

AGENDA SUPPLEMENT

Joint Standards Committee - Assessments Sub-Committee

To: Councillor Fisher (CYC Member)
Councillors Chambers and Rawlings (Parish Council Members)

Mr Leigh (Independent Person)

Date: Wednesday, 19 October 2022

Time: 2.00 pm

Venue: The King Richard III Room (GO49) - West Offices

The Agenda for the above meeting was published on **11 October 2022**. The attached additional documents are now available for the following agenda item:

4. Code of Conduct Complaint Received in Respect of a City of York Councillor (Pages 25 - 50)

Appendices 2-4 to the private report, marked 'to follow' on the published agenda.

Note: The Joint Standards Committee procedures are also attached to this supplement.

This agenda supplement was published on **12 October 2022**.

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Appendix 29 – Joint Standards Committee Procedures

CASE HANDLING PROCEDURE

Background

Under Section 28 of the Localism Act 2011, City of York Council must have in place “arrangements” under which allegations that an elected or co-opted councillor of the Council or of a town or parish council within the Council’s area (herein after referred to as the ‘subject member’) has failed to comply with the Council’s Code of Conduct can be considered and decisions made on such allegations.

These arrangements provide for the Council to appoint at least one Independent Person whose views must be sought by the Council before it takes a decision on an allegation that it has decided to investigate, and whose views can be sought by the Council at any other stage, or by the subject member against whom an allegation has been made.

The Council has adopted a Code of Conduct for councillors (the Code), which is published on the Council’s website and is available for inspection on request from the Council’s office.

Each town and parish council is also required to adopt a Code of Conduct which should be available on their website.

Initial assessment

1. All allegations, including those against a town or parish councillor, must be made in writing, ideally by completing the complaints form available on the Council’s website, to the monitoring officer of City of York Council (MO).
2. Within 3 working days of receipt of the complaint the MO will acknowledge the complaint.
3. Anonymous complaints will not be accepted unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward.

4. The MO will apply an initial filter to an allegation – for example, to check that the complaint is against a councillor, that they were in office at the time of the alleged incident and that the matter would be capable of being a breach of the Code. The Council has no authority to deal with complaints which relate solely to a councillor's private life or things they do which are not related to their role as a councillor or as a representative of the council. The MO will keep a record of all complaints made including those which do not pass the initial filter.
5. The MO must refer a complaint to the Joint Standards Committee Assessment Sub-Committee where the subject member or complainant is a member of the Executive or Shadow Executive or a committee chair or deputy. The MO may also refer a complaint either to the deputy monitoring officer (DMO) or the Assessment Sub-Committee where the MO has a conflict of interest. Circumstances where there may be a conflict of interest would include (but are not limited to) where the MO is the complainant, a key witness or where the MO has already advised on matters which are the subject of the complaint. Where this is done, references to the MO in this section should be substituted by the DMO or the JSC Assessment Sub-Committee.
6. Complaints which identify criminal conduct or breach of other regulations by any person may be referred by the MO to North Yorkshire Police for consideration, or any other regulatory agency. In such cases the MO may pause the consideration of the complaint pending action by the other body.
7. If the MO decides the matter is within scope, they will invite an Independent Person (IP) to give their views on what action should be taken at this stage. That IP will then remain the IP who will be consulted on that case throughout this process, except in exceptional circumstances. Where a matter has not been referred to the JSC Assessment Sub-Committee, the MO will also consult with the chair or vice chair of the JSC.
8. The MO will also notify the subject member of the complaint within three working days unless there are compelling reasons not to, together with a copy of the complaint (or relevant extracts) and a summary of the process to be followed, and invite them to submit any relevant comments. The subject member will be given 10 working days to respond from the date of the notification. In parish council

cases the MO may also notify the clerk and may ask for relevant factual information. However, the MO, in consultation with an IP, may withhold the complainant's identity if they can be satisfied that there are reasonable grounds for granting confidentiality, for example a belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.

9. At the end of the 10 working days from notifying the subject member (regardless of whether any comments have been received from the subject member), and after seeking the views of the IP and consulting with the chair or vice chair of the JSC the MO will decide one of the following outcomes:
 - a. to take no further action;
 - b. to seek to resolve the matter informally; or
 - c. to refer the matter for investigation.

