

**NORTH YORKSHIRE COUNTY COUNCIL**

**STANDARDS COMMITTEE**

Minutes of the meeting held at County Hall, Northallerton on Monday, 21 September 2009.

**PRESENT:**

Mr James F S DGLISH (Chairman).

County Councillors Philip Barrett, David Jeffels, J W Marshall, Peter Sowray and Geoff Webber.

Independent Members: Gillian Fleming and Henry Cronin.

Apologies were received from County Councillor Peter Pople and Independent Member Dr Janet Holt.

One member of the public was also present.

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**COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK**

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**9. MINUTES**

**RESOLVED –**

That the minutes of the meeting held on Wednesday, 5 August 2009, having been printed and circulated, be taken as read and signed by the Chairman as a correct record subject to the following amendment:-

Minute No 5 – Appointments to Sub-Committees – final paragraph in the resolution – remove “be recommended to”.

**10. ELECTION OF VICE-CHAIRMAN**

**RESOLVED –**

That Ms Gillian Fleming be appointed as the Vice-Chairman of the Standards Committee until the first meeting of the Committee following the annual meeting of the County Council in 2010.

**11. PUBLIC QUESTIONS OR STATEMENTS**

**RESOLVED –**

That it be noted that the Assistant Chief Executive (Legal and Democratic Services) had received no notice of any public question or statement to be made to the Committee.

## 12. COMPLAINTS AND ETHICAL INDICATORS

CONSIDERED –

The report of the Monitoring Officer and the Chief Executive providing statistics in relation to complaints and compliments received by the Council for Quarter 3 in 2008/2009 and Quarter 1 for 2009/2010. The report also presented information in relation to agreed ethical indicators for the period 1 April 2008 to 31 March 2009 which assisted in giving an indication of the health of the authority in relation to standards and ethics.

Amanda Fry, Staff Officer to the Chief Executive, presented the compliments and complaints quarterly report for both Quarter 3 – October to December 2008 and Quarter 1 – April to June 2009. She stated that the reports had been provided to both Management Board and the Executive as part of the performance management data.

She outlined how the information was utilised, changes to the categories and changes to the way in which Ombudsmen complaints were being investigated.

Members noted that the number of complaints upheld had increased in percentage terms and asked whether this was considered to be a negative feature. In response it was stated that this was not seen as a good thing, as the number of upheld complaints suggested that these were not being dealt with correctly at the initial stage, which was why extensive work was being undertaken with staff to determine how complaints were being dealt with and to emphasise the need to deal with these straight away.

It was noted that the figures relating to January to March 2009 had not been included in the report and it was stated that these would be supplied to Members subsequently. Members considered that, taking account of the size of the organisation, there were surprisingly few complaints that had been made. It was asked whether all of those coming through were complaints or whether these could be deemed as observations. In response it was stated that it was recognised that not all the issues raised were complaints as some were requests for information. It was emphasised that all issues were looking to be dealt with in as speedy a manner as possible.

It was noted that staff were provided with training, which would be continuous and updated, in how to deal with complaints, to ensure that these were addressed appropriately.

A Member asked, with each Authority encouraged to deal with standards issues in its own way, whether there was an overall framework for dealing with complaints or whether local authorities were left to design their own systems, which best suited their needs. In response it was stated that there were several over-reaching bodies that dealt with complaints, for example the Ombudsman, CAA, etc, therefore, there was a requirement to ensure that the required format to meet their particular needs was met. It was also noted that national software in relation to dealing with complaints was being developed, which would see local authorities dealing with complaints in a similar way and it was noted that the County Council was looking to introduce this at an early stage.

A Member referred to the statistics provided in relation to the misuse of IT, email or internet facilities and, noting that there had been 12 allegations that had been investigated, raised concerns that there was no information to indicate whether any of these had been particularly serious cases.

It was noted that of the 59 cases investigated by Internal Audit, 29 of those had been communicated via whistle blowing opportunities and Members were pleased that this system was shown to be working.

Members noted a large rise in compliments received between Quarter 4 2008/09 and Quarter 1 2009/10 and wondered why this was the case. In response it was stated that these had been under reported previously and, following a full explanation to staff, figures had risen.

Members asked when there was likely to be a reasonable consistency to the compliments and complaints information reported to the Committee. In response it was stated that the introduction of the national software package would assist in providing consistent statistics. It was emphasised, however, that national affects, such as an increase in complaints in respect of social care, etc could still cause “blips” in the figures, and had to be borne in mind.

A Member suggested that the information provided on the misuse of IT was, in essence, meaningless, without the information relating to the range of issues that had been investigated being provided. In response it was emphasised that the information provided related more to the effect of the whistleblowing system, rather than in-depth information as to the issues investigated. It was noted that information of this type would be reported to the Audit Committee, of which the Chairman was also a Member. The Chairman stated that, where required, information of this type could be obtained and provided to Standards Committee Members for information purposes. Members stated that they were glad to see that the details of the investigations were followed up by a Committee of the County Council.

Reference was made to the number of employment tribunals received in 2008/09 and it was noted that eight had been settled. It was asked whether these had been settled because it was the easiest option to take. In response it was stated that each case was judged on what was the best position for the Council and whether it would be cost effective to settle or not. It was emphasised that settlement was not considered as an easy option, but as the most cost effective to the Council. Details of the procedure undertaken in relation to employment tribunals was outlined, together with how the decision to settle claims was considered.

#### **RESOLVED –**

That, subject to action identified above being responded to, the report be noted.

### **13. REVIEW OF COMMUNICATIONS STRATEGY**

#### **CONSIDERED –**

The report of the Monitoring Officer providing a report on the progress of the review of the Standards Committee Communications Strategy and related matters.

The Monitoring Officer stated that the report continued the Committee’s review of the Communications Strategy and looked to replace some of the out of date information contained within the Strategy. She emphasised that the basis of the current Communications Strategy was sound, therefore, it required an update rather than a complete overhaul. She noted that some issues from the review of the Ethical Framework could also require reiteration in the Committee’s Communications Strategy.

The Monitoring Officer referred to the interconnection between the Corporate Communications Strategy and the Committee’s Strategy. She noted that the County Council’s Strategy was not inconsistent to that of the Standards Committee Strategy.

She stated that Members had sought to ensure that County Council publications promoted openness and her consideration of this matter led her to conclude that many of the Council's activities and policies reflected the principles outlined by the Committee and these were being actively embraced. Details of the principles were set out in the report.

She suggested that it may be an appropriate time for a further article to be placed in the NY Times, especially as public concerns had been heightened following the recent issues relating to MP expenses. It was noted that an article had recently been placed in a leading local newspaper, on behalf of the County Council, in response to the public interest about expenses. Discussions were currently on going with the Communications Unit as to the timing of placing further articles in the NY Times.

In relation to this matter Members noted the great amount of public unrest that had been generated in respect of the MPs expenses issues. Members considered that the public, in general, were expressing their distrust of public figures, and that distrust was leading to a fall in voting. It was suggested that an article should be published at the earliest opportunity, separate from other issues, to ensure the public were aware of how Local Government expenses were regulated and could not be abused in the way this had taken place in central Government. The Chairman considered that articles in the NY Times were also required to highlight the recent changes in regulations and to provide details of the new Standards Committee, together with how it supports the Council's performance. It was suggested, therefore, that a recommendation could be made to the Editorial Board of the NY Times, to produce articles in line with the issues outlined above, to take forward at a time they considered to be appropriate.

The Monitoring Officer noted that she had received a Freedom of Information request in relation to Councillors expenses, which had led to little interest being generated, which in turn highlighted how well regulated expenses for Councillors were.

The Monitoring Officer provided details of a review of the Committee's Action Plan for 2007/2009 and the proposed Action Plan for 2009/2011.

It was asked what was included in the induction process in terms of ethical training. In response the Monitoring Officer stated that she would provide details of this to a subsequent meeting of the Committee. It was noted that there was currently nothing in the recruitment pack in terms of the general ethical framework. Members suggested that details of the ethical framework could be placed on the intranet and also on the County Council's website. It was emphasised that it would be beneficial to have all issues relating to standards and ethics in one place on the website to assist the development of those.

