

## 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 to consider and determine any allegations that an elected or co-opted councillor of the Council or of a town or parish council within the Council’s area (the ‘Subject Member’) has failed to comply with the Council’s Code of Conduct

These arrangements provide for the Council to appoint at least one Independent Person (“IP”) whose views must be sought before it takes a decision on an allegation that it has decided to investigate, and may be sought by the Council at any other stage, or by the Subject Member against whom an allegation has been made.

#### Receipt of Complaints

1. Complaints must be made to the Monitoring Officer of City of York Council (the “MO”). A form is available on the Council's website and in the reception of West Offices. Assistance in completing the form can be provided.
2. The MO may nominate another officer with the designation of Deputy Monitoring Officer (“DMO”) to carry out any of the functions listed in this procedure.
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. Within 3 working days of receipt of the complaint the MO will acknowledge the complaint.

#### Filter Stage (is the Complaint in Scope?) Members not part of the Executive

5. For Members not part of the Executive, the MO, in consultation with the IP, will apply an initial filter to an allegation to check that the complaint is:
  - a. against a councillor;
  - b. that they were in office at the time of the alleged incident; and
  - c. that the matter would be capable of being a breach of the Code<sup>i</sup>.

## Executive Members

6. The MO must refer a complaint to the Joint Standards Committee (the “JSC”) where the Subject Member is a member of the Executive and the initial filter will be applied by the JSC with advice from the MO and IP.

## Conflict of Interest

7. In any case (Executive and non Executive members) the MO may refer a complaint to the JSC where the MO has a conflict of interest or in other exceptional circumstances. Situations where a conflict of interest may arise 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.
8. **Where a matter is referred under this section to the JSC or DMO, subsequent references to the MO in this procedure should be substituted by JSC or DMO (as appropriate).**
9. 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.

## Initial Assessment

10. If the matter is within scope, the MO 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.

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11. The MO will also notify the Subject Member of the complaint within three working days [of an in scope decision] unless there are compelling reasons not to, together with a summary of the complaint 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 satisfied that there are reasonable grounds for granting confidentiality.
12. 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), 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.
13. 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 (intended to do harm), vexatious (intended to cause annoyance, frustration or worry), frivolous (of little or no substance or public interest), or retaliatory?;
  - 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)?;
- 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?
- k. Does the complaint concern a failure to respond to a request from a constituent or other individual which is not of itself capable of amounting to disrespect.

## **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.
17. Where informal resolution has been proposed by the JSC any default in discharging that informal resolution shall result in the matter being referred for investigation. OR Where a case is remitted to JSC under

this paragraph, the Committee will not be entitled to re-open whether the matter is in scope but must determine whether or not the alleged conduct is so serious as to warrant investigation or whether in all the circumstances the case should be closed.

## Investigation

18. 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.
19. 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.
20. The Subject Member is notified who the relevant IP is for the case and may seek their views at any stage during the investigation.
21. 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.
22. Before concluding the investigation, a draft report will be produced and the complainant, Subject Member and IP will be given 7 calendar days to comment. Any comments received will be appended to the report and the investigator will confirm on the face of the report whether the comments affect the conclusion.
23. 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.

24. 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.

25. 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. Paragraphs [16-20 Informal Resolution will apply.

26. Where the matter is referred for determination, 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

27. A matter referred for determination by the MO will be heard by the JSC.

28. At the start of the hearing the MO will ask the JSC 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 JSC will always, however, retire in private to consider its findings and possible action.

29. The views of the IP will be sought by the JSC and made public before the JSC reaches its decision.

30. The JSC 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.

31. If the JSC 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 Subject Member be removed as Group Leader or other position of responsibility.

## Outcomes & Appeals

32. Notice of any decision made under this procedure will be given to all parties (and the clerk in parish cases). Decision notices

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following hearing will be published on the City of York Council website at the MO's discretion.

33. There is no right of appeal against a decision taken at any part of this procedure.
34. If the Complainant feels that the Council has failed to deal with the complaint properly they may make a complaint to the Local Government and Social Care Ombudsman.