10. In deciding what action is necessary the MO will consider the following non-exclusive factors:
 - a. does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?;
 - b. are there alternative, more appropriate, remedies that should be explored first?;
 - c. where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse or "unparliamentary" language) may be given;
 - d. is the complaint in the view of the MO malicious, politically motivated, or 'tit for tat'?;
 - e. whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction;
 - f. whether the complaint is the same as one which has previously been considered and no new material evidence has been submitted within the current administration;
 - g. whether the same complaint has been submitted and accepted;
 - h. does the complaint relate to conduct in the distant past (over six months before)? This would include any reason why there had been a delay in making the complaint;
 - i. does the complaint actually relate to dissatisfaction with a Council (or parish council) decision rather than the specific conduct of an individual?; and

- j. is it about someone who is no longer a councillor or who is seriously ill?
11. All parties (and the clerk for parish cases) will be notified of the decision and there is no internal right of appeal against that decision.
 12. A decision notice will be produced as a matter of record but will not be published at this stage though the Council may issue a public statement if details of the complaint are already in the public domain.
 13. The MO will report to the JSC for information on cases in which there has been no further action taken.

Informal resolution

14. Where the MO has decided to seek to resolve the matter informally, they may do one or more of the following:
 - a. ask the subject member to submit an apology in writing to the complainant;
 - b. convene a meeting between the subject member and the complainant in order to try to resolve the issue informally;
 - c. notify the subject member's group leader (where they are a member of a political group) and suggest that they may wish to take some internal group action;
 - d. suggest that the subject member undergo relevant training;
 - e. other such action that the MO deems appropriate.
15. The MO will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.
16. If either the subject member or complainant refuses to engage with the informal resolution proposed by the MO, or the MO deems the action taken by the subject member insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with an IP, whether the case should be closed, whether an investigation is necessary or whether some other action should be taken. If the MO and the IP are not in agreement about how to proceed the case will be referred to the chair or vice chair of the JSC for a decision.

17. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution.
18. The MO will report to the JSC on the outcome of any informal resolutions proposed and/or implemented.

Investigation

19. Where a matter is referred for investigation, the MO may carry out the investigation themselves, delegate it to another officer or contract it out to an outside body.
20. The investigation must normally be completed within 3 months of the MO decision to refer the complaint for investigation. If an extension of time is needed the MO must agree that extension with the JSC chair and the IP and notify the subject member, complainant (and clerk in parish cases) of any extension with reasons.
21. The subject member is notified who the relevant IP is for the case and may seek their views at any stage during the investigation.
22. The complainant is also notified who the IP is and may make a request to the MO to seek the views of the IP. However, such a request will only be granted at the discretion of the IP in consultation with the MO.
23. At any time while the investigation is underway the MO, the subject member or the complainant may ask for an informal resolution. The MO will consult with the relevant IP whether to agree with the request.
24. Before concluding the investigation, a draft report will be produced and the complainant, subject member and IP will be invited to comment. Witnesses may also be asked to comment as appropriate on parts of the draft report relevant to them.
25. Where the investigation has not been personally conducted by the MO, the final decision as to the findings of the report will be made by the MO unless there is a conflict of interest, in which case the decision will be taken by the DMO.

26. There may be exceptional circumstances when the MO decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. This may include, for example that the subject member is seriously ill or is no longer a councillor or other action has led to the matter being resolved. In such cases the MO should consult the IP before deciding that the file be closed. A record of the complaint will be kept on file in the event that the subject member returns to office in the future and a subsequent complaint is lodged against them.
27. At the end of the investigation the MO may conclude:
- a. that there has been no breach of the Code;
 - b. to seek to resolve the matter informally; or
 - c. to refer the matter to the JSC for determination.
28. In cases where the MO has concluded that there has been no breach of the Code all parties (and the clerk in parish cases) will be notified of the decision and there is no right of internal appeal against that decision. The MO will report the finding to the JSC and issue a public decision notice.
29. Where the MO decides to seek to resolve the matter informally, they shall seek the views of the IP and complainant before concluding whether such an outcome is appropriate. The possible resolutions are those outlined above at paragraph 14. If the subject member or complainant refuses to engage with the informal resolution directed by the MO, the MO deems the action taken by the subject member insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with the IP and chair or vice chair of the JSC, whether the case should be closed or whether a hearing is necessary. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution and any further steps.
30. Where the matter is referred for determination, the hearings panel of the JSC will convene within 2 months. The MO will notify the subject member and complainant of the date of the hearing and provide them with a written outline of the hearing procedure.