It was noted that a brief ethical framework survey had been undertaken in 2006 to gauge public perception of standards and ethics, within the County Council, and it was asked whether it was an appropriate time to undertake a similar survey to determine how awareness had changed. In respect of this it was suggested that it would be probably more beneficial to undertake such a survey following the published articles in the NY Times, possibly in early 2010. A review of the Citizens Panel's perception of ethics and standards at the County Council could be undertaken at the same time.

The Monitoring Officer outlined how requirements in relation to the Officer Register of Interests and Code of Conduct were being processed and how information on the intranet and internet was being updated.

Members considered the current Standards Committee Communications Strategy, as detailed at Appendix 1 to the report, and provided the following observations:-

- The Strategy had a tendency to swap between percentages and ratios when providing statistical information. It was suggested that this would be better if details were provided in one format, consistently, throughout the report.
- At 6.3 (b), in respect of communicating internally, it was suggested that the issue, “to communicate the role of Council’s Leader and Chief Executive Officer in the Ethical Agenda”, should also be included at 6.2, communicating externally.
- At 7.2 it was suggested that the final bullet point should be amended to read “up date on cases determined locally”, and an additional bullet point to read “update on cases determined by Standards for England”.
- In terms of item 9 – Means of Communication – it was suggested that an additional method of external communication be included in respect of Council tax notices sent out, which went to every household and could include information on standards and ethics.

In terms of the review of the Action Plan 2007/09 Members suggested the following:-

- In terms of Objective 5 – “To raise awareness amongst the staff and Councillors of the standards expected of them” – an item could be included in the staff newsletter on an annual basis. It was noted that this procedure had happened once in the past and Members considered that this should be a continuing process.

In terms of the revised Action Plan 2009/11 Members made the following observations:-

- Number 2 – “Promoting awareness among the public of the work of the Committee” – Members noted that this item suggested an annual update, but considered that it would be better if a date for the update was agreed with the Chairman and included as part of the timescale.
- Number 2.4 – “Identifying further opportunities to work with other authorities in the promotion of ethical standards” – Members welcomed opportunities to work alongside other local Standards Members and Committees to gain information and experience of the issues affecting them. They suggested working alongside National Park Authorities, City of York Council and local District Councils and consideration should be given to having Joint Standards meetings to share good practice. It was noted that the Monitoring Officer from City of York had recently undertaken work for the County Council’s Monitoring Officer, to assist with an assessment process within the County Council. The Monitoring Officer stated that she would investigate this matter and report back to a subsequent meeting.
- Number 3.1 – “Secure the attendance of the Council’s Leader and Chief Executive and have other Group Leaders at the Standards Committee”. – It was noted that Standards for England were looking at this issue and suggested that consideration should be given to specific meetings being designated to include the attendance of the above mentioned individuals, to encourage their attendance. The Chairman

noted that he was to meet the Chief Executive following this meeting and would reiterate the importance of leading Members and the Chief Executive regularly meeting the Standards Committee. Members suggested that the first meeting of 2010 could be designated to meeting with Group Leaders and the Chief Executive, with an appropriate agenda devised in relation to that. The Monitoring Officer stated that she would investigate this possibility and report back to the next meeting.

- Number 4 – “To raise awareness amongst the staff and Members of the standards expected of them” – It was suggested that the induction programme should be included as an action for developing this objective.
- It was noted that in terms of Members interests, Members were reminded on an annual basis of their need to update their Register of Interests.
- Members considered the way in which local press could be included in developing the promotion of ethical and standards issues. It was suggested that the Head of the Communications Unit should be invited to the next meeting of the Committee to consider ways of better engaging with the local press.
- It was suggested that local “Roadshows” and publicity events were useful ways of engaging with the public and could be considered for the promotion of ethical and standards issues. In response it was stated that these events were not utilised for the promotion of these issues as a matter of course, however, the County Council attended a number of these events and through the promotion of its services emphasised the strong ethical approach it adopted.
- Area Committees were also suggested as a good source of promotion for ethical and standards issues.

#### **RESOLVED –**

- (i) That, subject to the amendments as suggested by Members detailed above, the revised Communications Strategy be agreed.
- (ii) That, subject to the amendments suggested by Members as detailed above, the action points in Appendix 2 be agreed.
- (iii) That the Communications Unit be contacted to determine when would be an appropriate time for articles to be placed into the NY Times in relation to the Standards Committee and ethical/standards Issues, as outlined above, with articles placed in the publication subsequently.

#### **14. REVIEW OF ETHICAL ARRANGEMENTS**

##### **CONSIDERED –**

The report of the Monitoring Officer reviewing the ethical arrangements in place within the Authority.

The Monitoring Officer explained how the report set out the ethical arrangements in place within the Authority and ideas for future developments based on national

examples of good practice and derived from the Authority's annual return to Standards for England. A copy of the annual return was attached as an Appendix to the report.

Details of the County Council's documentation and processes, external standards documentation, national examples of good practice and other good practice measures were detailed within the report.

In terms of the County Council's documentation and processes, the Monitoring Officer stated that these were currently on the County Council's website and referred to in the Standards Bulletin. She noted that efforts were being made to provide a Standards page on the County Council's website to make obtaining this information much easier.

In terms of the national examples of good practice the Monitoring Officer noted that, in terms of providing e-learning opportunities for officers and Members on Ethical Standards, the County Council's Chief Executive's Group had developed an e-learning package for officers and were looking to develop this so that it could be utilised for Standards issues. This would continue to be explored and any developments would be reported back to the Committee.

A Member stated that examples (e) (f) (j) contained within the National Examples of Good Practice could be provided by Standards for England as these were applicable to all Authorities. She suggested that there was an opportunity to liaise, in relation to this provision, at the forthcoming Standards Committees' Annual Conference.

In terms of item (k) of the National Examples of Good Practice, "Ensuring significant partners had a Code of Conduct reflecting similar principles", it was suggested that, despite the statement promoting this, the County Council could do more, proactively, to ensure partners had appropriate ethical principles in place or were working to their own ethical code. The Monitoring Officer noted that the County Council had officers working on the development of partner working and she would seek a response to the issue raised for the next meeting of the Committee.

#### Annual Return

The Monitoring Officer explained the Annual Return to Standards for England for the benefit of Members. It was noted that the details would have been provided to the local press through the circulation of Committee papers.

#### **RESOLVED –**

- (i) That the contents of the report be noted;
- (ii) That the actions outlined above be acted upon where appropriate;
- (iii) That the examples of good practice measures identified be developed through the Committee's work plan where appropriate.

County Councillor Barratt declared a personal and prejudicial interest in respect of the following item, in relation to him being a Member of Craven Area Committee and a Member of Craven District Council. He left the room during consideration of the item and took no part in the discussion or vote on this matter.

**15. REQUESTS FOR DISPENSATIONS – CRAVEN AREA COMMITTEE**

CONSIDERED –

The report of the Monitoring Officer outlining requests from Members of Craven Area Committee for a dispensation, in almost identical terms and in respect of the same issues, from the Standards Committee.

The report outlined how Members of the Craven Area Committee, who were also Craven District Councillors had been invited to make a request for a dispensation from the Standards Committee, to enable them to speak, vote and be included within the quorum at meetings of the Area Committee when issues pertinent to the County Council were being discussed in respect of Craven District Council's proposals for the introduction of pay and display car parking charges for:-

- The car park at Craven swimming pool, Aireville Park, Skipton.
- North Street car park, Gargrave.
- Main Street car park, Embsay, and all further proposals by Craven District Council relating to car parking charges in the Craven district.

The dispensations had been requested as Members, who were also Members of Craven District Council, would have been deemed to have a prejudicial interest in these matters and would not have been able to take part in consideration of these. This would result in the meeting becoming inquorate and causing a delay in the decision making process.

