

Standards Committee

- To:** Mrs Christine Bainton (Independent Member, in the Chair)
Cllrs Horton (Vice-Chair), Waudby, Hudson and Taylor (CYC Members)
Mr A L Dixon, Mr M R Hall and Mr D Wilson (Independent Members)
Cllrs Crawford, Mellors and Forster (Parish Council Members)
- Date:** Friday, 28 August 2009
- Time:** 3.00 pm
- Venue:** The Guildhall, York

AGENDA

- 1. Declarations of Interest**
At this point, members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.
- 2. Minutes** (Pages 3 - 8)
To approve and sign the minutes of the meeting of the Standards Committee held on 26 June 2009.
- 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 Standards Committee, may do so. The deadline for registering is **5:00 pm on Thursday 27 August 2009.**

4. Standards Board for England - Change of Name

To receive a verbal update from the Chair on the decision of the Standards Board for England to change its operating name to 'Standards for England'.

5. Full Council - Feedback from Chair

To receive feedback from the Chair on the meeting of Full Council which she attended on 9 July 2009.

6. Review of the Protocol on Officer/Member Relations: Reference Back from Council (Pages 9 - 26)

This report asks members to re-consider the draft Protocol on Officer / Member Relations, which has been referred back to the Standards Committee by Full Council for further revisions.

7. The Local Government Ombudsman's Annual Review Year Ending 31 March 2009 (Pages 27 - 42)

This report highlights the recently received Annual Review from the Local Government Ombudsman, which sets out data on complaints against City of York Council that have been processed by the Ombudsman during the 12 Months up to 31st March 2009.

8. Member Development Steering Group (Pages 43 - 50)

This report informs members of the formation of a Member Development Steering Group, with a reporting line to the Standards Committee, and gives details of the Group's work to date.

9. Guidance on 'other action' (Pages 51 - 66)

To discuss any issues arising from new guidance on 'other action' recently issued by the Standards Board for England and circulated to members of the Standards Committee on 2 July 2009. A copy of the guidance is attached for reference.

10. Induction Pack for Independent Members

To discuss whether an induction pack should be provided for new Independent members of the Standards Committee and, if so, what it should contain.

11. Review of Work Plan

(Pages 67 - 68)

To review the Standards Committee's work plan for the 2009/10 municipal year. The latest revised version of the plan is attached.

12. Any other business which the Chair decides is 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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- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
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If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

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Holding the Executive to Account

The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

Who Gets Agenda and Reports for our Meetings?

- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
- Public libraries get copies of **all** public agenda/reports.

City of York Council

Committee Minutes

| | |
|---------|---|
| MEETING | STANDARDS COMMITTEE |
| DATE | 26 JUNE 2009 |
| PRESENT | MRS BAINTON (INDEPENDENT MEMBER, IN THE CHAIR) CLLRS HORTON (VICE-CHAIR), WAUDBY, HUDSON AND TAYLOR (CYC MEMBERS) MR DIXON, MR HALL AND MR WILSON (INDEPENDENT MEMBERS) CLLRS CRAWFORD, MELLORS AND FORSTER (PARISH COUNCIL MEMBERS) |

PART A - MATTERS DEALT WITH UNDER DELEGATED POWERS**1. DECLARATIONS OF INTEREST**

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda. No interests were declared.

2. MINUTES

RESOLVED: That the minutes of the Standards Committee meeting held on 13 March 2009 be approved and signed by the Chair as a correct record.

3. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

4. MEETINGS WITH LEADER AND CHIEF EXECUTIVE

The Chair provided an update on the outcome of her recent meeting with the Leader and Chief Executive of City of York Council.

Matters raised at the meeting had included:

- A briefing on the Standards Committee's annual report, in particular the low number of complaints received by comparison with other authorities, and potential problems around the setting up of joint committees under the new Regulations.
- The new assessment framework and how it had been embedded, including the recruitment of new members and the need to ensure promotion of the Committee's work through ward committees etc.
- The moral and ethical framework around the Code of Conduct, including the need to clarify for members of the public when a

councillor was and was not acting as a councillor, and other behavioural matters to consider that did not fall within the Code.

- Future plans for the Standards Committee.

Members discussed the options for promoting the Standards Committee and its work via the Press and agreed that an article or feature with input from the Chair would be the best method, if this could be arranged.

RESOLVED: That the report be noted and that the Monitoring Officer speak the Council's Head of Communications about the possibility of arranging an interview with the Press newspaper.¹

REASON: For information and to promote the work of the Standards Committee.

Action Required

1. Liaise with Head of M & C

GR

5. REVIEW OF THE PROTOCOL ON OFFICER / MEMBER RELATIONS

[See also under Part B Minutes]

Members considered a report which informed them of the latest position on the review of the Council's Protocol on Officer / Member Relations.

On 23 January 2009, Members had approved a revised draft of the Protocol, subject to some additional amendments and further consultation. That consultation had now been completed, resulting in no responses other than one from Human Resources that welcomed the revised Protocol. Members were therefore invited to recommend the revised Protocol, as amended in accordance with their comments at the January meeting, to Full Council for approval.

Members considered arrangements for reviewing the effectiveness of the Protocol once it had been approved by Council. Given that the original review had arisen from the Audit Commission's Ethical Governance audit, it was suggested that a similar audit be carried out in-house once the new Protocol had been in place for a suitable length of time.

RESOLVED: That the Monitoring Officer contact the Audit Commission to explore the possibility of using elements of their Ethical Governance audit to conduct an in-house review of the effectiveness of the new Protocol.¹

REASON: To ensure that the implementation of the new Protocol is properly followed up.

Action Required

1. Contact the Audit Commission

GR

6. ANNUAL REPORT OF STANDARDS COMMITTEE 2008/09

Members considered a draft version of the Standards Committee's Annual Report to Council for 2008/09, prepared by the Chair and the Monitoring Officer, prior to its submission to the next meeting of Full Council.

- RESOLVED: (i) That the content of the Annual Report be noted.
- (ii) That the section on the Future work plan be amended to include the work on following up the Ethical Governance review, as discussed in the previous item (Minute 40 refers).
- (iii) That, subject to this amendment, the report be approved for inclusion on the agenda of the next meeting of Full Council, on 9 July 2009.

REASON: To inform Council of the Committee's work in ensuring that ethical standards are maintained.

7. NEW REGULATIONS AFFECTING STANDARDS COMMITTEES

Members considered a report which informed them of the contents of the New Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255), which had come into force on 15 June 2009.

The Regulations enabled the Standards Board for England to suspend the functions of a local Standards Committee where that committee failed to perform its functions satisfactorily and to discharge those functions itself or arrange another authority's Standards Committee to discharge them. They also gave authorities power to establish Joint Standards Committees and extended the powers of Standards Committees to grant dispensations to allow members to speak and vote upon matters in which they had a prejudicial interest.

Further details of these provisions were set out in 3 to 14 of the report. In respect of the power to grant dispensations, the Regulations amended an incorrect reference in the previous regulations to the proportionality rules and specified that a dispensation could be granted where the business of the authority would be impeded because the absence of members due to prejudicial interests would upset the political balance of the meeting so as to prejudice the outcome of voting. The re-drafted text suggested that a dispensation on this ground would only be granted where there was clear evidence that voting on the item would be conducted on strict party lines.

RESOLVED: (i) That the Monitoring Officer advise all Members of the new grounds for application for a dispensation.¹

REASON: To ensure that Members are fully informed of the changes.

(ii) That the Monitoring Officer make tentative enquiries of the standards committees of the Police and Fire authorities within the vicinity, to establish whether any are considering exploring the potential for joint working, and report the results back to the Standards Committee.²

REASON: So that consideration can be given to establishing a Joint Standards Committee under the new Regulations, if appropriate.

Action Required

- | | |
|--|----|
| 1. Inform all Members of the change | GR |
| 2. Make enquiries of Fire and Police authorities re Joint Committees | GR |

8. ANNUAL STANDARDS ASSEMBLY

Members received information on the 2009 Annual Assembly of Standards Committees, to be held in Birmingham on 12-13 October and were invited to consider whether to send a representative to this event.

The Monitoring Officer advised that there was no specific budget for this event and that it was for Members to take a view on who needed to attend and the responsibility of the Monitoring Officer to secure any funding required.

