

**Notice of a Public Meeting of  
Joint Standards Committee**

**To:** Councillor Runciman (Chair), Barton, Scott and Taylor  
(City of York Council Members)  
Cllrs Martin (Vice-Chair), Crawford and Simpson (Parish  
Council Members)  
Mrs Bainton, Mr Dixon and Mr Hall (Interim Independent  
Persons)  
Mr Laverick – Independent Person

**Date:** Wednesday, 20 February 2013

**Time:** 3.00 pm

**Venue:** The Guildhall, York

**AGENDA**

**1. Declarations of Interest**

At this point, Members are asked to declare:

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

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

**2. Minutes**

(Pages 3 - 10)

To approve and sign the minutes of the meeting of the Joint Standards Committee held on 28 November 2012.

**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 committee, may do so. The deadline for registering is **5:00 pm on Tuesday 19 February 2013**.

**4. Attendance by Group Leaders** (Pages 11 - 12)

As requested by the Committee, Group Leaders from City of York Council have been invited to attend this meeting. This report suggests possible issues for discussion.

**5. Arrangements for Handling Complaints** (Pages 13 - 26)

This report asks the committee to adopt new procedures for dealing with complaints and new criteria for making decisions as to whether a complaint should be investigated.

**6. Monitoring report in respect of Complaints Received**

The Monitoring Officer will give a verbal report in respect of complaints received.

**7. First Review of New Code of Conduct** (Pages 27 - 42)

This report provides Members with the opportunity to reflect on the introduction of the new Codes and identify any issues which the committee may be able to address.

**8. Planning Code of Good Practice** (Pages 43 - 56)

This report asks Members to refer a revised Planning Code of Good Practice for consultation with relevant Members and Officers.

**9. Review of Work Plan** (Pages 57 - 58)

Members are asked to review the committee's work plan.

**10. Urgent Business**

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

Democracy Officer:

Name: Jayne Carr

Contact Details:

Telephone – (01904) 552030

Email – [jayne.carr@york.gov.uk](mailto:jayne.carr@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);
- find out about the rules for public speaking from the Democracy Officer.

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### Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

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We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

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Every effort will also be made to make information available in another language, either by providing translated information or an

interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

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### **Holding the Cabinet to Account**

The majority of councillors are not appointed to the Cabinet (39 out of 47). Any 3 non-Cabinet councillors can 'call-in' an item of business following a Cabinet meeting or publication of a Cabinet Member decision. A specially convened Corporate and Scrutiny Management Committee (CSMC) will then make its recommendations to the next scheduled Cabinet meeting, 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;
- York Explore Library and the Press receive copies of **all** public agenda/reports;
- All public agenda/reports can also be accessed online at other public libraries using this link

<http://democracy.york.gov.uk/ieDocHome.aspx?bcr=1>

City of York Council

Committee Minutes

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MEETING	JOINT STANDARDS COMMITTEE
DATE	28 NOVEMBER 2012
PRESENT	COUNCILLOR RUNCIMAN (CHAIR) (CYC MEMBER) COUNCILLOR BARTON (CYC MEMBER) COUNCILLOR CRAWFORD (PARISH COUNCIL MEMBER) COUNCILLOR MARTIN (VICE-CHAIR) (PARISH COUNCIL MEMBER) COUNCILLOR SCOTT (CYC MEMBER) COUNCILLOR SIMPSON (PARISH COUNCIL MEMBER) COUNCILLOR TAYLOR (CYC MEMBER)
IN ATTENDANCE:	MR DIXON (INTERIM INDEPENDENT PERSON)

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**PART A - MATTERS DEALT WITH UNDER DELEGATED POWERS****11. DECLARATIONS OF INTEREST**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

**12. MINUTES**

RESOLVED: That the minutes of the Joint Standards Committee meeting held on 12 September 2012 be approved and signed by the Chair as a correct record.

**13. PUBLIC PARTICIPATION**

It was reported that there were no registrations to speak at the meeting under the council's Public Participation Scheme.

**14. APPOINTMENT OF INDEPENDENT PERSONS**

*[See also Part B minute]*

Members received a report that provided an update on progress in recruiting independent persons to support the standards function.

The Appointments Panel had met in October and proposed to recommend the appointment of Mr David Laverick to fill one of the roles. The Panel had agreed that further efforts should be made to secure more applications before making a further recommendation for appointment.

Consideration was given to the arrangements to be put in place pending the appointment of two independent persons. It was agreed to recommend that the interim independent persons continue in this role. This would also ensure a smooth transition.

Members considered ways in which to attract further applications for the position as Independent Person. It was agreed that the following measures should be explored:

- An article in the local press highlighting the committee's role in raising standards and promoting awareness of the vacancy for an independent person.
- Advertising the position via York CVS.
- Advertising the position on the Public Appointments Commissioner website or newsletter.

Members were invited to forward any further suggestions to the Monitoring Officer for consultation with the Chair.

- RESOLVED:
- (i) That the recommendation to Council that Mr David Laverick be appointed as an independent person be endorsed.
  - (ii) That, until a full complement of independent persons has been appointed, it be recommended to Council that the existing former independent persons be requested to continue to act in this role.



- (iii) That, to secure further interest and applications for the position of Independent Person, the suggestions detailed above be explored<sup>1</sup>.

REASON: To ensure that the Council has appropriate arrangements in place for handling complaints against Members.

Action Required

1. Explore suggested recruitment strategies

AD

**15. MONITORING REPORT IN RESPECT OF COMPLAINTS RECEIVED**

The Monitoring Officer gave a verbal report in respect of complaints received. Since the previous meeting two complaints had been lodged:

- The first of the complaints related to a breach of the Code in respect of the Register of Interests. This had been investigated and appropriate action taken.
- The second of the complaints had been lodged very recently and hence there had not yet been the opportunity to investigate.

RESOLVED: That the update on complaints received be noted.

REASON: To ensure that the Committee is kept updated on complaints received.