Details of the Members prejudicial interests and the appropriate dispensation process were outlined in the report.

Should the Standards Committee be minded to grant the dispensations it must consider the duration and scope of them. Any dispensations granted would allow the Members concerned to fully participate in the specified matters, including speaking and voting upon them. The dispensations would be recorded in writing and kept with the relevant entries in the Council's Register of Members Interests.

**RESOLVED –**

- (i) That, following careful consideration, the Committee agrees to grant the applications for dispensations by the County Council Members of the Craven Area Committee listed at Appendix 1 to the report, enabling them to speak, vote and be included within the quorum at meetings of the Area Committee on which they sit when that Committee is determining issues pertinent to the County Council, in respect of Craven District Council's proposals for the introduction of pay and display car parking charges for the car park at Craven Swimming Pool, Aireville Park, Skipton, North Street Car Park, Gargrave and Main Street Car Park, Embsay and all further proposals by Craven District Council relating to car parking charges in the Craven District;
- (ii) That the dispensations be granted until the date of the Local Government elections in 2013.



County Councillor Jeffels declared a personal and prejudicial interest in respect of the following item in relation to him being a Member of the Yorkshire Coast and Moors County Area Committee and a Member of Scarborough Borough Council. He left the room during consideration of the item and took no part in the discussion or vote on this matter.

16. **REQUESTS FOR DISPENSATIONS – YORKSHIRE COAST AND MOORS COUNTY AREA COMMITTEE**

CONSIDERED –

The report of the Monitoring Officer outlining requests from Members of Yorkshire Coast and Moors Area Committee for a dispensation, in almost identical terms and in respect of the same issues, from the Standards Committee.

The report outlined how Members of the Yorkshire Coast and Moors Area Committee, who were also Scarborough Borough Councillors had been invited to make a request for a dispensation from the Standards Committee, to enable them to speak, vote and be included within the quorum at meetings of the Area Committee when the following applications for the registration of village greens were being discussed and in respect of Scarborough Borough Council's interest in the land on which the application sites lay:-

- An application for the registration of a village green at The Sunken Garden, St Nicholas Cliff/Marine Parade, Scarborough.
- An application for the registration of a village green at The Old Pool Site, Mulgrave Road, Whitby.

The dispensations had been requested as Members, who were also Members of Scarborough Borough Council, would have been deemed to have a prejudicial interest in these matters and would not have been able to take part in consideration of these. This would result in the meeting becoming inquorate and causing a delay in the decision making process.

Details of the Members prejudicial interests and the appropriate dispensation process were outlined in the report.

Should the Standards Committee be minded to grant the dispensations it must consider the duration and scope of them. Any dispensations granted would allow the Members concerned to fully participate in the specified matters, including speaking and voting upon them. The dispensations would be recorded in writing and kept with the relevant entries in the Council's Register of Members Interests.

A Member considered the applications to be wholly different to those previously determined at Min no. 15, above, as he considered that Members had very strong prejudicial interests in respect of these matters. He considered there was increased conflict for the Members involved because of the value of the assets, which he considered to be worth a considerable amount of money. He suggested that the "dual hatted" Members would have an undue influence because of this. He did not feel that Members who sat on both bodies would be able to reach an impartial decision.

The Chairman asked whether there were other ways of determining these matters, should the dispensations not be granted. The Monitoring Officer explained that it was a legal obligation for the issues to be determined and, as this was an Executive function devolved to the Area Committee, this was likely to be referred to the

Executive for determination. It was emphasised that this matter should not influence Members decision on whether it was right to grant the dispensation applications.

A Member suggested that some of the Members involved could also have pre-determination issues to take into account, if there were involved in decisions made by the Executive of Scarborough Borough Council in relation to the disposal of land. The Monitoring Officer stated that she would provide appropriate information to Members in relation to pre-determination matters, subsequent to this meeting.

The Chairman sought to clarify on whether the Member's concerns regarding the granting of the dispensations related to one or both of the village green registration applications. The Member considered that he had the same concerns in respect of both applications in ethical terms.

#### **RESOLVED –**

- (i) That, following careful consideration, the Committee does not grant the applications for dispensations by the County Council Members of the Yorkshire Coast and Moors County Area Committee listed at Appendix 1 to the report, and, as a consequence, they would be unable to speak, vote and be included within the quorum at the meeting of that Area Committee, when that Committee determined applications for the registration of village greens at The Sunken Garden, St Nicholas Cliff/Marine Parade, Scarborough and at The Old Pool Site, Mulgrave Road, Whitby; and
- (ii) That the Monitoring Officer considers an alternative arena for the registration of village green applications to be determined.

#### **17. PUBLIC PERCEPTION OF ETHICS**

##### **CONSIDERED –**

The report of the Monitoring Officer providing details of the findings on public perceptions of ethics recently published by Standards for England. Full details of the Standards for England report were attached at Appendix 1.

It was noted that at the time the consultation for the report was undertaken, the MPs expenses issue had an impact on public perceptions, which led to a conclusion that there had been an overall negative impact on public perceptions in terms of ethics.

The report also highlighted the many factors which influenced public perceptions of local government, many of which are outside of the control of local authorities. Key factors included:-

- Media influence.
- The relationship between people's political values and the way they rate services.
- The expectations of service users rising.
- The way in which people view their local area.

The report highlighted that the public were more likely to believe their local Councillors than their local MP, and there was a clear difference between the perception of the behaviour of local Councillors and the actual amount of complaints made against local Councillors. The research indicated that Local Standards

Frameworks had had a positive impact on local government and the behaviour of Members had improved. Those within local government had a far higher level of confidence in the ability of local government to uncover poor behaviour and deal with it properly, when compared to the public. Public attitudes towards local Councillors seemed to have changed less markedly than for local MPs, politicians generally and Government Ministers.

Members were encouraged by the findings, however, suggested that further work was required to ensure the public were aware of the mechanisms in place to ensure that local Councillors complied with appropriate ethical standards.

It was suggested that further work could be undertaken with the Communications Unit, alongside the findings of this report, to consider better engagement with the local press in respect of ethical standards.

**RESOLVED –**

That the report be noted.

**18. TRAINING PLAN**

**CONSIDERED –**

The report of the Monitoring Officer reviewing the Standards Committees Training Plan for 2009.

Details of the revised Standards Training Plan for 2009 were appended to the report. It was noted that further standards training for Standards Committee Members was planned for 30 November 2009, following the Committee's meeting on that date.

Training for recently appointed Councillors to the Committee would be included in the training scheduled for 30 November 2009 and would be utilised as a general refresher course for all Committee Members.

**RESOLVED –**

That the Standards Training Plan, as detailed in Appendix 1 to the report, be noted.

**19. COMPLAINTS AND FINDINGS/GUIDANCE FROM STANDARDS FOR ENGLAND**

**CONSIDERED –**

The report of the Monitoring Officer updating Members on the development of the ethical agenda and on any complaints received about Members of the Authority.

The following issues were highlighted:-

- New Codes of Conduct for Members and officers – a revised Code of Conduct for Members was expected in late autumn 2009 and a further consultation on the introduction of an officer's Code of Conduct was likely to take place in 2010.
- Suspending a Standards Committees Assessment and Review functions – information related to that was provided in an Appendix to the report.

- New Standards for England training DVD – Standards for England were currently finalising a new training DVD on local assessment which would be available shortly.
- One new complaint had been received against a County Councillor that may have breached the Code of Conduct since the last meeting of the Committee. A meeting of the Complaints Assessments Sub-Committee would take place on 21 September 2009 to assess the complaint.
- Previous complaints – A complaint made in May 2009 suggesting that a County Councillor may have breached the Code of Conduct had been assessed by the Complaints Assessment Sub-Committee which found that no action should be taken. Subsequently a request was received for a review of that decision and the Complaints Review Sub-Committee found that no action should be taken.
- Details of the monitoring of Local Ethical Framework arrangements undertaken by Standards for England were detailed and it was noted that the Monitoring Officer had submitted the return for the authority for the reporting quarter April to June 2009.

