

Joint Standards Committee Hearings Sub-Committee

To: Councillors Baker and Carr (CYC Members)
Councillor Rawlings (Parish Council Member)

Mr Laverick (Independent Person)

Date: Tuesday, 7 September 2021

Time: 10.00 am

Venue: The George Hudson Board Room - 1st Floor West
Offices (F045)

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 may have in respect of business on this agenda.

2. Appointment of Chair

To appoint a member to chair the meeting.

3. 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 at this meeting on agenda items only.

Please note that our registration deadlines have changed to 2 working days before the meeting. The deadline for registering at this meeting is **5:00pm on Friday, 3 September 2021.**

To register to speak please visit www.york.gov.uk/AttendCouncilMeetings to fill in an online registration form.

If you have any questions about the registration form or the meeting, please contact Democratic Services. Contact details can be found at the foot of this agenda.

Webcasting of Public Meetings

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

4. Complaint Against a Member of City of York Council (Pages 3 - 46)

To consider a complaint made against Cllr Mark Warters, a Member of City of York Council, which has been referred to the Hearings Sub-Committee for determination following an investigation.

Details of the procedure to be followed at the hearing can be found at pages 35 to 39 of the agenda papers.

5. Urgent Business

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

Democratic Services Officer responsible for this meeting:

Name: Fiona Young

Contact details:

- Telephone – (01904) 551027
- E-mail – 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.

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Coronavirus protocols for attending Committee Meetings at West Offices

If you are attending a meeting in West Offices, you must observe the following protocols.

Good ventilation is a key control point, therefore, all windows must remain open within the meeting room.

If you're displaying possible coronavirus symptoms (or anyone in your household is displaying symptoms), you should follow government guidance. You are advised not to attend your meeting at West Offices.

Testing

The Council encourages regular testing of all Officers and Members and also any members of the public in attendance at a Committee Meeting. Any members of the public attending a meeting are advised to take a test within 24 hours of attending a meeting, the result of the test should be negative, in order to attend. Test kits can be obtained by clicking on either link: [Find where to get rapid lateral flow tests - NHS \(test-and-trace.nhs.uk\)](https://www.nhs.uk/conditions/coronavirus/covid-19/testing/rapid-lateral-flow-tests/), or, [Order coronavirus \(COVID-19\) rapid lateral flow tests - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/order-coronavirus-covid-19-rapid-lateral-flow-tests). Alternatively, if you call 119 between the hours of 7am and 11pm, you can order a testing kit over the telephone.

Guidelines for attending Meetings at West Offices

- Please do not arrive more than 10 minutes before the meeting is due to start.
- You may wish to wear a face covering to help protect those also attending.
- You should wear a face covering when entering West Offices.
- Visitors to enter West Offices by the customer entrance and Officers/Councillors to enter using the staff entrance only.
- Ensure your ID / visitors pass is clearly visible at all time.
- Regular handwashing is recommended.
- Use the touchless hand sanitiser units on entry and exit to the building and hand sanitiser within the Meeting room.
- Bring your own drink if required.
- Only use the designated toilets next to the Meeting room.

Developing symptoms whilst in West Offices

If you develop coronavirus symptoms during a Meeting, you should:

- Make your way home immediately
- Avoid the use of public transport where possible
- Follow government guidance in relation to self-isolation.

You should also:

- Advise the Meeting organiser so they can arrange to assess and carry out additional cleaning
- Do not remain in the building any longer than necessary
- Do not visit any other areas of the building before you leave

If you receive a positive test result, or if you develop any symptoms before the meeting is due to take place, **you should not attend the meeting.**

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Standards Hearing Sub Committee**7 September 2021**

Complaint against Councillor Warters

Complainant: Mr and Mrs Moore**Subject Councillor:** Councillor Warters**Investigator:** Gerard Allen**Background**

This complaint is brought by Mr and Mrs Moore against Councillor Warters who is a City Councillor. The complaint relates to an allegation that Councillor Warters was aggressive and discriminatory towards the complainant and the operation of their business during a telephone call. During the course of the investigation an email sent by Councillor Warters came to light which Gerard Allen, the investigating officer considered as part of the investigation.

Gerard Allen did not find a breach of the Code in relation to the telephone call as it was one person's word against another and the accounts differed. In relation to the email, Gerard Allen found that a breach of the Code had occurred, namely that Councillor Warters failed to treat the complainants with respect. The complaint and also Mr Allen's report can be found at Annex A and B. City of York Council's Code of Conduct can be found at Annex C.

The Investigation Report has been shared with the parties. One of the Independent Persons, Mr Laverick has also been consulted. Having taken their views into account, the Monitoring Officer accepted the findings within the report and initially sought the view of Councillor Warters as to whether he would offer an apology to Mr and Mrs Moore by way of resolution. Councillor Warters stated that he was not prepared to issue an apology, therefore, the Monitoring Officer referred the matter for a Hearing.

The Complaint

The complaint appears in full at Annex A, but can be summarised as follows:

- (a) Councillor Warters was aggressive and discriminatory towards the complainants and the operation of their business and failed to treat them with respect.

The Code of Conduct

As required by the Localism Act 2011, City of York Council has adopted a Code of conduct which sets out the conduct expected of Councillors when acting as such. The Code of Conduct appears at Annex C. Particularly relevant to this complaint are the following sections:

“General Duties as to Conduct

3 (1) You must treat others with respect.”

The Hearing Process

The Standards Committee has approved a procedure for hearings which can be found at Annex D. In line with that procedure the complainant and subject member have been asked to complete a pre hearing check list indicating whether they intend to attend the hearing, to identify facts which they say are in dispute, and state whether any part of the hearing should be in public.

A completed pre hearing check list has been returned by Mr and Mrs Moore and Councillor Warters responded by email.

Mr and Mrs Moore’s form can be found at Annex E. It will be noted that Mr and Mrs Moore agree with the facts found by the Investigating Officer.

Councillor Warters’ email in response to the checklist can be found at Annex F. Councillor Warters stated that he had previously provided a long and detailed statement after receipt of the complaint that explained his position regarding the complaint and the facts that he disagrees with. He stated that he had also entered into correspondence highlighting the situation whereby an unsubstantiated complaint based on a telephone call could ever reach an investigation because the facts could never be established.

