

## NORTH YORKSHIRE COUNTY COUNCIL

### STANDARDS COMMITTEE

15 October, 2013

#### **Complaints Update**

#### **1.0 PURPOSE OF REPORT**

- 1.1 To inform Members of ethical framework complaints received about Members of the Council since the previous report in February, 2013.
- 1.2 To seek the views of the Committee on whether, in the light of experience, it would be appropriate to make changes to the timescales set out in the arrangements for dealing with allegations of breach of the Members' Code of Conduct.
- 1.3 To seek the views of the Committee on whether it would be appropriate to provide to the complainant any information provided by the Member who is the subject of the complaint.

#### **2.0 COMPLAINTS SINCE FEBRUARY**

- 2.1 There have been five further complaints that certain Members may have breached the Authority's Members' Code of Conduct since those reported to the Committee's previous meeting.

##### NYCC/SC/30 and 31

- 2.2 These two complaints relate to payments of IT/broadband allowances to Members of the County Council who are also Members of a District Council in the County. The cases were assessed on 11 February 2013 by the Monitoring Officer in consultation with the Independent Person for Standards when it was decided that no further action was necessary. In addition, NYCC/SC/31 was found to be not in jurisdiction.

##### NYCC/SC/32

- 2.3 This complaint was that a Councillor, now no longer a Member of the Council, had failed to declare a disclosable pecuniary interest in a property at a meeting when a matter which the complainant believed might have affected the property was discussed. The property interest was declared in the Register of Members' Interests. The complaint was investigated by the Deputy Monitoring Officer and no breach of the Code of Conduct was found, as it was considered that the property in question was not sufficiently affected by the matter discussed at the meeting.

### NYCC/SC/33

- 2.4 This complaint concerned the failure to remove an interest from the Register of Members' Interests within the timescale required under the County Council's Code of Conduct. As the Member complained against was no longer a member of the body, there was no question of any conflict or inappropriate influence arising. In consultation with the Independent Person I determined that this was not a serious breach, nor was there any question of the circumstances amounting to a criminal offence under the Localism Act 2011, and there was, therefore, no wider public interest in any further action being taken on the complaint.

### NYCC/SC/34

- 2.5 This complaint is about the behaviour and statements made by a Member at a public meeting and subsequently. The complaint has been referred to the Deputy Monitoring Officer and is currently under investigation.
- 2.6 At the time of preparing this report a further complaint has also been received relating to allowances claims by "dual-hatted" Member(s), which has yet to be progressed.

### **Previous complaints**

#### NYCC/SC/28

- 2.7 This case concerned allegations regarding the use of Council resources. It was assessed on 7 February 2013 and referred for investigation. The Investigating Officer reported no breach of the Code, which the Monitoring Officer and Independent Person for standards accepted.

#### NYCC/SC/29

- 2.8 This case concerned allegations regarding the use of Council resources. It was assessed on 7 February 2013 and referred for investigation. The Investigating Officer found breaches of the Code however by the end of process the subject Member had not been re-elected. The Monitoring Officer wrote to the parties to advise of the outcome of the report.

### **3.0 ARRANGEMENTS FOR DEALING WITH ALLEGATIONS**

- 3.1 The agreed arrangements for dealing with allegations of breach of the Members' Code of Conduct (copy attached at end of report) set out timescales for the treatment of complaints (sections 4, 5, 7 and 12). Experience of handling complaints, together with all the other workload, indicates that these timescales are often unachievable and the Committee is asked to consider whether it would be appropriate to amend them.
- 3.2 Whilst dealing with a recent complaint the complainant asked me to provide them with a copy of the information provided to me by the Member who was the subject of the complaint. Section 5 of the attached document makes clear that "the subject Member will be advised of the complaint and copied into any relevant correspondence or complaint received from the complainant". It goes on to state that the subject Member may also be requested to provide information about the matter, but does not state whether or not such information can/should then be made available to the complainant. The Committee is asked to consider whether there would be any benefit in the complainant being provided with information from the subject Member, or any reasons why this might be inappropriate. Any decision

to make such information available would need to take into account any Data Protection Act implications.

