



Joint Standards Committee

21 November 2023

Report of the Monitoring Officer

Review of the Case Handling Procedure for complaints under the Member Code of Conduct (Appendix 29 of the Council's Constitution)

Summary

1. This report sets out: (a) the statutory requirements for Standards arrangements in English Local Authorities and (b) presents options for amending the current City of York Council arrangements.

Background

2. Section 28 of the Localism Act 2011 provides that LAs (other than parish councils) must put in place 'arrangements' that set out the process for dealing with complaints of misconduct and the actions which may be taken against a member or co-opted member who is found to have failed to comply with the Member Code of Conduct.
3. There is no longer a statutory requirement to have a Standards Committee or separate Referrals, Review and Hearings sub-committees. Instead, the Council can establish its own process. Where Councils retain a Standards Committee, it is a normal committee of Council and the will be governed by proportionality, unless Council votes otherwise with no member voting against. This is the case with the Standards Committee at CYC which pursuant to Article 10 of our Constitution is not "politically balanced" in accordance with the legislative political balance rules but does comprise representatives of all political groups.
4. There is no longer a restriction that there can only be one member of the Executive on the Standards Committee.
5. Under the current statutory regime, district councils have responsibility for dealing with standards complaints against members of parish councils. City of York Council has established a

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Standards Committee as a joint committee with the York area parish councils meaning that the parish council representatives are voting members of the committee.

6. The LA must appoint one or more Independent Persons (“IP”) to advise the Council before it makes a decision on an allegation. The JSC terms of reference (Article 10) say that a minimum of 3 IPs will be appointed. Only 1 is currently appointed with the proposed appointment of a second being the subject of a report to Council on 23rd November 2023.
7. The functions of the IP are:
 - a. they must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member
 - b. they may be consulted by the authority in respect of a standards complaint at any other stage, and
 - c. they may be consulted by a member or co-opted member of the district council or of a parish council against whom a complaint has been made.
8. An Independent Person is not a member of the authority or of its committees or sub-committees and is therefore not a voting member of the Standards Committee.
9. The Localism Act 2011 does not give the LA or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. Where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited.
10. There is no requirement to put in place any appeals mechanism against complaint handling decisions. Such decisions would be open to judicial review if patently unreasonable, taken improperly, or if they sought to impose a sanction that the LA had no power to impose. Claimants for judicial review would ordinarily be expected to exhaust other avenues for resolution before resorting to the Courts. In this situation a person who was dissatisfied with the council’s handling of a Code of Conduct complaint could complain to the Local Government and Social Care Ombudsman.

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City of York Council and Comparator Arrangements

11. The current CYC arrangements were prepared with the support of Hoey Ainscough Associates, governance consultants to local authorities. Members of the Standards Committee contributed significantly to that process.
12. It is noteworthy that the arrangements were developed in the immediate aftermath of the 2021 Public Interest Report into the early termination of the former Chief Executive's employment. That report was critical of the Council's governance arrangements and, of failure to manage conflicts of interest. It is perhaps unsurprising that a most interventionist approach was adopted.
13. The City of York Council procedure is unusual in that it involves members of the Standards Committee in the initial assessment of complaints where the subject member or complainant is a member of the Executive or Shadow Executive or a committee chair or deputy. In practice this encompasses the majority of complaints and makes complaints handling slower (due to the need to convene a sub committee) and more onerous for both officers and members. The preparation and reading of reports for committee meetings is time consuming and convening additional meetings has wider resource implications.
14. Three comparator authority case handling procedures (Leeds, Wakefield and North Yorkshire) are provided at Annex 1. A model case handling procedure from legal resource Lexis Plus is Annex 2.

Methodology

15. The Chair and Deputy Chair of Joint Standards Committee met with the Monitoring Officer and Deputy Monitoring Officer on 12th September 2023 to discuss the strengths and weaknesses of the current case handling procedure and to share broad objectives for review. In drafting proposed changes, officers have also taken into account views expressed by Members on the procedure during the course of Standards Committee meetings.