Issues to be determined

Has Councillor Warters breached City of York Council’s Code of Conduct?

In the event that the Sub committee finds that the Code has been breached, it will need to determine whether a sanction should be imposed and if so, what sanction.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

The Equality Act 2010 places specific duties on Local Authorities, including the presence of a clear and concise Code of Conduct which prohibits unlawful discrimination and gives the public confidence in Councillors. Ensuring that the Code of Conduct is maintained meets the Nolan principles and also supports the prohibition.

Legal

As detailed within the report.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

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

27 August
2021

Specialist Implications Officer(s):

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

- **Annex A –Complaint**
- **Annex B – Investigating Officer’s report**
- **Annex C – City of York Council’s Code of Conduct**
- **Annex D – Hearing procedure**
- **Annex E - Pre hearing check list completed by complainant**
- **Annex F – Email responding to pre hearing check list completed by subject Councillor**

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Complaint Form

1. Your details

Title	Mr
First Name	Jason
Last name	Moore
Address	York Foot Clinic 289 Hull Road York YO10 3LB
Daytime telephone number	
Evening telephone number	
Mobile telephone	
E-mail address	

Your address and contact details will not usually be released unless necessary to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- The Member you are complaining about
- The parish or town clerk (if applicable)
- The Independent Persons who advise the City Council on handling standards complaints

We will tell them your name and details of your complaint. If you have serious concerns about your name or details of your complaint being released please discuss those concerns with the Council's Monitoring Officer before submitting your complaint.

2. Making your complaint

You should submit your complaint to the Council's Monitoring Officer by e-mail to monitoringofficer@york.gov.uk or by post to:

Janie Berry
The Monitoring Officer
City of York Council
West Offices
Station Rise
York
YO1 6GA

3. Councillor details

Please provide the name and address of the Councillors who you believe have breached the code of conduct and the name of their Council:

Title	First name	Last name	Name of Council
Mr	Mark	Warters	Osbaldwick & Derwent

4. Nature of complaint

Please explain in this section (or on separate sheets) what the Councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one Councillor you should clearly explain what each individual has done that you believe breaches the code of conduct.

Please see separate sheet



It is important that you provide all the information which you wish to have taken into account by the Monitoring Officer and Independent Persons in considering whether your complaint requires a detailed investigation. For example:

- You should be as specific as possible as to what you are alleging the Councillors did. For example instead of saying that a Councillor insulted you, you should state what they said or did.
- You should provide dates of the the alleged incidents if possible or a general timeframe if you cannot remember dates.
- You should confirm whether there were any witnesses.
- You should ensure that your complaint is about the code of conduct. The Joint Standards Committee cannot deal with general complaints about decisions made by a Council or actions taken by Councillors in a purely private capacity.

5. Additional help

Complaints must be submitted in writing. This includes by e-mail. We can make reasonable adjustments if you have a disability which prevents you making your complaint in writing or provide assistance if you have any other difficulty which prevents you completing this form.

Mr & Mrs Moore
York Foot Clinic
289 Hull Road
York
YO10 5JB

3rd January 2020

To The Monitoring Officer

Our names are Jason Moore and Keira Moore and we own the property York Foot Clinic, 289 Hull Road, YO10 3LB. In addition to the building we also own the grassed land which is opposite the building. We purchased the property in 2018.

Unfortunately we would like to submit a formal complaint against Councillor Mark Warters (Osbalwick and Derwent Ward). Please see below reasons why;

On the afternoon of Friday 27th November 2020 it was brought to my attention that [REDACTED] were installing fencing on the grassed land opposite the properties on Hull Road. My wife and I own the grassed land opposite our clinic which is clearly shown on Land Registry and on our Ownership Deeds. I approached the workmen and asked where they were placing the fencing and who had authorised this. The workmen at [REDACTED] informed me that "The Council" had instructed them and that they were fencing the whole of the grassed area (including my land). I asked them to speak to their foreman as I do not permit them to apply the fencing on my land. As it was approximately 2pm, work was soon to finish and they agreed to postpone installing until the following Monday.

I immediately spoke to my solicitor who provided me with screen shots from Land Registry, Conveyance and City of York Road Adoption confirming that we are the legal owners of the land and the erection of fencing without our permission was not legal. He told me to get in touch with my local councillor (Cllr), of which there are 2 – Cllr Mark Warters and Cllr Martin Rowley.

I immediately sought out Cllr Mark Warters phone number. I tried calling him several times however there was no answer. I therefore left a brief voicemail asking him to return my call due to the instruction of fencing on my property. I then sought out the phone number of Cllr Martin Rowley. My wife, Keira, managed to speak to Cllr Martin Rowley and explained the situation to him. Cllr Martin Rowley knew about the fencing but told us he was under the impression that the grassed land was owned by York Council and not by any private residents. Their call was interrupted but Cllr Martin Rowley said he was very keen to investigate any wrong doing and for us to call him back later that afternoon. Keira called him back where they were able to discuss matters in more detail. Keira said she would get our solicitor to forward screen shots from Land Registry etc... to show we were the legal owners of the land. Cllr Martin Rowley said he would speak to Cllr Mark Warters and Stoneplan York to postpone any fencing on our land until definite land ownership could be agreed to.

On the morning of Saturday 28th November, Cllr Mark Warters returned my missed calls. I thanked him for returning my call but informed him we had spoken with Cllr Martin Rowley in the meantime and were satisfied that he was investigating the issue for us and was meeting us on the Monday morning to go through things.

Cllr Mark Warters was aggressive in his manor immediately. He informed me he was “well aware” that I had spoken to Cllr Martin Rowley and that I “am wrong”, “It’s the Councils land and we will do what we want to do on it”. When I explained that our solicitor has clearly shown that the land is ours and that this is a waste of money and time, again he aggressively applied with “It’s not my money”. He brought up that he had already denied my previous application of a dropped kerb and would deny any future applications that I would make. He informed me that he’d “fought bigger people than you and stopped bigger issues than this”. He would not accept that the land was owned by me, even though I offered to forward to him the same documents we had arranged to Cllr Martin Rowley and invited him to come and meet me, my wife and Cllr Martin Rowley to discuss the matter on the Monday morning to which he replied “I’ve got a million better things to do with my time than deal with people like you”.