**16. ARRANGEMENTS FOR HANDLING COMPLAINTS**

Consideration was given to a report that reminded Members of the procedures adopted for dealing with complaints prior to the new regime being initiated. The report proposed some changes to these procedures and also proposed some criteria to be adopted in assessing what action to take in respect of a complaint.

Members gave consideration to the proposed changes and agreed that it was also important to build additional flexibility into the criteria.

- RESOLVED:
- (i) That the Monitoring Officer be requested to make the changes referred to in the report to sections 3 and 5 of the Procedures for Handling Complaints.
  - (ii) That additional flexibility be added to the procedures allowing for informal resolutions to be achieved following an investigation.
  - (iii) That the former assessment criteria, updated to reflect the current procedures, be adopted for use in making the initial judgement in respect of complaints.
  - (iv) That copies of the updated procedures be circulated by email to the Committee and presented at the next meeting<sup>1</sup>.
  - (v) That the Complaints Procedures be reviewed in July 2014 (or earlier if this proves necessary)<sup>2</sup>.

- REASONS:
- (i) To add further clarity to the procedures.
  - (ii) To ensure that the procedures operate in a fair way.
  - (iii) To ensure consistency in the judgements made about complaints.
  - (iv) To ensure that the effectiveness of the complaints procedures is monitored.

Action Required

- 1. Update procedures to reflect agreed changes
- 2. Update Committee's workplan

AD  
JC

**17. DISPENSATIONS**

*[See also Part B minute]*

Consideration was given to a report that provided Members with information about the dispensation provisions available under the new regime, reminded Members of existing arrangements and identified some particular issues for consideration.

Discussion took place as to the circumstances in which it may be appropriate to grant a dispensation. Members stated that it was also important that dispensations that had been granted were recorded on the agenda papers for meetings.

The Chair drew Members' attention to guidance that had been issued by the National Association of Local Councils (NALC) on the issue of dispensations.

- RESOLVED:
- (i) That the Monitoring Officer be delegated powers to grant dispensations in the circumstances described in the report.
  - (ii) That dispensations which fall outside the powers delegated to the Monitoring Officer be considered by the Joint Standards Committee or a Sub-Committee of the Committee.
  - (iii) That it be recommended that agenda papers for meetings record dispensations that had been granted.

REASON: To ensure that the Council business may proceed effectively.

**18. REGISTER OF GIFTS AND HOSPITALITY**

Consideration was given to a report that sought Members' views on guidance relating to the register of gifts and hospitality.

The following amendments to the wording of the guidance were agreed:

- Question 2 – answer to be amended to read “...*In the circumstances when the Sheriff is also an Elected*

*Member the Sheriff is required to abide by the same rules as for the Lord Mayor. If the Sheriff is not an Elected Member he is advised that he should comply with the rules”.*

- Question 4 – answer to be slightly expanded to urge particular caution if the hospitality is only being offered to the Member.
- Question 6 – answer to include *“If in doubt guidance should be sought from the Monitoring Officer”*.
- Question 7 – wording *“if in doubt”* to be removed from the answer.
- Question 8 – include an explanation as to why this has been included in the Code.

RESOLVED: That, subject to the agreed amendments, the model questions and answers be approved as guidance to Councillors.

REASON: To ensure that Members and the public can be clear as to the Joint Standards Committee’s expectations.

## **19. REVIEW OF WORK PLAN**

Consideration was given to the committee’s work plan for 2012/13.

The following additions to the work plan were agreed:

- Ratification of the updated procedures and assessment criteria for handling complaints to be included on the agenda for meeting of 20 February 2013 (see minute 16)
- Item on the Review of Member Officer Protocol (17 April 2013) to cover Parish Councils as well as CYC.
- Review of the arrangements for handling complaints to be included on the agenda for meeting in July 2014 (see minute 16)

RESOLVED: That, subject to the inclusion of the items detailed above, the committee’s work plan for 2012/13 be approved<sup>1</sup>.

REASON: To ensure that the committee has a planned programme of work in place.

Action Required

1. Update workplan

JC

**PART B - MATTERS REFERRED TO COUNCIL**

**20. APPOINTMENT OF INDEPENDENT PERSONS**

*[see also Part A minute]*

Members received a report that provided an update on progress in recruiting independent persons to support the standards function.

The Appointments Panel had met in October and proposed to recommend the appointment of Mr David Laverick to fill one of the roles. The Panel had agreed that further efforts should be made to secure more applications before making a further recommendation for appointment.

Consideration was given to the arrangements to be put in place pending the appointment of two independent persons. It was agreed to recommend that the interim independent persons continue in this role. This would also ensure a smooth transition.

Members considered ways in which to attract further applications for the position as Independent Person. It was agreed that the following measures should be explored:

- An article in the local press highlighting the committee's role in raising standards and promoting awareness of the vacancy for an independent person.
- Advertising the position via York CVS.
- Advertising the position on the Public Appointments Commissioner website or newsletter.

Members were invited to forward any further suggestions to the Monitoring Officer for consultation with the Chair.

- RECOMMENDED:
- (i) That Mr David Laverick be appointed as an independent person.
  - (ii) That, until a full complement of independent persons has been appointed, the existing former independent persons be requested to continue to act in this role.

REASON: To ensure that the Council has appropriate arrangements in place for handling complaints against Members.

**21. DISPENSATIONS**

*[See also Part A minute]*

Consideration was given to a report that provided Members with information about the dispensation provisions available under the new regime, reminded Members of existing arrangements and identified some particular issues for consideration.

Discussion took place as to the circumstances in which it may be appropriate to grant a dispensation. Members stated that it was also important that dispensations that had been granted were recorded on the agenda papers for meetings.

RECOMMENDED: That agenda papers for meetings record dispensations that had been granted.

REASON: To ensure that the Council business may proceed effectively.

Councillor Runciman, Chair

[The meeting started at 3.00 pm and finished at 4.15 pm].