Hearings Panel

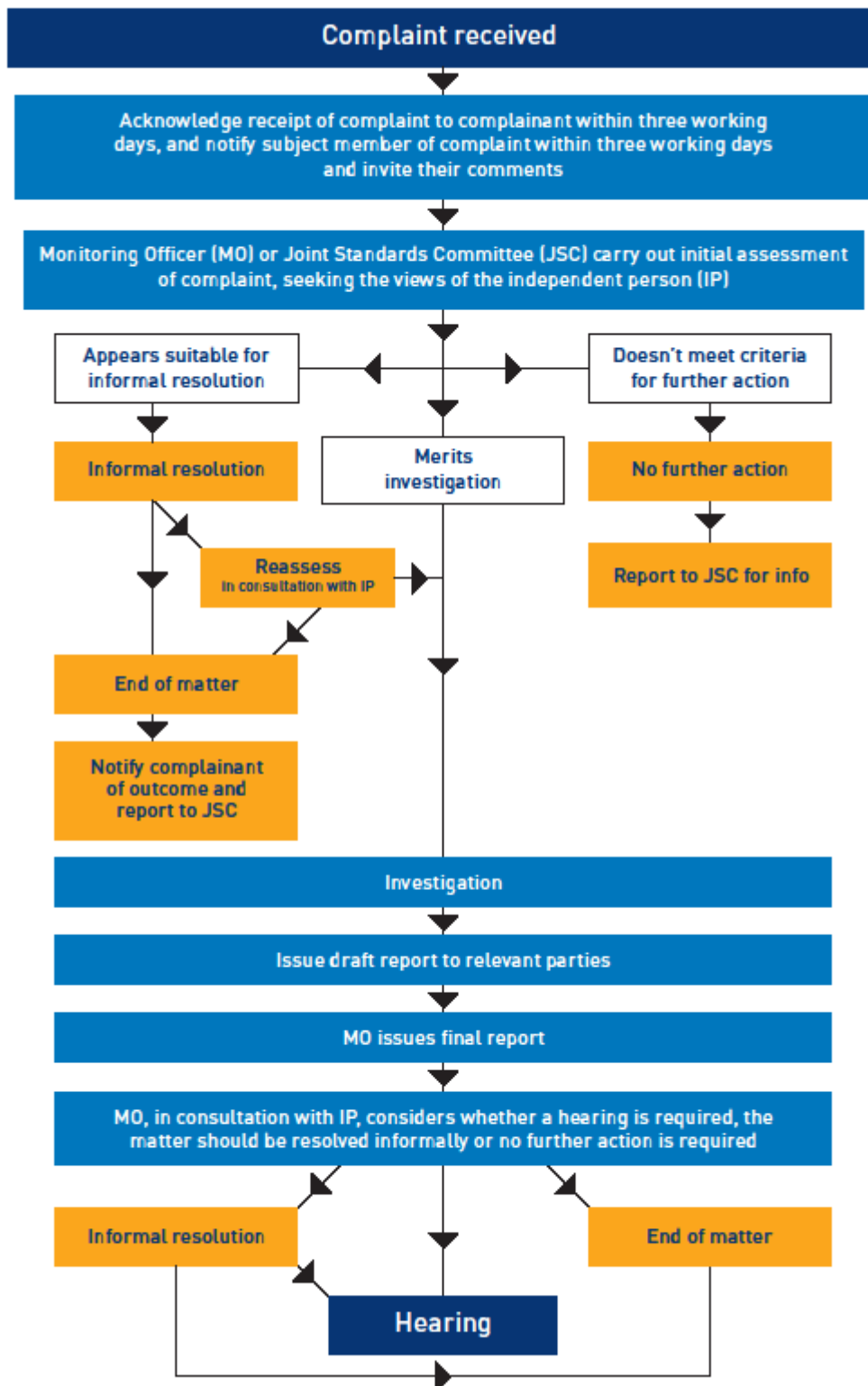
31. A matter referred for determination by the MO will be heard by a hearings panel, made up of members of the JSC.
32. At the start of the hearing the MO will ask the Hearings Panel to consider whether the matter should be heard in public or in private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. The Hearings Panel will always, however, retire in private to consider its findings and possible action.
33. The views of the IP will be sought by the Hearings Panel and made public before the Hearings Panel reaches its decision.
34. The Hearings Panel may decide:
 - a. that there has been no breach of the Code;
 - b. that there has been a breach but to take no further action; or
 - c. that there has been a breach and a relevant sanction should be imposed or recommended.
35. If the Hearings Panel decides that a relevant sanction should be imposed or recommended it may impose or recommend any one or more of the following:
 - a. report its findings in respect of the subject member's conduct to Council (or the relevant parish council);
 - b. issue (or recommend to the parish council to issue) a formal censure;
 - c. recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to Council) that they be removed from any or all committees or sub-committees of the Council (or recommend such action to the parish council);
 - d. recommend to the Leader of the Council that the subject member be removed from positions of responsibility.
 - e. instruct the MO to (or recommend that the parish council) arrange training for the subject member;
 - f. recommend to Council (or recommend to the parish council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by the parish council);

