

## **Standards Committee**

- To:** Mrs Christine Bainton (Independent Member, in the Chair)  
Cllrs Scott (Vice-Chair), Barton, Runciman and Taylor  
Mr A L Dixon (Independent Member) and Mr M R Hall (Independent Member)  
Cllrs Crawford (Parish Council Member), Forster (Parish Council Member) and Mellors (Parish Council Member)
- Date:** Friday, 20 January 2012
- Time:** 3.00 pm
- Venue:** The Guildhall, York

## **AGENDA**

- 1. Declarations of Interest**  
At this point, Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.
- 2. Minutes** (Pages 3 - 6)  
To approve and sign the minutes of the meeting of the Standards Committee held on 24 June 2011.
- 3. Minutes of Sub-Committees** (Pages 7 - 20)  
To approve and sign the minutes of the following meetings of sub-committees:
  - Assessment Sub-Committee – meetings held on 24 June 2011, 20 July 2011 and 24 November 2011.
  - Review Sub-Committee meetings held on 24 June 2011, 20 July 2011, 7 September 2011 and 21 December 2011.

#### **4. Public Participation**

At this point in the meeting, members of the public who have registered their wish to speak, regarding an item on the agenda or an issue within the remit of the Standards Committee, may do so. The deadline for registering is **5:00 pm on Thursday 19 January 2012.**

#### **5. Predetermination and Bias** (Pages 21 - 22)

This report draws Members' attention to the coming into force of provisions in the Localism Act.

#### **6. Abolition of the Standards Regime** (Pages 23 - 42)

This report describes the extensive changes to the current standards regime. An executive summary of the report is also included for information.

#### **7. Urgent Business**

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

Democratic Services Officer responsible for this meeting:

Name: Jayne Carr

Contact Details:

- Telephone – (01904) 552030
- E-mail – [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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## **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 from a published Cabinet (or Cabinet Member Decision Session) agenda. The Cabinet will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Cabinet meeting in the following week, where a final decision on the 'called-in' business will be made.

## **Scrutiny Committees**

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

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

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City of York Council

Minutes

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MEETING	STANDARDS COMMITTEE
DATE	24 JUNE 2011
PRESENT	MRS BAINTON (INDEPENDENT MEMBER, IN THE CHAIR), COUNCILLORS SCOTT (VICE-CHAIR) - ITEM 4 ONWARDS, RUNCIMAN, TAYLOR AND GALVIN (SUBSTITUTE FOR CLLR BARTON) (CYC MEMBERS) MR DIXON AND MR HALL (INDEPENDENT MEMBERS) COUNCILLORS CRAWFORD, FORSTER AND MELLORS (PARISH COUNCIL MEMBERS)
APOLOGIES	COUNCILLOR BARTON

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### 1. **DECLARATIONS OF INTEREST**

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda. Councillor Mellors declared a prejudicial interest in agenda item 6 – “Application for Dispensation”, as a member of Bishopthorpe Parish Council. He withdrew from the meeting during consideration of this item. Councillor Scott declared a prejudicial interest in agenda item 3 – “Minutes of Sub-Committees” and withdrew from the meeting during consideration of that item.

### 2. **MINUTES**

RESOLVED: That the minutes of the Standards Committee meeting held on 17 December 2010 be approved and signed by the Chair as a correct record.

### 3. **MINUTES OF SUB-COMMITTEES**

The minutes of the following meetings of sub-committees were approved and signed by the Members who had chaired the meetings:

- Assessment Sub-Committee meetings held on 21 December 2010, 4 April 2011 and 27 April 2011
- Review Sub-Committee meeting held on 17 December 2010
- Hearings Sub-Committee meeting held on 11 February 2011

#### **4. PUBLIC PARTICIPATION**

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

#### **5. ABOLITION OF THE STANDARDS REGIME**

Members considered a report that provided an update on the future of the Standards Regime.

Most of the members of the committee agreed that the current arrangements had improved standards both locally and nationally and had provided greater transparency and accountability. Concerns were expressed that the proposals would be detrimental to ethical governance.

Discussion took place regarding possible future arrangements. A suggestion was put forward that an independent working group could be established that would make recommendations to the Council. Members stressed the importance of ensuring that any arrangements that were put in place involved independent members, that there was consistency of application and that effective sanctions were available. It was also important that training continued to be offered to ensure that Members were aware of what was expected of them.

It was agreed that further consideration be given to this matter as information became available.

**RESOLVED:** That the report be noted and that further updates be provided at future meetings.

**REASON:** To ensure that the Standards Committee is kept informed regarding the future of the Standards Regime.

**6. APPLICATION FOR DISPENSATION**

Members considered a report that asked the Committee to consider a request from Bishopthorpe Parish Councillors for a dispensation from the Code of Conduct, to allow them to participate in decisions relating to the Village Hall.