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16. A summary of drafting priorities and changes is set out below:

Issue	Objective	Proposed amendment
<p>Appendix 29 overall is long, wordy and in parts repetitive. It comprises:</p> <p>The procedure</p> <p>Flowchart</p> <p>Initial assessment procedure (JSC)</p> <p>What to expect</p> <p>Conflicts guidance</p> <p>Hearings procedure</p>	<p>Reduce word count, increase clarity, remove duplication and any potential for conflict (arises if you repeat something but slightly differently)</p>	<p>Throughout plain English.</p> <p>Remove section “what to expect”.</p> <p>Remove section on procedure for initial assessment by JSC (this will not have external participation so different to hearings)</p> <p>Reconfigure conflicts guidance as guidance and do not include in Constitution for flexibility</p>
<p>Consider accessibility of the case handling procedure and appropriate mechanisms for receiving complaints</p>	<p>Equality is a Council priority. The case handling procedure should not discriminate against those unable to submit a written complaint.</p>	<p>Make form available online and in West Offices together with help to complete from customer service representative if required.</p>
<p>Review involvement of members at filter & initial assessment stage to ensure committee</p>	<p>Balance member involvement & review with efficiency and trust in MO</p>	<p>Reduce committee involvement to Executive member cases only or alternatively for hearing stage alone.</p>

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workload is proportionate		
Clarify and expand factors to take into account on initial assessment e.g. member query on interpretation of "tit for tat"	For transparency it should be clear at outset that certain things will not be capable of constituting a breach. See Leeds list.	Addition of malicious vexatious and frivolous. Clarify non response to citizens is not disrespect (this has been a repeat unfounded allegation).
Clarify what happens if informal resolution is unsuccessful.	Retain discretion for each case to be considered on its own merits.	Role of JSC chair as final arbiter removed, this sits better with the IP and MO for political neutrality and independence.
Consider need for multiple incarnations of JSC. Would require amendment to Article 10 also.	Maximise efficiency of committee work.	Drafted so that there is just one JSC (which is quorate at 4 see Appendix 6).

17. A mark up and clean version of the proposed new arrangements are attached at Annex 3 and Annex 4 for discussion.
18. The Committee is invited to consider the amendments in the context of the legislative requirements, comparator practice, resource implications and their experience of the case handling procedure in practice.
19. As the Case Handling Procedure forms part of the Constitution, any amendments would need to be approved by full Council. Any parts of the current case handling procedure which are retained as guidance but not as part of the Constitution could be amended without reference to full Council.

Implications

Financial

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There are financial implications to processing all code of conduct complaints. It is a legislative requirement that there are arrangements in place but the nature of such arrangements are discretionary. The procedure adopted by CYC should be proportionate to the aim of upholding high standards of conduct but also deliver value for money.

Human Resources (HR)

The proposed amendments set out in this report would have a marginal impact on staff resources through a reduction in committee meetings.

Equalities

The arrangements required by law to deal with complaints of breach of the Member Code of Conduct must be accessible and non discriminatory to those with protected characteristics as defined within the Equality Act 2010. In addition, the Council in seeking to uphold high standards of conduct must discharge its overarching duty (the Public Sector Equality Duty) to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations under that Act.

Legal

As detailed within the report.

Crime and Disorder, Information Technology and Property

Any allegations of criminal conduct should specifically catered for within the case handling procedure.

Recommendations and Reasons

20. Members are invited to preliminarily review the discussion draft and take forward proposals to the Constitution Working Group. This will be convened at the request of Audit & Governance Committee and will make recommendations to Council on revisions to the Constitution. For the Case Handling Procedure and any consequential amendments to the Joint Standards Committee Terms of Reference at Article 10, the purpose of such revisions should be to improve clarity, transparency and accessibility. Members may consider that a more succinct approach would assist with these objectives.

21. Members may agree some or all of the suggested amendments in the discussion draft, propose their own amendments or resolve to recommend no changes to the current

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procedure. Making no revisions is not advised. This would be a missed opportunity to make improvements based on valuable experience of working under the current procedure.

22. Members are encouraged to consider whether the full suite of documents within Appendix 29 should remain part of the Constitution or whether some parts should be removed or published separately as guidance on the CYC web page relating to Member Conduct.

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**Report
Approved**

Date 21
November
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Specialist Implications Officer(s):

Wards Affected:

All

For further information please contact the author of the report

Annexes

- Annex 1 Comparator arrangements
- Annex 2 Lexis Plus Model arrangements
- Annex 3 Discussion Draft (mark up)
- Annex 4 Discussion Draft (clean)

Background Papers:

Appendix 1

- <https://www.york.gov.uk/downloads/file/6830/public-interest-report-mary-weastell-exit-package>
- CYC webpage Councillor Conduct
<https://www.york.gov.uk/CouncillorConduct>