- g. recommend to Council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the Council for a specified period, such as a computer, website and/or email and internet access; or
- h. recommend to Council (or recommend that the parish council) that it excludes the subject member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
- i. if relevant, recommend to the Council that the subject member be removed from their role as Leader of the Council;
- j. if relevant recommend to the secretary or appropriate official of the group that the councillor be removed as Group Leader or other position of responsibility.

36. All parties (and the clerk in parish cases) will be notified of the Hearing Panel's decision and there is no right of internal appeal against that decision.

A decision notice will be published on the Council website within 5 working days of the Hearings Panel decision.

Case Handling Flowchart



INITIAL ASSESSMENT BY AN ASSESSMENT SUB-COMMITTEE PROCEDURE

Background

Under Section 28 of the Localism Act 2011, City of York Council must have in place “arrangements” under which allegations that an elected or co-opted member of the Council or of a town or parish council within the Council’s area has failed to comply with the Council’s Member Code of Conduct can be considered and decisions made on such allegations.

These arrangements provide for the Council to appoint at least one independent person (IP) whose views must be sought by the Council before it takes a decision on an allegation that it has decided to investigate, and whose views can be sought by the Council at any other stage, or by the member against whom an allegation has been made (subject member).

The Council has adopted a Member Code of Conduct (the Code), which is published on the Council’s website and is available for inspection on request from the Council’s office.

Each town and parish council is also required to adopt a Code of Conduct which should be available on their website.

The following procedures set out the process to be followed when an allegation is referred by the monitoring officer (MO) for an assessment by a sub-committee of the Joint Standards Committee (JSC).

Initial assessment by an assessment sub-committee

1. All allegations, including those against a town or parish councillor, must be made in writing, ideally by completing the complaints form available on the Council’s website, to the MO of City of York Council. In most circumstances the Council has delegated the decision as to whether or not to take any further action on a complaint to the MO. However, in certain circumstances the MO will refer the matter to an assessment sub-committee (see paragraph 5 of the Case Handling Procedure). This is either where the MO has a conflict of interest or because the complaint is about certain senior members of the City Council as set out in paragraph 5 of the Case Handling Procedure.

2. The MO will only refer matters to the Assessment Sub-Committee after having applied the initial filter in paragraph 4 of the Case Handling Procedure to assess whether the complaint falls properly within the jurisdiction of the framework. However, where there is some doubt (for example it is unclear on the face of it whether the matter related to the member's role as a councillor or representative of the authority) the presumption would be that the matter should be referred to the Assessment Sub-Committee. This process sets out the procedure to be followed by the Assessment Sub-Committee upon receipt of a referral from the MO.
3. A matter referred for determination by the MO will be heard by an assessment sub-committee, made up of members of the JSC. This Sub-Committee will consist of three members. The Council has agreed that political proportionality rules do not apply to the Assessment Sub-Committee. Where the matter relates to a parish councillor a parish representative will be one of the three Sub-Committee members.
4. At the start of the assessment the MO will ask the Assessment Sub-Committee to consider whether the matter should be heard in public or in private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. Given that this is an early consideration of an allegation where no findings of fact has been made, however, there would be a presumption that the matter is heard as a confidential item.
5. The Assessment Sub-Committee will meet within three weeks of the MO referring the matter to them.
6. The views of the IP will be sought by the Assessment Sub-Committee and included in any report to the Sub-Committee.
7. In considering the complaint, the Assessment Sub-Committee will receive a report from the MO (or deputy MO if the MO is conflicted) setting out the complaint, matters to be considered by the Sub-Committee and the available options as to next steps. It would also include any comments received from the subject member in response to the complaint. The MO may also include any relevant factual material such as minutes of a meeting or a copy of a subject member's register of interests. This part of the process is not a formal investigation but is to establish whether or not there is a 'case to

answer'. As such the Sub-Committee should consider the matter on the papers with relevant supporting information but cannot call witnesses.