**RESOLVED:** That the dispensation sought by the named Parish Councillors be granted.

**REASON:** To enable them to participate in discussions relating to the Village Hall notwithstanding their status as charity trustees.

**7. REVIEW OF WORK PLAN**

Consideration was given to the work plan for the Standards Committee. It was noted that the next meeting was scheduled to take place on 26 August 2011.

**RESOLVED:** (i) That the Committee continue to be updated on government proposals relating to the Standards regime.

(ii) That the meeting scheduled for 26 August 2011 be cancelled if there are no items of business requiring attention at that time.

**REASON:** In order to organise the future business of the Committee.

MRS C BAINTON

Independent Member, In the Chair

The meeting started at 3.00 pm and finished at 3.40 pm.

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City of York Council

Committee Minutes

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MEETING	STANDARDS COMMITTEE ASSESSMENT SUB-COMMITTEE
DATE	24 JUNE 2011
PRESENT	COUNCILLORS BAINTON (INDEPENDENT MEMBER, IN THE CHAIR), CRAWFORD (PARISH COUNCIL MEMBER) AND TAYLOR (CYC MEMBER)

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**1. DECLARATIONS OF INTEREST**

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

**2. COMPLAINT AGAINST PARISH COUNCILLORS OF HOLTBY PARISH COUNCIL**

The Sub-Committee considered a complaint made against three serving members of Holtby Parish Council and one former member.

The allegation concerned a letter that had been sent to the complainant by members of the parish council. Consideration was given as to whether the letter was in breach of paragraphs 2, 3 and 5 of the Code of Conduct.

Having considered the evidence provided in support of the complaint, it was

**RESOLVED:** That no further action be taken in this case.

**REASON:** The Sub-Committee considers that there has been no breach of the Code, that the letter that had been sent had set out the facts and was not disrespectful.

Mrs C Bainton, Chair

[The meeting started at 3.40 pm and finished at 3.50 pm].

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MEETING	STANDARDS COMMITTEE ASSESSMENT SUB-COMMITTEE
DATE	20 JULY 2011
PRESENT	MRS BAINTON (INDEPENDENT MEMBER, IN THE CHAIR) COUNCILLOR BARTON (CYC MEMBER) COUNCILLOR MELLORS (PARISH COUNCIL MEMBER)

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### 3. **DECLARATIONS OF INTEREST**

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

### 4. **COMPLAINT AGAINST A MEMBER OF CITY OF YORK COUNCIL**

The Sub-Committee considered a complaint made against a member of City of York Council.

It was alleged that the subject member, had used her position to promote personal business interests and had brought her office or authority into disrepute, in breach of paragraphs 5 and 6 of the Code of Conduct.

Having considered the evidence provided in support of the complaint, it was

**RESOLVED:** That the matter be referred to the Monitoring Officer for 'Alternative Action'.

**REASON:** The Sub-Committee considers that the facts of the case indicate a breach of the Code; however, the subject member has admitted the breach and it would therefore be unnecessary and disproportionate in the circumstances to refer the matter for investigation.

C Bainton, Chair

[The meeting started at 2.30 pm and finished at 2.35 pm].

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MEETING	STANDARDS COMMITTEE ASSESSMENT SUB-COMMITTEE
DATE	24 NOVEMBER 2011
PRESENT	MR DIXON (INDEPENDENT MEMBER, IN THE CHAIR) COUNCILLOR CRAWFORD (PARISH COUNCIL MEMBER) COUNCILLOR TAYLOR (CYC MEMBER)

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## 5. **DECLARATIONS OF INTEREST**

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

## 6. **COMPLAINT AGAINST MEMBERS OF CITY OF YORK COUNCIL**

The Sub-Committee considered a complaint made against 25 members of City of York Council.

It was alleged that the subject members had failed to register and subsequently declare donations made by the Labour party and UNISON towards their election expenses, in breach of paragraphs 12 and 13 of the Code of Conduct.

Having considered the evidence provided in support of the complaint, and the additional information provided at the meeting by the Monitoring Officer, it was

RESOLVED: (i) That, in respect of the allegation that 11 of the subject members had failed to record a donation from the Labour Party towards their election expenses, the matter be referred to the Monitoring Officer for 'Alternative Action.'

REASON: The Sub-Committee considers that, although the evidence indicates a potential breach of the Code, the breach is too minor to justify the time and expense of an investigation.

(ii) That, in respect of the allegations that 22 of the subject members had failed to record and subsequently declare a donation from UNISON towards their election expenses, no further action be taken.

REASON: The Sub-Committee considers that the evidence does not indicate a breach of the Code, as the donation was to the Labour Party and not to the individual subject members.