RESOLVED: (i) That the Chair attend on both days of the Annual Assembly and that Cllr Horton and Mr Hall attend on the first day only.

(ii) That any further requests to attend this event be passed on to the Monitoring Officer or the Principal Democracy Officer.

REASON: So that York is properly represented at the Annual Assembly.

9. REVIEW OF WORK PLAN

Members reviewed the work plan for the Standards Committee for the 2009/10 municipal year.

RESOLVED: (i) That the following amendments be made to the draft work plan for 2009/10 circulated with the agenda:¹

- a) Meeting on 28 August 2009 – add:
 - Guidance on ‘Other Action’
- b) Meeting on 23 October 2009 – add:
 - Review of Planning Code of Good Practice

- c) Meeting on 18 December 2009 – add:
 - Follow up to Ethical Governance review – report on results of Monitoring Officer’s discussions with the Audit Commission

 - d) Meeting on 22 January 2010 – remove Annual Report to Council and add:
 - Report on promoting the work of the Standards Committee
 - Reports on Members’ and Officers’ Registers of Gifts and Hospitality (including details of current practice throughout the Council on the Officers’ Register)
- (ii) That the following items be noted for future inclusion on the 2010/11 forward plan:
- Member Declarations of Interests (annual) – June 2010
 - Results of the Monitoring Officer’s enquiries regarding Joint Committees – July 2010

REASON: To ensure an organised programme of work for the Committee.

Action Required

1. Amend work plan as agreed

GR

PART B - MATTERS REFERRED TO COUNCIL

10. REVIEW OF THE PROTOCOL ON OFFICER/MEMBER RELATIONS

[See also under Part A Minutes]

Members considered a report which informed them of the latest position on the review of the Council’s Protocol on Officer / Member Relations.

On 23 January 2009, Members had approved a revised draft of the Protocol, subject to some additional amendments and further consultation. That consultation had now been completed, resulting in no responses other than one from Human Resources that welcomed the revised Protocol.

Members were therefore invited to recommend the revised Protocol, as amended in accordance with their comments at the January meeting, to Full Council for approval.

RECOMMENDED: That Council approve the revised Protocol on Officer / Member Relations.

REASON: In accordance with the requirements of the Constitution.

C Bainton, Chair

[The meeting started at 3.00 pm and finished at 4.30 pm].



Standards Committee – 28 August 2009

Report of The Head of Civic, Democratic & Legal Services

Review of the Protocol on Officer/Member Relations

Reference Back From Council

Summary

1. The revised protocol was reported to council for approval at its meeting on 9 July. During the debate a councillor queried the wording of the new version and council agreed to refer the draft protocol back to the Standards Committee for consideration.
2. I attached the relevant part of the minutes of the council meeting (Annex A) and a further amended draft protocol which I hope addresses the issues raised at council.

Background

3. As a result of the findings of the Ethical Governance Health Check the Standards Committee decided that it would review the council's Member/Officer protocol. In doing so the Committee considered examples of other council's protocols and consulted widely with a range of consultees including the Group Leaders and Secretaries of the political groups. Only one response was received to the consultation and this came from an officer and was approving of the new version.
4. The comments of Cllr Pierce were focussed on one word in paragraph 3.2 of the draft protocol which lists what officers can expect from councillors. Included in the list is the phrase '*acceptance of professional advice*'. Cllr Pierce was of the view that this curtailed the right of councillors to challenge professional advice given by officers.
5. As the reluctance on the part of members, to accept professional advice from officers was one of the issues highlighted by the ethical health check report I am reluctant to suggest removing any reference to professional advice. However, I wondered whether replacing the 'acceptance of' with 'respect for', would be an acceptable compromise. I have included this in the revised draft and would welcome an indication from members of the Standards Committee as to whether that is an acceptable compromise.

6. In addition to the point made by Cllr Pierce during council I have also sought to make some changes to the wording of part 9 of the report which covers issues of access to information. The changes are intended to clarify some of the issues and ensure that the protocol accords with the legal requirements in this context. I hope that they will also be simpler to understand. The need for this amendment has arisen only recently when the Democratic Services Team were asked by a member, to review their practice in relation to the distribution of 'Exempt' papers.

Implications

7.

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|-----------------|--|
| Legal | <p>There are no legal implications arising from this report or the proposals it contains. There is no legal requirement that a local authority must have a member/officer protocol but it is almost universally the case that they voluntarily adopt such a document.</p> <p>Quentin Baker quentin.baker@york.gov.uk</p> |
| Financial | <p>There are no financial implications arising from this report or the proposals it contains.</p> |
| Human Resources | <p>There are no human resource implications arising from these recommendations.</p> |

Recommendations

8. I hereby recommend that the Standards Committee: -
- a) **Endorses the content of the revised draft protocol on Officer/Member relationships and refer the draft to the next available meeting of full council for re-consideration.**

Contact Details

Author:
Quentin Baker
Head of Civic Legal and Democratic Services

Chief Officer Responsible for the report:
Quentin Baker
Head of Civic, Legal and Democratic Services

Report Approved **Date** 31/07/09

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Title
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Specialist Implications Officer(s) *List information for all*
Implication ie Financial *Implication ie Legal*
Name *Name: Quentin Baker*
Title *Title*
Tel No. *Tel No.*

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

All

For further information please contact the author of the report

Background Papers:

Annexes:

Annex A – Extract from the minutes of the Full Council meeting on 9 July 2009
Annex B - Revised draft protocol with amendments in tracked changes

21. STANDARDS COMMITTEE

(i) Annual Report

Mrs Christine Bainton, the Independent Chair of the Standards Committee, presented the Annual Report of the Standards Committee for the Municipal Year 2008/09.

Mrs Bainton then moved receipt of the Annual Report and Cllr Horton seconded the motion and it was

RESOLVED: That the Annual Report of the Standards Committee for 2008/09 be received.

(ii) Protocol on Officer / Member Relations

Mrs Bainton then moved, and Cllr Horton seconded, the recommendation contained in Minute 10 of the Standards Committee meeting held on 26 June 2009 in respect of a revised Protocol on Officer / Member Relations.

Following a debate on this recommendation, Cllr Pierce moved, and Cllr Scott seconded, that the matter be referred back to the Standards Committee for further consideration, with particular reference to the wording at paragraph 3.2 of the revised Protocol.

On being put to the vote, Cllr Pierce's proposal was declared CARRIED and it was

RESOLVED: That the Protocol on Officer / Member Relations be referred back to the Standards Committee for further consideration.¹

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Annex B

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PART 5C - PROTOCOL ON OFFICER/MEMBER RELATIONS**1 Introduction and Principles**

- 1.1 The purpose of this Protocol is to provide a set of principles to guide Members and officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 This Protocol should be read in conjunction with the Members' Code of Conduct, Employees' Code of Conduct, the Council's Constitution, Whistle-blowing Policy and any guidance issued by the Standards Committee, Audit and Governance Committee and/or the Monitoring Officer.
- 1.3 Certain employees, e.g. Head of Paid Service, Monitoring Officer, Chief Financial Officer (Section 151 Officer) and the statutory Chief Officers have responsibilities in law over and above their obligations to the Council and its Members that they must be allowed to discharge.

2 The Relationship: General Points

- 2.1 Both Councillors and officers are servants of the public, and they are indispensable to one another. But their roles and responsibilities are different .
 - 2.1.1 Councillors are responsible to the electorate and serve only so long as their term of office lasts. Members are representatives of the ward constituents and they also develop policies which will be implemented by the officers.
 - 2.1.2 Officers are responsible to the Council as a whole, they are employed by and ultimately responsible to the Chief Executive as Head of Paid Service. Their job is to provide professional advice and support to relevant parts of the Council in developing and implementing the policies and decisions.
- 2.2 These are very different roles and this may in some circumstances give rise to tensions and, as such, it is essential that the working relationship between officers and Members is businesslike and founded upon mutual respect.
- 2.3 Member/officer relationships should be conducted in a positive and constructive way. Therefore it is important that any dealings between Members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influences on the other party.

