic Gifts and Hospitality (following further consultation with current and former Lord Mayors)</li> </ul>	Standard item  Agreed at the meeting on 5 September to receive a further report.
TBC	<ul style="list-style-type: none"> <li>• The City Council's Whistleblowing Policy and its link to ethical standards.</li> </ul>	

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