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**Joint Standards Committee****20<sup>th</sup> February 2013**

Report of the Monitoring Officer

**ATTENDANCE BY GROUP LEADERS****Background**

1. The Committee has invited the following to attend this meeting:
  - Councillor James Alexander, Labour Leader of the Council
  - Councillor Ian Gillies, Leader of the Conservative group
  - Councillor Andy D'Agorne, Leader of the Green group

Councillor Carol Runciman, the Leader of the Liberal Democrat group, is of course, the Chair of the Committee.

2. It has been suggested that a discussion can take place for 30 minutes or so during which the group leaders may identify any issues relating to monitoring standards of conduct and our arrangements for dealing with complaints that they think the Committee might wish to address. The Committee may also wish to feed back any emerging issues that they have identified.
3. It is particularly opportune that this meeting takes place only a month after the Committee on Standards in Public Life issues its fourteenth report. The Committee has some concerns about the changes made to the local government standards regime which are referred to elsewhere on the agenda. However, the following extract from the Committee's report may help frame some of the discussion:

*“Prime responsibility for maintaining high standards of behaviour must always lie with individuals and organisations, not with external regulation. We welcome therefore the intention behind the Localism Act 2011 to encourage a greater sense of local responsibility for standards and to address some of the more*

*vexatious and disproportionate aspects of the local government standards regime.*

*To function effectively, local leadership and responsibility for standards requires certain conditions to be met – including strong leadership and robust, visible action against those who fall short. The Local Government Association has a particularly important responsibility in this respect. We would expect the new regime, like the previous one, to function well in those areas where party leaders are prepared to provide leadership. It is likely to do less well where such leadership is absent.*

*Past history suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit for tat accusations most common, or in those predominantly rural areas with significant numbers of independent members without the benefit of party discipline.”*

## **Recommendations**

### 4. Members are recommended to:

Note the report and identify any issues arising from the discussion with Group Leaders which the Committee may wish to action or consider in more detail at a future meeting

Reason: To promote high standards of ethical conduct

## **Contact Details**

### **Author:**

**Andrew Docherty**

**Monitoring Officer**

**CBSS**

*Tel No. 01904 551004*

**Report**  
**Approved**

**Date** 07/02/13

**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:** None





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**Joint Standards Committee****20<sup>th</sup> February 2013**

Report of the Monitoring Officer

**ARRANGEMENTS FOR HANDLING COMPLAINTS****Summary**

1. This report asks the Committee to adopt new procedures for dealing with complaints and new criteria for making decisions as to whether a complaint should be investigated.

**Background**

2. This matter was considered by the Committee at its last meeting following which revised procedures and criteria were drafted and circulated to Members. As a result of a comment made by a Member an addition has been made to section 7 of the complaints procedure which recognises that full Council has the constitutional right to remove the Leader from office and that is therefore a further sanction which a Hearing Panel could recommend.
3. A question has been asked as to whether the procedures should specify the make up of Hearing Panels and identify the Chair. Under the previous arrangements it was the practice to establish Sub Committees so as to exclude City Councillors from the same political group as either a complainant or the subject Member. It may be more difficult to do that now given the removal of Independent Members. It may still be sensible to aim to establish Panels in that way but whether that should be specified within the procedures is open to question.
4. Assessment, review and hearing sub committees were all chaired independently. That will not be the case for hearing Panels. As hearings will be rare it may be that an appropriate working practice would be to have hearings chaired by either the Chair or Vice Chair of the main Committee unless that is inappropriate in a particular case.

## Recommendations

5. Members are recommended to:

- 1) Consider the issues raised in paragraphs 3 and 4 of this report and identify and additional changes to the draft procedures which may be considered necessary.

Reason: To add further clarity to the procedures

- 2) To adopt the revised procedures and assessment criteria as the Committee's arrangements for handling complaints.

Reason: To ensure consistency in the judgements made about complaints.

## Contact Details

### Author:

**Andrew Docherty**  
**Monitoring Officer**

**CBSS**

Tel No. 01904 551004

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**Report**  
**Approved**

**Date** 0702/13

**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

Annex A – Procedures for handling complaints

Annex B – Assessment Criteria

## Complaints about the ethical conduct of Councillors

### 1 The Code of Conduct

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

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

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

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

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

### 2 Making a complaint

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

The Monitoring Officer  
Guildhall  
St Helen's Square  
York

Or –

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

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

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

We ask you to provide your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. This also guards against malicious complaints. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. The Monitoring Officer will normally tell the Councillor that a complaint has been received and who from. If you are concerned about your identity being revealed please advise the Monitoring Officer and he will discuss this with you before processing the complaint.

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

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

The Monitoring Officer will review every complaint received and discuss it with the Council's Independent Persons. Independent Persons are not Councillors and have no connection with the Council. Though by law the Independent Person must be consulted when a complaint has been investigated the Council has decided that the Independent Persons will also be consulted by the Monitoring Officer when the complaint is received to provide an external oversight.

He will then normally take a decision as to whether the complaint merits formal investigation. This decision will usually be taken within 14 days of receipt of your complaint.

Before reaching a decision the Monitoring Officer may request further information from you or obtain information which is readily available to him such as notes of Council meetings. If the complaint relates to a Parish Councillor he may consult the Parish Council.

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

account of this in deciding whether the complaint merits formal investigation.

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

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

Occasionally the Monitoring Officer may decide that the decision as to whether a complaint should be investigated should be made by members of the Joint Standards Committee. In this case a small Sub Committee of Councillors and Parish Councillors will meet to consider your complaint.

#### **4 How is the investigation conducted?**

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

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

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

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

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

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

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

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

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

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

**6.1 Local Resolution**

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

In making a decision about whether a matter can be resolved locally the complainant's views will be given considerable weight but the decision rests with the Monitoring Officer.

## 6.2 Local Hearing

If the complaint is not resolved through the local resolution process, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel.

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

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

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

The Hearings Panel may –

- 7.1 Censure the Councillor;
- 7.2 Formally report its findings to the City Council *or* Parish Council for information;
- 7.3 Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 7.4 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;

- 7.5 Recommend to Council that the Leader be removed from Office
- 7.6 Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;
- 7.7 Remove *[or recommend to the Parish Council that the Councillor be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- 7.8 Withdraw *[or recommend to the Parish Council that it withdraws]* facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or

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

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

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

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

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

The Independent Persons are invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the Councillor's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.