It was noted that should a determination be required in respect of a complaint, there was a three month period from that decision being made to the determination having to take place.

**RESOLVED –**

That the report be noted.

**20. STANDARDS BULLETIN**

**CONSIDERED –**

The report of the Monitoring Officer presenting a draft copy of the Standards Bulletin for Members consideration. A copy of the draft bulletin was appended to the report.

Members suggested that the “Ethical Framework Guidance Documents” section could be altered to provide a section detailing the documents that were most likely to affect Members in their every day work, so that they had easier access to the information required.

**RESOLVED –**

That, subject to the alteration of the “Ethical Framework Guidance Documents” section, as detailed above, the bulletin be circulated to Members of the Authority.

**21. STANDARDS WORK PROGRAMME 2009**

**CONSIDERED –**

The report of the Monitoring Officer highlighting the Committee’s future Work Programme.

The current Work Programme for the Standards Committee was attached at Appendix 1 to the report and incorporated action points from the Authority’s Ethical Audit Action Plan.

It was noted that the item re: Complaint Investigation and the Determination Procedures had been deferred until the Committee's November meeting.

Issues identified at today's meeting for further work would be incorporated into the Work Programme provided to the next meeting.

**RESOLVED –**

That the Standards Committee Work Programme be noted.

SML/ALJ

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

30 November 2009

Complaint Investigation and Determination Procedures

1.0 PURPOSE OF REPORT

1.1 To consider procedures for the investigation and determination of complaints.

2.0 BACKGROUND

2.1 The Standards Committee (England) Regulations 2008 provide for the local receipt assessment, investigation and determination of complaints that members may have breached the Code of Conduct by local Standards Committees.

2.2 At its meeting on 2 February 2009, the Committee agreed a procedure for the local assessment of complaints and the review of any decision to take no action on a complaint. The procedure has been published on the Council's website in the "Councillor Conduct" section.

2.3 On 18 May 2009, the Committee agreed to adopt a pro tem procedure under the new local regime for the investigation and determination stages of complaint handling incorporating by reference the procedures for investigations and determinations set out in the legislative framework and the Standards for England guidance.

2.4 Work has been undertaken in relation to the investigation and determination procedures to develop a procedure suitable for the investigation of complaints and the Standards Committee's roles in considering reports arising from investigations, and determining complaints. The draft revised procedure in relation to investigations is attached at Appendix 1, and that in relation to determinations is in Appendix 2 for members' approval, subject to any comments they may have.

2.5 There is a statutory duty on the authority to publish in such a manner as it considers appropriate, details of the procedures it will follow in relation to complaints against members that they may have breached the Code. The interim investigation and determination procedures have already been published on the Council's website, following members' agreement. It is therefore recommended that, if approved by members, the revised investigation and determination procedures should be substituted for the interim versions already published on the authority's website, alongside the complaints assessment procedure.

3.0 RECOMMENDATION

3.1 That subject to any comments they may have, members approve the complaints investigation and determination procedures attached at Appendices 1 and 2 to this report and agree that they be published on the County Council's website and in any other ways members deem appropriate.

CAROLE DUNN  
Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

County Hall  
NORTHALLERTON

Background Documents:

The Standards Committee (England) Regulations 2008  
Local Government Act 2000 as amended  
Standards for England Guidance on Standards Committee Investigations and  
Determinations

County Hall  
NORTHALLERTON

19 November 2009

**COMPLAINT INVESTIGATION PROCEDURE**

**1.0 INTRODUCTION**

- 1.1 North Yorkshire County Council has adopted a Code of Conduct for Members (the Code).
- 1.2 The Standards Committee (England) Regulations 2008 provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct, by local standards committees.
- 1.3 The Standards Committee has established various Sub-Committees to deal with the different stages of the complaints process. In undertaking these functions the Standards Committee and its Sub-Committees must have regard to legislation and Guidance from Standards for England.
- 1.4 This procedure deals with the conduct of investigations where it is determined by the Complaint Assessment Sub-Committee that an investigation into a complaint is necessary.
- 1.5 All references in this procedure to Appendices are references to the Appendices in the Standards for England Guidance Toolkit.

**2.0 SCOPE OF PROCEDURE**

- 2.1 This procedure shall be followed by the Monitoring Officer or other officer appointed to carry out a local investigation (the Investigator).
- 2.2 The procedures for the initial assessment; review, hearing and determination of complaints are set out in separate protocols agreed by the Standards Committee.

**3.0 CONFLICTS OF INTEREST AND DELEGATION OF INVESTIGATION**

- 3.1 Monitoring Officers (MO) have various roles in relation to the Code including advising Members about conduct issues; dealing with cases of alleged misconduct referred to them; advising subject members; and providing advice to the Standards Committee. The MO will sometimes undertake an investigation. These roles could give rise to a conflict of interest, in some circumstances. The MO must be mindful of situations where a conflict may arise, and, in that event another person should be appointed to carry out the investigation. However, an Officer who has advised the Sub-Committee dealing with initial assessment of a complaint or the Sub-Committee dealing with a review decision is not prevented from carrying out an investigation.
- 3.2 Under Section 82(a) of the Local Government Act 2000, the Monitoring Officer can delegate functions, including investigations, to their Deputy or to any other named person.
- 3.4 The MO should inform the relevant parties when they appoint an Investigator



## **4.0 CONFIDENTIALITY**

4.1 By Section 63 Local Government Act 2000 it is an offence to disclose information obtained by an ethical standards officer or a MO during an investigation unless:

- the disclosure will assist ethical standards officers to perform their statutory functions
- the disclosure will assist the monitoring officer or standards committee to perform their statutory functions
- the person who the information relates to gives permission for disclosure
- the information has already lawfully been made public
- the disclosure is made for the purposes of criminal proceedings in the UK
- disclosure is required by a court or other similar body
- the disclosure is to one of the public bodies listed in Section 63(1) of the Local Government Act 2000 for the purpose of their functions

4.2 A draft report issued on the outcome of the investigation should be marked confidential.

4.3 An ethical standards officer (ESO) might refer an allegation to the MO part-way through an investigation into an allegation. The ESOs are allowed to disclose information that they have obtained during the investigation to enable the MO to carry out his/her duties. There may be circumstances in which the ESO will be unable to disclose information. An example of this is where the Secretary of State has advised them that the disclosure would not be in the public interest.

## **5.0 PLANNING THE INVESTIGATION**

5.1 An Investigation Plan should be prepared. See Appendix 1 Form A. The plan should include:-

- (a) Details of the complaint;
- (b) The paragraphs of the Code of Conduct that may have been breached;
- (c) The facts which need to be determined to establish if the Member breached the Code including:-
  - Facts which would establish if the conduct happened as alleged;
  - Facts that would need to be proven to show that the conduct constituted a breach of the Code;
  - Facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology;
  - Evidence that has been supplied by the complainant;
  - How required evidence is to be obtained;
  - Expected timescales for the investigation.

5.2 If, there are significant changes to any of the above the Investigation Plan may need to be reviewed. A template for a review appears as Appendix 2.

## **6.0 DOCUMENTARY EVIDENCE**

- 6.1 Documentary evidence should be sought at the earliest opportunity and before any interviews are conducted.
- 6.2 It may be helpful to invite the subject member to provide an initial response to the allegation, in writing, when first making written contact with them. This gives the Member the opportunity to admit to the breach, if they would like to do so. A written response from the subject member may also provide additional useful information prior to the interview stage.
- 6.3 Requests for information should be made in writing and the Investigator should:-
- (a) Explain the legal authority they have for asking for the documents;
  - (b) Explain the broad purpose which the document is needed, for example “an investigation into the conduct of Councillor X”. It is not necessary to provide the detail of the complaint against the Member at this stage;
  - (c) Outline the confidentiality requirements that relate to the information request;
  - (d) Set a deadline for a response;
  - (e) Provide a contact name and number for further enquiries.
- 6.4 If relevant evidence is held on a computer it may be necessary for the hard drive to be searched for deleted or corrupted documents. It may be necessary to employ specialists to facilitate this.
- 6.5 If the Investigator believes that evidence may be destroyed if the subject Member or another party becomes aware of a request for that evidence, or it could lead to improper collaboration by witnesses, the Investigator may consider it appropriate to meet the witness to make the request for the relevant documents, rather than doing so in writing. The Investigator will then be able to explain the powers they have to obtain the information.

