

Complaints about the ethical conduct of Councillors

This document is intended to inform those who wish to make a complaint about a City or Parish Councillor where they believe that the Councillor may have breached the Code of Conduct. The Council want to ensure that the process is as transparent as possible and that complaints are dealt with as quickly as possible.

1 The Code of Conduct

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

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

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

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

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

2 Making a complaint

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

The Monitoring Officer
West Offices
Station Rise
York
YO1 6GA

Or –

monitoringofficer@york.gov.uk

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

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

This complaints procedure provisions allows for a Councillor to refer themselves if an allegation of misconduct is made against them. The referral will be dealt with in the same way as a complaint made by anyone else using this procedure.

The Monitoring Officer will normally acknowledge receipt of your complaint within 5-7 working days of receiving it, and will keep you informed of the progress of your complaint.

3. ~~Your~~ Privacy

We ask you to provide your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. This also guards against malicious complaints. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. We only use the information you provide for the purposes of dealing with your complaint.

Your contact details will not normally be shared unless that is essential for the handling of the complaint – such as where knowing your address is important to understanding the context of the complaint.

The Monitoring Officer will normally though share your name with:

- The Councillor concerned;
- The ~~—~~Independent Persons who advise on the handling of complaints;
- The Parish clerk if the councillor concerned is ~~–~~ a member of a Parish Council;

- Any investigator appointed to deal with the case;
- Members of any Committee or Sub Committee of the Council who are handling the case;
- Any witnesses to the allegations where that is necessary to enable a proper investigation.

We may be required or permitted, under data protection legislation, to disclose your personal data without your explicit consent, e.g. if we have a legal obligation to do so, such as law enforcement, regulation and licensing, criminal prosecutions and court proceedings.

~~You should note that if your complaint is investigated and results in a hearing these are normally conducted in public, that would mean your identity or personal data would be in the public domain.~~

If you are concerned about your identity being revealed please advise the Monitoring Officer and he/she will discuss this with you before processing the complaint.

The identity of the Councillor who is the subject of the complaint should remain confidential, particularly during the assessment and investigation stages of the complaints process. This is vital to ensure that the investigation is not prejudiced, therefore, you should not divulge the identity of the Councillor, nor the nature of the complaint to the public whilst the complaint is being investigated. The Monitoring Officer will also request that the Councillor maintains privacy and confidentiality, particularly in relation to your personal details whilst the complaint is being investigated.

You should note that if your complaint is investigated and results in a hearing these are usually conducted in public, that would mean your identity or personal data would be in the public domain.

We will retain details of standards complaints for six years and will then delete or destroy those details securely

You can find more information about your rights at <https://www.york.gov.uk/privacy> and further information is available from the Information Commissioners Office (ICO) <https://ico.org.uk/for-the-public/>

If you have any questions about this privacy information, want to exercise your rights, or if you have a complaint about how your information has been used, please contact us at foi@york.gov.uk or on [01904 554145](tel:01904554145) or write to the

Data Protection Officer
City of York Council
West Offices
Station Rise
York. YO1 6GA.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received. He/she may ask you to clarify aspects of it before deciding whether to accept it as a formal complaint.

~~Once the complaint has been accepted the Monitoring Officer will discuss it with the Council's Independent Persons. Independent Persons are not Councillors and have no connection with the Council. By law the Independent Person must be consulted when a complaint has been investigated. The Council has decided that at least one of the Independent Persons will also be consulted by the Monitoring Officer when the complaint is received so as to provide an external oversight. If an Independent Person is aware that he or she has a conflict of interest (such as being a friend of a party to the complaint) then the Independent Person will advise the Monitoring Officer and play no part in the consideration of that complaint.~~

The Monitoring Officer ~~will then~~ normally take a decision as to whether the complaint merits formal investigation. This decision will usually be taken within ~~28~~ 7 working days of ~~receipt of~~ your complaint being accepted. The Monitoring Officer will also notify the Councillor involved in the complaint within 7 working days of your complaint being accepted.