A Dixon, Chair

[The meeting started at 2.00 pm and finished at 2.40 pm].

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MEETING	STANDARDS COMMITTEE REVIEW SUB-COMMITTEE
DATE	24 JUNE 2011
PRESENT	CRAWFORD (PARISH COUNCIL MEMBER), HALL (INDEPENDENT MEMBER) AND TAYLOR (CYC MEMBER)

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**1. DECLARATIONS OF INTEREST**

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

**2. REVIEW OF A DECISION OF THE ASSESSMENT SUB-COMMITTEE ON A COMPLAINT AGAINST A MEMBER OF CITY OF YORK COUNCIL**

Members reviewed a decision made by the Assessment Sub-Committee on 4 April 2011 that no further action be taken in respect of a complaint made against a member of City of York Council. The review had been requested by the complainant on 13 April 2011, following the issuing of a decision notice.

Having considered all the evidence, including the papers submitted to the Assessment Sub-Committee, the decision notice and the points made by the complainant in the review request, it was

**RESOLVED:** That the decision of the Assessment Sub-Committee on 4 April 2011 be endorsed and that no further action be taken in respect of this complaint.

**REASON:** The Review Sub-Committee is in agreement with the decision of the Assessment Sub-Committee and the reasons given for that decision, as set out in the decision notice.

**3. REVIEW OF A DECISION OF THE ASSESSMENT SUB COMMITTEE ON A COMPLAINT AGAINST A PARISH COUNCILLOR OF UPPER POPPLETON PARISH COUNCIL**

Members reviewed a decision made by the Assessment Sub-Committee on 4 April 2011 that no further action be taken in respect of a complaint made against a member of Upper Poppleton Parish Council. The review had been requested by the complainant on 3 May 2011, following the issue of a decision notice.

Members considered all the evidence, including the papers submitted to the Assessment Sub-Committee, the decision notice and the points made by the complainant in the review request.

The Review Committee took a different view from the Assessment Sub Committee and considered that a personal interest ought to have been declared. However, in all the circumstances no further action was warranted.

**RESOLVED:** That no further action be taken in respect of this complaint.

**REASON:** That the breach of the Code had been so minor as to not require further action.

Mr Hall, Chair

[The meeting started at 3.50 pm and finished at 4.10 pm].



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MEETING	STANDARDS COMMITTEE REVIEW SUB-COMMITTEE
DATE	20 JULY 2011
PRESENT	MRS BAINTON (INDEPENDENT MEMBER), BARTON AND MELLORS (PARISH COUNCIL MEMBER)

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#### **4. DECLARATIONS OF INTEREST**

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

#### **5. REVIEW OF A DECISION OF THE ASSESSMENT SUB COMMITTEE ON A COMPLAINT AGAINST MEMBERS OF OSBALDWICK PARISH COUNCIL**

Members reviewed a decision made by the Assessment Sub-Committee on 27 April 2011 to take no further action in respect of a complaint against eleven members of Osbaldwick Parish Council, one of whom was now also a member of City of York Council. The review had been requested by the complainant on 16 May 2011, following the issue of a decision notice.

Having considered all the evidence, including the papers submitted to the Assessment Sub-Committee, the decision notice and the points made by the complainant in the review request, it was

**RESOLVED:** That the decision of the Assessment Sub-Committee on 27 April 2011 be endorsed and that no further action be taken in respect of this complaint.

**REASON:** The Review Sub-Committee considers that the allegations, if proven, would not amount to a breach of the Code of Conduct requiring the Sub Committee to take action, since:

- a) The primary complaint of the misuse of public funds does not fall within the remit of the Code of Conduct and has been addressed by the auditor
- b) Although there is an arguable case that in making a decision to expend funds on the newsletter Parish Councillors had misused the resources of the Council or had used those resources for political purposes, the Sub Committee does not consider that the allegation demonstrates an ethical conduct issue.
- c) The evidence presented does not support the remaining allegations against the subject members (namely: compromising the impartiality of those working for the Council, bringing the authority into disrepute and failing to treat others with respect).

C Bainton, Chair

[The meeting started at 2.00 pm and finished at 2.30 pm].

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MEETING	STANDARDS COMMITTEE REVIEW SUB-COMMITTEE
DATE	7 SEPTEMBER 2011
PRESENT	MR HALL (INDEPENDENT MEMBER, IN THE CHAIR) COUNCILLOR FORSTER (PARISH COUNCIL MEMBER) COUNCILLOR RUNCIMAN (CYC MEMBER)

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## 6. DECLARATIONS OF INTEREST

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

## 7. REVIEW OF A DECISION OF THE ASSESSMENT SUB COMMITTEE ON A COMPLAINT AGAINST MEMBERS OF HOLTBY PARISH COUNCIL

Members reviewed a decision made by the Assessment Sub-Committee on 24 June 2011 to take no further action in respect of a complaint against three members of Holtby Parish Council. The review had been requested by the complainant on 2 August 2011, following the issue of a decision notice.