## **7.0 INTERVIEWS**

- 7.1 Usually, the subject member will be interviewed at the end of the investigation, when all the evidence has been gathered. This provides an opportunity for the evidence to be put to the subject member and to obtain their response to it. If the subject member and complainant have been interviewed earlier in the process, the Investigator may wish to re-interview them near the end of the investigation, which may allow them to agree facts and to comment on issues that have been raised during the course of the investigation.
- 7.2 Interviews may be conducted by telephone or face to face. It may be more appropriate to conduct face to face interviews if:-
- The matters involved are sensitive;
  - The interviewee is vulnerable;
  - Multiple documents need to be referred to during the interview.
  - The interviewee wishes to have a legal representative present.
  - The interview is with the subject member.

- 7.3 If a subject member or witness insists on a face to face interview, consideration should be given to their request and checks made as to whether there is medical or disability related reason for their request. If there is no such reason, then the decision is at the discretion of the Investigator, who should outline their decision in writing on the file to show that it is proportionate and reasonable.
- 7.4 The Investigator should not conduct joint interviews, as it is important that each witness gives their own account. An interviewee may have a friend or adviser present, but not another witness and they should be asked to keep the information confidential. If the interviewee is a vulnerable person or a minor, the investigating officer may wish to ensure that they are accompanied by another person.
- 7.5 The venue for face to face interviews should be:-
- mutually convenient
  - on neutral territory
  - in a private room where you cannot be overheard
  - a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or subject member
  - safe for the Investigator

It may be appropriate, in some circumstances, to conduct an interview of the home of the interviewee, but this should usually be at the request of the interviewee.

- 7.7 If an interviewee is disabled make reasonable provisions. If an interviewee is vulnerable or a minor, they should always be accompanied by third party.

## **8.0 INFORMATION FOR INTERVIEWEES**

- 8.1 The Investigator should provide the following information, in writing (Appendix 4)-
- (a) Agreed time, date and venue, or confirmation that there is a telephone interview.
  - (b) Confirmation that the interview will be recorded, if appropriate.
  - (c) Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation, nor a member of the Standards Committee, nor a Council Officer. It is appropriate to ask to be provided with the name and status of the representative before the interview.
  - (d) The legal framework within which the interview will be conducted.
  - (e) How the information provided in the interview may be used.
  - (f) The circumstances in which the information provided in the interview may be made public.
  - (g) The confidentiality requirements which apply to an interviewee.
  - (h) Details and copies of any documents to be referred to during the interview
  - (i) When interviewing the subject member, details and copies of any evidence gathered which may be referred to in the report. Witness testimony does not have to be disclosed prior to the interview, depending on the nature of the testimony and whether the Investigator wants the interviewee's account

prior to putting the witness testimony to them. Witness testimony may be disclosed during the interview, once the interviewees own account has been obtained.

- (j) The interviewing officer's contact details.

## **9.0 CONDUCTING THE INTERVIEW**

9.1 Interviews should be planned in advance (Appendix 5). Important interviews should be audio recorded, where possible. Before recording an interview:-

- (a) Obtain the consent of the interviewee before recording the interview;
- (b) Ask the interviewee to record their consent on the record before recording has started;
- (c) Offer to send the interviewee a copy of the transcript or draft interview statement, which ever is applicable. If they ask, send a copy of the recording also.

9.2 The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering. If the Investigator is concerned that the interviewee may share their transcript with other witnesses, the despatch of the transcript or recording can be delayed until all interviews have been completed.

9.3 The interview procedures should include the following stages.

At the start of the interview:-

- (1) When the interviewee arrives, try and put them at ease.
- (2) Inform the interviewee that there is a standard interview preamble that you must take them through (Appendix 6)
- (3) Confirm that the interview will be recorded and put the recording device in a visible place on the desk.
- (4) With their permission start recording.
- (5) Ask them to confirm for the record that they consent to the recording.
- (6) Confirm for the record who the interviewer is, and the powers under which the interview is being conducted.
- (7) State the date and time for the record.
- (8) Confirm that they received the letter outlining the arrangements for the interview.
- (9) Confirm that the interviewee read and understood the letter and ask if they have any questions about it.
- (10) If the interview is with the subject member, repeat orally all of the information contained in the letter.
- (11) If the interviewee unclear about anything, then repeat orally all of the information contained in the letter.

- (12) Explain that they can take a break on request.
- (13) Explain that a break will be offered if the interview goes over an hour in any event.
- (14) Estimate how long the interview is likely to take and ask if they have a time by which it needs to end.
- (15) Explain that they can ask for a question to be rephrased if they don't understand it.

#### 9.4 During the interview:-

- (1) Start the interview with the subject member with some background questions. These could include 'how long have you been a member', or 'what training have you had on the Code of Conduct?'
- (2) Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question.
- (3) Do not dart back and forth between different issues.
- (4) Tackle one subject issue at a time.
- (5) Ask open questions about information the interviewee or other witnesses have provided about the issue.
- (6) Drill down. Ask open questions about a specific issue until have all the information needed on it has been obtained.
- (7) Where relevant ask the interviewee to reconcile differing accounts.
- (8) Ask closed questions to confirm the information that has been obtained about the specific issue.
- (9) Move onto the next issue using the same method.
- (10) If interviewing with someone else, the first interviewer should ask the open questions about each subject area. The second interviewer should then pick up on points to be clarified at the end of each subject area and ask closed questions to confirm what was said.
- (11) Do not ask leading questions.
- (12) Do not ask the interviewee to speculate.
- (13) Accurately put the evidence of other interviewees to the interviewee and ask for their response.
- (14) When asked, explain the relevance of the question.
- (15) Do not allow the interviewee's lawyer or representative to answer a question.
- (16) Allow the interviewee to stop and obtain advice whenever they choose.
- (17) If the interviewee becomes upset or unwell offer them a break.

- (18) Never use a raised voice.
- (19) Only interrupt if the interviewee is being unreasonable or is not providing relevant information.
- (20) Be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, move on to another point or issue.
- (21) Do not question the subject member about matters which fall outside the scope of the original allegation.
- (22) If the interviewee wants a break, record the time of the break on the record and the time the interview is resumed. Ask the interviewee to confirm for the record that nothing was discussed about the case with them during the break.

9.5 Closing the interview:-

- (1) State the time the interview finished.
- (2) Thank the interviewee for their time and outline what will happen next.

9.6 After the interview:-

- (1) Send the interviewee a copy of the transcript.
- (2) State in the letter that if there is no response from them by a specified date, it will be assumed that the transcript is agreed.
- (3) If the content of the transcript is disputed, check the discrepancies against the recording.
- (4) If the transcript is confirmed by the recording, write to the interviewee to inform them of this. In these circumstances, when the matter is referred to the standards committee, submit the transcript, the recording, the interviewee's letter outlining the dispute, and your response.

(Appendix 7)

9.7 Evaluating the information:-

- 1) Review the investigation plan in light of the information gathered during the interview.
- (2) Review all the evidence gathered to determine whether there are any gaps in it.
- 3) Take a view on all disputed relevant matters. The Investigator's opinion of the evidence is sufficient. However, if the Investigator is unable to come to a decision, s/he may need to seek further information or decide that s/he is unable to reach a conclusion.
- (4) Weigh up all the evidence and decide if the alleged conduct occurred.

- (5) If it is decided that the subject member acted as alleged, the Investigator will need to consider whether their conduct involved a failure to comply with the Code of Conduct.
- (6) If it is decided that the member breached the Code, consider whether there is evidence of any mitigating or aggravating circumstances. If not, it may be necessary to seek further information.

