

## Joint Standards Committee

- To:** Councillor Martin Rowley BEM (Chair), Douglas, Baker, Carr and Fisher (CYC Members)
- Cllrs Rawlings (Vice-Chair), Chambers and Waudby (Parish Council Members)
- Angharad Davies and David Laverick (Independent Members)
- Date:** Tuesday, 23 November 2021
- Time:** 4.00 pm
- Venue:** The Thornton Room - Ground Floor, West Offices (G039)

## AGENDA

### 1. **Declarations of Interest**

Members are asked to declare:

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

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

### 2. **Minutes**

(Pages 3 - 10)

To approve and sign the minutes of the meeting of the Joint Standards Committee held on 23 September 2021.

**3. Minutes of Sub-Committees** (Pages 11 - 24)

To approve and sign the minutes of the following meetings of the Standards Committee Sub-Committees:

- The Hearings Sub-Committee meetings held on 31 August 2021, 9 September 2021 and 30 September 2021.
- The Assessments Sub-Committee meeting held on 30 September 2021.

**4. Urgent Business**

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

**5. Public Participation**

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

**Please note that our registration deadlines have changed to 2 working days before the meeting, in order to facilitate the management of public participation at our meetings. The deadline for registering at this meeting is 5:00pm on Friday, 19 November 2021.**

To register to speak please visit [www.york.gov.uk/AttendCouncilMeetings](http://www.york.gov.uk/AttendCouncilMeetings) to fill in an online registration form. If you have any questions about the registration form or the meeting, please contact Democratic Services. Contact details can be found at the foot of this agenda.

**Webcasting of Public Meetings**

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During coronavirus, we've made some changes to how we're running council meetings. See our coronavirus updates ([www.york.gov.uk/COVIDDemocracy](http://www.york.gov.uk/COVIDDemocracy)) for more information on meetings and decisions.

## 6. Model Code of Conduct - Review of (Pages 25 - 64) Procedures

This report provides the Joint Standards Committee with Hoey Ainscough's update of their review of the current procedures in place to deal with Code of Conduct complaints.

Democracy Officer:

Name: Fiona Young

Contact Details:

Telephone – (01904) 552030

Email – [fiona.young@york.gov.uk](mailto:fiona.young@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.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

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## Coronavirus protocols for attending Committee Meetings at West Offices

If you are attending a meeting in West Offices, you must observe the following protocols.

**Good ventilation is a key control point, therefore, all windows must remain open within the meeting room.**

If you're displaying possible coronavirus symptoms (or anyone in your household is displaying symptoms), you should follow government guidance. You are advised not to attend your meeting at West Offices.

### Testing

The Council encourages regular testing of all Officers and Members and also any members of the public in attendance at a Committee Meeting. Any members of the public attending a meeting are advised to take a test within 24 hours of attending a meeting, the result of the test should be negative, in order to attend. Test kits can be obtained by clicking on either link: [Find where to get rapid lateral flow tests - NHS \(testand-trace.nhs.uk\)](https://testand-trace.nhs.uk), or, [Order coronavirus \(COVID-19\) rapid lateral flow tests - GOV.UK \(www.gov.uk\)](https://www.gov.uk). Alternatively, if you call 119 between the hours of 7am and 11pm, you can order a testing kit over the telephone.

### Guidelines for attending Meetings at West Offices

- Please do not arrive more than 10 minutes before the meeting is due to start.
- You may wish to wear a face covering to help protect those also attending.
- You should wear a face covering when entering West Offices.
- Visitors to enter West Offices by the customer entrance and Officers/Councillors to enter using the staff entrance only.
- Ensure your ID / visitors pass is clearly visible at all time.
- Regular handwashing is recommended.
- Use the touchless hand sanitiser units on entry and exit to the building and hand sanitiser within the Meeting room.
- Bring your own drink if required.
- Only use the designated toilets next to the Meeting room.

### Developing symptoms whilst in West Offices

If you develop coronavirus symptoms during a Meeting, you should:

- Make your way home immediately
- Avoid the use of public transport where possible
- Follow government guidance in relation to self-isolation.

You should also:

- Advise the Meeting organiser so they can arrange to assess and carry out additional cleaning
- Do not remain in the building any longer than necessary
- Do not visit any other areas of the building before you leave

If you receive a positive test result, or if you develop any symptoms before the meeting is due to take place, **you should not attend the meeting.**

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City of York Council

Minutes

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Meeting	Joint Standards Committee
Date	23 September 2021
Present	Councillor Martin Rowley BEM (Chair), Douglas, Baker, Carr and Fisher (CYC Members)  Cllrs Rawlings (Vice-Chair), Chambers and Waudby (Parish Council Members)  Angharad Davies and David Laverick (Independent Members)

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**20. Declarations of Interest**

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

**21. Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during consideration of the 'exempt' versions of Annexes A and B to Agenda Item 11 (Monitoring Report in Respect of Complaints Received), on the grounds that they contain information likely to reveal the identity of individuals, which is classed as exempt under Paragraph 2 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended by the Local Government (Access to Information) (Variation) Order 2006.

**22. Minutes**

Resolved: That the minutes of the meeting of the Joint Standards Committee held on 6 July 2021 be approved and signed as a correct record.

**23. Public Participation**

It was reported that there had been 3 registrations to speak at the meeting under the Council's Public Participation Scheme.

Gwen Swinburn spoke on matters within the general remit of the committee. She stated that she had concerns over the management of complaints by the Monitoring Officer, who she felt had a conflict of interest in relation to certain complaints. Ms Swinburn stated that she wanted all standards complaints to be treated fairly, proportionally and without bias.

Cllr Steven Hardcastle spoke on matters within the general remit of the committee. He spoke on the complaint due to be heard against him as Chairman of Deighton Parish Council at the Joint Standards Committee Hearing Sub-Committee on 30 September. He felt that he had been treated unfairly by the Committee and stated that he did not have confidence in the Monitoring Officer or Deputy Monitoring Officer. Cllr Hardcastle said there was no evidence for the accusations against him and that he had requested a pre-hearing which had not been granted by the Committee.

Cllr Mark Warters spoke on matters within the general remit of the committee and on item 9 (Model Code of Conduct Update - Review of Procedures). He stated the review needed member involvement and that the current procedures system was inadequate. Cllr Warters referenced two recent hearings which he felt had been poorly managed and brought the committee into disrepute. He stated that he did not have confidence in the Monitoring Officer and felt she was not acting impartially.