Having considered all the evidence, including the papers submitted to the Assessment Sub-Committee, the decision notice and the contents of the original e-mail to the City of York Planning Department in respect of which the complaint had arisen, it was

RESOLVED: (i) That no further action be taken in respect of this complaint.

REASON: The Sub-Committee supports the view of the Assessment Sub-Committee that the allegations, if proven, would not amount to a breach of the Code of Conduct.

- (ii) That the Monitoring Officer be asked to make enquiries as to whether the procedures for submitting comments electronically to the City of York Council's Planning portal can be improved.

REASON: To ensure, if possible, that the e-mail addresses of those submitting comments can be verified.

M Hall, Chair

[The meeting started at 3.00 pm and finished at 3.10 pm].

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MEETING	STANDARDS COMMITTEE REVIEW SUB-COMMITTEE
DATE	21 DECEMBER 2011
PRESENT	MRS BAINTON (INDEPENDENT MEMBER) IN THE CHAIR COUNCILLOR BARTON (CYC MEMBER) COUNCILLOR MELLORS (PARISH COUNCIL MEMBER)

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#### **8. DECLARATIONS OF INTEREST**

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

#### **9. REVIEW OF A DECISION OF THE ASSESSMENT SUB COMMITTEE ON A COMPLAINT AGAINST MEMBERS OF CITY OF YORK COUNCIL**

Members reviewed a decision made by the Assessment Sub-Committee on 24 November 2011 to take no further action in respect of a complaint against a number of Labour Councillors on the City of York Council. The review had been requested by the complainant on 7 December 2011, following the issue of a decision notice.

Having considered all the evidence, including the papers submitted to the Assessment Sub-Committee, the decision notice and the points made by the complainant in the review request, it was


**RESOLVED:** That the decision of the Assessment Sub-Committee be endorsed and that no further action be taken in respect of the complaint.

**REASON:** The Review Sub-Committee supports the view of the Assessment Sub-Committee and the reasons given for that decision, as set out in the decision notice.

Mrs C Bainton, Chair

[The meeting started at 3.00 pm and finished at 3.40 pm].

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<b>STANDARDS COMMITTEE</b>	<b>20 January 2012</b>
<b>Report of the Monitoring Officer</b>	

## **Predetermination and bias**

### **1. Summary**

- 1.1 The report draws Members' attention to the coming into force of provisions in the Localism Act.

### **2. Background**

- 2.1 The issue of whether a Member could participate in Council meetings having had previous involvement in an issue or previously expressed opinions on a matter was a legal bugbear for many years. The issue came before the Courts many times and decisions were reached which were not always easily reconciled with each other. As a result quite defensive legal advice was often given recommending Members not to participate whenever they had previously expressed a view.
- 2.2 In more recent years the Courts have taken a more flexible approach acknowledging that local government decision making is different from judicial decision making. The position reached was that a Member was entitled to have a preliminary view and entitled to express that view and still participate in a decision so long as they had not absolutely closed their mind to making a different decision. The Government has sought to enshrine the position that the common law has now reached in legislation.
- 2.3 What the Act says is that a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter.

- 2.4 In the House of Lords it was pointed out that if a Councillor announces to the television news cameras outside the Council meeting that he is not interested in what is going to be said at the debate and then says nothing in the meeting, it appears that the decision could not be challenged on the basis of the Councillor's closed mind. This goes substantially further than the existing law. It seems likely that there will be cases brought which will test exactly how far this provision goes.
- 2.5 It remains the case that local authority decision making is bound by other principles including only acting within powers available, principles of reasonableness etc.
- 2.6 Members of the City Council have been alerted to this provision coming into force and have been advised that the right approach is not to participate in a decision if they know that they have an absolutely fixed view on the issue.

### 3. Recommendations


- 3.1 That the Standards Committee note this report.

<b>Author</b>	<b>Chief Officer Responsible for the report</b>		
<i>Author's name: Andy Docherty Title: Assistant Director of Governance and ICT Dept: CBSS Ext: 1004</i>	<i>Chief Officer's Andy Docherty Title: Assistant Director of Governance and ICT</i>		
	<b>Report Approved</b>	✓	<b>Date</b> 9 January 2012

### Background papers

None



	
<b>STANDARDS COMMITTEE</b>	<b>20 January 2012</b>
<b>Report of the Monitoring Officer</b>	

## **Abolition of the Standards regime – Executive Summary**

### **1 Background**

- 1.1 The report describes extensive changes to the current standards regime. Largely these are expected to take effect from 1<sup>st</sup> July 2012.