## **10.0 DRAFTING THE REPORT**

10.1 On conclusion of the investigation, the Investigator will need to write up his/her findings in a report to the Standards Committee (Appendix 8). The report must contain the following information:-

10.1.1 Title page –

:

- who the report is for
- who the report is by
- the date of the report

10.1.2 Executive summary –

:

- the full allegation and who made it
- the provisions of the Code of Conduct that were considered
- a conclusion as to whether there has been a failure to comply with the Code
- the finding

10.1.3 The subject member's official details –

- when the member was elected
- the member's term of office
- any other relevant authorities of which they are a member
- details of any committees on which the member serves or has served
- the date a member ceased to be a member, where relevant
- the date the member signed an undertaking to abide by the Code
- full details of any training the member has received on the Code

10.1.4 Relevant legislation and protocols –

- any relevant extracts from the Code
- any relevant extracts from any other legislation or protocols considered in the report

10.1.5 Evidence gathered and the Investigator's consideration of it. This should include:

- (a) Start by summarising who information has been obtained from.
- (b) A chronology of the facts that have been established.
- (c) Set out undisputed facts as facts.
- (d) Where there is a disputed fact, outline the different views and the Investigator's conclusion on them. A conclusion should be based on a balance of probabilities. State why the conclusion has been reached.

- (e) Include all the relevant evidence gathered even if it does not support the conclusions reached.
- (f) Include any mitigating or aggravating factors, such as the state of mind of those involved.
- (g) When referring in the report to material in the evidence bundle, identify the document referred to.

#### 10.1.6 Summary of the material facts:-

- Summarise the facts needed to confirm the conclusions reached.
- Where there was a disputed fact, include the Investigator's conclusion.

#### 10.1.7 The subject member's additional submissions:-

- Outline information or opinions submitted by the subject member, which the Investigator did not consider relevant to the case.
- Outline why the Investigator does not deem information or opinions submitted by the subject member to be relevant.

#### 10.1.8 Reasoning as to whether there has been a failure to comply with the Code of Conduct in relation to each allegation::-

- Outline which part of the Code of Conduct is being considered. Explain the test being applied when determining if there has been a failure to comply with the Code.
- Explain in detail, giving reasons, for considering whether or not the conduct constitutes a breach of the Code.
- Do not introduce any new facts or opinions. Only refer to evidence or opinions that have been outlined earlier in the report.

Ensure the explanation of the test applied, and the reasons for the conclusions, are detailed and clear enough to enable understanding by a lay person with no legal background.

#### 10.1.9 Finding - Make a finding about each alleged breach of the Code.

- Outline in detail the reason for the decision.
- Refer to aggravating or mitigating facts, which must be outlined in the facts section earlier in the report.

#### 10.1.10 Schedule

- List the exhibits with the title Schedule of evidence taken into account. (Appendix 9)
- Exhibit all the evidence relied upon when reaching a conclusion.
- In complex cases it may be appropriate to provide a chronology.
- Provide a list of unused material.

#### 10.1.12 Send the draft to:-

- Issue a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. This is helpful where the report is complex or the conclusions are likely to be disputed by either party.



- The draft should not be sent to other witnesses or parties interviewed, but seek confirmation of their evidence from them before issuing the report.

#### 10.1.13 Ensure that the draft report is clearly marked as 'Draft'.

- State that the report may be subject to change and does not represent the final conclusion.
- If the subject member is found to be in breach, send copies of the evidence relied upon when reaching this conclusion.
- Consider whether any of the information in the draft report, or evidence bundle, is confidential information that should not go into the public domain. For example, medical details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.

Send an accompanying letter stating (Appendix 10):

- that the report is confidential
- that it can be discussed with a legal representative
- the date by which comments must be received
- Keep a copy of the draft and the bundle of evidence that you send to the subject member.

#### 10.1.14 Comments on the draft:-

- Responses to the draft may reveal the need for further investigation, or they may add nothing of relevance. Occasionally, responses may reveal a need for further investigation and may result in changes to the report. These changes may be significant enough to consider issuing a second draft.
- Once the Investigator has considered whether the responses add anything of substance to the investigation, s/he will be able to make final conclusions and recommendations.
- Where comments on the draft are critical of the investigation or the Investigator, consider how to respond to the complaints made. Such criticisms should not prevent a draft report being finalised unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. The only exemption to this is in the circumstances listed in the section 2 in relation to complaints about the investigation.

A party may disagree with:-

- the interpretation of the Code or other legislation
- the analysis of the evidence
- the analysis of an individual's conduct
- conclusions reached in an investigation
- the scope of the investigation
- how and who evidence was obtained from

#### 10.1.15 Comments received before the draft is issued:-

- If the comments are made by the subject member, respond in writing.
- If the subject member does not understand either the Code or the investigative process, then seek to explain the position to them. Failure

to do so may be taken into account at any subsequent hearing. However, the Investigator only needs to show that s/he took all reasonable steps to address the subject member's confusion.

- If comments are made by the complainant or a third party, either respond to their comments or ask them to wait until they have read the draft report.

#### 10.1.16 Comments received in response to the draft report:-

- Keep a written record of consideration of any comments received on the draft.
- It is best practice to provide a written response to the party explaining the Investigator's position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report.
- Add to the bundle of evidence any critical comments received on the draft.

#### 10.1.17 Comments received after the final report has been issued:-

- Write to the party explaining that the investigation is now closed and refer them to the person who is dealing with the standards committee hearing. Refer the party to the Adjudication Panel for England if the matter has been referred to it.

#### 10.1.18 Comments received after the hearing:-

- Respond saying that the matter is now closed and no further correspondence will be entered into on the specifics of that case.
- Complaints about the conduct of Investigators should be dealt with in the same way as other service complaints.

#### 10.1.19 The final report: - The final report must be sent to:

- the Standards Committee (or Complaint Determination Sub-Committee)
- the subject member
- the standards committee of any other authority, other than a parish council, of which the subject member is a member, if requested

A copy may also be made available to the complainant and others as part of the hearing process.

- State that the report represents the final finding and will be presented to the Standards Committee (or Complaint Determination Sub-Committee).
- If the subject member has been found to be in breach send him/her copies of the evidence relied upon when reaching this conclusion.
- Consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain. For example, medical details, personal contact details or signatures. All information of this nature should be edited from the final report unless it is essential to the reasoning.
- Send an accompanying letter (Appendix 11) stating:-
  - that some aspects of the report are confidential
  - that the comments they made in response to the draft report have been considered and the final report amended where appropriate

- that it can be discussed with a legal representative

## **11.0 THE BUNDLE OF EVIDENCE**

11.1 Evidence - two bundles should be prepared. One of evidence used, which is to be submitted in full to the Standards Committee (or Sub-Committee) or the Adjudication Panel for England (if applicable). The other should contain a schedule of unused evidence. The Investigator may be required to submit documents from this bundle if they are requested by the standards committee or the subject member.

11.2 The evidence bundle will typically include:-

- (a) Documents which establish the legal framework for the investigation such as:
  - the complaint letter;
  - the authority's Code of Conduct;
  - a copy of any legislation referred to in the report;
  - a copy of the subject member's declaration of acceptance of office.
- (b) Any document which has been relied upon when reaching the Investigator's decision, such as:
  - transcripts, interview records or interview statements with all relevant parties and interviewees;
  - written correspondence from the subject member on substantive matters, including comments they made on the draft report;
  - minutes, reports and other documentary evidence upon which the Investigator has relied when reaching your conclusion as to the facts.
- (c) Any document which would assist in the subject member's defence, such as:
  - any document that the subject member may seek to rely on in their defence of the conclusions reached;
  - documents which contain information that is inconsistent with the facts as established by the investigation;
  - documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses;
  - documents containing information which could lead to a finding that the standards committee or Investigator has acted in breach of the subject member's rights under the Human Rights Act 1998;
  - documents which provide an explanation or partial explanation of the subject member's actions.
- (d) Background documents. These are documents which the Investigator did not rely upon when reaching his/her decision, but which may be helpful to the Standards Committee (or Sub-Committee) when considering the case. They should also include documents that the subject member thinks are relevant but which are not, in the Investigator's opinion, material to the case.
- (e) A list of unused evidence. This is a list of the documents that the Investigator believes are irrelevant to the investigation.