## 10 Appeals

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

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

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

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## City of York Council Joint Standards Committee Assessment Criteria for complaints

### 1. Background and Context

- 1.1 The Joint Standards Committee's arrangements for dealing with complaints are described in more detail in a separate document available from the Monitoring Officer and on the City Council's website.
- 1.2 The first decision to be made when a complaint is received is whether or not it should be referred for investigation. That decision is normally made by the Monitoring Officer but may be made by a Sub Committee of Members of the Joint Standards Committee. In making the decision regard will be had to the following criteria.

### 2. Is the complaint covered by the Code?

- 2.1 Is the complaint about the conduct of a member?

*The complaint must relate to one or more named elected or co-opted members of the district or parish councils covered by the Joint Standards Committee i.e. within the City of York Council Area.*

- 2.2 Was the named member in office at the time the alleged misconduct took place?

- 2.3 Does the allegation relate to the Member's conduct as a Councillor?

*Complaints which relate to a Councillor's private life rather than their Council business are unlikely to be covered by the Code.*

- 2.4 If the complaint is proven, would there be a breach of the Code under which the member was operating at the time of the alleged misconduct?

*Codes of Conduct are concerned with Members' ethical behaviour. Sometimes complaints are received about decisions which*

*Councillors have made or about the quality of service provided by a Councillor. These are unlikely to be covered by the Code.*

- 2.5 If the complaint is not covered by the Code then it cannot be investigated.

### **3. Sufficiency of Information**

- 3.1 The complainant must provide sufficient information to show that there is a real possibility that there has been a breach of the Code of Conduct. If insufficient information is available the case will not normally be referred for investigation.

### **4. Seriousness of the Complaint**

- 4.1 A complaint will not normally be referred for investigation or other action where the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.

### **5. Length of Time Which Has Elapsed**

- 5.1 A complaint will not normally be investigated where the events took place more than 6 months prior to the complaint being submitted. An exception to this may arise where the conduct relates to a pattern of behaviour which has recently been repeated.

### **6. Public Interest**

- 6.1 Consideration will be given as to whether the public interest would be served by referring a complaint for investigation or other action. They may consider that the public interest would not be served where, for instance, a member has died, resigned or is seriously ill.
- 6.2 The Joint Standards Committee encourages informal resolution of complaints where it is in the public interest to do so. In some cases a speedy apology to the complainant may be the most effective outcome. In a case where the Code has been breached through ignorance an acceptance of fault from the Councillor together with an offer of training or a briefing from the Monitoring Officer, may be sufficient.

- 6.3 If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.

## **7. Anonymous Complaints**

- 7.1 Anonymous complaints will not normally be entertained unless there is additional documentary evidence to support the complaint.

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**Joint Standards Committee****20<sup>th</sup> February 2013**

Report of the Monitoring Officer

**FIRST REVIEW OF THE CODE OF CONDUCT****Summary**

1. This report provides Members with the opportunity to reflect on the introduction of the new Codes and identify any issues which the Committee may be able to address.

**Background**

2. In July the City Council adopted its Code of Conduct based on the previous national model Code with the addition of provisions reflecting the new requirements with regard to disclosable pecuniary interests. All the Parish Councils adopted a slightly simpler Code, based on a model provided by the National Association of Local Councils, which retained most elements of the previous national Code.
3. A copy of the City Council's Code appears as Appendix A to this report.
4. Two recent internal training sessions for City Councillors have provided an opportunity to consider the new code in some depth. Very few issues have been identified in relation to the local elements of the Code. There is a typographical error in paragraph 2.1 of the Code – which can be corrected without any formal decision to do so. No other changes to the Code have been identified as this stage as being required.
5. In terms of other issues a question has been raised as to the new local requirement to register hospitality which is offered but not accepted. The specific issue relates to conferences. Some Members receive flyers containing invitations to free or discounted conferences on a fairly regular basis and generally do not respond to them. It is questionable whether the Committee would consider

attendance at such events and the provision of reasonable refreshments associated with them to come within the definition of hospitality. The Committee may wish to issue guidance on this matter.

6. The national elements of the Code have been more problematic and, in particular, those relating to the declaration of disclosable pecuniary interests. The Act is very poorly worded. Section 31(1)(b) says that where a Member: "has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting" he or she cannot participate. Quite what that means has been the issue of some debate given the way DPI's are defined in Regulations. The Communities and Local Government Department resorted to paraphrase in Guidance they issued saying that participation is prevented when:

*"...you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting"*

7. That raises the question of where the lines should be drawn. However, an opinion from Leading Counsel shared with ACSes Members rightly points out that now that criminal liability may arise, there is a particular need for circumspection, suggests that the absence of clarity in relation to the law requires a cautious approach and advises that if there is likely to be a problem, it may be better to head this off by inviting applications for dispensations. This is plainly sensible advice.
8. The absence of clarity in the law has already had some impact in York. A Cabinet Member has been advised not to participate in one decision which had a tangential link to his employer. The Monitoring Officer is satisfied that the interest would have been regarded as personal at the most under the old regime.
9. Members have previously discussed the uncertainty around the application of the new law to Council tax setting. The Minister has issued guidance on that issue which is attached. The guidance has provoked debate in local government circles. The ACSes President has been quoted as saying that: "legislation does not always mean what ministers may wish it to mean".
10. While realistically there is no chance of a prosecution the Monitoring Officer has proceeded to grant the requested dispensations.