**24. Update on the Recruitment of Independent Persons**

The Committee considered a report which provided them with an update on the recruitment process for Independent Persons for the Committee. The Director of Governance & Monitoring Officer and Head of Democratic Governance & Deputy Monitoring Officer were in attendance to present the report and respond to questions.

Key points raised during the presentation of the report included:

- Advertisements had been released for the recruitment of three independent persons for the Joint Standards Committee.

- There was no allowance attached to the role, except for travel expenses.
- No applications had been received for the role, and the Monitoring Officer stated that she had decided to convene a meeting of City of York Council's Independent Remuneration Panel to discuss what incentives could be allotted to the role.
- An independent person had also been sought for the Audit and Governance Committee, but no applications had been forthcoming for that role either.

Key points raised during discussion of the item included:

- Attaching some form of allowance to the independent person role would not only attract more applicants, but also likely attract those with desirable experience and training.
- Economic conditions had made it more difficult for people to take up unpaid voluntary work.
- The independent person position is a large time commitment, and it was unrealistic to expect people to sign up without pay.
- The position was advertised on the City of York Council website, and an article was also published in the local press.
- Targeted advertising, for example in legal journals, was considered too prescriptive by officers, since the only requirement for the position was that the applicant must be a resident or worker in the city.
- If it were decided to assign an allowance to the independent person role, it would apply to future holders of the office, not those currently in place who were due to step down. Details such as the quantity and frequency of payments would be decided by the Independent Remunerations Board.
- There was considerable interest in the role, though there were no applications. It was noted by prospective applicants that North Yorkshire Police were advertising for an independent person role at the same time, but were offering a fee to the successful candidate.
- There was concern from members that advertising the position mainly on the City of York Council website meant that suitable applicants may not have known there was a post available. The Chair requested to search for additional options for advertising the role.

- The Independent Remunerations Board usually set minimum expectations e.g. for attendance for roles with an allowance.

Resolved:

- i. That the contents of the report be noted.

Reason: To update members of the recruitment of independent persons.

## **25. Terms of Reference of the Committee**

As part of the review of the Council's Constitution, Joint Standards Committee was asked to note the terms of reference for the Committee which were to be included within the revised Constitution. The Director of Governance & Monitoring Officer and the Head of Democratic Governance & Deputy Monitoring Officer were in attendance to present the report and respond to questions.

Key point raised during the discussion of the item included:

- The draft constitution had been presented to the Audit and Governance Committee and was under discussion by a cross-party working group.
- The Monitoring Officer agreed to work on clarifying how independent members not part of any political group will be represented on the Joint Standards Committee. Furthermore, the current terms of reference refer at 3.1 to 'the [five] main political groups', since there may be more than 5 groups in future it was suggested to amend this.
- The terms of reference presented were largely unchanged from the previous constitution.
- The minimum number of members needed to be present at a meeting for the Committee to be quorate was 4, which was the standard quoracy requirement across the Council. It was suggested that this be made explicit in the terms of reference.
- The Audit and Governance Committee had agreed to undertake an annual fitness for purpose review of the Constitution with any resultant changes going to Full Council for approval. During this process, committees will have the opportunity to comment on their governance arrangements and suggest changes.

- The wording at 3.2 on members who become 'disqualified' from sitting on the Joint Standards Committee was to be reviewed.
- It had previously been requested by the Committee to include a provision to codify the custom that the Chair of Joint Standards Committee be a City of York councillor and the Vice-Chair a parish councillor.
- It was confirmed that the Committee wished that there should be no provision for substitutes for absent members. In light of this it was requested that it be ensured that Joint Standards Committee does not clash with any other meetings on the corporate calendar.
- It was agreed by members to change the wording at 2.1 b) from 'support' to 'work with the Monitoring Officer'.

Resolved:

- i. That the contents of the report be noted.

Reason: To allow the members of the Joint Standards Committee to feedback on the proposed terms of reference for inclusion in the revised constitution.

## **26. Model Code of Conduct**

Members noted a report which provided them with an update on progress of the adoption of the LGA Model Code of Conduct.

Resolved:

- i. That the update contained within the report be noted.

Reason: To inform members on the progress of the adoption of the LGA Model Code of Conduct.

## **27. Model Code of Conduct Update - Review of Procedures**

The Committee considered a report which provided it with the current procedures in place, which needed to be reviewed in light of the new Model Code of Conduct. The Director of Governance & Monitoring Officer and the Head of Democratic Governance & Deputy Monitoring Officer were in attendance to present the report and respond to questions.

Key points raised during the presentation of the report included:

- Officers advised the committee to approve the commencement of a review of the procedures in light of the new Model Code of Conduct.
- Hoey Ainscough, who were the national advisers on the Model Code of Conduct and national authors of the procedures which support it, were supporting the Council with advice on the adoption of the new code.
- The report presented to the committee contained the procedures in place at the time of the meeting, which were up for review.

Key points raised by members of the committee included:

- The Chair stated that it was important to have the input of Hoey Ainscough to ensure that the procedures adopted were fit for purpose and stood up to public scrutiny.
- The Model Code of Conduct was to be presented to Full Council at their October 2021 meeting.
- It was suggested to schedule an additional meeting of the Joint Standards Committee to consider the proposed amended procedures. The Committee agreed to schedule this meeting for 16:00 on 23 November 2021 before they are brought before Full Council for approval on 16 December 2021.
- Members emphasised the need to make the new procedures accessible to the general public and easily understandable.
- It was agreed that draft versions of any proposed procedures would be circulated to the Chair and Vice-Chair for input from the committee on an ongoing basis prior to the next meeting of the Joint Standards Committee.
- There was no provision for a transition arrangement regarding the new procedures. Should Full Council decide to approve the new procedures on 16 December 2021, complaints received before that date would be processed under the old procedures, with only post 16 December complaints processed under the new procedures.
- It was suggested that the committee could choose to not formally acknowledge receipt of any complaints until the new procedures were put in place, however it was agreed by the Committee that it was necessary to continue to process complaints under the current procedures at least until the next meeting of the Committee on 23 November.

- It was agreed by the Committee that the Monitoring Officer should consult the Chair or Vice-Chair prior to beginning an investigation into any received complaint, and prior to making the decision to hold a hearing around a complaint.

Resolved:

- i. That a review of the procedures of the Joint Standards Committee be undertaken.
- ii. That the new procedures should include the requirement that the Monitoring Officer should consult with the Chair or Vice-Chair of the Committee prior to beginning any investigation and to prior to deciding to hold a hearing about a complaint.