It has since been agreed with the Legal Department of York Council that we are the legal owners of the Land in question as are other residents on the street. This has meant the fencing now has a stop/start appearance as it has been stopped where other residents have now also complained. I have also alerted Cllr Martin Rowley that the fence that has been erected now means that the only access onto this grass verge for hedge cutting/ grass mowing etc is by accessing it via our private land, access that we have not agreed to.

I have never met Cllr Mark Warters or had any dealings with him before. I am deeply saddened that when I needed to discuss matters with him he choose to be aggressive, narrow minded and discriminative against me and my business, rather than take a pragmatic, reasonable approach to this incident. I would like to bring to attention, in particular the following behaviours that I feel warrant this complaint against him:

Openess – It is claimed that this application has been requested by the residents of the street. As an owner of property on this street, I have never been contacted by or had any information given to me regarding this. I have spoken to the majority of the residents on the street who also had no known knowledge of this application or awareness of the fencing being erected. We were not informed of this fence and do not see how, in all honesty, it can be classed as an open application when over half of the residents knew nothing about it. I feel this has been done behind closed doors with its only aim being to harm my business and to profit others.

Accountability – I challenge any Cllr who claims “they have better things to do with their time” than investigate potential illegal activity that they have signed off and approved. In contrast to this, Cllr Martin Rowley immediately accepted my challenge and agreed to meet and discuss the matter. Cllr Mark Warters flatly refused this request in a most rude and abrupt manor.

Treat others with respect – I have never had any dealings with Cllr Mark Warters before. He was aggressive and abusive straight away with me even though I have not done anything wrong and am only protecting my legal property. He felt the need to immediately start the conversation with a bully attitude with how he spoke to me.

Equality Enactment – I believe Cllr Mark Warters has been discriminatory to me as an independent business owner. We offer medical treatments, in particularly to those with mobility issues. I have previously tried to get disability parking for the clinic, at my own cost. The fact that he has previously denied this application and took great delight in informing me he would refuse any further applications shows he has a discriminatory attitude to not only my business but to patients who are disabled.

Bully/ Intimidate – Cllr Mark Warters clearly intended to bully me with his aggressive attitude. He also tried to intimidate me by claiming he “had stopped bigger issues than this”.

Bringing the Council into disrepute – We have to question any Cllr who passes any application without thoroughly investigating it. If the correct due diligence had been done it would be clear that the area was privately owned by me. He was completely blind-sided by his aggression/ anger on the matter, to the point that he would not listen to any of my arguments or accept the evidence in front of him. If this one-sided attitude is how he operates, it makes us question what else he has done!

We feel deeply saddened that we have to submit this complaint, however we feel we have no choice. Cllrs must be held accountable for their actions, rightly or wrongly. They must also be made aware that they cannot adopt a bully attitude just because they can. If we cannot rely on our local Cllrs to regulate, monitor and deal with issues in a fair and just manor what hope do we have.

I thank you for your time

Many thanks

Jason and Keira Moore

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Complaint

Report to the Monitoring Officer, City of York Council, into complaints against Councillor Mark Warters.

From Gerard Allen, appointed as Investigating Officer for this complaint by Janie Berry, Monitoring Officer, City of York Council.

The Complaint referred for Investigation and Background

On 3rd January 2021 Jason Moore and Keira Moore (“the Complainants”) submitted a complaint to City of York Council against Councillor Mark Warters (“Cllr Warters”) who is an Independent Member representing Osbaldwick and Derwent Ward in respect of comments they allege Cllr Warters made to the Complainants in a telephone conversation between them on Saturday 28th November 2020 and more generally the alleged behaviour/conduct of Cllr Warters during that telephone conversation (“the Complaint”).

In addition, during a telephone interview with the Complainants on 3rd February regarding the Complaint, the Complainants informed me that on 26th January they became aware of an email which had apparently been sent by Cllr Warters (at 15:44 hours on 28th December 2020) to various Council officers referring to the Complainants and they wished to complain about the content and tone of that email. Its contents were as follows:

[“Dear All,

Still awaiting CYCs definitive opinion as to the status of this verge.

The owner of the Foot Clinic is now parking a vehicle on this verge (despite the foot clinic supposedly having parking for four vehicles) just simply to stick two fingers up to the residents in that area.

This involves driving over a CYC kerb to access the verge - is anyone going to take any action?

If not then my advice to residents will be to park their cars on the road to prevent this manoeuvre, parking that is perfectly legal as it's not in obstruction of a legitimate dropped crossing.

Look forward to this matter being dealt with ASAP.

Mark.

Regards,

Cllr. Mark Warters.”]

That email has therefore been added to/treated as part of the Complaint. Accordingly the content and context/circumstances of that email has therefore been reviewed and assessed as part of the Investigation of the Complaint and taken into account in the preparation of this Reports and its finding/conclusion.

By way of background, the Complainants operate a business from premises located at 289 Hull Road, York, YO10 5JB known as/trading as York Foot Clinic, which is within the Osbaldwick and Derwent Ward – for which Ward Cllr Warters is one of the elected Members.

On Friday 27th November 2020 it came to the attention of the Complainants that fencing had been erected on behalf of the Council on grassed land opposite properties along Hull Road, including on land which it transpires is registered at the Land Registry in the ownership of the Complainants.

The Complainants immediately sought advice from their solicitor, who advised them to contact their Ward Councillors. They telephoned Cllr Warters and left a brief voicemail asking Cllr Warters to phone them back to discuss the erecting of fencing on the Land.

Cllr Warters returned their call the following morning, on 28th November and it is the telephone discussion which resulted in the Complaint.