### **2 Key aspects of the new arrangements**

- 2.1 The City and Parish Councils will have a statutory duty to promote and maintain high standards of conduct for their members.
- 2.2 Each Council will have to adopt a Code of Conduct compliant with the Nolan principles and including “appropriate” provisions for registering and declaring interests. The Monitoring Officer will maintain all the registers and publish them on the City Council’s website. Parish Councils with a website will also have to publish them.
- 2.3 The Act also requires the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs). Regulations will provide a definition of DPI’s. It will be an offence to fail to register such interest or to participate in discussions at Council meetings when such an interest exists. Disclosure of such interests will generally be via the register. Disclosure at meetings will only be required if the interest is not already registered. The Act does not require a member to leave the room but Standing Orders could. There is no general duty to keep the register up to date unless an issue relating to the interests arises at a meeting.
- 2.4 The Statutory Standards Committee will be abolished. There will still be a need for some Committee structure to deal with allegations that the Code has been breached and the City Council arrangement must cover the Parishes. The report describes various options.

- 2.5 There will be considerably more flexibility in deciding how to manage complaints. The report identifies how some delegation to the Monitoring Officer could address problems inherent in the current system.
- 2.6 Arrangements for dealing with complaints must include a role for an independent person. Current independent members of the Committee do not appear to be eligible. The report identifies roles for this person which go beyond the statutory minimum.
- 2.7 There are no provisions for sanctions within the Localism Act. The report identifies some which might be capable of being imposed.
- 2.8 New arrangements for dispensations are introduced. The power to grant these may be delegated and there could be advantage in doing so in some cases.

### **3. List of Recommendations**

#### **Recommendation One**

*It is recommended that the Monitoring Officer be instructed to bring a draft Code to the next meeting of the Committee having considered any national models which may have been produced.*

#### **Recommendation Two**

*It is recommended that the Standards Committee indicates support for the following proposal:*

- a. *that the City Council establish a separate Standards Committee*
- b. *That the Monitoring Officer be asked to bring draft terms of reference to the next meeting of the Committee*
- c. *The Committee consist of [eight] members of the City Council*
- d. *That the Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members of the Committee*

#### **Recommendation 3**

*That the Monitoring Officer be instructed to prepare for further approval "arrangements" as follows -*

- a. *That the Monitoring Officer be designated as the appropriate Officer to receive complaints of failure to comply with the Code of Conduct;*
- b. *That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report to the Standards Committee on the discharge of this function;*
- c. *Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;*
- d. *Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;*
- e. *That Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct*

#### **Recommendation 4**

*That the Monitoring Officer advertise a vacancy of the appointment of 1 Independent Person and 2 Reserve Independent Persons*

*That a Committee comprising the Chair and three other members of Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.*

**Recommendation 5**

- a. *That the Monitoring Officer ensure that all members are informed of their duty to register interests;*
- b. *That the Monitoring Officer arrange to inform and train Parish Clerks on the new registration arrangements*

**Recommendation 6**

*That Standards Committee recommend the introduction of Standing Orders requiring Members to withdraw from the meeting room during the consideration of any item of business in which he or she has a DPI unless a dispensation has been granted*


**Recommendation 7**

- a. *That the City Council be recommended to delegate to the Monitoring Officer the power to grant dispensations on grounds referred to in the report.*
- b. *That the City Council be recommended to delegate to the Standards Committee the power to grant dispensations on all grounds*

<b>Author</b>	<b>Chief Officer Responsible for the report</b>		
<i>Author's name: Andy Docherty Title: Assistant Director of Governance and ICT Dept: CBSS Ext: 1004</i>	<i>Chief Officer's Andy Docherty Title: Assistant Director of Governance and ICT</i>		
	<b>Report Approved</b>	√	<b>Date</b> 12 January 2012

**Background papers**

None

	
<b>STANDARDS COMMITTEE</b>	<b>20 January 2012</b>
<b>Report of the Monitoring Officer</b>	

## **Abolition of the Standards regime**

### **1 The Localism Act 2011**

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The Department for Communities and Local Government has recently announced that these will take effect fully from 1<sup>st</sup> July 2012 although Standards for England is expected to be abolished on 31<sup>st</sup> March and take no more cases after 31<sup>st</sup> January.
- 1.2 Earlier reports had suggested that the new arrangements may be implemented as early as April and for that reason an urgent, informal briefing for Standards Committee members took place in December. This report describes the changes and recommends the actions required to implement the new regime. In doing so it picks up on comments made during the informal briefing.

### **2 Duty to promote and maintain high standards of conduct**

- 2.1 Every relevant local authority (which includes parish councils, fire and rescue authorities and police authorities in England or in Wales) will be placed under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. Previously this was the duty of the Standards Committee.