8. The Assessment Sub-Committee may decide:
 - a. that no further action is required;
 - b. that the matter should be referred for formal investigation; or
 - c. that some form of informal resolution should be carried out.
9. In reaching its decision it must consider the same range of factors as set out in the Case Handling Procedure.
10. If the Assessment Sub-Committee decides that no further action is required it will produce a decision notice and notify the complainant and the subject member (and parish clerk if appropriate) within three working days.
11. If the Assessment Sub-Committee decides the matter should be referred for formal investigation, it must produce a Decision Notice and instruct the MO to arrange for the matter to be investigated. In doing so it should specify to the MO whether it believes the investigation needs to be done externally from the authority, bearing in mind the significance and complexity of the case. The MO should then notify the complainant and subject member (and parish clerk if appropriate) that the matter is to be investigated and outline the process to be followed within three working days.
12. If the Assessment Sub-Committee decides the matter should be referred for an informal resolution, it must produce a Decision Notice and instruct the MO to arrange for the action to be carried out. In doing so it should specify to the MO what action it believes to be appropriate and a timescale. The MO should then notify the complainant and subject member (and parish clerk if appropriate) within three working days.

There is no internal right of appeal against the decision of the Assessment Sub-Committee.

WHAT TO EXPECT IF YOU'RE SUBJECT TO A CODE OF CONDUCT COMPLAINT

1. How is a complaint made?

A complaint is usually made by means of a completed complaint form. A copy of the complaint form is available to download from the Council website [here](#).

The monitoring officer (MO) will then apply an initial filter to the complaint – for example, to check that it is actually against a serving councillor, that they were in office at the time of the alleged incident and that the matter if proven would be capable of being a breach of the Code. If the complaint does not meet these legal tests the complainant will be told that no further action can be taken. The MO will keep a record of all complaints made including those which do not pass the initial filter.

2. How will I be notified of the complaint?

If the complaint passes the initial filter the MO will notify you of the complaint and send you a copy (or relevant extracts) and the process to be followed within three working days unless there are compelling reasons not to do so. You will also be asked to send any relevant comments to the MO within 10 working days from when the MO tells you about the complaint. In parish and town council cases the MO may also notify the clerk and ask them for any relevant factual information. The MO may refer some complaints to an assessment sub-committee of the Joint Standards Committee (JSC) in which case you will also be told that the JSC will be making the initial decision in your case.

3. Will I know who has made the complaint?

You will usually be informed of the complainant's identity. However, the MO, in consultation with an independent person (IP), may withhold the complainant's identity if they are satisfied that there are reasonable grounds for granting confidentiality.

Anonymous complaints will not be accepted unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously should be taken forward.

4. When may the complainant be granted confidentiality?

Requests for confidentiality will be considered on a case-by-case basis but reasonable grounds may include a belief that the

complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.

5. How will the complaint to be considered?

At the end of the 10 working days from sending you the complaint the MO (or Assessment Sub-Committee of the JSC) will decide:

- a. to take no further action; or
- b. to try to resolve the matter informally; or
- c. to refer the matter for investigation.

Before taking this decision the MO will ask an IP for their views on what action should be taken and will also consult with the chair or vice chair of the Joint Standards Committee unless the matter is being decided by the Assessment Sub-Committee of the JSC. In deciding what action is necessary the MO (or the Assessment Sub-Committee of the JSC) will consider the following non-exclusive factors:

- a. does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?;
- b. are there alternative, more appropriate, remedies that should be explored first?;
- c. where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse or “unparliamentary” language) may be given;
- d. is the complaint in the view of the MO malicious, politically motivated, or ‘tit for tat’?;
- e. whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction;
- f. whether the complaint is the same as one which has previously been considered and no new material evidence has been submitted within the current administration;
- g. whether the same complaint has been submitted and accepted;
- h. does the complaint relate to conduct in the distant past (over six months before)? This would include any reason why there had been a delay in making the complaint;
- i. does the complaint actually relate to dissatisfaction with a Council (or parish council) decision rather than the specific conduct of an individual?; and
- j. is it about someone who is no longer a councillor or who is seriously ill?