Reason: To enable the committee to undertake a review of the procedures and ensure they are fit for purpose.

## **28. Review of Work Plan**

Members considered the Committee's work plan for the current municipal year.

Key points raised during discussion of the item included:

- The Committee agreed that a new meeting be scheduled for 23 November 2021, the items brought to which should be the proposed reviewed procedures discussed under Minute 27 and the amendments to the Terms of Reference discussed under Minute 25.
- An update on the Parish Charter was due to be brought to this meeting, but had been delayed and was now to be heard by the committee on 24 January 2022 in addition to the standard items.
- The next review of the Terms of Reference was to be 6 months following their adoption, which would be in the next municipal year.

Resolved: That the work plan be approved subject to the following additions:

- i. That the Review of the Parish Charter item and an item discussing the outcome of Full Council on 16 December 2021 be brought to the meeting of 24 January 2022.
- ii. That an additional meeting of the Joint Standards Committee be scheduled for the 23

November 2021 at 16:00 to discuss two items: the proposed amendments to the Terms of Reference and the proposed reviewed procedures.

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

**29. Monitoring Report in Respect of Complaints Received**

Members considered a report which provided an update on current business as regards complaints.

Members thanked officers for their report and the extra detail provided which was requested at previous meetings of the Committee.

An anonymised list of live complaints was attached at Annex A to the report, and an anonymised list of closed complaints at Annex B. Full details were provided in an exempt version of each annex. Discussion of the exempt lists took place in private session, in accordance with the resolution in Minute 21 above.

Resolved: That the report be noted.

Reason: To ensure that the committee is aware of current levels of activity.

Cllr M Rowley BEM, Chair

The meeting started at 4.45 pm and finished at 6.58 pm.

City of York Council

Committee Minutes

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Meeting	Joint Standards Committee Hearings Sub-Committee
Date	31 August 2021
Present	Councillors Douglas, Fisher and Chambers (Parish Council Member)
Apologies	Ms Davies (Independent Person)

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### 1. **Appointment of Chair**

Resolved: That Cllr Douglas be appointed to act as Chair of the hearing.

### 2. **Declarations of Interest**

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, any prejudicial interests, or any disclosable pecuniary interests, that they might have in the business on the agenda. No interests were declared.

### 3. **Exclusion of Press and Public**

This item was not considered, as some of the participants indicated at this point that they had not received the agenda papers and a short adjournment was called to make further enquiries.

### 4. **Complaint against a Member of a Council covered by the Joint Standards Committee**

Following the adjournment, it was ascertained that the Subject Member had not received the agenda papers.

A further adjournment was called at 10:30 am to enable the Subject Member to consider whether he was in a position to proceed. The meeting re-convened at 10:48 am and both the Subject Member and the Complainant stated that they would like the hearing to go ahead, although both indicated that they were uncertain of the procedures. The meeting was then adjourned for the Sub-Committee to determine whether to continue with the hearing or adjourn it to a future date.

The meeting re-convened at 10:56 am and it was

Resolved: That the hearing be adjourned to a date to be confirmed.

Reason: To give the parties the opportunity to receive and consider all the case papers and familiarise themselves with the hearing procedure.

Cllr C Douglas, Chair

[The meeting started at 10.00 am and finished at 11.15 am].

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Meeting	Joint Standards Committee Hearings Sub-Committee
Date	7 September 2021
Present	Councillors Carr (in the Chair) and Baker(CYC Members) Councillor Rawlings (Parish Council Member)  Mr Laverick (Independent Person)

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#### **5. Appointment of Chair**

Resolved: That Cllr Carr be appointed to act as Chair of the meeting.

#### **6. Declarations of Interest**

Members were invited to declare any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, which they might have in the business on the agenda. No interests were declared.

#### **7. Urgent Business - Exclusion of Press and Public**

The Chair introduced this item under urgent business on the basis that, although there were no exempt papers on the agenda, it may be necessary to exclude the press and public during certain parts of the meeting.

Resolved: That the Press and Public be excluded from the meeting if at any point Members request legal advice in private, and during their deliberations and decision at the end of the meeting.

#### **8. Public Participation**

It was reported that there had been four registrations to speak at the meeting regarding Agenda Item 4 (Complaint Against a Member of City of York Council).

Jill Edwards, Chair of Kexby & Scoreby Parish Council, stated that on the basis of her experience of Cllr Warters since he

became a ward councillor in 2015, the allegations against him were untrue, and that there was no evidence to support them.

Peter Broadley, Chairman of Holtby Parish Council, said he had known Cllr Warters for over 20 years, that he was honest, hardworking and never disrespectful to residents, and the complaint was trivial and did not warrant investigation.

Wendy Maddocks, as a long-term resident of Osbaldwick and member of Osbaldwick Parish Council, said she had known Cllr Warters for many years; the only aggression she had witnessed had been from the complainant at a parish council meeting, and she was astonished that the complaint was being considered.

Gwen Swinburn commented on the complaints process, which she described as 'surreal', stating that the complaint should have been dismissed by the Monitoring Officer and that it had been treated differently from a previous complaint against the Council Leader.

## **9. Complaint Against a Member of City of York Council**

The Panel considered a complaint made against Cllr Mark Warters, a City of York Councillor, by Mr Jason Moore. The complaint related to the behaviour of Cllr Warters towards the complainant during a telephone call.

The matter had been referred to the Hearings Sub-Committee for determination following an investigation.

Introductions were carried out and the procedure for the hearing was explained.

### **Determining factual disputes**

Copies of the investigator's report and the written submissions received had been circulated to the Panel and to the parties prior to the meeting. During the meeting the Panel took advice from the Monitoring Officer, the Deputy Monitoring Officer, and the Independent Person.

The investigating officer was not present at the hearing.

Neither the Subject Member nor the Complainant were present at the hearing. The Complainant was represented by a friend,

Mr Arif Khalfe, who made submissions on behalf of the Complainant and responded to questions from the Panel.

*[The meeting then went into private session whilst the Panel made their deliberations and returned to public session for the Panel to announce their findings]*

The Panel gave consideration to the following allegation of breaches of the Code of Conduct:

That Councillor Warters' alleged behaviour during the telephone conversation failed to adhere to the following principles upon which the Code of Conduct is specified as being based:

- Openness,
- Accountability,
- Treating others with respect,
- Bullying and Intimidation,
- Equality enactment/Legislation
- Bringing the Council into disrepute.