- (f) Provide sufficient detail about each item so that the standards committee or subject member can request it if they wish.
- (g) It is not necessary to prepare a bundle of the unused evidence.

There is no need to disclose:

- (a) Sensitive information which the Investigator has edited or deleted;
- (b) Information protected by legal professional privilege and public interest immunity;
- (c) Internal documents such as file notes and draft reports. However, these may be requested by the standards committee, so it is important to be sure that these are precise and clear.

- 11.3 The bundle should begin with the documents which establish the legal framework for the investigation.

The remaining evidence should then be grouped thematically, for example policy documents or minutes.

Arrange the documents chronologically within their group.

The front page of the bundle should be numbered 000001, with each subsequent page numbered in ascending order.

If a document is missing, provide a note to this effect to the Standards Committee outlining the reasons why the document is unavailable.

Only include multiple versions of a document if it is important to do so for the evidence.

- 11.4 The information that should be deleted from the bundle will depend on the circumstances of the case. Information should be deleted on the basis that it may end up in the public domain. Consider whether to remove the following:

- a telephone number, address, email address, or signature of any person other than on a transcript or witness statement. This is personal data as defined by the Data Protection Act 1998. While the standards committee may need witness contact details, these should still be deleted from any documents and provided as a separate list to the standards committee
- age and date of birth of a party (unless directly relevant to the case)
- any information which relates to matters which were not referred for investigation
- other personal data as defined by the Data Protection Act 1998 Items such as petitions, legal advice and the evidence of vulnerable people need to be deleted on a case-by-case basis. If in doubt seek legal advice.

## **12.0 COMPLAINTS**

- 12.1 It is important that there is a clear documented procedure for considering complaints about the investigation. The procedure should fall into two discrete

stages. First an evaluation of the nature of the complaint, and second, what action should be taken to handle the complaint.

12.2 There are two types of complaints:-

- Complaints about the conduct of the investigation (service complaints).
- Complaints about the interpretation and reasoning in the Investigator's report.

12.3 Service complaints occur when a party criticises the actions of an Investigator. Such criticisms may include:-

- administrative errors, for example misspelling a name
- failure to communicate
- criticism of the manner in which the Investigator behaved
- criticism of the length of time it took to conclude the investigation

The County Council has a procedure for processing service complaints generally, which should be used when dealing with service complaints about an investigation.

12.4 The investigation can continue while a service complaint is being addressed. However, there may be circumstances where the complaint is so substantive that it would not be appropriate for the same Investigator to continue on the case while the service complaint is ongoing. Such circumstances should be very rare. An investigation into a service complaint should not postpone the conduct of the main investigation.

### **13.0 TERMINATING INVESTIGATION BEFORE COMPLETION**

13.1 It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. In some circumstances it may be more appropriate to deal with matters by taking other action. This decision may only become clear after some investigation has been conducted. In such cases, refer the case back to the standards committee. It is important to be aware that once a programme of other action has been embarked upon the investigation cannot be re-opened, even if other action fails. The decision to take other action closes the opportunity to investigate. Communicate this clearly to all parties.

13.2 The Standards Committees have very broad powers to direct the MO to deal with cases. The following are some alternatives to investigation:-

- Mediation or conciliation – either between parties or involving the community to a greater or lesser extent.
- Training.
- Review of lessons learnt from the case.
- Peer mentoring.
- Review of protocols, standings orders or registers of interest.

13.3 If the Standards Committee decides to take other action, advise the parties that no conclusion has been reached on whether the subject member failed to comply with the Code of Conduct.



NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

COMPLAINT DETERMINATION SUB-COMMITTEE

**COMPLAINT DETERMINATION PROCEDURE**

**1.0 INTRODUCTION**

- 1.1 The Standards Committee (England) Regulations provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct for Members (the Code), by local standards committees. The Council's Standards Committee has established Sub-Committees to deal with the different stages of complaint handling. The Standards Committee has also has agreed local Assessment, Review and Investigation Procedures to deal with the earlier stages of complaint handling. The Standards Committee and its Sub-Committees will also take account of the detailed Guidance issued by Standards for England in conducting these processes
- 1.2 Complaint Determination Procedure deals with the consideration and hearing of complaints following an investigation.
- 1.3 The main purpose of the Standards Committee's determination hearing is to decide whether a Member of the Council has breached the Code of Conduct, and if so, whether a sanction should be applied, and what form the sanction should take.

**2.0 CONSIDERATION OF INVESTIGATION REPORTS**

- 2.1 The Standards Committee has appointed the Complaint Determination Sub-Committee (the Sub-Committee) to consider investigation reports from Investigating Officer (the Investigator), and to hold determination hearings. The Investigator may be the Monitoring Officer or his/her representative, or and Ethical Standards Officer. References in this procedure to the Sub-Committee include references to the Standards Committee.
- 2.2 The Monitoring Officer will need to be aware of potential conflicts in advising the Standards Committee or Sub-Committee and members. The Monitoring Officer will be the main adviser to the Standards Committee unless he or she has an interest in the matter which prevents him/her for carrying out his/her role independently. In the event that this situation occurs, the Monitoring Officer will arrange another appropriately qualified officer to advise the Sub-Committee. In addition, if the Monitoring Officer has conducted the investigation, another officer will advise the Sub-Committee.
- 2.3 In relation to the Sub-Committee, the Monitoring Officer or other legal adviser will:
  - (a) make sure that Sub-Committee members understand their powers and procedures;
  - (b) make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and as effectively as possible;
  - (c) make sure that the subject member understands the procedures the Sub-Committee will follow;

- (d) provide advice to the Standards Committee/Sub-Committee during the hearing and their deliberations;
  - (e) help the Sub-Committee to produce a written decision and summary of that decision.
- 2.4 The Monitoring Officer or Investigating Officer will make one of the following findings on completion of an investigation:
- There has been a failure to comply with the Code
  - There has not been a failure to comply with the Code
- 2.5 The Investigator must prepare a report to the Standards Committee. The Sub-Committee will meet to receive and consider the report.
- 2.6 If the conclusion of the report is that there has been no failure to comply with the Code, the Sub-Committee must decide whether to accept that recommendation. The Sub-Committee must also decide whether it the Adjudication Panel for England should hear the case. This is a preliminary decision which must be made and recorded.
- 2.7 Information presented to the Sub-Committee for the purpose of considering the investigation report may, if appropriate, be considered as exempt information. The Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The categories of exempt information under Schedule 12A Local Government Act 1972 as modified in relation to local determinations by Standards Committees is set out at Appendix 3.
- 2.8 If the Sub-Committee accepts the recommendation in the report that there has not been a failure to comply with the Code it must give written notice of the finding to:
- the member who is the subject of the complaint (the subject member)
  - any ethical standards officer involved
  - the standards committee of any other authority concerned
  - any parish council concerned; and
  - the person who made the allegation,

The Sub-Committee shall also arrange for notice of the finding to be published in a newspaper circulating in the area, and if the Sub-Committee considers appropriate, on the Council's web page, and in any other publication it determines.

- 2.9 The above notice shall not be published if the subject member so requests.