### **3 The Code of Conduct**

- 3.1 The Act contains a duty for each relevant authority to adopt a code of conduct for their members and co-opted members. Previous versions of the Bill provided a power not a duty to make such arrangements. Parishes may adopt the City Council's Code and assume it complies with the law!

- 3.2 The Code must comply with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. This is likely to mean the Code containing some general principles similar to those in paragraphs 3 to 7 of the existing Code – although no doubt the drafting could be less legalistic.
- 3.3 The Code must contain the provisions which the Authority consider appropriate in respect of the registration and declaration of pecuniary and non pecuniary interests. However, the Act also requires the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs). Regulations will provide a definition of DPI’s.
- 3.4 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.
- 3.5 It is for full Council to adopt or replace the Code and its adoption must be publicised. How that is done is left to each Council’s discretion.
- 3.6 There is work going on nationally supported by ACSeS and NALC to develop recommended Codes. If time allows it would seem sensible to at least consider this work before starting to draft a local Code. The Act also requires that the Code contains “appropriate” provisions registering and declaring interest other than DPI’s. Until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

3.7

***Recommendation One***

*It is recommended that the Monitoring Officer be instructed to bring a draft Code to the next meeting of the Committee having considered any national models which may have been produced.*

**4 Standards Committee**

- 4.1 The Act removes the requirement to have a statutory Standards Committee. However, there will still be a need to deal with standards issue such as:

- Promoting high standards and monitoring the Council's ethical framework
- Granting dispensations from declaring interests
- Dealing with case work – the City Council has a duty to put in place arrangements for investigating and making decisions in respect of complaints against its own and against Parish Councillors.

4.2 Any new arrangements have to comply with the normal legal requirements for Council's dealing with non- executive functions. The unique features available to the statutory Standards Committee including the right of independent Members to participate in decision making, would not exist. The question of how complaints should be handled is addressed later in this report. However, it is assumed that there would still be a need for at least one Sub Committee to deal with some aspects of standards complaints and that this group should be drawn from the membership of a parent Committee. There are various options available for that parent Committee including:

#### **Option one - an Ordinary Committee of the Council**

- 4.3 This would be politically balanced, only City of York Councillors would have voting rights but it could have additional co-opted members (including Parish Councillors) on a non voting basis. The City Council could delegate decision making responsibilities to such a Committee for granting dispensations and determining what action to take where the Code has been found to have been breached. Parish Councils could likewise delegate their decision making responsibilities to such a Committee. If a Parish Council chose not to delegate its responsibilities then the Committee would only be able to offer advice to the Parish Council on dispensations and on sanctions to be applied.
- 4.4 The Committee could be a separate Standards Committee or the functions could be assigned to an existing Committee, with the Council's Audit and Governance Committee being the obvious choice. There would be some small financial savings and savings in administrative time in adopting this option. Questions would though need to be asked as to whether that Committee has the capacity to take on additional work and whether in doing so any focus would be lost on either standards or on the Committee's traditional areas of responsibility.

## **Option Two – a Joint Committee of the City Council and one or more Parish Councils**

- 4.5 This would have the advantage of allowing any Parish Council which was a party to the Joint Committee to appoint voting members. Non Councillors could be co-opted but without a vote. A Joint Committee which included representatives of all the Parish Councils would though be very large – especially as the City Council might be expected to require a proportionate scale of membership. Individual members would deal with case work infrequently, expertise and consistency would be difficult to achieve. An alternative would be to try to replicate the present arrangements whereby a smaller number of Parish Councillors are identified for appointment after consultation with all the Parish Councils.
- 4.6 There are at least two ways of trying to achieve this – both of which are unsatisfactory to some extent. The first would be for the Joint Committee to be established with all the Parish Councils but with an agreement that a limited number would make appointments. This would be an unusual arrangement for a joint committee but a lawful one. The disadvantage of this is that, unlike with the current arrangements, there would be nobody with the final say as to membership in the absence of consensus.
- 4.7 An alternative would be for there to be consultation with the Parishes as to who the Parish representatives should be – much as has happened with the existing system. The Committee would then be formally constituted with the Parish Councils whose Members were to be appointed to the Committee. Other Parish Councils would be able to delegate functions to the Joint Committee. The Committee could also include non voting independent Members. This would, however, leave a difficulty that any change in parish representation would necessitate the establishment of a new Joint Committee unless the replacement came from the same Parish.

## **Option Three – An Advisory Committee or Working Group**

- 4.8 This would be a very flexible option in terms of membership and voting rights but it would have no decision making powers. The work of the current Standards Committee involves few actual decisions other than in respect of dispensations. Parish Councils may choose to deal with dispensations themselves and, given their relative rarity, the City Council could easily accommodate that responsibility elsewhere in its Committee structure. However, any Sub Committee dealing with case



work would also only be advisory. That would not meet the requirement in the Act to have “arrangements under which decisions on allegations can be made”. Introducing arrangements where an advisory Committee reported to a person or body with decision making powers is theoretically possible but would give rise to substantial issues of natural justice.