3 Expectations

3.1 What can Members expect from officers:

- Political neutrality;
- A commitment to act in the interests of the Council as a whole and not to any one political group;
- A professional approach to the working relationship;
- An understanding of their role and its pressures;
- Timely response to enquiries;
- Professional advice;
- Confidentiality where appropriate;
- Courtesy and respect;
- Compliance with the Officers' Code of Conduct.

3.2 What can officers expect from Members:

- Understanding of the requirements of their roles and an appreciation of competing calls on their time;
- A partnership working approach;
- Courtesy and respect;
- Political leadership and direction;
- Not to be bullied or subjected to inappropriate pressure;
- Respect for their professional advice.
- Members shall act within the Code of Conduct at all times.

4 Specific Issues

4.1 Officer Advice and preparation of reports: – The provision of advice and the preparation of reports are central to the roles of many senior officers and they are under a duty to give their best advice in the interests of the Council as a whole. When carrying out these duties it is essential that they feel able to give full and frank advice even where this may not be supportive of a particular policy or decision promoted by a Member. Members must not seek to unduly influence the content of any report or try to persuade an officer to change their professional advice when drafting their reports.

4.2 Social contact between Members and officers:- Mutual respect between employees and Members is essential to good local government. Close personal familiarity between employees and Members that transcends the normal employer/employee relationship can potentially undermine Members' confidence in the political neutrality or even-handedness of an officer, and therefore, care should be exercised.

5 When Things Go Wrong

- 5.1 Procedure for Members:- From time to time the relationship between a Member and an officer may become strained for various reasons, including the tensions mentioned above. In such circumstances, it is essential that the Member should not raise such matters in a manner that is incompatible with the objectives of this Protocol. An officer has no means of responding to such criticisms in public. If a Member feels he/she has not been treated with proper respect, courtesy, or has any concerns about the conduct or capability of an officer he/she should raise the matter with the respective Head of Service/Assistant Director. The Head of Service/Assistant Director will then look into the facts and report back to the Member. If the Member continues to feel concern then he/she should report the facts to the appropriate Director, or if, after doing so is still dissatisfied, should raise the issue with the Chief Executive. Any action taken against an officer in respect of a complaint will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.
- 5.2 Where an officer feels that he/she has not been properly treated with respect and courtesy by a Member, he/she should raise the matter with his/her Head of Service/Assistant Director, Director or the Chief Executive as appropriate, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances the Head of Service/Assistant Director, Director or the Chief Executive will take appropriate action either by approaching the individual Member and/or Group Leader or by referring the matter to the Head of Civic, Democratic and Legal Services for advice on how to proceed.

6 Officer Support: Member and Party Groups

- 6.1 It must be recognised by all officers and Members that in discharging their duties and responsibilities, officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.

Party groups are a recognised part of local authorities and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality.

- 6.2 In providing this support to party groups certain points must be understood by both officers and Members:
- (a) Officer support must be limited to providing information and advice in relation to matters of a Council business. Officers must not be involved in advising on matters of party business. It is recommended that officers are not present at meetings or parts of meetings where matters of party business are to be discussed.

- (b) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
 - (c) Where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.
- 6.3 Special care needs to be exercised whenever officers are involved in providing information and advice to party groups or other meetings which include persons who are not Members of the Council or Elected Members. Such persons are not bound by the Members' Code of Conduct (in particular, the provisions concerning declarations of interest and confidentiality) and, for this and other reasons, officers may not be able to provide the same level of information and advice as they would to a Member only meeting.
- 6.4 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group, but officers must have regard to a Member's right of access to information and Council documents which are referred to in paragraphs 9.1 and 9.2 above. However the confidentiality of information discussed in the presence of an officer cannot be guaranteed in all cases as it may be subject to the Freedom of Information Act.
- 6.5 In relation to budget proposals;
 - (a) The administration shall be entitled to confidential discussions with officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of the Executive/Council meetings, whichever is the earlier;
 - (b) The opposition groups shall be entitled to confidential discussions with officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Executive/Council meetings, whichever is the earlier.
- 6.6 Any particular difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

7 Officer Support: The Executive

- 7.1 It is important that there should be a close working relationship between Executive Members and the officers who support and/or interact with them. However such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other Members and other party groups.
- 7.2 Whilst Executive Members will be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an officer will be under a professional duty to submit a report. A Director, Head of Service/Assistant Director will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report.
- 7.3 Under Executive arrangements, individual Members of the Executive may, in some situations, take decisions. The Council has put in place mechanisms to ensure that the individual Executive Member seeks advice from relevant Members and officers before making a decision with his/her delegated authority. This includes taking legal advice, financial advice and professional officer advice as well as consulting the Monitoring Officer where there is doubt about powers to act.
- 7.4 Officers will continue to work for and serve the Council as a whole. However, as the majority of functions will be the responsibility of the Executive it is likely that in practice many officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the officers. Officers must ensure that their political neutrality does not appear to be compromised.

8 Officer Support: Overview and Scrutiny

- 8.1 It is not the role of Overview and Scrutiny to act as a disciplinary tribunal in relation to the actions of Members or officers. Neither is it the role of officers to become involved in what would amount to disciplinary investigations on a panels behalf. This means:
- (a) Overview and Scrutiny's questioning about the conduct of individuals should be in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, not to imply criticism or blame;
 - (b) In these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview and Scrutiny may ask (but not require) him to do so.

- 8.2 Overview and Scrutiny should not act as a “Court of Appeal” against decisions or to pursue complaints by individuals, as other procedures exist for this. These are internal, eg the Corporate Complaints Procedure, and external/statutory, eg Local Government Ombudsman, Standards Board for England, or appeal to the Courts. However:
- (a) Overview and Scrutiny may investigate the manner in which decisions are made but should not pass judgement on the merits of a decision in individual cases;
 - (b) They can comment on the merits of a particular policy affecting individuals.
- 8.3 Wherever possible Overview and Scrutiny should provide written questions or details of indicative topics to someone invited to appear before a panel to ensure they have adequate time to prepare for the meeting. In addition, invitees ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel has previously indicated.

9 Members’ Access to Information and to Council Documents

9.1 Members need to have access to information held by the council in order to perform their roles but their rights to access are not absolute. The starting point is that Members have the same rights as any other person and, as such, they are entitled to copies of any published information held by the council. They can also make a request under the Freedom of Information Act 2000 if they wish.

9.2 Members also have additional legal rights to access information held by the council which would not normally be made public. They are given these extra rights of access in order to enable them to undertake their roles as councillors. However, care should be exercised in this regard as Councillors are only entitled to confidential information where they either, have a right under S.100 of the local Government Act 1972 or, where they can show that they have a ‘need to know’ the information in order to conduct their council duties.

S.100(F) LGA 1972

9.3 This provides that any document held by the council containing material relating to any business to be transacted at any meeting of the council, committee or sub-committee must be available for inspection by any member of the council unless it is deemed by the proper officer to fall within certain categories of ‘exempt’ information as defined by Schedule 12A to the Local Government Act 1972. This applies to all categories of exempt information except those under paragraph 3 (except to the extent that the information relates to proposed terms of a contract), and paragraph 6 of Sched 12A.

Need to Know

9.4 Even where the above statutory rights do not apply to the information in question the Member also has a common law right to inspect information which it is necessary for them to inspect in order to carry out their function as a councillor. This will normally cover all the information

9.5 In cases of doubt Members should approach the Head of Civic, Democratic & Legal Services for assistance.

(a) 9.2

9.4 The common law rights of Members are based on the principle that any Member has a right to inspect Council documents so far as his or her access to the documents is reasonably necessary to enable the Member properly to perform his or her duties as a Member of the Council. This principle is commonly referred to as the “need to know” principle.

9.5 The exercise of this common law right depends upon an individual Member being able to demonstrate that he or she has the necessary “need to know”. In this respect a Member has no right to a “roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must be determined by the particular Director or Assistant Director with advice from the Head of Civic, Democratic and Legal Services.

9.6 In some circumstances the Member will be expected to justify the request to inspect a document. In addition there will be a range of documents, which, because of their nature are either not accessible to Members or are accessible only by the political group forming the administration and not by the other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council’s and/or the public interest.

9.7 Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie in connection with the proper performance of the Member’s duties as a Member of the Council. Therefore, for example, early drafts of Committee reports/briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied, ie to brief the Member.