11. The earlier government guidance also contained a statement that having a disclosable pecuniary interest would prevent any form of participation from a Member even as a member of the public. At the recent training the overwhelming view of Members was that discussion starts after the public have made representations and the wording of the Act does not prevent a Member making such representations. That is also the view of the Monitoring Officer and a similar view has been expressed in another opinion from Leading Counsel shared with ACSeS Members. Nevertheless, in light of the residual uncertainty, the Committee may wish to consider specifically delegating power to the Monitoring Officer to grant dispensations in such cases as they are unlikely to be covered by the powers already delegated.
12. Members may also wish to note that the Committee on Standards in Public Life has recently indicated that it has adopted a watching brief on local government standards. The Committee has concerns as to the adequacy of sanctions available for misconduct and concerns as to whether the new arrangements for independent involvement will prove to be as robust as those they replaced.

### **Recommendations**

13. Members are recommended to:
  - 1) Clarify the application of the requirement to register offers of hospitality to the conferences referred to in paragraph 5.  
Reason: To clarify the expectations imposed on Members
  - 2) To delegate to the Monitoring Officer the power to grant dispensations enabling a Member to make representations to Council meetings in circumstances where a member of the public has identical rights.  
Reason: To avoid any uncertainty as to Members' legal position
  - 3) To note the report and to timetable a further similar for the next Municipal Year  
Reason: To allow Members to monitor the implementation and impact of the new standards regime.

**Contact Details**

**Author:**

**Andrew Docherty**  
**Monitoring Officer**

**CBSS**

*Tel No. 01904 551004*

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**Report**  
**Approved**

**Date** 0702/13

**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**

Annex A – Code of Conduct

Annex B – Letter from Brandon Lewis M.P.

## MEMBERS' CODE OF CONDUCT

### Part 1: General Provisions

#### Introduction

1. (1) This Code sets out the standards of behaviour required of you whenever you are acting as a Councillor of the City of York Council. This Code also applies to any person appointed as a co-opted member of the City Council or any of its Committees when acting as such.
- (2) The Code has been adopted by the City Council and is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

#### Definitions

2. (1) In this Code:

You are acting as a Councillor or acting as a co-opted Member only when conducting the business of the Council or acting, claiming to act or giving the impression that you are acting as a representative of the Council.
- (2) A “co-opted member”, is a person who is not an elected member of the authority but who –
  - (a) is a member of any committee or sub-committee of the authority, or
  - (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority and is entitled to vote at any meeting of that committee or sub-committee
- (3) “meeting” means a meeting of the Council or of any committee, sub-committee, joint committee or joint sub-committee of the authority or of the Cabinet or any committee of the Cabinet.
- (4) A “sensitive interest” is one where you consider that disclosure of the details an interest could lead to you, or a person

connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees.

### **General Duties as to Conduct**

3. (1) You must treat others with respect.
- (2) You must not do anything which may cause the Council to breach any equality enactment.
- (3) You must not bully or intimidate any person, or attempt to bully or intimidate them.
- (4) You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Authority, or do anything that is likely to compromise their impartiality.
- (5) You must not disclose information which is confidential, unless:
  - (a) You have the permission of a person authorised to give it; or
  - (b) You are required by law to disclose the information; or
  - (c) You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
  - (d) The disclosure is reasonable; and is in the public interest; and is made in good faith.
- (6) You must not prevent another person gaining access to information which that person is entitled by law.
- (7) You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.
- (8) You must not use your position as a Councillor improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.

- (9) When you use or authorise the use by others of the resources of the Council you must:
- (a) abide by the Council's reasonable requirements; and
  - (b) ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (10) You must have regard to relevant advice given by the Council's Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.

## **Part 2: Interests**

### **Disclosable Pecuniary Interests**

#### ***Registration of disclosable pecuniary interests***

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

#### ***Definition of disclosable pecuniary interests***

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

#### ***Non participation at meetings in case of disclosable pecuniary interest***

- (3) If you are present at a meeting and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,

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

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

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

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

**Notification of Interests**

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

**Disclosure of Interests**

- 6. (1) You have a personal interest in any business of your authority where it relates to or is likely to affect you, a body named in the second schedule or any person with whom you have a close association.

- (2) If you are present at a meeting and you have a personal interest in any matter to be considered or being considered at the meeting:
  - (a) If the interest is not registered, you must disclose the interest to the meeting.
  - (b) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- (3) If you have a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it would be likely to prejudice your judgement of the public interest then you have a prejudicial interest. This is subject to the exceptions set out in paragraph 6.4.
- (4) You do not have a prejudicial interest in any business of the authority where that business:
  - (a) does not affect your financial position or the financial position of a person or body named in the second schedule;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in the second schedule; or
  - (c) relates to the functions of your authority in respect of;
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992,

where you are in receipt of, or are entitled to the receipt of, such pay;

- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

### **Sensitive Interests**

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

### **Compliance with Standing Orders**

- 8. (1) Standing Orders may require you to leave the meeting room when you have a personal interest. You must comply with any such Standing Order.



## First Schedule – Interests which are Disclosable Pecuniary Interests

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

	interest.
Securities	Any beneficial interest in securities of a body where— <ol style="list-style-type: none"><li>(a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and</li><li>(b) either—<ol style="list-style-type: none"><li>i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li><li>ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</li></ol></li></ol>

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

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

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

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

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

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

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

### **Second Schedule – Other Interests**

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

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5 February 2012

To all Local Authority Leaders

Dear Colleague,

### **REMOVING UNNECESSARY RED TAPE: COUNCIL TAX SETTING**

As you will know, the Localism Act 2011 abolished the last Administration's bureaucratic and controversial Standards Board regime. We have intentionally sought to move to a lighter-touch regime which focuses on openness and transparency.

In August 2012, we published a [practical guide](#) for councillors, to complement the [illustrative local code of conduct](#) we published in April 2012. However, as highlighted in a recent [Parliamentary debate](#) on the topic, we are keen to avoid unnecessary and bureaucratic gold-plating of the new regime.

That debate and associated correspondence has highlighted that some council monitoring officers are informing their councillors that being a council tax payer is a disclosable pecuniary interest in any Budget debate. Councillors are then informed they would be committing a criminal offence if they speak or vote in that debate unless they obtain a formal dispensation.

Whilst my department does not issue legal advice, in our opinion, such dispensations are unnecessary. Council tax liability applies to the generality of the population; councillors have no unique position in that regard.