6. What contact can I expect from the MO after the assessment of the complaint?

You will be notified of the MO's decision, and there is no internal right of appeal against that decision.

A decision notice will be produced as a matter of record but will not be published at this stage though the Council may issue a public statement if details of the complaint are already in the public domain.

7. What happens if the MO seeks to resolve the matter informally?

Where the MO has decided to seek to resolve the matter informally, they may do one or more of the following:

- a. seek an apology from you in writing to the complainant;
- b. convene a meeting between you and the complainant in order to try to resolve the issue informally;
- c. notify your group leader (if you are a member of a political group) and suggest that they may wish to take some internal group action;
- d. suggest that you undergo relevant training;
- e. other such action that the MO deems appropriate.

The MO will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.

If either you or the complainant do not engage with the informal resolution, or the MO deems the action taken by you is insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with an IP, whether the case should be closed, whether an investigation is necessary or whether some other action should be taken. If the MO and the IP do not agree the chair or vice chair of the JSC will be asked to decide.

The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution and will report to the JSC on the outcome of any informal resolutions proposed and/or implemented.

8. What happens if the matter is referred for investigation?

Where a matter is referred for investigation, the MO may carry out the investigation themselves, delegate it to another officer or contract it out to an outside body.

The investigation must normally be completed within 3 months. If an extension of time is needed the MO will notify you of any extension with reasons.

You will be notified of who the relevant IP is for the case and you may seek their views at any stage during the investigation.

At any time while the investigation is underway you, the MO or the complainant may ask for an informal resolution. The MO will consult with the relevant IP whether to agree with the request.

Before concluding the investigation, a draft report will be produced and you, the complainant and the IP will be asked to comment. Witnesses may also be asked to comment on parts of the draft report relevant to them.

There may be exceptional circumstances when the MO decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. In such cases the MO will consult the IP before closing the file. A record of the complaint will be kept on file.

At the end of the investigation the MO may conclude:

- a. that there has been no breach of the Code;
- b. to seek to resolve the matter informally; or
- c. to refer the matter to the JSC for determination.

In cases where the MO has concluded that there has been no breach of the Code you will be told of the decision and there is no right of internal appeal against that decision. The MO will report the finding to the JSC and issue a public decision notice.

Where the MO decides to seek to resolve the matter informally, they will seek the views of the IP and complainant before concluding whether such an outcome is appropriate. If you or the complainant do not engage with the informal resolution, the MO deems the action taken by you insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with the IP and chair or vice chair of the JSC, whether the case should be closed or whether a hearing is necessary. The MO will notify the complainant

(and clerk in parish cases) of the outcome of the informal resolution and any further steps.

9. Will I have to attend a hearing?

A matter referred for determination by the MO will be heard by a hearings panel, made up of members of the JSC. There is no requirement for you to attend the hearing though you will be invited and may ask somebody to help you with your case. You will also be asked if you want any witnesses to come to the hearing to help your case.

At the start of the hearing the Hearings Panel will decide whether the hearing will be in public or in private, subject to the normal rules on exempt and confidential information and bearing in mind the public interest. The hearings panel will always, however, retire in private to consider its findings and possible action.

The IP will give their views to the Hearings Panel before it makes a finding on the case.

The Hearings Panel may decide:

- a. that there has been no breach of the Code;
- b. that there has been a breach but to take no further action; or
- c. that there has been a breach and a relevant sanction should be imposed or recommended.