9.8 The Members Code of Conduct also contains specific rules about confidential information held by councils which prohibit members from disclosing such information unless it can be shown that it is in the public interest to do so.

10 Correspondence

10.1 Correspondence between an individual Member and an officer should not be copied (by the officer) to any other Member. Where exceptionally it is

necessary to copy to another Member, this should be made clear to the original Member.

- 10.2 Official letters and electronic communications on behalf of the Council should be sent in the name of the appropriate officer, rather than in the name of the Member. It may be appropriate in certain limited circumstances (eg, representations to a Government Minister) for a letter to appear in the name of an Executive Member or the Leader, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

11 Communication of Officer Delegated Decisions

- 11.1 Notwithstanding the rights of Members to information and to Council documents set out in this Protocol, officers taking decisions under delegated authority from the Executive must ensure that relevant Members have prompt information regarding the decision, the reasons for the decision and the impact of the decision.

- 11.2 For the purposes of this protocol “relevant Member” will include:

- (a) Members of any Ward upon which the decision is likely to impact.
- (b) Members of the Executive and Shadow Executive where the decision falls within their portfolio area.
- (c) Members of any relevant Committee or advisory panel where if it was not for delegation to officers, the decision would be taken by that Committee or panel.
- (d) All Members of the Council where the decision is likely to have a corporate impact.

- 11.3 If any Member becomes aware that they have not been provided with the information in accordance with this protocol the matter should be raised with the appropriate Director and/or the Chief Executive.

12 Publicity and Press Releases

- 12.1 Local Authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Council, explaining its objectives and policies to the electors and customers. Local Authorities use publicity to keep the public informed and to encourage public participation. The Council needs to tell the public about the services it provides. Good effective publicity should aim to improve public awareness of the Council’s activities. Publicity is a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential to ensure that decisions on publicity are properly made in accordance with the Code of

Recommended Practice on Local Authority Publicity and the Council's Media Protocol.

- 12.2 Officers and/or Members should seek advice from Head of Marketing and Communications when making decisions on publicity, and particular care should be paid to any publicity used by the Council around the time of an election.

13 Involvement of Ward Councillors

- 13.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. In addition officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

14 Monitoring and Review

- 14.1 The application and implementation of this Protocol will be monitored and reviewed by the Council's Standards Committee in consultation with the Council's Monitoring Officer.



Standards Committee

28 August 2009

Report of The Head of Civic, Democratic & Legal Services

The Local Government Ombudsman's Annual Review Year Ending 31 March 2009

1. Summary

- 1.1 This report highlights the recently received Annual Review from the Local Government Ombudsman which sets out data on complaints against City of York Council that have been processed by the Ombudsman in some way during the 12 Months up to 31st March 2009. The report asks Members to note the information.

2. Background

- 2.1 The Local Government Ombudsman was established by the Local Government Act 1974 and is responsible for investigating complaints of maladministration made against local authorities. The term maladministration is not defined within the legislation itself although it was explained in the House of Commons by Richard Crossman as including:-

“...bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on.”

- 2.2 The above definition emphasises the very broad range of actions which potentially fall within the jurisdiction of the Local Government Ombudsman, (LGO), and this definition was clarified in 2007 to include failures in service and the failure to provide a service which it was the authority's function to provide.
- 2.3 As for potential complainants, only those who can claim to have suffered an injustice as a result of the maladministration or failure of service, or those acting on their behalf, are entitled to lodge a complaint with the LGO. It is also a pre-requisite that the complainant has first exhausted the authority's internal complaints system.
- 2.4 The LGO has a range of options open to it where it has a complaint within jurisdiction including conducting investigations and issuing public reports identifying maladministration. The LGO will often seek to resolve matters by

local settlement if that is possible. The LGO shares its reports and data with the Audit Commission for the purposes of audit and inspection.

3 The Annual Report – Headlines

- 3.1 The Annual Review, which is attached as appendix 'A', covers the twelve months up to the 31st March 2009 and contains data in tabular format with comparisons against other authorities and a narrative element. The report notes that during that period the team received fifty seven complaints and enquiries concerning City of York Council, (CYC). Of this twenty eight were forwarded to the investigations team either as new complaints or as resubmitted premature complaints.
- 3.2 As for decisions made during the year, thirty decisions were made during the year and in twelve of these the LGO found no evidence of maladministration. In a further seven cases the LGO used their discretion not to investigate and another four were considered to be outside jurisdiction. Seven cases were decided as local settlement cases where during the course of an investigation the council takes action which is considered by the LGO to be a satisfactory response to the complaint. The report itself describes the circumstances of some of the cases decided as local settlements
- 3.3 The one area of performance in complaint handling that is highlighted as being out of target range is that of the speed in which the council responds to the LGO when it submits enquiries to the council. The response times are recorded as thirty five days on average compared to the target of twenty eight days. The LGO welcomes the improvement in response times in connection with planning and building control matters but notes that response times in housing and anti social behaviour cases could be improved.

4 Further Work

- 4.1 It is noted that many authorities publish their LGO annual reports and I understand that this is not currently the case here at CYC. In the spirit of openness it is suggested that these reports should be made available on the council's website in the pages dealing with complaints. This is technically very easy to achieve.
- 4.2 The council is currently working on developing an new IT based complaints recording system which will assist in the recording and management of complaints.

5 Recommendations

- 5.1 It is hereby recommended that the members of the committee note the content of the LGO Annual Report and endorse the proposal to make this and future reports available on the council's website.

Contact Details

Author:

Author's name:

Quentin Baker

**Title: Head of Civic Legal and
Democratic Services**

Chief Officer Responsible for the report:

Chief Officer's name: Quentin Baker

Title: Monitoring Officer

Dept Name

Chief Executive's Department

Tel No. 01904 551004

Specialist Implications Officer(s) n/a

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

All

For further information please contact the author of the report

Background Papers

None

Annexes

Appendix A: The local Government Ombudsman's Annual Review for City of York Council, year ending 31st March 2009

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**The Local Government Ombudsman's
Annual Review
York City Council
for the year ended
31 March 2009**

The Local Government Ombudsman (LGO) provides a free, independent and impartial service. We consider complaints about the administrative actions of councils and some other authorities. We cannot question what a council has done simply because someone does not agree with it. If we find something has gone wrong, such as poor service, service failure, delay or bad advice, and that a person has suffered as a result, the Ombudsmen aim to get it put right by recommending a suitable remedy. The LGO also uses the findings from investigation work to help authorities provide better public services through initiatives such as special reports, training and annual reviews.

Contents of Annual Review

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Section 1: Complaints about York City Council 2008/09

Introduction

This annual review provides a summary of the complaints we have dealt with about York City Council. We have included comments on the authority's performance and complaint-handling arrangements, where possible, so they can assist with your service improvement.

I hope that the review will be a useful addition to other information your authority holds on how people experience or perceive your services.

Two appendices form an integral part of this review: statistical data for 2008/09 and a note to help the interpretation of the statistics.

Changes to our way of working and statistics

A change in the way we operate means that the statistics about complaints received in 2008/09 are not directly comparable with those from 2007/08. Since 1 April 2008 the new LGO Advice Team has been the single point of contact for all enquiries and new complaints. The number of calls to our service has increased significantly since then. It handles more than 3,000 calls a month, together with written and emailed complaints. Our advisers now provide comprehensive information and advice to callers at the outset with a full explanation of the process and possible outcomes. It enables callers to make a more informed decision about whether putting their complaint to us is an appropriate course of action. Some decide to pursue their complaint direct with the council first.

It means that direct comparisons with some of the previous year's statistics are difficult and could be misleading. So this annual review focuses mainly on the 2008/09 statistics without drawing those comparisons.

Enquiries and complaints received

Our Advice Team received 57 complaints and enquiries during the year. Of these 18 were about issues in the 'Other' category such as antisocial behaviour, licensing, environmental health; 12 were about planning-related matters, eight were in the housing category, and eight concerned transport and highway issues.

We treated 17 of those complaints and enquiries as premature and in a further 12 cases advice was given (usually to make a complaint direct to the Council). The remaining 28 complaints were forwarded to the investigative team either as new complaints or as premature complaints that had been resubmitted.