Being a council taxpayer or being eligible for a discount under the new local arrangements for council tax support are pecuniary interests, but **are not disclosable pecuniary interests** as specified in regulations. Therefore a **councillor does not need to seek a dispensation** in order to participate in discussions or vote on decisions in the council tax setting process or local arrangements for council tax support. I made this clear in the [Parliamentary debate](#), which I would encourage you to read.

Holders of public office should be guided by the Nolan Principles. I believe that the blanket act of every councillor declaring the obvious (that residents are liable for council tax) adds nothing to that cause. Indeed, Section 106 of the Local Government Finance Act 1992 prohibits councillors who are in council tax arrears (by two or more months) from voting on Budgets. So there is a clear expectation that the generality of councillors are paying council tax.

I hope this is helpful in reducing your council's administrative paperwork and we will shortly be updating our practical guide for councillors to reflect this view.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Brandon', with a long horizontal flourish extending to the right.

**BRANDON LEWIS MP**



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**Joint Standards Committee****20<sup>th</sup> February 2013**

Report of the Monitoring Officer

**PLANNING CODE OF GOOD PRACTICE****Summary**

1. This report asks Members to refer a revised Planning Code of Good Practice for consultation with relevant Members and Officers.

**Background**

2. In 2003 the Council adopted a Planning Code of Good Practice which supplemented the Code of Conduct. That was considered to be good practice supported by the Local Government Association and the Association of County Secretaries and Solicitors (ACSeS). Although it has had some revision since that time the current Code is now very outdated having failed to keep pace with developments in relation to the predetermination rules and not yet having been updated in light of last year's changes to the standards regime. The Code is, however, still part of the Council's Constitution and can be found here:

<http://democracy.york.gov.uk/ecSDDisplay.aspx?NAME=SD569&ID=569&RPID=6683781&sch=doc&cat=12830&path=12830>

3. A substantially revised draft Code is annexed to this report. It takes elements from the existing Code and has regard to a Model Code prepared by ACSeS but has been updated in light of the Localism Act 2011.

**Recommendations**

4. Members are recommended to:
  - 1) Identify any changes that they would like to see to the draft Planning Code

Reason: To add further clarity to the code.

- 2) Ask the Monitoring Officer to consult relevant Members and Officers on the draft Code and report the outcome of that consultation to the next meeting of this Committee.

Reason: To ensure that any new Code is fit for purpose.

**Contact Details**

**Author:**

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**Monitoring Officer**

**CBSS**

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|

**Report  
Approved**

**Date** 07/02/13

**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**

Annex A – Draft Planning Code of Practice



## PLANNING - CODE OF GOOD PRACTICE

### 1. Reasons for Guidance

- 1.1 One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Planning necessarily affects land and property interests and as such is often highly contentious. It is important therefore that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons. The aim of this Code of Good Practice is to promote public confidence in the planning decision making process.
- 1.2 If you do not abide by this Code of Good Practice, you may put:
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of being the subject of a standards complaint

### 2. When does this code apply?

- 2.1 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes both Planning Committee meetings, any meetings of the full Council when exercising the functions of the Planning Authority, and less formal occasions, such as meetings with Officers or the public and consultative meetings. It applies to planning enforcement matters or site specific policy issues as well as to planning applications.
- 2.2 This Code of Practice supplements the Council's Code of Conduct for Members, and gives detailed advice on dealing with planning issues.
- 2.3 If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer, and preferably well before any meeting takes place.

**Do** apply the rules in the Members' Code of Conduct first.  
**Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control.  
**Do** seek early advice if in doubt

### 3. Dealing with Interests under the Members' Code

- 3.1 Members must always declare personal, prejudicial and disclosable pecuniary interests in accordance with the Members' Code of Conduct.
- 3.2 A personal interest arises where the business affects you, somebody with whom you have a close association, one of the outside bodies referred to in the second schedule of the Code of Conduct or someone from whom you have received a gift or hospitality valued at £25 or more. You must declare these interests unless they appear on your register of interests.
- 3.3 A prejudicial interest arises where your personal interest is so significant that it would be likely to prejudice your judgement of the public interest. You should not participate in the debate or vote where you have such an interest and, if the interest arises in a decision making meeting, you should leave the room.
- 3.4 A disclosable pecuniary interest arises where the business relates to one of the interests prescribed by law and referred to in the first schedule of the Code of Conduct. It is a criminal offence to participate in a Council meeting if you have such an interest and have not been granted a dispensation.

**Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other Members. Disclose your interest at the commencement of discussion on that particular matter.

**Where your interest is a prejudicial or disclosable pecuniary interest and you have not obtained a dispensation:-**

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.
- **Don't** get involved in the processing of the application\*.
- **Don't** use your position to discuss the proposal with Officers or Members when other members of the public would not have the same opportunity to do so.

- \* A Councillor who has a prejudicial or disclosable pecuniary interest in a matter is permitted to seek to persuade Planning Officers of the merit of the application in the same way as a member of the public but should be careful to avoid creating an impression of placing pressure on an Officer for a particular recommendation.

#### 4. Keeping an open mind

- 4.1 Members must not make up their minds before they have all relevant material and arguments before them at the Planning Committee meeting. The use of a political whip is not permitted for decisions on planning applications.
- 4.2 Members are entitled to feel predisposed towards a particular decision, but must still be able to consider and weigh relevant factors before reaching the final decision. Pre-determination arises when Members' minds are closed (or reasonably perceived to be closed) to the consideration and weighing of the relevant factors. That risks making the whole decision vulnerable to legal challenge. It also risks a public perception being created of unfairness in the planning process.
- 4.3 The Localism Act 2011 has built on clarification of the law provided by the Courts in a number of cases and Members can take some comfort that they are entitled to express views on planning matters prior to a decision being made without being challenged on grounds of predetermination. Nevertheless it remains the case that Members must not have closed their mind to possible alternative decisions and must be prepared to consider representations made and the advice of Officers and listen to the debate before reaching a final view.