### **Panel's Findings**

Having considered the written documentation and the verbal representations made at the meeting, the Panel

Resolved: That the complaint be dismissed.

Reasons: (i) In the absence of both the subject Member and the Complainant at this hearing it has proved impossible to have the opportunity to hear direct evidence as to the conduct, manner and tone of the telephone call in question. In the absence of any other relevant evidence being brought to the Panel's attention it has not, in our opinion, been possible to make a direct link between the telephone conversation and the email in the investigating officer's report.

(ii) The email referred to in the Investigating Officer's report does not, in the Panel's opinion, cast sufficient light on the conduct or tone of the subject or relevant telephone conversation. There is no evidence presented to the Panel that there has been a breach of the Code of Conduct.

(iii) The Panel reminds itself that the only witnesses to the telephone call were the complainant, Mr Moore, and the subject Member, Councillor Warters. In the absence of any evidence it has not been possible for the Panel to determine whether or not Councillor Warters breached the Code of Conduct.

### **Determining Sanctions**

No sanctions were determined, as the complaint was dismissed.

*Note: the Decision Notice issued following this meeting has been published alongside these minutes*

Cllr D Carr, Chair

[The meeting started at 10.00 am and finished at 12.32 pm].

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Meeting	Joint Standards Committee Hearings Sub-Committee
Date	30 September 2021 ( <i>adjourned from 30 August 2021</i> )
Present	Councillors Douglas (Chair) and Fisher (CYC Members) Councillor Chambers (Parish Council Member)  Ms Davies (Independent Person, via Zoom)

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#### 10. **Declarations of Interest**

Members were invited to declare any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, which they might have in the business on the agenda. No interests were declared.

#### 11. **Public Participation**

It was reported that five people had registered to speak at the meeting on 30 September 2021 under the Council's Public Participation Scheme.

Cllr Warters stated that the process being used to deal with complaints hearings was flawed, and noted that Members of the current panel had also been critical of the process in the past.

Gwen Swinburn stated that the proper process was being ignored, on the grounds that the Subject Member had been denied the right to a pre-hearing, which had been allowed in a case in 2018.

*[The Chair responded, confirming that the procedure at Annex D to the report had been followed, that the Chair in the 2018 case had exercised their discretion in respect of a pre-hearing, and that this had been explained to the Subject Member.]*

Ian Chambers, a member of Deighton Parish Council, spoke in support of the Subject Member, stating that he had not adversely influenced the parish council's decision regarding the

Complainant's application to be co-opted and that it was the Complainant who had behaved disrespectfully.

Jeanne Fletcher, a member of Deighton Parish Council, spoke in support of the Subject Member, agreeing with the comments of the previous speaker and adding that the complaint investigation had taken far too long and was a waste of time.

Trevor Bartram, a previous Chair of Deighton Parish Council, said he had received an 'unacceptable' letter from a parish council member regarding the Complainant's application, and that he had given advice to the Chair and clerk which they had ignored.

**12. Exclusion of Press and Public**

Resolved: That the Press and Public be excluded from the meeting if at any point Members request legal advice in private, and during their deliberations and decision at the end of the meeting.

**13. Complaint against a Member of a Council covered by the Joint Standards Committee**

The Panel considered a complaint made against Cllr Steven Hardcastle, of Deighton Parish Council (the Subject Member), by Mrs Eve Hale (the Complainant). The complaint related to an allegation that the Subject Member had delayed her application to be co-opted onto Deighton Parish Council, due to his personal animosity towards her. The matter had been referred to the Hearings Sub-Committee for determination following an investigation.

Introductions were carried out and the procedure for the hearing was explained.

**Determining factual disputes**

Copies of the investigator's report and the written submissions received had been circulated to the Panel and to the parties prior to the meeting. The parties confirmed that they had seen the report and the procedures to be followed at the hearing. During the meeting the Panel took advice from the Independent Person.

The Subject Member was represented by Mr Brack, a member of Deighton Parish Council. The Complainant was represented by Mrs Mercer.

The Investigating Officer presented his report and responded to questions from the Subject Member and his representative.

The Complainant presented her case and responded to questions from the Subject Member and his representative.

Mr Brack presented the Subject Member's case. The Subject Member then responded to questions from the Panel, the Monitoring Officer, the Investigating Officer and the Complainant.

*[At 12:09 pm the hearing was adjourned for a break, during which Mrs Mercer left. The hearing re-commenced at 12:45 pm].*

The Investigating Officer summarised his case.

*[At this point, the Subject Member withdrew from the hearing and an adjournment was called to obtain legal advice. The hearing re-commenced at 1:12 pm and continued in the absence of the Subject Member and his representative.]*

The Complainant summarised her case.

*[The hearing then went into private session whilst the Panel made their deliberations and returned to public session for the Panel to announce their findings]*

The Panel gave consideration to the following allegation of breaches of the Code of Conduct:

That Cllr Hardcastle's behaviour was in breach of the member obligations contained in Sections 1 and 3 of the Parish Council's Code of Conduct; namely, that when a member of the council acts, claims to act or gives the impression of acting as a representative of the council, he/she should:

- Behave in such a way that a reasonable person would regard as respectful (Section 1)
- Not seek to improperly confer an advantage or disadvantage on any person (Section 3).

Having considered the written documentation and the verbal representations made at the meeting, in light of the Joint Standards Committee's published criteria for the assessment of complaints, the Panel

Resolved: That the Investigating Officer's findings that Councillor Hardcastle has breached Deighton Parish Council's Code of Conduct be upheld.

Reasons: (i) Mrs Hale believed Parish Councillor Hardcastle had a personal animosity towards her – the Panel considered the Chair's 2020 statement which has been referred to as part of this complaint. The Panel determined that this statement clearly referred to Mrs Hale and Councillor Hardcastle's comment that he "will resist any attempt for these individuals to rejoin the Council" was directed towards Mrs Hale, amongst others. In the Panel's view this supports the proposition that there was animosity towards Mrs Hale.

(ii) That there was a delay in Mrs Hale's application to be co-opted – the Panel are satisfied that there was clearly a delay in dealing with Mrs Hale's application. The Panel accepted that the delay was 10 months, when there were opportunities to have dealt with the application. It was Councillor Hardcastle's responsibility, as Chair of the Parish Council, to ensure that such applications should be dealt with in a timely manner and that his animosity towards Mrs Hale may have negatively impacted on the timescale. The Panel determined that the explanations given for the delay including the Covid pandemic and seeking external advice were insufficient to account for the length of the delay.