The Complainants allege that during the telephone conversation Cllr Warters engaged in the following conduct, contending that:

- (i) Cllr Warters was “aggressive in his manner” from early in the conversation after the Complainants thanked him for returning their call but informing them they had already spoken to Cllr Rowley who was investigating the fencing matter and who would be meeting them on Monday 30th November to discuss the fencing matter.
- (ii) Cllr Warters allegedly stated:
 - (a) That they [the Complainants] were “wrong”, that “it’s the Council land and we will do what we want on it”
 - (b) “It’s not my money” when the Complainants said to him that the land belonged to the Complainants and so erecting of fencing on the Land by the Council was a waste of money and time
 - (c) He had already denied the Complainants’ previous application for dropping/lowering of kerb to facilitate vehicular access to/egress from the land for the purpose of parking vehicles in connection with the operation of the Complainants’ business and that he would deny any future applications they might submit.
 - (d) He had “fought bigger people than [the Complainants] and stopped bigger issues than this”.
 - (e) He had “a million better things to do with his time than deal with people like [the Complainants]” when the Complainants invited him to attend the meeting between them and Cllr Rowley arranged for 30th November.

- (iii) It is further alleged that Cllr Warters refused to accept the land belonged to the Complainants even though they allege that they offered to supply him with documents proving their ownership of the land.

The Complainants also contend that Cllr Warters' alleged behaviour during the telephone conversation fails to adhere to the following principles upon which the Code of Conduct is specified as being based:

- (a) Openness – the Complainants allege that they did not have any advance knowledge of, or involvement in, the Council's decision to erect fencing separating the grassed land from their properties. The Complainants consider that the decision to erect fencing on this grassed land 'has been done behind closed doors with its only aim being to harm [the Complainants' business] and to profit others'.
- (b) Accountability – the Complainants allege that Cllr Warters 'flatly refused in a most rude and abrupt manner' their request that he investigate 'potential illegal activity' by the Council in erecting fencing on the land belonging to the Complainants.
- (c) Treat others with respect – the Complainants claim that Cllr Warters was 'aggressive and abusive' with them even though they felt that they had not done anything wrong and consider that there were only 'protecting [their] legal property'.
- (d) Bully/Intimidate – the Complainants contend/consider that Cllrs Warters was intending to bully and intimidate them with his allegedly 'aggressive attitude' and by allegedly claiming that he "had stopped bigger issues than this".
- (e) Equality enactment/legislation – the Complainants contend that Cllr Warters has been discriminatory towards them 'as an independent business owner' by allegedly informed them that he had denied a previous application by them for dropping/lowering of kerb and by allegedly stating to them that he would refuse any further applications from them. They claim this is evidence of a discriminatory attitude to both their business and to persons with disability/mobility issues (as the Complainants says their business involves supplying medical treatments, particularly to persons with mobility issues).
- (f) Bringing the Council into disrepute: - the Complainants contended that Cllr Warters was 'blinded by his aggression/anger' to the extent that they allege he would not listen to them or accept evidence they owned the land.

Relevant Provisions of the City of York Council Members' Code of Conduct

Paragraph 3(1) – duty to treat others with respect

Paragraph 3(2) – duty not do anything which may cause the Council to breach any equality enactment

Paragraph 3(3) – duty not bully or intimidate any person, or attempt to bully or intimidate them

Paragraph 3(4) – duty not do anything which compromises the impartiality of anyone who works for or behalf of the Authority, or do anything that is likely to compromise their impartiality

Paragraph 3(7) – duty not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute

A copy of the complaint can be found at Annex 1 and the Code of Conduct can be found at Annex 2, attached to this report.

The Investigation

On 12th January 2021 I was instructed by the Monitoring Officer to conduct an investigation into the complaint.

Documents which were considered

- a) Letter from Complainants to the Council's Monitoring Officer dated 3rd January 2020 making the Complaint
- b) Email from Cllr Waters dated 15th January setting out his recollection of the background and his full responses to the allegations made in the Complaint.
- c) Emails which Cllr Warters had sent to:
 - (i) Cllr Rowley (and officers in the Council's highways and Property Services departments) dated 30th November regarding ownership of the land, including an email forwarded to Cllr Warters by Cllr Rowley in which an officer in Property Services confirmed to Cllr Rowley that Land Registry records indicated that the land is owned by the Complainants.
 - (ii) Various Council officers referring to the Complainants dated 28th December 2020
 - (iii) Officers in the Highways Dept (streetworks team) of the Council dated between 18th December and 15th January in which he was seeking advice as to whether the grassed area, including the land, was classed as highway verge and whether the surface was vested in the Council as local highway authority

On 15th and 16th January Cllr Waters provided various emails in/to which he:

- (a) Set out his recollection to the background of the matters which he considered preceded/led to the erection of the fencing
- (b) Detailed his response to the allegations made against him in the Complaint from his recollection of the telephone conversation
- (c) Set out his attempts to ascertain from officers in the Council the factual position about ownership of the Land following the telephone conversation, including forwarding copies of emails he had sent to Council officers seeking this information

Cllr Warters stated that:

- (1) Following election as Ward Councillor in 2011 he became involved in 'long running problems' caused to neighbouring residents by the operation of a doctors/GP surgery then located at 289 York Road (run by previous owners of the Complainants' business premises) involving doctors' and patients' cars allegedly being parked in a manner preventing/hindering neighbouring residents in accessing/egressing their properties.
- (2) The grassed area that the land forms a small part of (which Cllr Warters referred to as the verge) has been maintained by the Council for many years to a very tidy standard