Complaint outcomes

I decided 30 complaints against the Council during the year. In 12 of those cases I found no evidence of maladministration. I used my discretion not to investigate a further seven. Typically these are cases where even though there may have been some fault by the Council there is no significant injustice to the complainant. In four cases I took the view that the matters complained about were outside my jurisdiction and so they were not investigated.

When we complete an investigation, we generally issue a report. This year we issued no reports against your Council.

Local settlements

A 'local settlement' is a complaint where, during the course of our investigation, a council takes or agrees to take some action that we consider to be a satisfactory response to the complaint. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. Of the complaints we decided against your authority seven were decided as local settlements.

In one case about local taxation the Council failed to respond to a complaint which the complainant first made in September 2007 about her council tax bill and advice about student discounts. She made a further complaint in November 2007 but no action was taken. This led to the bailiffs visiting the complainant in January 2008 and the Council still failed to reply to a further complaint about this. At the same time the Council was also pressurising the complainant to pay more than she could afford towards the arrears. The Council agreed to apply the correct student discount for part of the period concerned which halved the arrears, to offset compensation of £200 against the arrears and to accept £20 per month towards the remainder.

In a planning case, the Council failed to erect a site notice to advertise a planning application for development at the rear of the complainant's property. As a result of this failure she was not aware of the proposals until building work commenced and so lost the opportunity to object. If she had objected the Members of the Planning Committee would have carried out a site visit and considered her objections. In addition the officer's report to the Committee did not address all aspects of the complainant's amenity, including over-dominance and loss of light, so Members did not consider these issues. I concluded that, but for the maladministration the outcome may well have been different but could not conclude that it definitely would have been. The Council agreed to pay the complainant £1000 compensation.

In a third case the complainant lived close to a former airfield which was used for motorsport. Nearby residents had been complaining about noise nuisance for some time. The complainant had asked the Council two specific questions about the unauthorised use of the airfield for motor activities in July 2007 which the Council did not answer. The Council wrote to the complainant with an apology and provided a detailed response to the questions. It also confirmed it would continue to keep residents informed as to progress, about efforts to control the nuisance.

One complaint was about housing repairs, where the Council had delayed for two weeks in repairing a hot water heater leaving the complainants without hot water for this period. The Council promptly offered £115 on receipt of our enquiry letter.

There was one complaint about traffic management where the Council had carried out consultation on its local transport plan with residents affected by proposed changes in traffic management. It had failed to send the consultation documents to the complainant and her immediate neighbours but they had found out about the matter shortly before the consultation period had ended. The Council was also unclear about alterations to local junctions in their area which had already been granted planning permission as part of a nearby major development, but the complainants did not have a significant injustice from this. The Council had already agreed that the consultation document could have been better worded and that it needed to improve its communications. So it had learned from the complaint but it had not apologised to the complainant until the complaint came to us.

The remaining locally settled complaints were about parking, traffic and regeneration and improvement. The Council remedied these seven complaints in ways which I considered was appropriate. It paid a total of £1,490, as well as providing other benefits, to the people affected.

Liaison with the Local Government Ombudsman

We made enquiries on 20 complaints during the year. The Council's average response time of 35.3 days is exactly the same as last year and falls significantly outside our target of 28 days. I welcome the improvement in response times on Planning and building control complaints from 43.3 days to 28.5 days but am disappointed to see that the response times in complaints about housing and antisocial behaviour are over 40 days. I hope the Council can take some positive steps over the coming year to improve its performance in this area.

Training in complaint handling

Part of our role is to provide advice and guidance about good administrative practice. We offer training courses for all levels of local authority staff in complaints handling and investigation. All courses are presented by experienced investigators. They give participants the opportunity to practise the skills needed to deal with complaints positively and efficiently. We can also provide customised courses to help authorities to deal with particular issues and occasional open courses for individuals from different authorities.

I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

Conclusions

I welcome this opportunity to give you my reflections about the complaints my office has dealt with over the past year. I hope that you find the information and assessment provided useful when seeking improvements to your Council's services.

**J R White
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB**

June 2009

Section 2: LGO developments

Introduction

This annual review also provides an opportunity to bring councils up to date on developments – current and proposed – in the LGO and to seek feedback. It includes our proposal to introduce a ‘statement of reasons’ for Ombudsmen decisions.

Council First

From 1 April 2009, the LGO has considered complaints only where the council’s own complaints procedure has been completed. Local authorities have been informed of these new arrangements, including some notable exceptions. We will carefully monitor the impact of this change during the course of the year.

Statement of reasons: consultation

The Local Government and Public Involvement in Health Act 2007 made provision for the LGO to publish statements of reasons relating to the individual decisions of an Ombudsman following the investigation of a complaint. The Ombudsmen are now consulting local government on their proposal to use statements of reasons. The proposal is that these will comprise a short summary (about one page of A4) of the complaint, the investigation, the findings and the recommended remedy. The statement, naming the council but not the complainant, would usually be published on our website.

We plan to consult local authorities on the detail of these statements with a view to implementing them from October 2009.

Making Experiences Count (MEC)

The new formal, one stage complaint handling arrangement for adult social care was also introduced from 1 April 2009. The LGO is looking to ensure that this formal stage is observed by complainants before the Ombudsmen will consider any such complaint, although some may be treated as exceptions under the Council First approach. The LGO also recognises that during the transition from the existing scheme to the new scheme there is going to be a mixed approach to considering complaints as some may have originated before 1 April 2009. The LGO will endeavour to provide support, as necessary, through dedicated events for complaints-handling staff in adult social care departments.

Training in complaint handling

Effective Complaint Handling in Adult Social Care is the latest addition to our range of training courses for local authority staff. This adds to the generic Good Complaint Handling (identifying and processing complaints) and Effective Complaint Handling (investigation and resolution), and courses for social care staff at both of these levels. Demand for our training in complaint handling remains high. A total of 129 courses were delivered in 2008/09. Feedback from participants shows that they find it stimulating, challenging and beneficial in their work in dealing with complaints.

Adult Social Care Self-funding

The Health Bill 2009 proposes for the LGO to extend its jurisdiction to cover an independent complaints-handling role in respect of self-funded adult social care. The new service will commence in 2010.

Internal schools management

The Apprenticeship, Skills, Children and Learning Bill (ASCL) 2009 proposes making the LGO the host for a new independent complaints-handling function for schools. In essence, we would consider the complaint after the governing body of the school had considered it. Subject to legislation, the new service would be introduced, in pilot form, probably in September 2010.

Further developments

I hope this information gives you an insight into the major changes happening within the LGO, many of which will have a direct impact on your local authority. We will keep you up to date through LGO Link as each development progresses but if there is anything you wish to discuss in the meantime please let me know.

**J R White
Local Government Ombudsman
The Oaks No 2
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June 2009

Appendix 1: Notes to assist interpretation of the statistics 2008/09

Introduction

This year, the annual review only shows 2008/09 figures for enquiries and complaints received, and for decisions taken. This is because the change in the way we operate (explained in the introduction to the review) means that these statistics are not directly comparable with statistics from previous years.

Table 1. LGO Advice Team: Enquiries and complaints received

This information shows the number of enquiries and complaints received by the LGO, broken down by service area and in total. It also shows how these were dealt with, as follows.

Formal/informal prematures: The LGO does not normally consider a complaint unless a council has first had an opportunity to deal with that complaint itself. So if someone complains to the LGO without having taken the matter up with a council, the LGO will usually refer it back to the council as a 'premature complaint' to see if the council can itself resolve the matter. These are 'formal premature complaints'. We now also include 'informal' premature complaints here, where advice is given to the complainant making an enquiry that their complaint is premature. The total of premature complaints shown in this line *does not include* the number of resubmitted premature complaints (see below).

Advice given: These are enquiries where the LGO Advice Team has given advice on why the Ombudsman would not be able to consider the complaint, other than the complaint being premature. For example, the complaint may clearly be outside the Ombudsman's jurisdiction. It also includes cases where the complainant has not given enough information for clear advice to be given, but they have, in any case, decided not to pursue the complaint.