(iii) Chair's 2020 Annual Statement – the Panel find that it is reasonable that the comments made by Councillor Hardcastle in his capacity of Chair of the Parish Council breached the Nolan principles and did not demonstrate respect to others.

(iv) The Panel noted the comments made by Councillor Hardcastle in relation to the procedure; however, the Panel remained satisfied that the

procedures surrounding the management of this Hearing had been adhered to, noting that the procedures are published on the Council's website. It is unfortunate that despite being given the opportunity, Councillor Hardcastle did not remain to present his final submissions to outline further details of his concern to the Panel.

### **Sanctions and Observations**

The Panel considered what, if any, sanctions should be imposed for the breach. In doing so they made a number of observations, and

- Resolved: (i) That the following sanctions be imposed:
- a) Formally report the findings of the Panel to the Parish Council;
  - b) Recommend that the Parish Council be arrange mandatory training for Parish Councillor Hardcastle around Chairing Skills, including the Code of Conduct and Parish Council Governance.

Reason: In order to impose sanctions appropriate to the breach.

- (ii) That the following observations be brought to the attention of Deighton Parish Council:
- The Parish Council would benefit from training on the Code of Conduct.
  - Training for the whole Parish Council around agenda setting and Parish Council procedures.
  - Take the opportunity of the support and services of the Yorkshire Local Council's Association and maximise the support available.
  - It is recommended that such opportunities are also offered to the Parish Council Clerk.

Reason: In light of the apparent lack of knowledge of procedures and roles within the Parish Council.

*[The Decision Notice issued following this meeting has been published alongside these minutes]*

Cllr C Douglas, Chair

[The meeting started at 10.06 am and finished at 3.11 pm].

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MEETING	Joint Standards Committee - Assessments Sub-Committee
DATE	30 September 2021
PRESENT	Councillors Douglas and Fisher (CYC Members) Councillor Rawlings (Parish Council Member)  Ms Davies (Independent Person)

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**17. Appointment of Chair**

Resolved: That Cllr Rawlings be appointed to act as Chair of the meeting.

**18. Declarations of Interest**

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, that they might have in the business on the agenda. No interests were declared.

**19. Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during consideration of the private report at Agenda Item 4 (Code of Conduct Complaint received in respect of a City of York Councillor), on the grounds that it contains information relating to an individual, which is classed as exempt under paragraph 1 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

**20. Code of Conduct Complaint received in respect of a City of York Councillor**

Members considered an updated report produced by the Investigating Officer in respect of a complaint against a City of York Councillor, following the Sub-Committee's request on 23

April 2021 that further investigation be carried out in relation to the complaint.

After completing the further investigation, the Investigating Officer had concluded that the Councillor in question did not breach the Code of Conduct.

Details of the complaint and circumstances were presented in the exempt report. The draft investigation report was attached as exempt Annex A. Members were asked to consider whether to:

- A. Rule that the draft investigation report was not complete and that further investigation should take place;
- B. Rule that the report was complete and that the finding made was accepted; or
- C. Rule that the report was complete but that the finding made was not accepted.

Following discussion in private session in accordance with the resolution in Minute 19 above, it was

Resolved: (i) That option A be approved and the Investigating Officer's finding that the Councillor did not breach the Code of Conduct be accepted.

Reason: On the basis that the Councillor was acting as a private individual, and not as a councillor, at the material time.

(ii) That the Sub-Committee place on record their deep concern about the complaints; however, whilst disappointed, they note the repeated apologies made by the Councillor.

Cllr S Rawlings, Chair

[The meeting started at 3.21 pm and finished at 3.54 pm].



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**Joint Standards Committee****23 November 2021**

Report of the Monitoring Officer

**Model Code Update – Review of Procedures****Summary**

This report provides the Joint Standards Committee with Hoey Ainscough's update of their review of the current procedures in place to deal with Code of Conduct complaints.

**Background**

At the last Joint Standards Committee Meeting, the Committee decided to request that Hoey Ainscough Associates conduct a review of the current procedures in place to deal with Code of Conduct complaints. This review has now been conducted and Hoey Ainscough have drafted a procedure document which can be found in their procedure document at Annex A.

Paul Hoey and Natalie Ainscough will be present at the next Joint Standards Committee Meeting in order to discuss their report further with Members their procedure document. In order to assist Members, the report containing the current procedures from the September Joint Standards Committee meeting can be found at Annex B.

**Implications****Financial**

Not applicable to this report.

**Human Resources (HR)**

Not applicable to this report.

**Equalities**

The Equality Act 2010 places specific duties on Local Authorities. Having a clear and concise Code of Conduct and procedures which aid

the process and prohibits unlawful discrimination gives the public confidence in Members and the Council as a whole.

**Legal**

As detailed within the report.

**Crime and Disorder, Information Technology and Property**

Not applicable to this report.

**Recommendations**

Members are asked to consider the draft procedures and decide whether to recommend the same to Full Council for adoption and implementation to support the Model Code of Conduct.

**Author:**

Rachel Antonelli  
Head of Democratic  
Governance & Deputy  
Monitoring Officer  
Tel: 01904 551043

**Chief Officer Responsible for the**

**report:** Janie Berry  
Director of Governance &  
Monitoring Officer  
Tel: 01904 555385

**Report  
Approved**

**Date**

15  
November  
2021

**Specialist Implications Officer(s):**

**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

**Background Papers:**

Annex A – Procedure Document  
Annex B – September Joint Standards Committee Report with Current  
Procedure Documents

## **CITY OF YORK COUNCIL CASE HANDLING PROCEDURE**

### **Background**

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

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

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

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

### **Initial assessment**

1. All allegations, including those against a town or parish councillor, must be made in writing, ideally by completing the complaints form available on the Council’s website, to the monitoring officer of City of York Council (MO).
2. Within 3 working days of receipt of the complaint the MO will acknowledge the complaint.
3. Anonymous complaints will not be accepted unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward.
4. The MO will apply an initial filter to an allegation – for example, to check that the complaint is against a councillor, that they were in office at the time of the alleged incident and that the matter would be capable of being a breach of the Code. If the MO is of the view that the complaint does not fundamentally relate to a Code matter, then they will decline to progress it further under this procedure. 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.
5. The MO may refer the matter to the Joint Standards Committee (JSC) to take the decision in his or her place. Circumstances where this would be done include (but are not limited to) where the MO has a conflict of interest – for

example as the complainant, a key witness or where the MO has already advised on matters which are the subject of the complaint; or where the subject member or complainant is a member of the Executive or Shadow Executive or a committee chair or deputy. Where this is done, references to the MO in this section should be substituted by JSC.