If the Hearings Panel decides that a relevant sanction should be imposed or recommended it may impose or recommend any one or more of the following:

- a. report its findings in respect of your conduct to Council (or the relevant parish council);
- b. issue (or recommend to the parish council to issue) a formal censure;
- c. recommend to your group leader (or in the case of ungrouped councillors, recommend to Council) that you be removed from any or all committees or sub-committees of the Council (or recommend such action to the parish council);

- d. recommend to the Leader of the Council that you be removed from positions of responsibility.
- e. instruct the MO to (or recommend that the parish council) arrange training for you;
- f. recommend to Council (or recommend to the parish council) that you be removed from all outside appointments to which you have been appointed or nominated by the Council (or by the parish council);
- g. recommend to Council (or recommend to the parish council) that it withdraws facilities provided to you by the Council for a specified period, such as a computer, website and/or email and internet access; or
- h. recommend to Council (or recommend that the parish council) that it excludes you from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
- i. if relevant, recommend to the Council that you be removed from your role as Leader of the Council;
- j. if relevant recommend to the secretary or appropriate official of the group that you be removed as group leader or other position of responsibility.

10. What can I do if I disagree with the decision of the hearing panel?

There is no right of internal appeal against that decision.

11. Are the outcomes of the hearings published?

You, the complainant (and the clerk in parish cases) will be told of the outcome and a decision notice will be published on the Council website within 5 working days of the Hearings Panel decision.

12. Who should I go to if I have a question about the process?

The MO or Deputy MO should be able to answer any questions you have about the process.

CONFLICTS OF INTEREST GUIDELINES FOR MEMBERS AND OFFICERS

Members

A member must not participate in any part of the assessment or hearings process if they are:-

- the complainant;
- a potential witness to, or the subject of the complaint;
- closely associated with someone who is the complainant, a potential witness, or the subject of the complaint;
- a parish representative and the matter concerns their own parish council.

A member of the Joint Standards Committee (JSC) who is involved in the initial assessment of a complaint can be a member of the Hearings Panel which hears and determines the complaint at the conclusion of an investigation even if they were involved in the initial assessment decision, subject to the same tests for any conflict of interest. Each case where this could occur should however be considered carefully on its own particular circumstances, in order to assess whether there might be any perceptions of potential unfairness or bias, which would justify the member concerned not being involved in the hearing/determination.

Officers

An officer who has previously advised the subject member, another member or the complainant about the issues giving rise to the complaint, should consider carefully whether they can be involved in any part of the assessment or hearings process at all.

An officer who has taken part in supporting the assessment and/or hearing process, should not be involved in the investigation of the matter, and vice-versa.

Members and officers

Members and officers should also take care to avoid any personal conflicts of interest in relation to the consideration of a complaint that a member may have breached the Code of Conduct.

The provisions of the Council's Member Code of Conduct regarding interests apply to Joint Standards Committee members in assessments and hearings.

These provisions should also be considered by officers to apply to them in the same way that they apply to members, so that anyone (member or officer) who has an interest or is otherwise personally involved with a complaint in any way, must not take part in the assessment or hearing of that complaint.

The circumstances where a member or officer must not take part in an assessment or hearing of a complaint, include the following:-

- the member or officer or a relative or close associate of the subject member or an officer who is directly involved in the case;
- the complaint is likely to affect the well-being or financial position of the member or officer or the well-being or financial position of a family member, friend or close associate more than it affects the majority;
- a family member, friend or close associate of the member or officer is involved in the case;
- the member or officer has an interest in any matter relating to the case. For example, it concerns another member's failure to declare an interest in a planning application in which the member or officer has an interest.

HEARINGS BEFORE A HEARINGS PANEL OF THE JOINT STANDARDS COMMITTEE PROCEDURE

1. Formal hearings will be conducted by a panel of three councillors drawn from membership of the Joint Standards Committee (JSC) on the basis of availability plus an Independent Person (IP) who will not be a member of the Hearings Panel but whose views the Panel must have regard to.
2. The Hearings Panel need not reflect the political proportionality of the Council as a whole.
3. The monitoring officer (MO) will advise the Hearings Panel at the start of the meeting, whether in their opinion the Panel should meet in public or private having regard to:
 - a. the rules on confidential and exempt information as defined by Schedule 12A, Local Government Act, 1972; and whether
 - b. in all the circumstances of the case, the public interest in maintaining any exemption outweighs the public interest in disclosing the information.
4. The Council's published Public Participation Protocol as contained within the Council's Constitution will not apply without exception. This means that where the hearing is held in public, members of the public will not be allowed to address the Panel on any matter unless they are formally part of the proceedings, for example as a witness.
5. Before a Hearings Panel meets, the MO shall write to the subject member with a copy of the report, notifying them of the date of the hearing and asking:
 - a. whether they accept the finding in the investigation report;
 - b. whether they dispute any factual part of the report, identifying any areas of dispute;
 - c. whether the subject member wishes to call any witnesses at the hearing (only witnesses identified to the investigating officer by the subject member may be called as witnesses. In law, witnesses do not have to attend a hearing);
 - d. whether they wish to be accompanied at the hearing.
6. Where the investigation has not been carried out by the MO, the MO will also ask the investigator if they wish to call any witnesses in addition to any called by the subject member. (Only witnesses

identified as part of the investigation may be called as witnesses – as 5.c. above)