- (3) He stated that he understood from neighbouring residents that following the acquisition of 289 York Road by the Complainants and their operation of York Foot Clinic, the Complainants and their customers had regularly:
- (i) Parked vehicles in a manner preventing/hindering neighbouring residents in accessing/egressing their properties.
 - (ii) Parked vehicles on the verge, causing damage to the condition of the verge and driving over the kerb separating the verge from the adjoining highway
- (4) On the evening of 27th November, after returning from work, Cllr Warters said that he listened to phone messages received on his phone from the Complainants and Cllr Rowley – following which he states that:
- (i) He replied to Cllr Rowley.
 - (ii) He tried to speak to the Complainants and left a voicemail on their phone .
 - (iii) He sent an email at 9 p.m. to officers in the streetworks team of the Council's Highways Department asking for clarification regarding ownership of the verge including the Land, namely whether it formed part of the adopted highway owned by the Council as highway authority or if instead the land is owned by the Complainants, given the proposal for the Council to instruct a contractor to erect fencing to protect the verge from parking of vehicles as he said this was requested by all of the residential households along this section of Hull Road.
- (5) During the telephone conversation with the Complainants on 28th November:
- (i) Cllr Warters said that he 'had no aggression or anger when talking with the complainant'. Cllr Warters denied saying to the Complainants that he had "fought bigger people than you and stopped bigger issues than this". Cllr Warters reported that the telephone conversation was 'perfectly amiable to start with' and that it was the Complainant (Mr Moore) who became increasingly 'animated and aggressive when realising that I was not going to be a pushover for the complainant to get his way'.
 - (ii) He strongly denied ever stating "it's not my money" in response to the Complainants stating that the erection of the fencing was a waste of money. Cllr Warters stated that his response to the Complainants was to say "I was happy to see the ward money being spent on supporting the residents on this section of the road who had put up with so much over the years". He also denied ever stating to the Complainants that he had "better things to do with his time than deal with people like you". Cllr Warters said that he informed the Complainants that he had already spoken with the Council's contractor the previous evening (27th November) to instruct the contractor not to erect fencing on the part of the grass verge opposite Number 289. He states that he explained to the Complainants that he "[has] a million and one things to do in a morning before I finally get out to work". He said the reason why he declined the Complainants' invitation to attend a meeting between them and Cllr Rowley on 30th November was that, at the point of the telephone conversation, he did not know the legal position as to whether the land was owned by the Council as highway authority or was in the private ownership of the Complainants, so considered any meeting/further discussion should await him obtaining clarification of the ownership position from Council officers.

- (iii) Cllr Warters denied ever stating in the telephone conversation that he had 'already denied the Complainants' application for a dropped kerb and would deny any future applications that [the Complainants] would make'. he said he was aware of the process for determining applications for vehicle crossing/dropping of kerbs and said that he knew that such applications are not a matter for him to make the determination on. Cllr Waters said that he simply informed the Complainant/Mr Moore that he was aware they had previously unsuccessfully applied for permission to drop the kerb and park vehicles on the land
- (iv) Although the Complainants stated at the end of the telephone conversation that they would forward to him documents which they told him showed they own the land, Cllr Warters said that he never received the documents from the Complainants. He denied failing to listen to the Complainants

Interviews and consideration of evidence

Councillor Warters (Subject Councillor)

Cllr Warters was interviewed on 3rd February 2021. In that interview Cllr Warters:

- (a) Confirmed that he spoke with the Complainants by telephone on 28th November 2020;
- (b) Disputed the allegations made against him by the Complainants in the Complaint letter, stating that those allegations were untrue;
- (c) Denied behaving in the manner alleged by the Complainants in the Complaint letter during the telephone conversation, in particular denying:
 - (i) Making any of the statements attributed to him by the Complainants in the Complaint letter;
 - (ii) That he had behaved in an aggressive or bullying manner towards the Complainants;
 - (iii) He confirmed that the parties to the telephone conversation were Cllr Warters and Jason Moore;
- (d) Said that no-one else was present at his end during the telephone conversation and, as far as he knew, no-one else was with Mr Moore so Cllr Warters believed there were no witnesses to the telephone conversation and he did not have a recording of the telephone conversation.

Jason Moore and Keira Moore (Complainants)

On 3rd February 2021 Jason Moore and Keira Moore (the Complainants) were interviewed. A friend of theirs – Arif – was also present during the telephone interview. In that interview the Complainants:

- (a) Confirmed their account of the telephone conversation detailed in their Complaint letter;
- (b) Repeated the allegations against, and complaint against, Cllr Waters set out in their Complaint letter;
- (c) Confirmed that the parties to the telephone conversation were Cllr Warters and Jason Moore;
 - Mr Moore said that no-one else was present at his end during the telephone conversation and, as far as he knew, no-one else was present at Cllr Warters' end either. Therefore Mr Moore believed there were no

witnesses to the telephone conversation and he did not have a recording of the telephone conversation;

- (d) Said they had recently (on 26th January) received an email from a Council officer (in the Streetworks team of Network Management) which appended various emails including some emails which had apparently been sent by Cllr Warters to various Council officers referring to the Complainants, in particular an email that Cllr Warters had seemingly sent (at 15:44 hours on 28th December 2020);

The Complainants forwarded that email to me during the Interview, they said that they wanted me to include this email as part of their complaint. (Its contents have been sent out at the top of the report).

Mrs Moore said that she and her husband were upset and annoyed at the tone and content of this email, in particular their contention that in it Cllr Warters appeared to say the Moores wanted to “stick two figures up” to local residents and stated that he would be advising neighbouring local residents to park their cars on the road in front of the ‘verge’ to prevent the Moores driving onto the ‘verge’.

Mrs Moore said that she and her husband have good/friendly relations with most of the local residents living near their business premises but they had experienced aggression and hostility from two nearby residents. Mrs Moore said that she and her husband were not sure if this behaviour is being encouraged by Cllr Warters.

She said they try to get their patients to park their vehicles in a manner that does not inconvenience local residents. The Complainants said Cllr Warters had not sought their point of view in relation to parking. Mrs Moore said she and her husband do not park on the grass land opposite York Foot Clinic for any protracted period of time on any occasion – sometime Mrs Moore temporarily reverses her car onto the land from the driveway in order to let their other podiatrist reverse out and drive away but Mrs Moore then parks her car back on the driveway again. She and her husband said they could not understand why Cllr Warters seemingly had such a problem with her occasionally temporarily driving onto the land given that they say the land is owned by them, not the Council. They could not understand the reason for Cllr Warters’ alleged comments/manner in the telephone.

No Independent Witness

In the separate respective interviews with Cllr Warters and Mr & Mrs Moore, both parties confirmed that there were no independent witnesses to the telephone conversation. When Cllr Warters telephoned Jason Moore’s mobile phone on 28th November, the only parties to the telephone conversation were Cllr Warters and Jason Moore.

