Annex 1

Appendix 29 – Joint Standards Committee Procedures

CASE HANDLING PROCEDURE

These arrangements are made under section 28(6) of the Localism Act 2011 and set out how City of York Council ("the Authority") will investigate and determine allegations that an elected or co-opted member of the Council, or of a parish or town council within the Authority's area (the "Subject Member"), has failed to comply with the adopted Code of Conduct.

Monitoring Officer

1) All allegations will be received by the Authority's Monitoring Officer ("MO") who may, at any time, nominate a deputy to carry out any of their functions listed in this procedure.

2) Where the MO is the complainant, a relevant witness, or otherwise has a conflict of interest, and where the matter cannot be properly dealt with by a deputy for any reason, the MO will refer the allegation to the Chair and Vice-Chair of the Joint Standards Committee ("JSC") who will together take over the MO's role in the procedure.

Independent Person

3) The Authority will appoint an Independent Person ("IP") whose views may be sought at any stage of the procedure but ***must*** be sought, recorded, and taken into account, before it makes a decision on an allegation that it has decided to investigate.

4) The appointed IP's views can also be sought at any stage by the Subject Member against whom an allegation has been made.

5) Save in exceptional circumstances, once appointed the IP will remain the IP to be consulted throughout the procedure.

The Allegation

6) All allegations ***must*** be made in writing. A form is available on the Authority's website and in the reception of West Offices for this purpose. Assistance in completing the form can be provided.

7) Within *3 working days* of receipt, the MO will contact the complainant to acknowledge their allegation and to outline this procedure and the timescales involved.

8) Every allegation will be treated on its own merits, but multiple allegations may be consolidated where they relate to the same alleged misconduct.

9) Where an allegation identifies criminal conduct, or a regulatory breach, the MO may refer the matter to North Yorkshire Police (or other relevant Regulatory Authority) for consideration. In such cases the MO may pause this procedure until the outcome of the referral is known, but is not obliged to do so.

10) An anonymous allegation will not generally be accepted unless the MO concludes that there is a compelling public interest in doing so.

11) Where a complainant requests their identity be withheld from the Subject Member, and the MO believes there is a genuine risk of intimidation, serious harm or distress, or an adverse impact on employment, the complainant's identity may be so withheld. The complainant must be informed of the reasons for the decision.

12) A Subject Member has no automatic right to confidentiality but may request that an allegation remain confidential whilst it is investigated. The MO will consider the procedural fairness of such a request, balancing the public interest against the risk of the Subject Member (and/or to persons associated with them) suffering serious harm or distress were the allegation to become known, before deciding whether the investigation ought to remain private.

A – Jurisdiction

13) The MO will apply an initial filter to an allegation to check:

a. it is against an elected or co-opted member,

b. they were in office at the time of the allegation,

c. it relates to when they were acting, or purporting to act, in their capacity as an elected or co-opted member,

d. that, if proven, the matter could be capable of being a breach of the adopted Code.

B – Initial Assessment

14) Where jurisdiction is established, the MO will notify the Subject Member (and in the case of town or parish councillors also the town or parish clerk) of the allegation and provide a copy of it, together with any supporting evidence.

15) The Subject Member will then be given *10 working days* from date of notification to respond to the MO with any comments they wish to make.

16) At the end of this period (whether or not a response is received from the Subject Member) the MO, in consultation with the IP, will decide whether to:

- take no further action,
- seek to resolve the matter informally,
- refer the matter for deeper investigation,
- refer the matter to a committee hearing.

17) Where the Subject Member is the Leader, opposition Leader, a member of the Executive or a Shadow Executive, and the initial assessment decision is to take no further action, the initial assessment must first be referred to the Chair and Vice-Chair of the JSC who may, if they both agree, substitute an alternative decision.