#### **4.0 RECOMMENDATIONS**

- 4.1 That the Committee notes the current position on complaints received
- 4.2 That the Committee determines whether it believes any changes to the timescales set out in the arrangements for dealing with allegations of the breach of the Members' Code of Conduct would be beneficial and merited.
- 4.3 That the Committee determines whether it would be appropriate to provide to the complainant any information provided by the Member who is the subject of the complaint.

CAROLE DUNN  
Monitoring Officer

Background Documents: None

County Hall  
NORTHALLERTON  
7 October, 2013

## **NORTH YORKSHIRE COUNTY COUNCIL**

### **ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACH OF THE MEMBERS' CODE OF CONDUCT**

These arrangements set out how a complaint can be made to North Yorkshire County Council that an elected or voting co-opted Member has failed to comply with the Council's Code of Conduct for Members. These arrangements are made under Sections 28(6) and (7) Localism Act 2011.

#### **1 Independent Person**

The Council has appointed an Independent Person whose views must be sought by the Council before it takes any decision on an allegation which has been decided should be investigated. The Independent Person's views can also be sought by the Council at any other stage or by a Member against whom an allegation has been made. In practice complaints are dealt with by the Monitoring Officer, and by the Standards Committee.

#### **2 Members' Code of Conduct**

The Council has adopted a Code of Conduct for Members, attached as an Appendix to these arrangements. It is also published on the Authority's website.

#### **3 Making a Complaint**

If someone considers there has been a breach of the Code of Conduct by a Member, and wants to make a complaint, they should write or send an email to:

Carole Dunn  
Monitoring Officer  
North Yorkshire County Council  
County Hall  
NORTHALLERTON  
North Yorkshire  
DL7 8AD

email: [carole.dunn@northyorks.gov.uk](mailto:carole.dunn@northyorks.gov.uk)

Where possible, the standard complaint form should be used. It can be downloaded from the Council's website, or is available from the Monitoring Officer at the above address.

It is important to provide a name and contact address. Please note that the Council will not investigate anonymous complaints unless there is a significant public interest in doing so.

#### **4 Timescales**

We aim to deal with any complaint, so far as possible, within 30 working days of receipt, or as soon as possible thereafter.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days and will keep you informed of progress.

#### **5 Assessment for Investigation or Other Action**

Every complaint relating to the Code of Conduct will be received by the Monitoring Officer.

The Member who is the subject of a complaint ('the subject Member') will be advised of the complaint and copied into any relevant correspondence or complaint form received from the Complainant. The Monitoring Officer will review complaints and consult with the Independent Person in doing so, and will decide whether a complaint merits formal investigation. Where there

is a difference of opinion between the Monitoring Officer and the Independent Person, then the allegation will be investigated.

This assessment will take place, where possible, within 15 working days of receipt of the complaint or as soon as possible thereafter. The Monitoring Officer may request more information to assist the decision as to whether investigation is appropriate.

The subject Member may also be requested to provide information about the matter.

The Monitoring Officer will advise you, in writing, of his/her decision about whether or not the matter should be investigated.

If the complaint identifies criminal conduct or breach of other regulation, the Monitoring Officer will consult the Police and/or such other regulatory agencies as he/she considers appropriate.

The Monitoring Officer will not refer for investigation matters which are, in his/her opinion, and after consultation with the Independent Person, vexatious, offensive, trivial or politically motivated.

If the Monitoring Officer has a conflict of interest or does not for any other reason consider it appropriate that s/he undertakes initial assessment of a complaint, it will be referred to the Standards Committee.

The Standards Committee will be informed of the outcome of all complaints received.

## **6 Informal Resolution**

Wherever possible the Monitoring Officer will seek to resolve a complaint informally without the need for formal investigation or referral to the Standards Committee.

This may involve trying to mediate between the parties, aiming to clarify misunderstandings, or encouraging discussion between the Complainant and subject Member to enable a resolution between them, or where appropriate, an apology. It may also involve other remedial action by the Council.

If the Member or the Council make a reasonable offer of local resolution but the Complainant is not willing to accept the offer, the Monitoring Officer will take this into account in deciding whether a complaint merits formal investigation.