6. The MO may also delegate the decision to the deputy monitoring officer (DMO) where there is a conflict of interest as outlined above.
7. 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.
8. If the MO decides the matter is within scope, he or she will invite an Independent Person (IP) to give his or her views on what action should be taken at this stage. That IP will then remain the IP who will be consulted on that case throughout this process, except in exceptional circumstances. Where a matter has not been referred to the JSC, the MO will also consult with the chair of the JSC.
9. The MO will also notify the subject member of the complaint unless there are compelling reasons not to and invite him/her to submit any relevant comments. The subject member will be given 10 working days to respond, from the date of the notification. In parish council cases the MO may also notify the clerk and may ask for relevant factual information. However, the MO, in consultation with an IP, may withhold the complainant's identity if they can be satisfied that there are reasonable grounds for granting confidentiality, for example a belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.
10. 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.
11. In deciding what action is necessary the MO will consider the following non-exclusive factors:
  - a. does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?;
  - b. are there alternative, more appropriate, remedies that should be explored first?;
  - c. where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse or "unparliamentary" language) may be given;

- d. is the complaint in the view of the MO malicious, politically motivated, or 'tit for tat'?
  - e. whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction;
  - f. whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
  - g. whether a substantially similar complaint has been submitted and accepted;
  - h. does the complaint relate to conduct in the distant past (over six months before)? This would include any reason why there had been a delay in making the complaint;
  - i. does the complaint actually relate to dissatisfaction with a Council (or parish council) decision rather than the specific conduct of an individual?; and
  - j. is it about someone who is no longer a councillor or who is seriously ill?
12. All parties (and the clerk for parish cases) will be notified of the MO's decision and there is no right of appeal against that decision.
13. A decision notice will be produced as a matter of record but will not be published at this stage though the Council may issue a public statement if details of the complaint are already in the public domain.
14. The MO will report to the JSC periodically on cases in which there has been no further action taken.

### **Informal resolution**

15. Where the MO has decided to seek to resolve the matter informally, he or she 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.
16. The MO will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.
17. If either the subject member or complainant refuses to engage with the informal resolution proposed by the MO, or do not engage within the set timeframe, 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.

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

### **Investigation**

20. Where a matter is referred for investigation, the MO may carry out the investigation him/herself, delegate it to another officer or contract it out to an outside body.
21. 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.
22. The subject member is notified who the relevant IP is for the case and may seek his or her views at any stage during the investigation.
23. The complainant is also notified who the IP is and may make a request to the MO to seek the views of the IP. However, such a request will only be granted at the discretion of the IP in consultation with the MO.
24. 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 to agree this.
25. Before being finalised, a draft report will be produced and the complainant, subject member and IP will be invited to comment. Witnesses may also be asked to comment as appropriate on parts of the draft report relevant to them.
26. Where the investigation has not been personally conducted by the MO, the final decision as to outcome will nevertheless be made by the MO unless there is a conflict of interest, in which case the decision will be taken by the DMO.
27. 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.

28. 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.

29. In cases where the MO has concluded that there has been no breach of the Code all parties (and the clerk in parish cases) will be notified of the MO's decision and there is no right of appeal against that decision. The MO will report the finding to the JSC and issue a public decision notice.

30. Where the MO decides to seek to resolve the matter informally, he or she shall seek the views of the IP and complainant before concluding whether such an outcome is appropriate. The possible resolutions are those outlined above at paragraph 15. If the subject member or complainant refuses to engage with the informal resolution directed by the MO, the MO deems the action taken by the subject member insufficient or the informal resolution does not take place in a timely way the MO will decide, in consultation with the IP, whether the case should be closed or whether a hearing is necessary. The MO will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution.

31. Where the matter is referred for determination, the hearings panel of the JSC will convene within 2 months. The MO will notify the subject member and complainant of the date of the hearing.

### **Hearings panel**

32. A matter referred for determination by the MO will be heard by a hearings panel, made up of members of the JSC

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

34. The views of the IP will be sought by the hearings panel and made public before the hearings panel reaches its decision.

35. The hearings panel may decide:

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

36. If the hearings panel decides that a relevant sanction should be imposed or recommended it may impose or recommend any one or more of the following:
- a. report its findings in respect of the subject member's conduct to Council (or the relevant parish council);
  - b. issue (or recommend to the parish council to issue) a formal censure;
  - c. recommend to the subject member's group leader (or in the case of ungrouped councillors, recommend to Council) that he/she 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 he/she has been appointed or nominated by the Council (or by the parish council);
  - g. recommend to Council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the Council for a specified period, such as a computer, website and/or email and internet access; or
  - h. recommend to Council (or recommend that the parish council) that it excludes the subject member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
  - i. if relevant, recommend to the Council that the subject member be removed from their role as Leader of the Council;
  - j. if relevant recommend to the secretary or appropriate official of the group that the councillor be removed as Group Leader or other position of responsibility.
37. All parties (and the clerk in parish cases) will be notified of the hearing panel's decision and there is no right of appeal against that decision.
38. A decision notice will be published on the Council website within 5 working days of the hearings panel decision.



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**Joint Standards Committee****23 September 2021**

Report of the Monitoring Officer

**Model Code Update – Review of Procedures****Summary**

This report provides the Joint Standards Committee with the current procedures in place, which will need to be reviewed in light of the new Model Code of Conduct.

**Background**

The Committee will be aware that a set of procedures are in place which deal with different stages in Standards complaints. The Committee had indicated that they wished to review the procedures after the Model Code of Conduct had been considered by Full Council and implemented, however, recent Joint Standards Committee Hearing Panels has brought to light procedural issues which has led to the Chair and Vice Chair of the Committee, along with other Members of the Committee to request that the procedures be reconsidered as a matter of urgency.

The procedures are annexed as follows:

- Annex A – Complaints Procedure
- Annex B - Assessment Criteria
- Annex C – Pre Hearing Procedure
- Annex D – Pre Hearing Checklist
- Annex E – Hearing Procedure

**Implications****Financial**

Not applicable to this report.

**Human Resources (HR)**

Not applicable to this report.