➢ No Further Action

18) Where it is decided not to take any further action, the matter will be immediately closed. Examples of when this might occur include:

a. there is insufficient evidence to demonstrate a Code breach,

b. an alternative remedy ought to be explored first,

c. the allegation describes a trivial breach, is intended to cause annoyance frustration or worry (vexatious), is intended to cause harm (malicious), has little or no substance (frivolous), or is petty tit-for-tat (retaliatory),

d. the allegation is made by one councillor against another in circumstances amounting to robust political debate,

e. the allegation is merely a delay, or failure to respond to a constituent request, not in itself capable of amounting to disrespect,

f. the relevant conduct took place over six months previously without good reason for a delay in making the allegation,

g. the allegation relates to a decision of the Authority (or a town or parish council), rather than conduct of an individual,

h. the allegation is the same or substantially similar to one which has recently been considered, and no new material evidence has been submitted,

i. if proven, the allegation would warrant no sanction, or

j. the Subject Member has stood down or is seriously ill.

19) The complainant and Subject Member will be notified of the decision in writing and the outcome reported to the JSC.

20) There is no internal right of appeal.

- **Informal Resolution**

21) Where a Code breach is relatively minor, a one-off, or a genuine mistake, a proportionate outcome in the public interest might include:

a. suggesting the offer of a written apology,

b. suggesting the withdrawal of the offending remark,

c. suggesting the Subject Member undertake relevant training,

d. convening a meeting (with or without a mediator present), between the complainant and Subject Member, to try to resolve the issue(s),

e. inviting a response from the Subject Member's political group (where they are a member of such a group), or

f. a written warning as to future conduct.

22) The complainant and Subject Member will be notified of the decision in writing and the decision reported to the JSC.

23) A register of written warnings will be maintained by the MO and, where a member becomes the subject of a new allegation, any prior written

warning(s) will be taken into account before any further informal resolution can be proposed.

24) If, after a reasonable time, the suggested informal resolution has not taken place, or any party refuses to engage with the proposal, the MO in consultation with the IP will decide whether further action is necessary in the public interest.

25) There is no internal right of appeal.

C - Referral for Investigation

26) Where a deeper investigation is warranted, it must be carried out fairly and reasonably by the MO, an officer appointed by them, or in being contracted to an external agent.

27) The investigation will be limited to matters raised in the written allegation.

28) An investigation report will then be prepared *within 3 months* of referral. This time limit may be extended only where the MO agrees that it is necessary, proportionate and reasonable to do so.

29) Where a Subject Member becomes seriously ill, or ceases to be a member or co-opted member, or some other exceptional circumstance occurs before the investigation is complete, the MO in consultation with the IP may decide to halt the investigation and take no further action.

30) The written report must outline the investigator's findings of fact, on the balance of probability, and indicate in its conclusion whether the investigator believes a breach of the Code has occurred.

31) The report will be provided to both the complainant and Subject Member who may, within 5 working days of receipt, comment on it. The investigator will then be given 5 working days to indicate whether these comments affect the report's conclusion.

32) The report, and any comments, will then be considered by the MO in consultation with the IP, before deciding whether to:

- take no further action,
- seek to resolve the matter informally, or
- refer the matter to a committee hearing.

33) There is no internal right of appeal.

D - Referral to a Hearing

Pre-hearing

34) A hearing will be held before the JSC *within 6 weeks* of a referral.

35) The MO will manage the hearing procedure, and advise the JSC throughout the hearing process, but *must not* take part in the decision itself.

36) The MO will write to the complainant, the Subject Member and any investigator not later than 10 working days before the hearing to confirm the hearing date, its location, and to provide a copy of this procedure.

37) Neither the complainant, Subject Member nor investigator can be compelled to attend the hearing and the hearing need not be an oral hearing.

38) Irrespective of whether the MO decides that an oral hearing is necessary, or a party has indicated that they do not wish to attend, the complainant, Subject Member and investigator *must* all be invited to provide, *no later than 3 working days before the hearing*, written submissions and/or any evidence that they would like the JSC to take into account.

39) The Subject Member will also be invited to confirm whether they accept the findings of any investigation report, to identify any areas of dispute, and (if they intend to attend the hearing) to indicate whether they would like someone to accompany them.