4.9

***Recommendation Two***

*It is recommended that the Standards Committee indicates support for the following proposal:*

- a. that the City Council establish a separate Standards Committee*
- b. That the Monitoring Officer be asked to bring draft terms of reference to the next meeting of the Committee*
- c. The Committee consist of [eight] members of the City Council*
- d. That the Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members of the Committee*

**5 Dealing with Misconduct Complaints**

**“Arrangements”**

- 5.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of the Code of Conduct both by City Council members and by Parish Council members.
- 5.2 The Act repeals the requirements for separate Assessment, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

## **Decision whether to investigate a complaint**

- 5.3 In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. However, the Monitoring Officer had no real discretion over whether a case was presented to the Assessment Sub Committee where there was a clear complaint that the Code may have breached.
- 5.4 It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation. The Act introduces a new figure – the “Independent Person” – and it would seem appropriate to require the Monitoring Officer to consult the Independent Person at least before deciding not to investigate a complaint. The Monitoring Officer would retain the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.
- 5.5 If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a regular report to the Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee’s attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

### **“No Breach of Code” finding on investigation**

- 5.6 Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to Consideration Sub-Committee and the Sub-Committee take the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels appropriate. Summaries of any such cases could be presented to the Standards Committee for information.

### **“Breach of Code” finding on investigation**

- 5.7 Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may be another opportunity for local resolution, without the need for a hearing. It is suggested that the Monitoring Officer should be given the power to agree to such a resolution subject to the complainant being satisfied and the Independent Person being consulted.
- 5.8 In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary to hold a hearing to determine whether the member had failed to comply with the Code of Conduct and what action, if any, was appropriate as a result.

### **Action in response to a Hearing finding of failure to comply with Code**

- 5.9 The Act does not give the Council or its Standards Committee any powers to impose sanctions. Work is being undertaken at a national level on the subject of sanctions but the following would seem to be potentially available to the Sub Committee:
- 5.9.1 Reporting its findings to Council [or to the Parish Council] for information;
  - 5.9.2 Recommending to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - 5.9.3 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - 5.9.4 Instructing the Monitoring Officer to [or recommend that the Parish Council] offer to arrange training for the member;
  - 5.9.5 Removing (where power to do so has been delegated) or recommending to the Council that the member be removed from outside appointments to which he/she has been appointed or nominated by the authority;

- 5.9.6 *Withdrawing [or recommending to the Parish Council that it withdraws] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or*
- 5.9.7 *Excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.*
- 5.10 If, as has been previously recommended, the Council constitutes its Standards Committee as an Ordinary Committee and its hearing panel as an Ordinary Sub Committee then the Sub Committee will have no power to do any more in respect of a member of a Parish Council by way of sanction than make a recommendation to the Parish Council. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and seek the delegation of powers from Parish Council to the Hearings Panels. Parish Councils would though be free to decide not to delegate that power. However, the most powerful sanction in most cases (and the only one available in many) will be that of a report to the Parish Council itself. The absence of a power to impose a sanction may therefore be more of a theoretical rather than a practical problem.

### **Appeals**

- 5.11 There is no requirement to put in place any appeals mechanism. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

#### ***Recommendation 3***

*That the Monitoring Officer be instructed to prepare for approval "arrangements" as follows -*

- a. That the Monitoring Officer be designated as the appropriate Officer to receive complaints of failure to comply with the Code of Conduct;*

- b. That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report to the Standards Committee on the discharge of this function;*
- c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;*
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;*
- e. That Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct.*

## **6 Independent Person(s)**

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

### **“Independence”**

- 6.1 The Independent Person must be appointed through a process of public advertisement, application and appointment by a vote of a majority of all members of the Council (not just of those present and voting).

A person is considered not to be “independent” if –

- 6.1.1 he is, or has been within the last 5 years, an elected or co-opted member or an officer of the City Council or of any of the Parish Councils within its area;
- 6.1.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the City Council or of any of the Parish Councils within its area ;  
or
- 6.1.3 he is a relative (as defined within the Act) or close friend (which is not defined) of a current elected or co-opted member or officer of the City Council or any Parish Council within its area, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

6.2 The wording of the Act seems to be clear enough in excluding current independent members from acting as independent persons for the City of York.

### **Functions of the Independent Person**

6.3 The Independent Person(s) –

- Must be consulted by the authority before it makes any decision in respect of an allegation which it has decided to investigate
- May be consulted by the authority in respect of a standards complaint at any other stage; and
- May be consulted by a member or co-opted member of the City Council or of a Parish Council against whom a complaint has been made.