**Equalities**

The Equality Act 2010 places specific duties on Local Authorities. Having a clear and concise Code of Conduct and procedures which aid the process and prohibits unlawful discrimination gives the public confidence in Members and the Council as a whole.

**Legal**

As detailed within the report.

**Crime and Disorder, Information Technology and Property**

Not applicable to this report.

**Recommendations**

Members are asked to consider whether a review of the procedures is required now and if so, how this review will be conducted.

**Author:**

Rachel Antonelli

Head of Democratic  
Governance & Deputy  
Monitoring Officer

Tel: 01904 551043

**Chief Officer Responsible for the report: Janie Berry**

Director of Governance &  
Monitoring Officer  
Tel: 01904 555385

**Report  
Approved**

**Date** 14/09/2021

**Specialist Implications Officer(s):**

**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

**Background Papers:**

- Annex A – Complaints Procedure
- Annex B - Assessment Criteria
- Annex C – Pre Hearing Procedure
- Annex D – Pre Hearing Checklist
- Annex E – Hearing Procedure



## 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,](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 are 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](mailto:monitoringofficer@york.gov.uk)

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

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

This complaints procedure allows for a Councillor to refer themselves if they so desire, or if they feel it is in the interests of clarity. 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 7 working days of receiving it, and will keep you informed of the progress of your complaint, including reasons as to why they decide to close the complaint or not progress further. Regardless of the outcome of your complaint or the stage the complaint is concluded, you will be advised as to the outcome of the complaint.

### **3 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 it 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 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.

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 6 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](mailto: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.

The Monitoring Officer will then take a decision as to whether the complaint merits formal investigation. Where the Monitoring Officer feels that the case does merit formal investigation, he/she will consult with 1 of the Independent Persons in order to provide an external oversight. This decision will usually be taken within 7 working days 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 consider 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 2 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 or will be consulted ahead of the Sub Committee considering your complaint.

Examples of matters which the Sub Committee will consider include 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 their powers to make decisions but any Sub Committee appointed will have the same powers as the Monitoring Officer.

If the Monitoring Officer makes the decision to investigate your complaint, he or she will advise you of this within 7 working days. If the decision has been referred to a Sub Committee, a decision will be made as soon as is practicable.

### **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.

Investigations will be completed within 3 months of the investigator being instructed. There may be very good reasons why this is not possible, for example, where the case is complex or witnesses are not available. Where there are delays, 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 Councillor are expected to keep the circumstances of the complaint confidential and failure to do so could have a detrimental impact on the complaint or the 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 investigation 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. 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 Person(s).

## **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, the Councillor and if applicable, 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 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 internal right of appeal for either the complainant or for a Councillor against a decision of a Monitoring Officer, however, if, as a complainant you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman. There may also be the possibility of an application for Judicial Review of the decision.



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

### 1. Background and Context

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

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

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

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

- 2.2 Was the named member in office at the time the alleged misconduct took place?
- 2.3 Does the allegation relate to the Member's conduct as a Councillor?

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

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

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

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

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

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

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

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

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

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

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

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### **6. Public Interest**

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

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

**7. Anonymous Complaints**

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

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### Pre Hearing Procedure

1. Where a decision has been made that a complaint needs to be referred for a hearing then a Sub Committee meeting will be arranged for that purpose. The Sub Committee will sit as a Hearing Panel.
2. A copy of the final investigation report will be sent to the Subject Member, the complainant and to the Independent Persons. If the complaint relates to the Subject Member's conduct as a parish councillor then a copy will also be sent to the Clerk to the Parish Council.
3. The Subject Member and the complainant will be asked to confirm within fifteen working days whether he/she:
  - Disagrees with any of the findings of fact in the report and the reasons for any disagreement
  - Wishes to be represented by a solicitor or barrister, or by any other person (such representation should not normally be necessary)
  - Wishes to attend the hearing
  - Wishes relevant witnesses to be called to give evidence to the Panel
  - Wishes any part of the hearing to be held in private<sup>i</sup>
  - Wishes any part of the Investigating Officer's report or other relevant documents to be withheld from the public<sup>ii</sup>
4. The Subject Member and the complainant will be informed that if, at the meeting of the Committee, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.

5. Upon receipt of the Member's and complainant's responses, the Investigating Officer shall be invited to comment on it within ten working days, and to say whether or not he/she:
  - Considers that the Committee should request other witnesses to give evidence or submit written or other evidence to the Committee
  - Believes any part of the hearing should be held in private
  - Believes any part of the report or other relevant documents should be withheld from the public

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6. The Monitoring Officer will consider the responses and set a date for the hearing in consultation with the Chair of the Panel.
7. The Monitoring Officer together with the Chair of the Hearing Panel will consider which witnesses should be invited to attend. Witnesses may not be called if the number requested is unreasonable and it appears that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Panel to reach its decision.
8. The Chair of the Hearing Panel may request the attendance of any additional witnesses whose evidence he/she considers would assist the Panel to reach its decision. The Panel does not though have powers to compel any witness to attend.

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9. The Monitoring Officer will:
  - Confirm a date, time and place for the hearing
  - Confirm the main facts of the case that are agreed
  - Confirm the main facts that are not agreed
  - Provide the Panel with a copy of the investigating officer's report
  - Provide copies of any other written evidence to the relevant parties and the Panel

- Confirm which witnesses will be called by the parties
- Provide the parties with copies of the proposed procedure for the hearing.

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<sup>i</sup> The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Proper Officer of the Council will decide whether papers should be publicly available in advance and the Sub Committee will determine whether all or part of the meeting should be in private.

<sup>ii</sup> See note i



<b>City of York Council Standards Committee</b>	
<b>Pre Hearing checklist</b>	
<b>Complainant</b>	
<b>Subject Member</b>	Councillor
<b>Investigating Officer</b>	
<b>Do you intend to attend the proposed hearing to give evidence or make representations</b>	
Yes/No	
<b>Do you wish to be represented at the hearing by a solicitor, barrister or another person.<sup>1</sup></b>	
Yes/No	
<b>If so by who?</b>	
<i>Name of representative and capacity in which they act: e.g. solicitor, friend, fellow Councillor</i>	
<b>Do you wish the whole or any part of the hearing to be in private?</b>	
Yes/No	
<b>If yes please explain why<sup>2</sup></b>	

<sup>1</sup> Although there has to be a degree of formality to the proceedings of the committee it will be unusual for subject members to be represented. The procedure is not adversarial. The Committee will act in an inquisitorial manner to ensure that the circumstances of the case are fully understood.