40) Any submissions and/or evidence received will be circulated to all parties before the hearing. Late submissions or evidence will not be considered at the hearing, unless all parties have been invited to comment on the procedural fairness of doing so and where the Chair agrees that it may be considered.

41) If a party wishes to call a witness to the hearing, they must advise the MO of this no later than 3 working days before the hearing, explain why the witness is necessary, and provide the witness' contact details.

42) Only the parties themselves and any relevant witnesses, whose attendance has been agreed with the MO in advance of the hearing, may address the JSC at the hearing.

43) The hearing must be open to the public, save where either:

    a) it is likely that *confidential information* will be disclosed, within the meaning of section 100A(3) Local Government Act 1972

    or

    b) it is likely that *exempt information* will be disclosed, as defined in schedule 12A to Local Government Act 1972 and the JSC resolves that the public interest in maintaining the exemption outweighs the public interest in disclosure.

44) Where a hearing, or part of a hearing, remains open to the public the Public Participation Protocol will not apply: members of the public may not ask questions of any party or address the JSC at any point.

45) The appointed IP must be present at the hearing, whether or not it is an oral hearing, and their views taken into account before the JSC comes to a decision. The IP may not take part in the decision itself.

46) The hearing may be adjourned at any time but only when it is necessary and in the public interest, for example, to allow production of additional evidence, to secure a party's attendance, or where there is insufficient time to conclude the hearing on a single day.

At the hearing

47) At the commencement of the hearing, the JSC members will appoint a Chair. No member of the JSC may act as Chair unless they have received the relevant training to be able to do so

48) All JSC decisions are made on the balance of probabilities. The technical rules of evidence applicable to civil and criminal courts will not apply. Hearsay evidence may be considered, and it will be a matter for the JSC to decide how much weight to attach to it.

49) Order of presentation:

a) the complainant will be invited to present their allegation,

b) the investigator will then present their report,

c) the Subject Member will then be invited to present their response,

d) each party will be given 5 minutes to sum up their position,

e) the IP will then be invited to indicate their views on both breach and, if found, appropriate sanctions.

Where any party is not present, their written submissions and any evidence submitted in support will be read out.

50) Questions and witnesses:

a) Once each party or witness has presented their case, they may be asked any relevant questions first by the JSC, then the complainant, the investigator, the IP and finally the Subject Member

b) Any witness ***must*** remain outside the room until called to address the JSC, but may then choose to remain or to leave the hearing once they have done so.

Decisions

51) The JSC will decide:

- the facts, on balance of probability, upon which it will base its decision,
- whether these facts amount to a breach of the Code of Conduct and, if so,
- what sanction (if any) would be appropriate.

52) The JSC will then announce its decision and give reasons, and each party invited to comment, before the hearing ends.

53) A Decision Notice will be published *within 5 working days of the hearing* and a copy, with reasons, provided to the complainant and the Subject Member and, in the case of a town or parish councillor, to the town or parish clerk.

54) The MO will maintain a register of decisions. The JSC may take into account its previous decisions against a Subject Member before considering a sanction, following a finding of a second or subsequent Code of Conduct breach.

55) There is no internal right of appeal.

- **Formal Sanctions**

56) In order to promote and maintain the highest of standards of members and co-opted members at the Authority, the JSC may consider one or more of the following sanctions:

- Report its findings to full council and/or the relevant town or parish council

- Recommend to full council that it restrict the Subject Member's access to specific facilities and resources, including any premises, or to restrict contact with named individuals, for a specified period

- Issue, or issue through a town or parish clerk, a formal reprimand

- If the Subject Member is also a member of a political group, to recommend to that group's leader that the Subject Member be removed from any or all committees and sub-committees

- If the Subject Member is the leader of a political group, to recommend to that group's secretary or other official that they be removed from that role

- Recommend to the Leader that the Subject Member be removed from positions of authority or, if the Subject Member is the Leader, to recommend to full council that they be removed from that post

- Instruct the MO to offer the Subject Member specific training, or assist the town or parish council to offer such training

- Recommend to full council that the Subject Member be removed from all outside appointments and nominations