This causes some problems, an Independent Person who has been consulted by the member against whom the complaint has been made, might as a result be regarded as prejudiced on the matter, if they were to be involved in the determination of that complaint.

### **How many Independent Persons?**

6.4 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing

more than one Independent Person, provided that a couple of reserves are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

#### **Recommendation 4**

- a. That the Monitoring Officer advertise a vacancy of the appointment of 1 Independent Person and 2 Reserve Independent Persons*
- b. That a Sub Committee comprising the Chair and three other members of Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.*

## **7 The Register of Members' Interests**

- 7.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). At present we do not know what Disclosable Pecuniary Interests will comprise. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.
- 7.2 In addition to registering DPI's the Authority's Code of Conduct will contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 7.3 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
- 7.4 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.

- 7.5 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
- 7.6 The Monitoring Officer is required to maintain the register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the City Council offices and on the City Council's website as well as the Parish Council's website if it has one.

Recommendation 5

- a. *That the Monitoring Officer ensure that all members are informed of their duty to register interests;*
- b. *That the Monitoring Officer arrange to inform and train Parish Clerks on the new registration arrangements.*

## **8 Disclosure of Interests and Withdrawal from Meetings**

- 8.1 If a Member is present at a meeting and has a DPI in any matter to be considered then the interest has to be disclosed but only if it is not already registered or, at least, if the Member has not sent off a notification to the Monitoring Officer. Having disclosed a DPI the Member has 28 days to update their register. A member with a DPI (whether required to be declared or not) is prevented from participating in any discussion of the matter or the vote. It is a matter for the Council to determine in its standing orders whether Members with an interest must leave the meeting room.
- 8.2 The Act does not define "discussion" and in the absence of any clear guidance to the contrary it may be wise to assume that this would prevent a Member with a DPI from making representations on an issue



as currently allowed for members with a prejudicial interest under the Code.

- 8.3 Similar provisions to those described in paragraph 8.1 apply to functions which may be discharged by an individual Member. In York this will apply to Cabinet Member decisions. There is a requirement that disclosable interests in these be registered and that the Member does nothing in respect of the function other than arrange for someone else to perform it.
- 8.4 Failure to comply with the requirements in respect of disclosure and participation becomes a criminal offence rather than leading to sanctions;
- 8.5 The Council's Code of Conduct must make "appropriate" provisions for the registration and disclosure of interests other than DPIs. Failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence. Standing Orders could require a Member to withdraw from the meeting room.

Recommendation 6

*That Standards Committee recommend the introduction of Standing Orders requiring Members to withdraw from the meeting room during the consideration of any item of business in which he or she has a DPI unless a dispensation has been granted*

## 9 Sensitive Interests

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a

meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

## **10 Dispensations**

10.1 The provisions on dispensations are significantly altered by the Localism Act.

10.2 In future, a dispensation will be able to be granted in the following circumstances –

(a) That so many members of the decision-making body have DPLs in a matter that it would “impede the transaction of the business”.

(b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote on the matter;

(c) That the authority considers that the dispensation is in the interests of persons living in the authority's area;

(d) That, without a dispensation, no member of the Cabinet would be able to participate on this matter

(e) That the authority considers that it is otherwise appropriate to grant a dispensation.

10.3 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

10.4 The application for an exemption has to be to the “Proper Officer” of the Council but the Localism Act now gives discretion for this power to grant the exemption to be delegated to a Committee, a Sub-Committee, or to an Officer. Parish Councils will exercise this responsibility themselves unless they choose to delegate it.

10.5 So far as the City Council is concerned it is suggested that the grounds under paragraph 10.2(d) are quite objective and might appropriately be delegated to an Officer. Similarly, if the view is taken that for business to be impeded the meeting needs to be otherwise inquorate, the grounds for a dispensation under paragraph 10.2 (a) are also objective. The other grounds though are rather more subjective and it may well be more appropriate for applications to be determined by a Committee.

### Recommendation Seven

1. *That the City Council be recommended to delegate to the Monitoring Officer the power to grant dispensations on grounds referred to in paragraphs 10.2 (a) and (d)*
2. *That the City Council be recommended to delegate to the Standards Committee the power to grant dispensations on all grounds*

## 11 Transitional Arrangements

Regulations under the Localism Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct.
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

<b>Author</b>	<b>Chief Officer Responsible for the report</b>		
<i>Author's name: Andy Docherty Title: Assistant Director of Governance and ICT Dept: CBSS Ext: 1004</i>	<i>Chief Officer's Andy Docherty Title: Assistant Director of Governance and ICT</i>		
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### Background papers

None

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