Forwarded to the investigative team (resubmitted prematures): These are cases where there was either a formal premature decision, or the complainant was given informal advice that their case was premature, and the complainant has resubmitted their complaint to the Ombudsman after it has been put to the council. *These figures need to be added to the numbers for formal/informal premature complaints (see above) to get the full total number of premature complaints. They also needed to be added to the 'forwarded to the investigative team (new)' to get the total number of forwarded complaints.*

Forwarded to the investigative team (new): These are the complaints that have been forwarded from the LGO Advice Team to the Investigative Team for further consideration. The figures may include some complaints that the Investigative Team has received but where we have not yet contacted the council.

Table 2. Investigative Team: Decisions

This information records the number of decisions made by the LGO Investigative Team, broken down by outcome, within the period given. **This number will not be the same as the number of complaints forwarded from the LGO Advice Team** because some complaints decided in 2008/09 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2008/09 will still be in hand at the end of the year. Below we set out a key explaining the outcome categories.

MI reps: where the LGO has concluded an investigation and issued a formal report finding maladministration causing injustice.

LS (local settlements): decisions by letter discontinuing our investigation because action has been agreed by the authority and accepted by the Ombudsman as a satisfactory outcome for the complainant.

M reps: where the LGO has concluded an investigation and issued a formal report finding maladministration but causing no injustice to the complainant.

NM reps: where the LGO has concluded an investigation and issued a formal report finding no maladministration by the council.

No mal: decisions by letter discontinuing an investigation because we have found no, or insufficient, evidence of maladministration.

Omb disc: decisions by letter discontinuing an investigation in which we have exercised the Ombudsman's general discretion not to pursue the complaint. This can be for a variety of reasons, but the most common is that we have found no or insufficient injustice to warrant pursuing the matter further.

Outside jurisdiction: these are cases which were outside the Ombudsman's jurisdiction.

Table 3. Response times

These figures record the average time the council takes to respond to our first enquiries on a complaint. We measure this in calendar days from the date we send our letter/fax/email to the date that we receive a substantive response from the council. The council's figures may differ somewhat, since they are likely to be recorded from the date the council receives our letter until the despatch of its response.

Table 4. Average local authority response times 2008/09

This table gives comparative figures for average response times by authorities in England, by type of authority, within three time bands.

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LGO Advice Team

| Enquiries and complaints received | Adult care services | Children and family services | Education | Housing | Benefits | Public Finance inc. Local Taxation | Planning and building control | Transport and highways | Other | Total |
|--|---------------------|------------------------------|-----------|----------|----------|------------------------------------|-------------------------------|------------------------|-----------|-------|
| Formal/informal premature complaints | 1 | 1 | 0 | 2 | 0 | 1 | 3 | 2 | 7 | 17 |
| Advice given | 0 | 0 | 0 | 3 | 0 | 1 | 1 | 1 | 6 | 12 |
| Forwarded to investigative team (resubmitted prematures) | 1 | 0 | 0 | 1 | 0 | 0 | 2 | 2 | 0 | 6 |
| Forwarded to investigative team (new) | 1 | 1 | 2 | 2 | 1 | 1 | 6 | 3 | 5 | 22 |
| Total | 3 | 2 | 2 | 8 | 1 | 3 | 12 | 8 | 18 | |

Investigative Team

| Decisions | MI reps | LS | M reps | NM reps | No mal | Omb disc | Outside jurisdiction | Total |
|-------------------------|---------|----|--------|---------|--------|----------|----------------------|-------|
| 01/04/2008 / 31/03/2009 | 0 | 7 | 0 | 0 | 12 | 7 | 4 | 30 |

| Response times | FIRST ENQUIRIES | |
|------------------------|------------------------|----------------------------|
| | No. of First Enquiries | Avg no. of days to respond |
| 1/04/2008 / 31/03/2009 | 20 | 35.3 |
| 2007 / 2008 | 20 | 35.3 |
| 2006 / 2007 | 35 | 38.7 |

Average local authority response times 01/04/2008 to 31/03/2009

| Types of authority | <= 28 days % | 29 - 35 days % | > = 36 days % |
|---------------------------|--------------|----------------|---------------|
| District councils | 60 | 20 | 20 |
| Unitary authorities | 56 | 35 | 9 |
| Metropolitan authorities | 67 | 19 | 14 |
| County councils | 62 | 32 | 6 |
| London boroughs | 58 | 27 | 15 |
| National park authorities | 100 | 0 | 0 |

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Standards Committee

28 August 2009

Report of the Head of Civic Legal and Democratic Services

Member Development Steering Group

Summary

1. This report informs members of the formation of a Member Development Steering Group, with a reporting line to the Standards Committee, and gives details of the Group's work to date.

Background

2. The Member Development Steering Group and the associated terms of reference were established at the meeting of Full Council on 2 April 2009. This was the first step in the Council's progress towards achieving I&DeA Charter Status in Member Development and improving its approach to the provision of development opportunities for elected Members.

Reporting arrangements and terms of reference

3. The Member Development Steering Group will report three times a year to the Standards Committee in view of its ethical and standards role relating to Members. This will enable Standards Committee to feed any recommendations into Council in relation, for instance, to development funding for Members or Member engagement in events/activities.
4. At its meeting on 2 April 2009, Council agreed the terms of reference set out in Annex A to this report. These serve to guide the Steering Group in its purpose and aims with regard to Member Development and working towards achieving Charter Status.

Work to Date

5. Since its formation at Council in April, the Steering Group has met twice. The minutes of these meetings are available view on the Council's website at <http://democracy.york.gov.uk/ieListMeetings.asp?CId=680&Year=2009>

Decisions taken to date by the Group can be summarised as follows:

- Agreement of an Annual Work Plan for the Steering Group, which sets out key actions in the Member Development annual cycle and

the necessary steps towards achieving Charter Status. The Annual Work Plan is attached as Annex B to this report.

- Agreement of the forthcoming programme of Development Opportunities for Members (Member Development Plan)
- Endorsement of an event during local democracy week aimed at encouraging members of the public to consider becoming a councillor (**'a councillor who me?'**). It should be noted that this is not to be funded from the Member development budget.
- The appointment of Mike Leitch as external consultant to provide Personal Development Reviews for members during September and October 2009.

Consultation

6. Not relevant for the purposes of this report.

Options

7. Not relevant for the purposes of this report, which is for information only.

Corporate Priorities

8. The establishment of a Member Development Steering Group reporting to the Standards Committee is consistent with the priority actions included in the Council's refreshed Corporate Strategy; in particular, the provision of strong leadership, supporting and developing people and encouraging improvement in everything we do.

Implications

9. There are no known implications in relation to the following in terms of dealing with the specific matter before Members, namely to note the information within this report.
 - Financial
 - Human Resources (HR)
 - Equalities
 - Legal
 - Crime & Disorder
 - Property
 - Other

Risk Management

10. In compliance with the Council's risk management strategy, there are no risks associated with the contents of this report.

Recommendation

11. Members are asked to note the contents of the report

Reason

12. In accordance with the reporting arrangements agreed by Council for the Member Development Steering Group

Contact Details

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Chief Officer Responsible for the report:

Quentin Baker
Head of Civic Democratic and Legal Services
Tel: (01904) 551004

Report Approved

Date

18 August 2009

Specialist Implications Officer(s)

None

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None.

Annexes:

Annex A – Member Development Steering Group Terms of Reference
Annex B - Annual Work Plan (2009/2010)

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Terms of Reference – Member Development Steering Group

Terms of Reference:

1. Developing and reviewing the Member Development Strategy.
2. Developing, monitoring, evaluating and reviewing the annual Member Development Programme.
3. Receive periodical attendance monitoring reports with a view to reporting annually to Full Council
4. Providing strong leadership and guidance to officers in respect of all Member Development issues.
5. Promoting best practice in respect of Member Development amongst all elected Members of the Council.
6. Encouraging the highest level of participation by all Members in the Member Development Programme, in respect of the Strategy, and in relation to Personal Development Plans (PDPs).
7. Ensuring that the Council reaches and maintains the required level of skills, competence's and practices to achieve I&DeA Charter status in connection with elected Members.
8. Reporting on a regular basis to the Standards Committee.