## **7 Investigation**

If the Monitoring Officer concludes that a matter merits investigation, the Complainant will be invited to submit all information they wish to submit in support of their allegation within 5 working days of request.

Once the information is received it will be sent to the Member who is subject to the complaint, who would also be invited to submit all information they wish to be considered in response within 5 working days.

Throughout the process the Monitoring Officer will ensure the subject Member and Complainant receive appropriate support and assistance.

The Monitoring Officer may also appoint a member of his/her staff to oversee the gathering of information relating to the matter which will comprise the investigation ('the Nominated Officer'). The Nominated Officer will consider whether any further information is needed and take steps so far as possible to secure its production.

A report containing the information provided by the Complainant and subject Member will be prepared by the Nominated Officer, and copied to both parties and sent to the Monitoring Officer. The report will conclude with a recommendation as to whether it is considered that there has been a breach of the Code.

## **8 Conclusion of no evidence of failure to comply with the Code of Conduct**

The Monitoring Officer will receive and review the report and consult the Independent Person upon it. Subsequently, if satisfied that the report is sufficient, the Monitoring Officer will write to the Complainant and the subject Member notifying them that s/he is satisfied that no further action is required.

## **9 Conclusion that there is evidence of failure to comply with the Code of Conduct**

The Monitoring Officer will review the report and consult the Independent Person as to whether local resolution may be possible. If any suggested resolution is not agreed, the matter will be referred to the Standards Committee for consideration.

If the matter can reasonably be resolved in the Monitoring Officer's opinion without the need for a hearing he/she will consult the Independent Person, with the Complainant and subject Member, to seek to agree a fair resolution which will also ensure higher standards of conduct for the future.

As with initial assessment this can include the Member accepting that conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution the matter will be reported to the Standards Committee but no further action will be taken.

## **10 Hearing**

If local resolution is not appropriate, or the Complainant or subject Member are not satisfied with the proposed resolution, or the subject Member is not prepared to undertake any proposed remedial action, the report will be reported to a Hearings Panel ('the Panel') of 3 Members from the Standards Committee. The Independent Person will attend all Panel meetings and will be consulted by the Panel in making its decision about whether there has been a breach of the Code and any action to be taken.

The Panel will meet to decide whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action.

The report will be presented to the Panel. The Complainant and the subject Member will be invited to attend the Panel to present information and make representations in relation to the allegations that there has been a failure to comply with the Code of Conduct. The Independent Person will be present. The Panel can proceed in the absence of either the subject Member or the Complainant where it deems this to be appropriate.

The Panel shall consult with the Independent Person and be advised by the Monitoring Officer. It may conclude:

- (a) that the Member did not fail to comply with the Code of Conduct;
- (b) that the Member did fail to comply with the Code of Conduct; and, if it so concludes, the Panel may determine whether any action is necessary and, if so, what sanction is appropriate.

## **11 What action can the Panel take if there has been a breach of the Code of Conduct?**

The Panel may:

- (a) issue a letter of censure to the Member and where appropriate require an apology to be given to the Complainant;

- (b) recommend to the Member's Group Leader that he/she be removed from any or all committees or sub-committees of the Council;
- (c) instruct the Monitoring Officer to arrange training for the Member.

The Panel has no power to suspend or disqualify the Member or to withdraw allowances.

The Panel shall consult the Independent Person and decide what, if any, publicity should be undertaken regarding the outcome of the matter. Options for such publicity include a notice on the Council's website or a press release.

## **12 What happens at the end of the hearing?**

The Chair of the Panel will announce the decision of the Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action it deems necessary. The Monitoring Officer will prepare a Decision Notice which will be given to the subject Member and the Complainant within 5 working days. The outcome will be reported to the next meeting of the Standards Committee.

## **13 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements and delegates to the Chair of the Panel the right to depart from these arrangements where he/she considers it expedient to do so to secure the effective and fair consideration of any matter.

## **14 Appeals**

There is no right of appeal for the Complainant or the subject Member against a decision of the Monitoring Officer or Panel.

If the Complainant feels that the Council has failed to deal with the complaint properly they may make a complaint to the Local Government Ombudsman.

1 July 2012