**Don't** make up your mind, or appear to have made up your mind, on how you will vote on any planning matter until you have heard the Officer's presentation and evidence at the Planning Committee when the matter will be considered.

- 4.4 A member of the Planning Committee who is also a Parish Councillor may already have been consulted on a planning

application at a Parish Council meeting. It is permissible to express a view at a Parish Council meeting on a matter and still participate at the Planning Committee so long as you have not closed your mind to reaching a different view. It is good practice in these cases to:

- make it clear during the discussion at the consultee body that your views are expressed on the limited information before you only; and
- you will reserve judgement and the independence to make up your own mind when it comes before the Planning Committee and you hear all of the relevant information; and
- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Planning Committee; and
- you disclose the personal interest regarding your membership of the Parish Council when the Planning Committee comes to consider the proposal

4.5 If you have already made up your mind you must not speak or vote on the business but you are not legally required to withdraw from the meeting (unless you also have a prejudicial or disclosable pecuniary interest). However, you may prefer to do so for the sake of appearances. If you decide to stay in the meeting you should explain that you do not intend to speak and vote because you have (or you could reasonably be perceived as having) judged the matter elsewhere, so that this may be recorded in the minutes.

4.6 Cabinet Members may have been involved in promoting a particular development in their role as Cabinet Members for the Service. If a Cabinet Member also sits on Planning Committee it may be difficult for him or her to demonstrate objectivity in dealing with an application relating to that development. In those cases the best course of action would be for the Cabinet Member to withdraw from the debate and vote.

## **5 Contact with Applicants, Developers and Objectors**

5.1 Members should discourage applicants or agents from approaching them in any way, should minimise social contacts with known developers and agents and should refrain altogether from

such contacts when developments are contemplated or a planning application has been received.

- 5.2 Members should refrain from involving themselves in discussions with developers or potential applicants at the pre-application stage of proposals unless such discussions are part of structured and recorded arrangements with Officers.
- 5.3 If an approach is received from an applicant/agent in relation to a particular planning application or a matter that may give rise to a planning application, the Member should:
- Refer the applicant or agent to the relevant Officers of the Council, and notify Officers of the approach.
  - Avoid giving any commitment or impression of a commitment or that they hold any particular view about the development or the future of the site in question.
  - Confine themselves to providing information on the Council's general planning policies or procedures only, where the Member is fully aware of these.
  - If they do express an opinion they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.
- 5.4 When any Member speaks at a meeting of the Committee on the subject of a particular planning application, they should disclose the fact that they have been in contact with the applicant/agent, if this is the case. Members are able to articulate their own views on proposals, but should not speak on behalf of the applicant or the agent who will have their own opportunity to speak to Committee.
- 5.5 Any written information received by a Member of the relevant Committee from the applicant or agent, objectors or any other third party, should be passed or copied immediately to the relevant Planning Officer and declared at the start of the consideration of the particular application.

**Do** seek to minimise social contacts with known developers particularly when the developer is known to be contemplating development in the City

**Do** refer an applicant, developer or objector who approaches you about a planning application to Officers, if they need planning, procedural or technical advice.

## **6 Contact with neighbours, objectors, supporters, third parties or fellow Councillors**

- 6.1 In order for the planning system to work effectively public concerns must be adequately aired. It is an important part of a Member's role to listen to residents' views and put these views forward within the Council. However, it is important that Members make decisions based on the full facts having considered all representations made and all other relevant considerations. Members will usually need a report from Officers to help them to do this.
- 6.2 Members should be wary of giving the impression that they have made up their mind about a particular matter. Discretion is always advisable. A good approach is to say something like: "From what I know at the moment I support (or have reservations about) this application, but I won't make a final decision until I have all the facts before me at Planning Committee".
- 6.3 Members should advise anyone lobbying them that the Committee can only effectively consider representations if they are made in writing to the Assistant Director (Planning & Sustainable Development). Members can also advise objectors of the rights they have for speaking at meetings. If there are technical issues or alternatives to be considered, then Members should either ask the applicant/objector to raise these matters with Officers or ask Officers to consider such matters when reporting to Committee.
- 6.4 Members should not accept gifts or hospitality of any value from anyone who is lobbying them. You should inform the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 6.5 Members should not take part in negotiations with applicants or potential applicants regarding their proposals for development except where such negotiations are part of a structured arrangement with Officers.

If you are lobbied

**Do** explain that you are not in position to express a firm intention to vote one way or the other

**Do** explain how representations can be made formally

**Don't** accept any gifts or hospitality

## **7 Lobbying by Members**

- 7.1 Members are quite entitled to join general interest groups which may have an interest in planning matters such as the Civic Society or the Victorian Society. If a group to which you belong has adopted a view on a particular matter then you need to declare a personal interest when the matter is discussed.
- 7.2 There may be circumstances where a political group has a policy commitment to a particular development. It may have been contained within the party's manifesto. This alone does not prevent a Member participating in decision making so long as you have not closed your mind to considering the planning arguments.
- 7.3 You should not, however, act as the lead spokesman for a group supporting or opposed to a particular development.

## **8. Site Visits**

- 8.1 Site visits can play an important role in ensuring that Members make decisions on a sound understanding of the relevant issues. However care must be taken to ensure that site visits are not misused as a lobbying device to help ensure a particular outcome in respect of controversial applications or to defer consideration of an application to a subsequent meeting.
- 8.2 You will have the opportunity to ask questions of Officers, the applicant and objectors at the site visit but you should avoid expressing opinions at this stage.
- 8.3 In addition it is important for Officers and Members to hear all the discussion and visit all parts of the site as a single group so as to ensure that any information which you gained from the site visit can be reported back to the Committee, and that all Members have the same information
- 8.4 While visiting sites Members must not accept any form of gift, hospitality or refreshment.
- 8.5 Members should not normally accept invitations to visit a site unless this is in the company of a planning officer. This does not prevent you from going alone to view a site from public land.