<sup>2</sup> The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Council's proper officer will determine whether papers should be publicly available and the Hearing Sub Committee will determine whether the meeting or any part of it should be in private.

**Do you wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public?**

*Yes/No*

**If yes please explain why<sup>3</sup>**

**Do you disagree with any of the facts found by the investigating officer as set out in his her report?**

*Yes/No*

**If yes please set out briefly the facts that you dispute and your view as to the true factual position**

<sup>3</sup> The Standards Committee's general position is that hearings should be held in public and that documents should be publicly available in advance of the meeting. However, there may be circumstances in which fairness to individuals dictates and the provisions of schedule 12A to the Local Government Act 1972 allow, information to be considered in private. The Council's proper officer will determine whether papers should be publicly available and the Hearing Sub Committee will determine whether the meeting or any part of it should be in private.

<b>Do you believe that witnesses should be called to the Hearing</b>
<i>Yes/No</i>
<b>If yes please identify the witnesses who you wish to be called and briefly identify the issues that they will be able to give evidence about<sup>4</sup></b>

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<sup>4</sup> The Monitoring Officer and Chair will consider whether any witnesses you name are likely to be able to give evidence which will be of value to the Hearing Panel. If they are then those witnesses will be invited to attend. The Panel cannot compel the attendance of any witness.



## **CITY OF YORK COUNCIL STANDARDS COMMITTEE HEARING PROCEDURE**

### **General Matters**

1. In this procedure the term “interested parties” is used to cover the complainant, the subject member and the investigating officer. The interested parties will all be invited to attend the hearing as potential witnesses.
2. The Independent Persons will also be invited to attend the hearing in an advisory, non-voting capacity. Their views will be sought as to whether the evidence establishes a breach of the code of conduct and, if so, as to what if any penalty should be imposed.
3. The Hearing Panel will be made up of members of the Standards Committee and there will normally be three members. The Panel will be supported by the Monitoring Officer or his representative and a democratic services officer.
4. The meeting will be open to the press and public unless confidential or exempt information is likely to be disclosed. The Standards Committee considers that in general the public interest in seeing that complaints relating to Councillors are handled properly will outweigh any considerations relating to the privacy of the Councillor concerned but each case will be considered on its own merits including consideration of the privacy of other parties.
5. The hearing will normally follow the procedure set out below but the Chair has the discretion to vary it at any time. Such a variation may be considered where, for example, the Chair believes that doing so will be in the interests of fairness or help in establishing the facts of the case.
6. It will not usually be necessary for the Subject Member to be represented at a hearing but he or she may choose to arrange such representation which may be by a solicitor, barrister or another person.
7. The Panel may take legal advice at any time during the hearing or during its deliberations. The substance of any advice given to the Panel will normally be shared with the parties.

### **Preliminary procedures**

8. Prior to the hearing commencing the Panel may meet privately to review the material presented and to agree the main lines of enquiry.
9. At the start of the hearing, the Chair will arrange introductions of the Panel, its Officers, the Independent Persons and the interested parties. The Chair will briefly explain the procedure which the Panel will follow in the conduct of the hearing. The Chair will confirm that each interested party has seen the final report of the investigating officer and has had the opportunity to engage in the pre hearing procedures.
10. The Monitoring Officer will identify whether the pre hearing procedures have identified any significant disagreements about the facts contained in the Investigating Officer's report. The Panel will record the agreed facts and establish the facts in dispute which they will be required to rule upon.
11. If a party raises an issue which has not been raised previously then that party shall be required to give a full explanation to the Panel as to why it was not raised earlier. The Panel may then:
  - a. Consider whether or not to allow the issue that has been raised to be dealt with at the hearing
  - b. Consider whether the hearing should be adjourned for further investigations to take place.

### **Determining factual disputes**

12. If there are disputed facts which the Panel consider relevant to establishing whether the Code has been breached or as to the seriousness of the breach then, the Panel will adopt an inquisitorial approach in establishing the facts. The Chair will invite members of the Panel to ask questions of the interested parties or any other potential witness present. The Monitoring Officer may also ask questions.

13. Once a witness has answered questions from the Panel then the Chair will ask the interested parties whether there are other issues which ought properly to be raised with the witness. The Chair (or another Member) may put any such issues to the witness him or herself or may allow the relevant party to ask questions directly.
14. The Panel must reach a decision as to the facts it finds to be proven. The Panel must also make a decision as to whether the proven facts (including those which are agreed) show a breach of the code of conduct. Depending on the complexity of the case the Panel may consider each of those issues separately or deal with them together. In either case the Chair will invite the parties to make representations on each matter before the Panel reaches its decision.

### **Panel deliberations**

15. When the Panel is considering its finding of facts and whether those facts amount to a breach of the Code of conduct it will do so in private but in the presence of the Monitoring Officer, the Independent persons and the Democratic Services officer.
16. At the conclusion of the Panel's deliberations, the Chair will publicly announce the Panel's findings as to the facts and as to whether those facts show a breach of the code of conduct. The Panel will give reasons for their findings. It will be normal practice to share the substance of any advice given by the Monitoring Officer and Independent persons at this stage.

### **Determining Sanctions**

17. If the Panel concludes that the Subject Member has failed to comply with the Code of Conduct, the Chair will invite representations from the interested parties as to what action, if any, it should take.
18. The Panel will then consider whether to impose a sanction, and, if so, what sanction to impose and when that sanction should take effect. It will do so in private but in the presence of the Monitoring Officer, the Independent persons and the Democratic Services officer.
19. The sanctions available to the Hearings Panel are to –

- Censure the Councillor;
  - Formally report its findings to the City Council or Parish Council for information;
  - 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 Panels or Sub-Committees of the Council;
  - Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - Recommend to Council that the Leader be removed from Office (if it is the Leader' conduct that is being considered)
  - Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;
  - 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]*;
  - 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.
20. 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.
21. The Chair will publicly announce the decision of the Panel. The substance of any further advice given by the Independent Person and Monitoring Officer will also be shared. Written notice of the findings of the Panel will be given as soon as is reasonably practicable to the Subject Member. They will also be placed on the

council's website. If the complaint was against the Subject Member as a parish councillor, written notice of the findings of the Panel will be sent to the clerk to the parish council.

**Other action**

22. The Panel may also consider making any recommendations to the Council concerned with a view to promoting higher standards of conduct among its members.