Finding and conclusion

The Complaint relates primarily to the content of a telephone conversation between the Complainants and Cllr Warters to which were there no independent witnesses and of which no recording is available. Therefore it has been very difficult to reach a clear unequivocal finding/conclusion regarding what was said by Cllr Warters to Mr Moore during the telephone conversation because the Complainants and Cllr

Warters have given fundamentally different/conflicting accounts of what was said by, and the conduct/manner of, Cllr Warters during the telephone conversation.

However, when viewed against the background of the content of the email sent by Cllr Warters to various persons at 15:44 hours on 28th December 2020, Cllr Warters is seeking advice from the Council as to ownership of the land, which indicates that he is wanting a resolution on this point. The email does give me a flavour of perhaps his feelings towards the owners of the Foot Clinic, using terms such as “just simply to stick two fingers up to the residents in that area” and “my advice to residents will be to park their cars on the road to prevent this manoeuvre”. Such a view is not helpful in resolving such a situation and there is a chance that this view could have spilled out during the telephone conversation. If Cllr Warters did have this view when he spoke with Mr Moore than his manner/tone during the conversation may have been perceived to be hostile/aggressive towards the Complainants. That said, as I have already stated, I am faced with a situation whereby differing accounts have been provided and I cannot prove/reach a definitive conclusion one way or another what was said during the telephone conversation.

My finding/conclusion is that whilst it is likely that the views of Cllr Warters in the email did remain present during the telephone conversation, I cannot conclude one way or another whether the conversation Cllr Warters had with Mr Moore did breach the Code of Conduct. I have been asked to consider the email within this context and it is clear that Cllr Warters sent the email in his capacity of Ward Councillor, and the enquiry was Council business, therefore, the contents of the email does require consideration. Whilst the email was not initially sent to the Complainants, they did receive a copy when an Officer was attempting to deal with the matter.

On considering the email, in sending that email, I find that Cllr Warters failed to treat the Complainants with respect (Clause 3(1) Code of Conduct). I do not find that any other part of the Code of Conduct was breached.

In mitigation of my above finding, I consider that Cllr Warters took the following steps to assist the Complainants/resolve the issue they had contacted him about:

- (i) When he became aware on the afternoon of Friday 27th November that the Complainants objected to the erection of fencing on the area of land in question opposite their business premises at 289 Hull Road, he contacted the Council’s contractors to instruct them to halt erection of fencing on it.
- (ii) After the telephone conversation, he made significant efforts to ascertain from Council officers whether the grassed land opposite 289 Hull Road was classed as adopted highway (and therefore vested in the Council as local highway authority) or was in the private ownership of the Complainants.

Gerard Allen - Investigating Officer
11th March 2021

Annex B – City of York Council Members' Code of Conduct

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Part 1: General Provisions

Introduction

1. (1) This Code sets out the standards of behaviour required of you whenever you are acting as a Councillor of the City of York Council.
- (2) This Code also applies to any person appointed as a co-opted member of the City Council or any of its Committees when acting as such.
- (3) A person will be acting as a Councillor or as a co-opted member when:
 - Present at formal meetings of the Council.
 - Performing duties entrusted to them by the Council
 - Performing functions associated with the ordinary role of Councillor – such as undertaking casework for residents
 - Otherwise acting, claiming to act or giving the impression that they are acting as a Councillor

But a person will not be acting as a Councillor or as a co-opted member when acting as a trustee or director of another organisation even where the appointment to that role was made by the Council.

- (4) The Code has been adopted by the City Council and is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Definitions

2.
 - (1) A “co-opted member”, is a person who is not an elected member of the authority but who –
 - (a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority and

in either case is entitled to vote at any meeting of that committee or sub-committee

- (2) "meeting" means a meeting of the Council or of any committee, sub-committee, joint committee or joint sub-committee of the authority or of the Executive or any committee of the Executive.
- (3) A "sensitive interest" is one where you consider that disclosure of the details an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees.

General Duties as to Conduct

3. (1) You must treat others with respect.
- (2) You must not do anything which may cause the Council to breach any equality enactment.
- (3) You must not bully or intimidate any person, or attempt to bully or intimidate them.
- (4) You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Authority, or do anything that is likely to compromise their impartiality.
- (5) You must not disclose information which is confidential, unless:
- (a) You have the permission of a person authorised to give it; or
- (b) You are required by law to disclose the information; or
- (c) You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or

- (d) The disclosure is reasonable; and is in the public interest; and is made in good faith.
- (6) You must not prevent another person gaining access to information which that person is entitled by law.
- (7) You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.
- (8) You must not use your position as a Councillor improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.
- (9) When you use or authorise the use by others of the resources of the Council you must:
 - (a) abide by the Council's reasonable requirements; and
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (10) You must have regard to relevant advice given by the Council's Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.

Part 2: Interests**Disclosable Pecuniary Interests*****Registration of disclosable pecuniary interests***

4. (1) Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'. These will be included in the register of interests which is published on the Council's website

Definition of disclosable pecuniary interests

- (2) A 'disclosable pecuniary interest' is an interest of a kind described in the first schedule to this Code. An interest is disclosable if the interest is of yours or of your partner. Your partner means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Non participation in items of business in the case of disclosable pecuniary interest

- (3) Where a matter arises at a meeting which relates to one of your disclosable pecuniary interests,
- (a) You may not participate in any discussion of the matter at the meeting.
 - (b) You may not participate in any vote taken on the matter at the meeting.
 - (c) If the interest is not registered, you must disclose the interest to the meeting.
 - (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition, Standing Orders require you to leave the room where the meeting is held while any discussion or voting takes place.

Non participation in individual executive decision making in case of disclosable pecuniary interest

- (4) Where an Executive Member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Executive Member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

Notification of Interests

5. (1) In addition to the disclosable pecuniary interests you must, notify the Monitoring Officer of any interests you have of a kind described in the second schedule. You must make that notification within 28 days of this Code coming into effect or of you becoming a Member or co-opted Member if that is later.
- (2) You must notify the Monitoring Officer of any changes to these interests or of any new interests within 28 days of becoming aware of them.