7. The MO will also write to the complainant with a copy of the report, notifying them of the date of the hearing and asking them if they wish to attend and/or make any further representations. They are not required to attend and the hearing may continue if the complainant is not present or has made no further representation.
8. In advance of a meeting of a Hearings Panel its members shall seek to agree who will chair the hearing. The chair may issue directions about the conduct of the hearing, including the number and suitability of suggested witnesses. A member of a Hearings Panel shall not act as chair unless they have received relevant training.
9. Subject to the discretion of the chair, the hearing shall be conducted as follows:
 - a. The investigating officer will be invited to present their report and to call witnesses. The subject member and the Panel (including the IP), in that order, may ask questions or seek clarification both of the investigating officer and any witnesses.
 - b. The subject member will be invited to comment on the report and its findings and to call any witnesses. The investigating officer and the Panel (including the IP), in that order, may ask questions or seek clarification both of the subject member and any witnesses.
 - c. The investigating officer and the subject member will be invited, in that order, to make brief concluding remarks.
 - d. The subject member will remain present throughout the hearing although any witnesses would only be present when being invited to present their evidence.
10. The chair and Hearings Panel, including the IP, may ask for advice at any stage from the MO or another officer appointed to advise the Panel.
11. Once the hearing has been concluded, the IP will express their views. The Hearings Panel and the MO, or other officer where the MO is the investigator or has a conflict of interest, will then retire to consider its decision. The Hearings Panel is required to do the following:
 - i. to make findings of the facts,

- ii. to decide on whether these facts constitute a breach of the Code of Conduct, and
 - iii. where a breach is found, to decide on the appropriate sanction.
12. In deciding whether or not to uphold the complaint the Hearings Panel must apply, as the standard of proof, the balance of probability. Any officer present is simply there to advise the Panel and is not part of the decision-making process.
13. The Hearings Panel will then return and announce its findings on whether there has been a breach of the Code, and give reasons.
14. Following announcement of the Hearing Panel's findings, the investigating officer and the subject member will be invited to make submissions, if necessary, regarding remedies or sanctions. The IP may also be asked to give any further views.
15. The Hearings Panel with the MO or other appropriate officer will then retire again to consider what, if any, sanction it wishes to impose. It will then announce its decision and give reasons. Following the hearing, a Decision Notice will be issued within 3 working days, and a copy shall be sent to the complainant and subject member, and to the parish clerk where it is a parish council case.
16. There is no internal right of appeal against a decision on a Code of Conduct complaint.
17. The decision will be published on the Joint Standards Committee pages of the Council's website. This includes decisions relating to members of town or parish councils.

Sanctions available to a Hearings Panel

18. The Hearings Panel has powers to take action in respect of individual councillors as necessary to promote and maintain high standards of conduct.
19. The Hearings Panel may do one, or a combination, of the following:
- a. report its findings in respect of the subject member's conduct to Council (or the relevant parish council);
 - b. issue (or recommend to the parish council to issue) a formal censure;

- c. recommend to the subject member's group leader (or in the case of un-grouped members, recommend to Council) that they be removed from any or all committees or sub-committees of the Council (or recommend such action to the parish council);
- d. recommend to the Leader of the Council that the subject member be removed from positions of responsibility;
- e. instruct the MO to (or recommend that the parish council) arrange training for the subject member;
- f. recommend to Council (or recommend to the parish council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by the parish council);
- g. recommend to Council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the Council for a specified period, such as a computer, website and/or email and internet access; or
- h. recommend to Council (or recommend that the parish council) that it excludes the subject member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
- i. if relevant recommend to the Council that the subject member be removed from their role as leader of the Council;

if relevant recommend to the secretary or appropriate official of the group that the member be removed as group leader or other position of responsibility.

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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