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**Member Development Steering Group
Annual Work Plan 2009/2010**

| MDWG Meeting | Detail | Report to Standards Committee | Report to Council |
|--------------|---|-------------------------------|-------------------|
| June | <ul style="list-style-type: none"> • agree implementation plan for achieving Charter Status • Consider updates to Member Development Programme 2009/2010 • Agree PDP consultant and approach for engaging all members | | |
| September | <ul style="list-style-type: none"> • Consider Local Democracy Week events • Agree member development policy/strategy • Agree monitoring framework, approach covering engagement/take up with all aspects of MDP (e.g. PDP's, events, alternative training) • Role profiles (inc ward members, corporate parenting and promoting citizenship & community leadership) | Oct 09 | |
| November | <ul style="list-style-type: none"> • Evaluation Monitoring (events/PDP's offered to date) • Budget monitor • Evaluation strategy • Consider 360° appraisals • Invite Chris Farquar (Bradford MDC) to discuss their experience in gaining charter status | Dec 09 | |

| | | | |
|------------|---|----------|--------|
| January | <ul style="list-style-type: none"> • Budget Recommendations • Agree communications plan | Jan 10 | Feb 10 |
| March | <ul style="list-style-type: none"> • Review Communications Plan • Consider annual monitor of attendance • Consider draft MDP 2010/2011 | April 10 | |
| April 2010 | <ul style="list-style-type: none"> • Consider annual monitor of attendance • Agree Member Development Programme | | |

In addition to the above the Steering Group will also consider other items including suggested training throughout the year.

OTHER ACTION GUIDANCE

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introduction

- 1) This guidance on other action is aimed at members of standards committees. It is not mandatory but has been written to help describe what other action is, when it might be used, and how the process can be managed.
 - Although there is no formal route for dealing with a member who refuses to comply with other action, failure to cooperate may amount to bringing the authority into disrepute.
- 2) Advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local Investigations and Other Action and How to Conduct an Investigation**.
- 3) The Standards Board's key messages on other action are:
 - Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the member's honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
 - A referral for other action closes the opportunity to investigate.
 - A decision to refer a complaint for other action makes no finding of fact, and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
 - Assessment sub-committees cannot direct the subject member or any other party to take action. The direction is to the monitoring officer.

what is other action?

- 4) An assessment sub-committee has **three** options when dealing with a complaint that a member has failed or may have failed to comply with the Code of Conduct. The Local Government Act 2000, as amended, states that it can decide to refer the complaint to the monitoring officer of the authority concerned, refer it to the Standards Board, or take no action.
- 5) If the assessment sub-committee decides to refer a complaint to the monitoring officer, it can direct them to investigate the matter. Alternatively, it can direct them to take steps other than carrying out an investigation. This is known as other action.
- 6) Generally, there are **two** indicators for other action. The **first** is when there is evidence of poor understanding of the Code of Conduct and/or the authority's procedures. The **second** indicator for other action is when relationships within the authority as a whole have broken down to such an extent that it becomes very difficult to conduct the business of the council.
- 7) The Standards Committee (England) Regulations 2008 explain that the steps a standards committee can direct a monitoring officer to take are:
 - arranging for the member to attend a training course
 - arranging for the member and complainant to engage in a process of conciliation
 - any other steps (not including an investigation) which appear appropriate
- 8) Suggestions as to types of training courses a member might attend, and other steps a standards committee might consider appropriate, are listed in the next section (**What might other action involve?**).

what might other action involve?

- 9) The Standards Committee (England) Regulations 2008 specifically provide that a referral for other action may consist of a direction to the monitoring officer to arrange for the member to attend a training course. Training may be in anything the assessment sub-committee deems appropriate, such as:
- chairing skills
 - working with external bodies and partnerships
 - governance issues
 - the Code of Conduct
 - council procedures and protocols
 - legal matters
 - planning and licensing
 - working with officers
 - use of council resources
- 10) In general, other action may take the form of directing the monitoring officer to arrange for the:
- redrafting of council procedures or policies
 - training of members of the council as a whole
 - mentoring of a member or members, or whole council
 - management of conflict
 - development of council protocols
 - implementation of a council complaints procedure
- 11) A referral for other action does not mean that the member has been found to have done anything wrong (see the next section '**Deciding to take other action**'). It is therefore very important that the action proposed does not imply this. Other action cannot, for example, take the form of requiring the subject member to apologise. Of course, in those cases where the member has admitted the breach and offered an apology, the assessment sub-committee may decide that no further action is necessary.
- 12) **It is particularly important to remember that an assessment sub-committee can only direct a monitoring officer to take other action. It has no power to direct anyone else to do so.**

deciding on other action

- 13) A decision to refer a complaint for other action – like all assessment decisions – does not involve making any findings of fact. All parties should understand that a decision to take other action means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member failed to comply with the Code.
- 14) Similarly, everyone involved in a decision to take other action must understand that the purpose of such a referral is not to find out whether the member breached the Code of Conduct. This is regardless of how simple it may be to establish the facts. A decision to direct the monitoring officer to take other action is an alternative to an investigation. It cannot ever result in a finding that the member has or has not failed to comply with the Code.
- 15) The assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be behaviour which would necessarily require the subject member to face one of the sanctions it could impose. This excludes training, which can be other action decided on at assessment stage, and a sanction following a hearing. The assessment sub-committee should also be satisfied that other action could assist the proper functioning of the council.
- 16) Other action is not intended to be a quick and easy means of dealing with matters which the assessment sub-committee considers to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action. While other action can be a cost-effective way of getting a matter resolved, it is not a quick-fix. Furthermore, other action should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time-consuming process.
- 17) Standards committees should take care to avoid it appearing to the complainant that deciding to take other action is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.
- 18) Importantly, if a complaint merits being investigated, then it should be referred for investigation. For example, complaints should not be referred for other action when an investigation would be in the public interest. Other action should also be avoided where the allegation fundamentally challenges the member's honesty or integrity. It should additionally be avoided where the allegation, if proven, would warrant any of the sanctions (apart

deciding on other action

from training) available to a standards committee after a hearing.

- 19) Assessment sub-committees must not refer an allegation for other action without consulting the monitoring officer, who will often be present at the assessment meeting. If the monitoring officer is not present, and has not given any indication of their views on other action, the assessment meeting may need to be adjourned.
- 20) The monitoring officer may be able to advise the assessment sub-committee how viable the proposed other action is, by providing information on the resources available to them. They may be able to tell the assessment sub-committee how much any proposed other action might cost. They might also be able to advise whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as trained mediators.

when is other action appropriate?

- 21) The first stage in assessing a complaint is to determine whether it is within jurisdiction. In other words, the assessment sub-committee needs to decide whether, if what the complainant alleges were true, the Code of Conduct would apply. If the Code would not apply to the alleged conduct, the only decision an assessment sub-committee is able to make is to take no action. Other action will never be appropriate in these cases.
- 22) In general, the Standards Board believes that other action is most beneficial when used to deal with systemic problems rather than individual ones. The action proposed does not have to be limited to the subject of the complaint. Several members, or indeed a whole authority, could be included in the action the monitoring officer is asked to take.
- 23) Matters which standards committees might consider referring for other action include:
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the council
 - misunderstanding of procedures or protocols
 - misleading, unclear or misunderstood advice from officers
 - lack of experience or training
 - interpersonal conflict
 - allegations and retaliatory allegations from the same members
 - allegations about how formal meetings are conducted
 - allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves
- 24) We advise standards committees to draw up assessment criteria which detail the matters they will take into account when deciding what action, if any, to take. Every decision to take other action – like all assessment decisions – can then be made with reference to these criteria.
- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures

adjournment

- 25) Some assessment sub-committees are reluctant to refer a complaint for other action without knowing whether the subject member and other members of the authority will cooperate with the proposed approach.
- 26) One way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers might be suitable for other action. The standards committee can then ask the monitoring officer to find out whether the member or members will cooperate. Although this option is not specifically provided for by the legislation, we do not consider that it is prohibited. Meetings may also be adjourned to enable the monitoring officer to find out more information about the complaint.
- 27) It is up to each authority to decide whether their assessment of a particular complaint should be adjourned. They should consider the advantages and disadvantages of adjournment when making this decision. They should also bear in mind that we advise that assessment decisions should be made within an average of 20 working days, and that an adjournment may mean that that the average assessment time increases.
- 28) Advantages of adjournment are:
- Those sitting on the assessment sub-committee will know what the members think about the proposed solution, and may therefore be more confident in making their decision.
 - Members may be likely to cooperate if they are made aware of the options available.
 - When members indicate that the action would be ineffective, the sub-committee still have the option of deciding to refer the complaint for investigation.
 - Further information obtained by the monitoring officer may mean that the complaint is effectively resolved, enabling the sub-committee to decide to take no action.
- 29) Disadvantages of adjournment are:
- Finding out members' views runs the risk of putting the decision about what action to take into the hands of the member, rather than the sub-committee.
 - The authority of the standards committee may be undermined if other action is agreed through negotiations between the monitoring officer and the member or members.
 - By making further enquiries, the monitoring officer may end up starting an investigation before the assessment decision is made.