Disclosure of Interests

6. (1) You have a personal interest in any business of your authority where it relates to or is likely to affect you, a body named in the second schedule or any person with whom you have a close association.
- (2) If you are present at a meeting and you have a personal interest in any matter to be considered or being considered at the meeting:
 - (a) If the interest is not registered, you must disclose the interest to the meeting.
 - (b) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

-
- (3) If you have a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it would be likely to prejudice your judgement of the public interest then you have a prejudicial interest. This is subject to the exceptions set out in paragraph 6.4.
- (4) You do not have a prejudicial interest in any business of the authority where that business:
- (a) does not affect your financial position or the financial position of a person or body named in the second schedule;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in the second schedule; or
 - (c) relates to the functions of your authority in respect of;
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

-
- (5) A member with a prejudicial interest must leave the room during the debate and voting on the matter in question.

Sensitive Interests

7. (1) If you have a sensitive interest which is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.
- (2) If you are required to declare a sensitive interest at a meeting you need only declare the fact of the interest and not the details of the interest itself.

Dispensations

8. (1) The Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if he or she has an disclosable pecuniary interest or a prejudicial interest. The Council may grant such a dispensation if:
- It believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or
 - considers that without the dispensation the representation of different political groups would be so upset as to alter the likely outcome of any vote relating to the business
 - It is in the interests of the inhabitants in the Council's area to allow the member to take part; or
 - It is otherwise appropriate to grant a dispensation.
- (2) The Council has granted the Monitoring Officer in consultation with the Chair of the Joint Standards Committee the power to grant dispensations. These can only be granted following a written request from the Member and the existence of and reason for the dispensation should be recorded in the minutes of the meeting.

First Schedule – Interests which are Disclosable Pecuniary Interests

<i>Interest</i>	<i>Description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to your knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial</p>

	interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and (b) either— i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“relevant period” means the period of 12 months ending with the day on which you give a notification for the purposes of section 30(1) of the Act;

“relevant person” means you or any your partner as defined in paragraph 4.2

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000() and other securities of any description, other than money deposited with a building society.

Second Schedule – Other Interests

1. Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
2. Any body —
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
3. Any person from whom you have received the offer of a gift or hospitality with an estimated value of more than £50 (whether or not you accept the offer) which is attributable to your position as an elected or co-opted member of the Council.

CITY OF YORK COUNCIL STANDARDS COMMITTEE HEARING PROCEDURE

General Matters

1. In this procedure the term “interested parties” is used to cover the complainant, the subject member and the investigating officer. The interested parties will all be invited to attend the hearing as potential witnesses.
2. The Independent Persons will also be invited to attend the hearing in an advisory, non-voting capacity. Their views will be sought as to whether the evidence establishes a breach of the code of conduct and, if so, as to what if any penalty should be imposed.
3. The Hearing Panel will be made up of members of the Standards Committee and there will normally be three members. The Panel will be supported by the Monitoring Officer or his representative and a democratic services officer.
4. The meeting will be open to the press and public unless confidential or exempt information is likely to be disclosed. The Standards Committee considers that in general the public interest in seeing that complaints relating to Councillors are handled properly will outweigh any considerations relating to the privacy of the Councillor concerned but each case will be considered on its own merits including consideration of the privacy of other parties.
5. The hearing will normally follow the procedure set out below but the Chair has the discretion to vary it at any time. Such a variation may be considered where, for example, the Chair believes that doing so will be in the interests of fairness or help in establishing the facts of the case.
6. It will not usually be necessary for the Subject Member to be represented at a hearing but he or she may choose to arrange such representation which may be by a solicitor, barrister or another person.
7. The Panel may take legal advice at any time during the hearing or during its deliberations. The substance of any advice given to the Panel will normally be shared with the parties.

Preliminary procedures

8. Prior to the hearing commencing the Panel may meet privately to review the material presented and to agree the main lines of enquiry.
9. At the start of the hearing, the Chair will arrange introductions of the Panel, its Officers, the Independent Persons and the interested parties. The Chair will briefly explain the procedure which the Panel will follow in the conduct of the hearing. The Chair will confirm that each interested party has seen the final report of the investigating officer and has had the opportunity to engage in the pre hearing procedures.
10. The Monitoring Officer will identify whether the pre hearing procedures have identified any significant disagreements about the facts contained in the Investigating Officer's report. The Panel will record the agreed facts and establish the facts in dispute which they will be required to rule upon.
11. If a party raises an issue which has not been raised previously then that party shall be required to give a full explanation to the Panel as to why it was not raised earlier. The Panel may then:
 - a. Consider whether or not to allow the issue that has been raised to be dealt with at the hearing
 - b. Consider whether the hearing should be adjourned for further investigations to take place.

Determining factual disputes

12. If there are disputed facts which the Panel consider relevant to establishing whether the Code has been breached or as to the seriousness of the breach then, the Panel will adopt an inquisitorial approach in establishing the facts. The Chair will invite members of the Panel to ask questions of the interested parties or any other potential witness present. The Monitoring Officer may also ask questions.

13. Once a witness has answered questions from the Panel then the Chair will ask the interested parties whether there are other issues which ought properly to be raised with the witness. The Chair (or another Member) may put any such issues to the witness him or herself or may allow the relevant party to ask questions directly.
14. The Panel must reach a decision as to the facts it finds to be proven. The Panel must also make a decision as to whether the proven facts (including those which are agreed) show a breach of the code of conduct. Depending on the complexity of the case the Panel may consider each of those issues separately or deal with them together. In either case the Chair will invite the parties to make representations on each matter before the Panel reaches its decision.

Panel deliberations

15. When the Panel is considering its finding of facts and whether those facts amount to a breach of the Code of conduct it will do so in private but in the presence of the Monitoring Officer, the Independent persons and the Democratic Services officer.
16. At the conclusion of the Panel's deliberations, the Chair will publicly announce the Panel's findings as to the facts and as to whether those facts show a breach of the code of conduct. The Panel will give reasons for their findings. It will be normal practice to share the substance of any advice given by the Monitoring Officer and Independent persons at this stage.