Before reaching a decision the Monitoring Officer may request further information from you or obtain information which is readily available to him/her such as notes of Council meetings. If the complaint relates to a Parish Councillor the Monitoring Officer may consult the Parish Council. If they considers it appropriate to do so, the Monitoring Officer may put the complaint to the Councillor involved and seek their comments.

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

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

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

Occasionally the Monitoring Officer may decide that the decision as to whether a complaint should be investigated should be made by members of the Joint Standards Committee. In this case a small Sub Committee of ~~usually~~ 32 Members of the Joint Standards Committee which consists of City and Parish Councillors will meet to consider your complaint. At least 1 Independent Person will be present. Examples of matters which the Sub Committee will consider include for example multiple complaints made about the same Councillor, counter complaints made by Councillors about each other, vexatious or repeated complaints or where special procedures may need to be implemented to classify complaints. In the rest of this procedure we have assumed that the Monitoring Officer will use ~~his~~ their powers to make decisions but any Sub Committee appointed will have the same powers as the Monitoring Officer.

3 How is the investigation conducted?

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

The Investigating Officer will usually need to speak to you to discuss your complaint and may need to see relevant documents or interview

other witnesses. You will be able to suggest what documents and which witnesses the Investigating Officer should consider seeing.

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

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

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

~~We aim to complete investigations~~Investigations will be completed within three months of the investigator being instructed. There may be very good reasons why that is not possible, for example,— where the case is complex or witnesses are not available, ~~for example, or~~ where there are delays, though this will be reported to the Chair of the Standards Committee, the complainant and the Councillor who is the subject of the complaint prior to the end of the 3 month period.

The complainant and subject Councillor are expected to keep the circumstances of the complaint and failure to do so could have a detrimental impact on the complaint or complaints process.

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

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

It is possible that the Monitoring Officer may accept that the report is complete but does not accept the Investigating Officer's judgment that

there has been no breach of the Code. In that case the Monitoring Officer may refer the case for a hearing following the procedures set out below.

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

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

5.1 Local Resolution

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

Although the complainant's views will be carefully considered the decision as to whether a complaint can be resolved without a hearing rests with the Monitoring Officer if the breach is minor.

5.2 Local Hearing

If the complaint is not resolved through the local resolution process, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel. Ordinarily a sub-committee will be chaired by the Chair or Vice-Chair of the Joint Standards Committee and comprise of other members of the Joint Standards Committee. ~~The Council's usual practice is to seek to avoid where possible using Members of the Committee who belong to the same political party as Members involved in the complaint.~~ At least one Member will be a Parish Councillor where the complaint relates to a Parish matter. Subject to that, Hearings Panels are appointed by approaching Members of the Standards Committee

in rotation with the Member being appointed if they are available to attend the hearing.

-1 or more Independent Persons will be present at the hearing.

The Hearings Panel will take evidence and reach a decision. This is not a Court process but, in order to be fair to everyone, formalities are followed so that a proper decision can be reached. A detailed hearings procedure is available to view.

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

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

The Hearings Panel may –

- 6.1 Censure the Councillor;
- 6.2 Formally report its findings to the City Council *or* Parish Council for information;
- 6.3 Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 6.4 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 6.5 Recommend to Council that the Leader be removed from Office
- 6.6 Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;
- 6.7 Remove *[or recommend to the Parish Council that the Councillor be removed]* from all outside appointments to which he/she has

been appointed or nominated by the authority [*or by the Parish Council*];

- 6.8 Withdraw [*or recommend to the Parish Council that it withdraws*] facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access.

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

7 What happens after the hearing?

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

8 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Joint Standards Committee. It normally consists of ~~three~~3 Members.

The Independent Persons are invited to attend all meetings of the Hearings Panel and their —views are sought and taken into consideration before the Hearings Panel takes any decision on whether the Councillor's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The decision is that of the Hearings Panel, however, if the Independent Person's advice is contrary to the Panel decision, this will be recorded.

~~9~~ Appeals

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

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

If a complainant feels that the authority has failed to deal with your complaint properly, they may make a complaint to the Local Government Ombudsman. There may also be the possibility of an application for Judicial Review of the decision.

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