adjournment

- The member or members may try to pass on more information to the monitoring officer, to persuade the sub-committee to take no action.
- 30) As an alternative to adjourning the assessment meeting, the standards committee could agree that the monitoring officer seeks views on other action when they receive a complaint.

role of the monitoring officer

- 31) When a matter has been referred for other action, it is the monitoring officer's duty to give notice to the relevant parties. These relevant parties are:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority concerned
 - any parish council concerned
- 32) If the standards committee issues a decision notice that goes to all these parties, the Standards Board considers that the monitoring officer's responsibility is met.
- 33) Whoever notifies the parties of the decision should take care over how the decision is conveyed. It is important that the wording does not imply that the member is culpable. It is also important that members do not feel they have been found guilty without an investigation of the allegation. Note that both parties could end up potentially feeling dissatisfied. This is because complainants and subject members do not have the right to have the decision to refer a matter for other action reviewed under Section 57B of the Local Government Act 2000.
- 34) When a monitoring officer receives a referral with a direction to take other action, they must deal with it in accordance with the direction. They do not have discretion to take a different course of action and should make every attempt to ensure that the action specified is carried out successfully.
- 35) Information and advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local investigations and other action** and **How to conduct an investigation**.
- 36) The monitoring officer must submit a written report to the standards committee within three months of receiving the direction, or as soon as possible after that. This report must give details of the action taken or the action proposed to comply with the direction.

consideration of the monitoring officer's report

- 37) The standards committee or an appropriate sub-committee should consider the monitoring officer's report and decide whether it is satisfied with the action described. The meeting at which the report is considered is subject to the general notice and publicity requirements under regulation 8 of the Standards Committee (England) Regulations 2008.
- 38) The monitoring officer's report can be considered by the same members who initially assessed the complaint, by another sub-committee, or by the standards committee as a whole. This is a decision to be made by each authority, and will depend on the way in which the committee has been set up, what sub-committees it has and the terms of reference of each body.
- 39) The advantage of the same members considering the report is that they will be aware of the details of the original complaint. However, some authorities may consider that convening a sub-committee simply for this purpose is not a good use of time and resources. They might instead choose to include consideration of the monitoring officer's report as an item on the agenda of the regular meeting of the standards committee.
- 40) If the standards committee or sub-committee **is** satisfied with the action described in the monitoring officer's report, it should give notice of this to all of the following:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority involved
 - any parish council concerned
- The matter is then closed.
- 41) If the standards committee or sub-committee is **not** satisfied, it must give another direction to the monitoring officer, which must again be to take some kind of other action. The standards committee cannot at this stage decide that the matter should be investigated. This is discussed further in the section below.
- 42) If the report describes action which has been proposed but not yet taken, the standards committee should decide whether this is satisfactory. If it has doubts about whether the action will take place, it should consider whether or not to give a further direction to the monitoring officer. The standards committee or sub-committee may also consider making a further direction where the report indicates that the member has refused to cooperate, has done so unwillingly or inadequately, or has not engaged with the process.

what if other action does not work?

- 43) Each time a standards committee or sub-committee directs a monitoring officer to take other action, the monitoring officer must submit a written report detailing the action taken or proposed. If dissatisfied, the standards committee can direct the monitoring officer to take further other action.
- 44) In theory, if a standards committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However, standards committees should be proportionate and reasonable in their directions. We believe that the process should be drawn to a close after a limited number of attempts by the monitoring officer to bring about other action – even where this has not occurred in accordance with the direction.
- 45) There is no formal route for dealing with a member who categorically refuses to comply with other action. However, the Standards Board believes that deliberate and continued failure to cooperate with a monitoring officer who is trying to carry out the directions of a standards committee may potentially amount to conduct which brings the office of councillor into disrepute. Furthermore, an assessment sub-committee may take this into account when deciding what action to take if they are assessing a complaint about a member who has previously failed to cooperate.
- 46) If a standards committee receives a complaint that a member did not cooperate with other action in relation to a previous complaint, they should only assess the complaint about the failure to cooperate. They should not take into account the conduct which led to the original complaint.
- 47) If the complaint is accepted for investigation then it is vitally important that any investigation focuses on the lack of cooperation and not the original complaint that led to the other action. Otherwise there is a danger that the original complaint will be resurrected. This is particularly important where the member says that the lack of cooperation was because they had done nothing wrong.

why other action closes the opportunity to investigate

- 48) Once an assessment sub-committee has decided to refer a matter for other action, this becomes the way forward in that particular case. If a standards committee is not satisfied that the action taken has not achieved the aim of the direction to take other action, it cannot then decide the matter should be investigated. The assessment sub-committee needs to be clear at the outset that should other action be unsuccessful or only partially successful, that it would still then remain the preferred course of action.
- 49) The legislation is clear on this issue. Once an allegation is referred under Section 57A(2) of the Local Government Act 2000 to the monitoring officer to take steps other than investigation, those steps are the ones referred to in regulation 13(3) of the Standards Committee (England) Regulations 2008. They are limited to arranging for training, a process of conciliation or such other steps – not including investigation – which the standard committee considers to be appropriate. There is no power that allows the case to be referred on for investigation if these options under regulation 13(3) are perceived to have failed.
- 50) Regulation 14(1) of the same regulations says that regulation 14 applies only if regulation 13 is not applied. If other action has been attempted, regulation 13 has been applied.
- 51) As well as being set out in statute, there are sound reasons why complaints which have been referred for other action should not then be investigated. Firstly, there are difficulties in deciding why the action has 'failed'; whether it has failed and if so, why an investigation is thought to be needed. This subjective judgment has the potential to increase the complainant or the subject member's dissatisfaction with the process. In some circumstances, it may also risk deliberate non-cooperation with the action prescribed in order to secure an investigation.
- 52) An investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

why other action closes the opportunity to investigate

- 53) The issue of timeliness is also key for all parties when dealing with an allegation of misconduct. It is questionable as to how fair the process would be, for both the subject member and complainant, if it is extended for the duration of the other action taking place and the investigation that follows it. Where other action is undertaken before an investigation, there is the risk that the case will be prejudiced. Witnesses may become prejudiced, there may be problems obtaining evidence, and an investigation may be jeopardised if the issues are discussed in detail as part of a mediation process.

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2009/2010 Work Plan for Standards Committee

Ongoing Activities

Local assessment of complaints
 Standards Board Guidance
 Member and Officer Training

| <u>Item</u> | <u>Meeting Date</u> | <u>Notes</u> |
|---|---------------------|--------------|
| Review of Planning Code of Good Practice | 23 October 2009 | |
| Report on Substitutes for Standards Committee | 23 October 2009 | |
| Member Development Steering Group – Progress Report | 23 October 2009 | |
| Review of Operation of Local Assessment of Complaints Framework | 23 October 2009 | |
| Follow up to Ethical Governance review – report on results of Monitoring Officer’s discussions with the Audit Commission | 18 December 2009 | |
| Results of the Monitoring Officer’s enquiries regarding Joint Committees | 18 December 2009 | |
| Report on promoting the work of the Standards Committee | 22 January 2010 | |
| Reports on Members’ and Officers’ Registers of Gifts and Hospitality (including details of current practice throughout the Council on the Officers’ Register) | 22 January 2010 | |
| Review of Members’ Declarations of Interest | 1 April 2010 | |

Items for 2010/11 Municipal Year (dates tba):

- *Corporate Complaints Review (annual, following introduction of new system in September 2009)*
- *Annual Report to Council*