Determining Sanctions

17. If the Panel concludes that the Subject Member has failed to comply with the Code of Conduct, the Chair will invite representations from the interested parties as to what action, if any, it should take.
18. The Panel will then consider whether to impose a sanction, and, if so, what sanction to impose and when that sanction should take effect. It will do so in private but in the presence of the Monitoring Officer, the Independent persons and the Democratic Services officer.
19. The sanctions available to the Hearings Panel are to –


- Censure the Councillor;
 - Formally report its findings to the City Council or Parish Council for information;
 - 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 Panels or Sub-Committees of the Council;
 - Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - Recommend to Council that the Leader be removed from Office (if it is the Leader' conduct that is being considered)
 - Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;
 - 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]*;
 - 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.
20. 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.
21. The Chair will publicly announce the decision of the Panel. The substance of any further advice given by the Independent Person and Monitoring Officer will also be shared. Written notice of the findings of the Panel will be given as soon as is reasonably practicable to the Subject Member. They will also be placed on the

council's website. If the complaint was against the Subject Member as a parish councillor, written notice of the findings of the Panel will be sent to the clerk to the parish council.

Other action

22. The Panel may also consider making any recommendations to the Council concerned with a view to promoting higher standards of conduct among its members.

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City of York Council Standards Committee	
Pre Hearing checklist	
Complainant	
Subject Member	Councillor
Investigating Officer	
Do you intend to attend the proposed hearing to give evidence or make representations	
Yes/No	
Do you wish to be represented at the hearing by a solicitor, barrister or another person.1	
Yes/No	
If so by who?	
<i>Name of representative and capacity in which they act: e.g. solicitor, friend, fellow Councillor</i> ADIF KHALFE - FRIEND	
Do you wish the whole or any part of the hearing to be in private?	
Yes/No	
If yes please explain why2	

1 Although there has to be a degree of formality to the proceedings of the committee it will be unusual for subject members to be represented. The procedure is not adversarial. The Committee will act in an inquisitorial manner to ensure that the circumstances of the case are fully understood.

2 The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Council's proper officer will determine whether papers should be publicly available and the Hearing Sub Committee will determine whether the meeting or any part of it should be in private.

Do you wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public?
Yes/No <input checked="" type="radio"/>
If yes please explain why³
Do you disagree with any of the <u>facts</u> found by the investigating officer as set out in his her report?
Yes/No <input checked="" type="radio"/>
If yes please set out briefly the facts that you dispute and your view as to the true factual position

³ The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Council's proper officer will determine whether papers should be publicly available and the Hearing Sub Committee will determine whether the meeting or any part of it should be in private.

Do you believe that witnesses should be called to the Hearing
Yes/No <input checked="" type="radio"/>
If yes please identify the witnesses who you wish to be called and briefly identify the issues that they will be able to give evidence about⁴

⁴ The Monitoring Officer and Chair will consider whether any witnesses you name are likely to be able to give evidence which will be of value to the Hearing Panel. If they are then those witnesses will be invited to attend. The Panel cannot compel the attendance of any witness.

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Antonelli, Rachel

From: Mark Warters [REDACTED]
Sent: 22 July 2021 10:01
To: Berry, Janie; Antonelli, Rachel
Cc: [REDACTED]
Subject: Hearing Checklist.doc
Attachments: Hearing Checklist.doc

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Morning Janie/Rachel,

As it's now 15 working days since you allowed me to share the complaint against me with potential witnesses I now fill in the checklist as required.

Do I intend to Attend - Yes.

Am I to be represented - No.

Whole or part of the hearing in private - No the whole hearing should be public.

Report to be withheld - No.

Do I disagree with the facts - I have previously provided a long and detailed statement straight after receipt of the complaint that fully explains my position regarding the nature of the complaint and the facts I disagree with. I have also entered into correspondence highlighting the situation whereby an unsubstantiated complaint based on a telephone call can ever reach this stage because the facts can never be established.

Do I intend to call witnesses - Yes.

No witnesses can comment on the content of the telephone conversation that the complaint centres around as obviously there are no witnesses to the call, however the following witnesses will be able to impart useful information as to the background of the matter that has led to the complaint, useful information as to the complainants character and to rebut untrue statements in the complainants statement that do not relate directly to the telephone call.

Witnesses;

Cllr. M. Rowley.

Councillor Rowley referred at an Osbaldwick Parish Council meeting to having taken a telephone call from the complainant to which he and his wife who heard the call were disgusted as to how he was spoken to by the complainant in my case, the telephone call related to the Hull Rd Foot Clinic.

Councillor Rowley was also present when the complainants and their solicitor attended an in person Osbaldwick PC meeting at which he had to intervene to ask Mr Moore not to be so aggressive, the attendance of the complainants was in relation to a planning application submitted by the Foot Clinic.

Given Councillor Rowley's role as Chair of JSC I would be expecting a written statement and no other involvement in this matter.

Emma Leonard, Highways Development Control.

Emma Leonard will be able to provide useful background as to the ownership/legal aspects of the verge opposite the Hull Rd. Foot Clinic and hopefully such background will demonstrate that the facts as I understood them and explained to the complainant on the phone were correct and reasonable.

I would expect a written witness statement to suffice.

Mr Keith Harrison of [REDACTED]

Mr Harrison has agreed to provide a statement in response to the untrue remarks in the complainants statement with regard to the situation on this section of Hull Rd. and to the complainants remarks about the neighbours.

Mr Harrison has agreed to attend the hearing to answer questions and represent other Hull Rd. residents who will be providing written statements on these matters.

Mr. Neville Elsegood of [REDACTED].

Mr Elsegood will be providing a written statement.

Mrs. Shirley Horner of [REDACTED].

Mrs Horner will be providing a written statement.

Mr Kevin Wakefield on behalf of Mrs Joyce Wakefield of [REDACTED].

Mr Wakefield will be providing a written statement.

Mr William Old of [REDACTED].

Mr Old will be providing a written statement.

I look forward to you acknowledging this email and providing some indication as to the likely date of the hearing and the date when written witness statements need to be submitted.

Mark.

Regards,

Cllr. Mark Warters.
[REDACTED]