- 8.6 If, exceptionally, you feel it necessary to enter private land you should ensure that you have the permission of the owner/occupier to do so. You should make it clear that the purpose of the visit is to obtain an impression of the site and not to discuss the merits of the application. If you feel that you need an explanation of the proposal then you should request a formal site visit by contacting the Case Officer at least 10 days before the Committee meeting.

**Don't** request a site visit unless you feel it is strictly necessary

**Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

**Do** ask the Officers at the site visit questions or seek clarification from them on factual matters which are relevant to the site inspection.

**Don't** express opinions or views on the proposal to anyone.

**Don't** enter a site which is subject to a planning application unless you can comply with the good practice rules in this Code

## **9. Presentations to Members**

- 9.1 It may be that on larger, more complex, or design sensitive applications, it would be appropriate for a prior presentation to be made to the relevant Committee.
- 9.2 If so, such presentations will not be held less than two weeks in advance of the meeting. This is to allow Members due time for reflection on the proposal, and to allow any questions and issues to be followed up by Officers and covered in the agenda report to Members at the subsequent Committee.
- 9.3 The role of Members at such presentations is to listen to the presentation, and to raise questions on the details presented. It is important that Members do not promote or oppose the application at this stage, since not all the relevant information may be before them.



## **10. Decision Making**

- 10.1 The Council's Constitution specifies that certain applications must be brought before the Committee and others may be determined by Officers. Members can request that a particular application should be brought to Committee rather than being determined by Officers under delegated powers.
- 10.2 You should ensure that you only request that an application be brought to Committee [in accordance with Constitutional requirements], and for proper reasons which are reported to the Committee.
- 10.3 In making decisions on planning applications, the law requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. Adequate reasons must be given for any decision. It is particularly important to ensure that these are fully articulated and recorded where a decision is made contrary to an Officer recommendation or contrary to established policy.
- 10.4 You must come to a decision after proper consideration of all the information reasonably required. You should not participate in a vote if you have not been present for the full presentation and debate. You should not attempt to answer e-mail, monitor or contribute to social media discussions or engage in any other activity which may distract you from giving the proceedings your full attention.
- 10.5 You should ensure that you have had sufficient time to digest any new material which has been presented. You may need to ask for an adjournment to do so. Occasionally it may be necessary to defer an item to allow for proper consideration or for additional information to be obtained.

**Do** come to meetings with an open mind and demonstrate that you are open-minded.

**Do** make decisions in accordance with the Development Plan unless material considerations indicate otherwise

**Do** come to your decision only after due consideration of all of the information reasonably required.

**Do** make sure that if you are proposing, seconding or supporting a decision that you clearly identify the planning reasons leading to this conclusion and can identify the supporting evidence

## **11. Officers**

11.1 Members must not put improper pressure on any Officer to put forward a particular recommendation and should do anything which compromises or is likely to compromise his or her professional integrity and impartiality. Doing so may be a breach of the Code of Conduct.

11.2 Planning Officers must act within officer and professional codes of conduct. The Royal Town Planning Institute requires its members to fearlessly and impartially exercise their independent professional judgment to the best of their skill and understanding. Accordingly there may be occasions where Officers make recommendations which may be contrary to the views and wishes of Members.

**Do not** apply improper pressure on Officers to make a particular recommendation

**Do** respect the professional obligations of planning Officers.

## **12. Members as developers or applicants**

12.1 If you have an interest in land that may be the subject of

redesignation or other decision in the Development Plan process, or if you, or someone with whom they have a close association is making a planning application to the Council, then you should discuss this at the earliest opportunity with the Assistant Director (Planning & Sustainable Development). The planning application should contain a declaration (in the form of a covering letter) of the Member's position in relation to the planning application, so that all those consulted are aware of the relationship. The Assistant Director (Planning & Sustainable Development) will oversee the consideration of the application with the case officer, including any discussions that may involve other Members.

12.2 Any applications by a Member will be reported to the Planning Committee or the Planning Area Sub-Committee as appropriate and will not be dealt with by an officer under delegated powers. The Member's interest should be made clear at the Committee.

12.3 If your planning application comes before the Planning Committee you will have a disclosable pecuniary interest in relation to the application. This must be declared and means that you may not participate in the discussion or vote on the application. Government guidance suggests that the prohibition on discussing the item would prevent you making representations to the Committee as an ordinary member of the public. While some lawyers have questioned this guidance there is a degree of uncertainty and the safest option would be for you to either seek a dispensation allowing you to make representations or ask someone else to make those representations on your behalf.

### **13. Member Training**

13.1 In order to ensure that Members are fully aware of the requirements placed on them when sitting on Planning Committees it is the policy of the Council to require Members to attend prescribed before sitting as a Member or Substitute Member.

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## 20012/2014 Work Plan for Joint Standards Committee

<u>Meeting Date</u>	<u>Items</u>	<u>Notes</u>
<b>28 November 2012 at 3.00pm</b>	<i>Monitoring report in respect of complaints received</i> <i>Protocol for handling complaints and assessment criteria</i> <i>Dispensations</i> <i>Registers of gifts and hospitality</i>	
<b>20 February 2013 at 3.00pm</b>	Monitoring report in respect of complaints received  Review of the new Code of Conduct  Planning Code of Good Practice  Meeting with Group Leaders  Presentation of finalised Procedures for Handling Complaints	As agreed at meeting of 28 November 2012 (minute 16)
<b>17 April 2013 at 3.00pm</b>	Monitoring report in respect of complaints received  Review of Member Officer Protocol (to include Parish Councils as well as CYC)	As agreed at meeting of 28 November 2012 (minute 19)

<b>26 June 2013 at 3.00pm (provisional)</b>		
<b>11 September 2013 at 3.00pm (provisional)</b>		
<b>13 November 2013 at 3.00pm (provisional)</b>		
<b>19 February 2014 at 3.00pm (provisional)</b>		
<b>16 April 2014 at 3.00pm (provisional)</b>		
<b>June/July 2014</b>	Review of the arrangements for handling complaints.	As agreed at meeting of 28 November 2012 (minute 19)