## **Record Keeping**

35. The MO will keep a record of all complaints made and will report on the data gathered regularly to the JSC.



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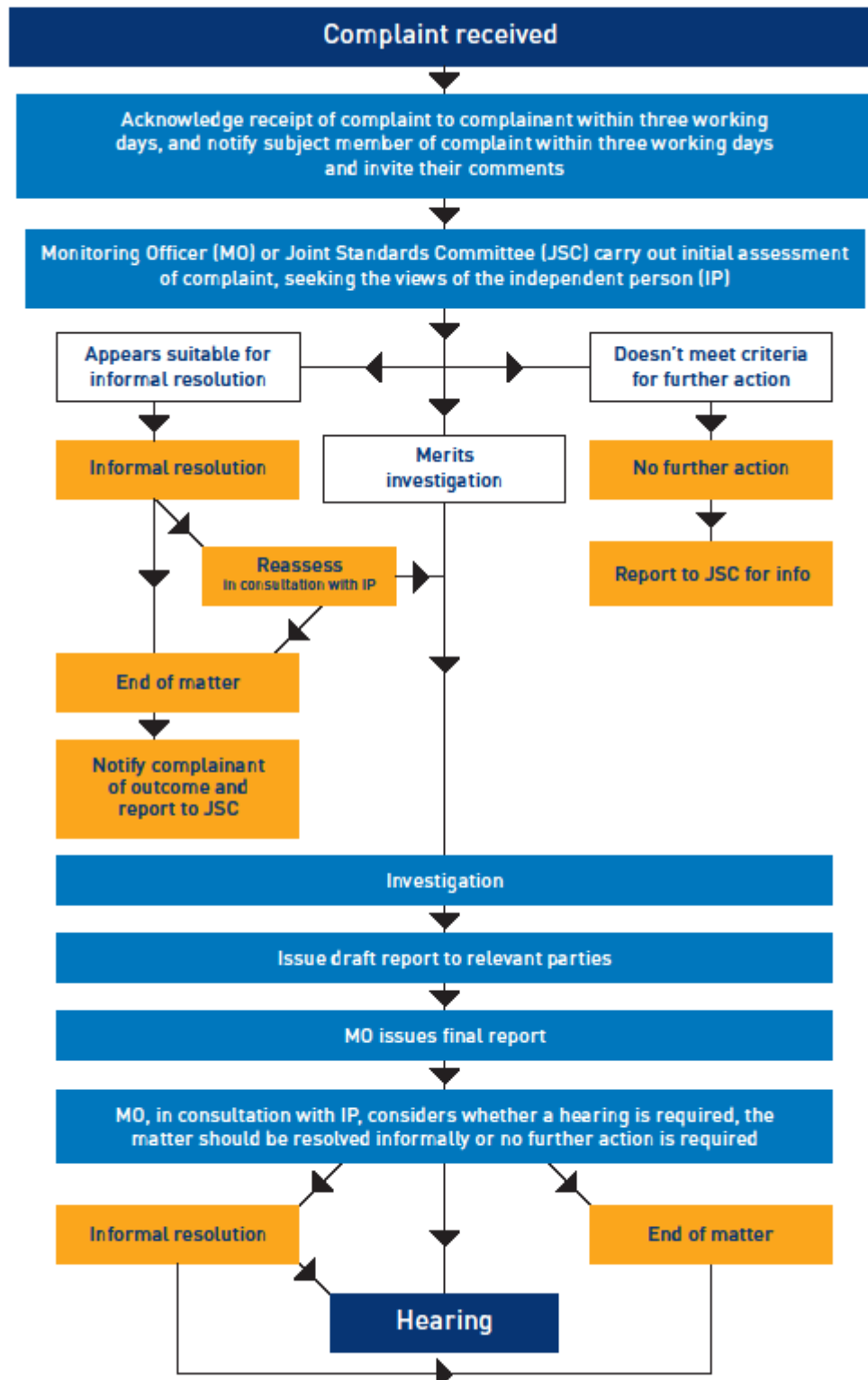
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## **Case Handling Flowchart**

**To be amended following confirmation of any procedural amendments**

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## **INITIAL ASSESSMENT BY AN ASSESSMENT SUB-COMMITTEE PROCEDURE**

The following procedures set out the process to be followed when an allegation is referred by the Monitoring Officer (MO) for an assessment by the Joint Standards Committee (JSC).

### **Initial assessment by JSC**

1. The MO will only refer matters to the JSC for initial assessment in accordance with paragraphs 6 & 7 of the Case Handling Procedure.
2. Where the matter relates to a parish councillor a parish representative will be one of the JSC members considering the matter.
3. At the start of the assessment the MO will ask the JSC 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 have been made, however, there would be a presumption that the matter is heard as a confidential item.
4. The JSC will meet within three weeks of the MO referring the matter to them.
5. The views of the IP will be sought by the JSC and included in any report to the Sub-Committee.
6. In considering the complaint, the JSC will receive a report from the MO (or deputy MO) setting out:
  - a. the complaint;
  - b. matters to be considered by the JSC;
  - c. the available options and next steps;
  - d. any comments received from the Subject Member in response to the complaint;
  - e. The views of the IP;

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- f. any relevant factual material such as minutes of a meeting or a copy of a Subject Member's register of interests.
7. 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 JSC should consider the matter on the papers with relevant supporting information but cannot call witnesses.
8. The JSC 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 JSC decides the matter should be referred for formal investigation, that investigation will proceed under the direction of the MO in accordance with paragraph #.

## 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 JSC who is involved in the initial assessment of a complaint can be a member of the JSC 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.

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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 THE JOINT STANDARDS COMMITTEE PROCEDURE

1. Formal hearings will be conducted by the JSC on the basis of availability plus an Independent Person (IP) who will not be a member of the Committee but whose views the Panel must have regard to.
2. The JSC need not reflect the political proportionality of the Council as a whole.
3. The MO will advise the JSC at the start of the meeting, whether in their opinion the Committee 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 JSC on any matter unless they are formally part of the proceedings, for example as a witness.
5. Before a hearing, 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.

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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 hearing the JSC 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 the JSC 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 JSC (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 JSC (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 JSC, including the IP, may ask for advice at any stage from the MO or another officer appointed to advise the JSC.
11. Once the hearing has been concluded, the IP will express their views. The JSC 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 JSC is required to:

- i. make findings of the facts,
- ii. 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 JSC must apply, as the standard of proof, the balance of probability. Any officer present is simply there to advise the JSC and is not part of the decision-making process.
13. The JSC 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 JSC'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 JSC 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**

18. The JSC has powers to take action in respect of individual councillors as necessary to promote and maintain high standards of conduct. It may impose one or a combination of the sanctions outlined in paragraph [32] of the Case Handling Procedure.

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<sup>i</sup> 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.