### **3.0 HEARING AND PRE-HEARING PROCESS**

- 3.1 If the investigation report concludes that there has been a failure to comply with the Code, a hearing must take place unless the Sub-Committee decides that the matter must be referred to the Adjudication Panel for England. A pre-hearing process will be followed.
- 3.2 The hearing must take place within **three months** of the date when the Monitoring Officer's report is completed, or, in the case of a report referred by an Ethical Standards Officer, the date when the report is received by the Monitoring Officer. If it is not held within the three month period it must be held as soon as possible after that. It must not be held until at least **fourteen days** after the report is sent to the subject member, unless the subject member agrees that it can be held earlier.
- 3.3 When the Sub-Committee is convened for a hearing, information presented to the Sub-Committee may if appropriate be considered as exempt information. The Sub-



Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. A decision as to whether to maintain an exemption will not necessarily need to result in the public being excluded from a hearing, or in details of the complaint being excluded from the report sent out in advance of the hearing. In most cases the parties will agree to a hearing in public. The views of the parties on this should be sought in good time to allow for legal advice to be sought if necessary.

- 3.4 The Sub-Committee can consider the Investigator's report in the subject-member's absence if s/he fails to attend. If the Sub-Committee is satisfied with the subject member's reasons for not attending, it should arrange an alternative hearing date.

#### **4.0 PRE-HEARING PROCESS**

- 4.1 The purpose of the pre-hearing process is to ensure the hearing is dealt with fairly and efficiently. It will usually be carried out in writing, but may sometimes require a formal meeting of the Sub-Committee.

- 4.2 The pre-hearing process aims to:

- a) identify whether the subject member disagrees with any findings of fact in the investigation report;
- b) decide whether those disagreements are significant to the hearing;
- c) decide whether to hear evidence about those disagreements during the hearing;
- d) decide whether there are any parts of the hearings that should be held in private;
- e) decide whether any parts of the investigation report or other documents should be withheld from the public, prior to the hearing on the grounds that they contain 'exempt' material.

- 4.3 The following steps will be taken as part of the pre-hearing preparations.

- 4.4 The Monitoring Officer will provide copy of the investigation report to the subject member.

- 4.5 The Democratic Services Officer, in consultation with the Chair of the Sub-Committee, will:

- (a) provide a copy of the Sub-Committee's Pre-hearing and Hearing procedures to the subject member
- (b) outline the subject member's rights and responsibilities
- (c) propose a date for the hearing
- (d) ask for a written response from the subject member by a set time to find out whether s/he:
  - (i) disagrees with any of the findings of fact in the investigation report, including the reasons for disagreement (Appendix 1 Form A);
  - (ii) wants to be represented at the hearing by a solicitor, barrister or any other person. It should be noted that that the Sub-Committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined (Appendix 1 Form D);
  - (iii) wants to give evidence to the Sub-Committee, either verbally or in writing ( Appendix 1 Form B);

- (iv) wants to call relevant witnesses to give evidence to the Sub-Committee, in which case an outline of the evidence to be given by the witness should be given (Appendix 1 Form E)
  - (v) can attend the hearing on the proposed date
  - (vi) wants any part of the hearing to be held in private
  - (vii) wants any part of the investigation report or other relevant documents to be withheld from the public
- (e) send a copy of the subject member's response to the Monitoring Officer or ethical standards officer for comment, and invite the Monitoring Officer or ethical standards officer to say by a set time whether they want:
- (i) to be represented at the hearing
  - (ii) to call relevant witnesses to give evidence to the standards Sub-Committee
  - (iii) any part of the hearing to be held in private
  - (iv) any part of the investigation report or other relevant documents to be withheld from the public
  - (v) to invite any other witnesses the Sub-Committee feels are appropriate

*The parties should note that at the hearing, new disagreements about factual matters in the investigation report will only be allowed in exceptional circumstances e.g. where new evidence has just come to light and could not have been produced before, and otherwise new evidence may be ruled out.*

- 4.6 At least fourteen days before the hearing date, the Democratic Services Officer in consultation with the legal adviser, will issue to all involved in the complaint a Pre-Hearing Process Summary (Appendix 1 Form F) which will:
- (a) confirm a date, time and place for the hearing;
  - (b) confirm the main facts of the case that are agreed;
  - (c) confirm the main facts which are not agreed;
  - (d) note whether the subject-member and investigating officer will attend the hearing and/or be represented;
  - (e) confirm which witnesses will give evidence, subject to the power of the Sub-Committee to rule on this issue;
  - (f) outline the proposed procedure for the hearing.

## **5.0 HEARING**

- 5.1 The hearing will be conducted in accordance with the Hearing Procedure set out at Appendix 2 .
- 5.2 If the Sub-Committee decides that the member has failed to follow the Code and that the member should be sanctioned, it may impose any one or a combination of the following sanctions:

- (a) Censure. This is the only sanction available when dealing with a person who is no longer a member of the authority.
- (b) Restrict the member's access to the premises or resources of the relevant authority for up to six months, provided the restriction is reasonable and proportionate to the nature of the breach, and does not unreasonably restrict the member's ability to perform the functions of a member.
- (c) Suspend or partly suspend the member for up to six months.
- (d) Suspend or partly suspend the member for up to six months on condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the Sub-Committee orders. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter as set out by the Sub-Committee.
- (e) Require that the member submits a written apology in a form specified by the Sub-Committee.
- (f) Require the subject member to undertake training which it specifies
- (g) Require that the subject member participates in conciliation as specified by the Sub-Committee

5.3 Sanctions may start immediately or up to six months after the hearing, at the discretion of the Sub-Committee.

## **6.0 NOTICE AND PUBLICATION OF FINDINGS**

6.1 The Sub-Committee will announce its decision at the end of the hearing and where reasonably possible, within two weeks, will give a full written decision to the relevant parties, being:

- the subject member
- the complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- Standards for England

6.2 The Sub-Committee must also arrange to publish a summary of its findings and any sanction applied in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

6.3 If the Sub-Committee finding is that the subject member did not fail to follow the Code, the summary must say this and set out the reasons. In this case, the subject member is entitled to decide that no summary of the decision shall be passed to the newspapers.

6.4 If the Sub-Committee finds that the subject member has breached the Code but decides that no action is needed, the published summary must:

- say that the member failed to follow the Code but that no action needs to be taken
- outline what happened
- give reasons for the decision not to take action
- state that the member may appeal against that finding

6.5 If the Standards Committee finds the member has failed to follow the Code and imposed a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened
- explain what sanctions have been imposed
- give reasons for the decision
- state that the member may appeal against that finding

6.6 The reports and minutes should be available for public inspection for six years after the hearing. Sections of documents relating to parts of the hearing that were held in private do not have to be made available for public inspection.

## **7.0 APPEAL**

7.1 The member who is the subject of a Sub-Committee finding has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding. The application must be in writing and submitted within 21 days of the subject member receiving notice of the Sub-Committee's decision.

## **8.0 Costs**

8.1 The subject member is responsible for meeting the costs of representation at a Standards Committee hearing, or at an Appeal Tribunal in the event that she/he submits an appeal. The Council has taken out insurance to cover this. However, insurance will only cover the costs incurred by members found not to be in breach of the Code. Members are advised to refer to the terms of their own insurance scheme.

## NORTH YORKSHIRE COUNTY COUNCIL

## FORM A

**Subject member's response to the evidence set out in the investigation report**

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

# NORTH YORKSHIRE COUNTY COUNCIL

## FORM B

### Other evidence relevant to the complaint

Please set out below, using the numbered paragraphs, any evidence you feel is relevant to the complaint made about you.

Paragraph number	Details of the evidence
1	
2	
3	

# NORTH YORKSHIRE COUNTY COUNCIL

## FORM C

### Representations to be taken into account if a member is found to have failed to follow the Code of Conduct

Please set out below, using the numbered paragraphs, any factors that the standards committee should take into account if it finds that a member has failed to follow the Code of Conduct. Please note that no such finding has been made yet.

Paragraph number	Factors for the standards committee to take into account when deciding whether to sanction any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	

# NORTH YORKSHIRE COUNTY COUNCIL

## FORM D

### Arrangements for the standards committee hearing

Please tick the relevant boxes.

<b>1</b>	<b>Are you planning to attend the standards committee hearing on the proposed date in the accompanying letter?</b>  If 'No', please explain why.	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>	<b>Reason:</b>
<b>2</b>	<b>Are you going to present your own case?</b>	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>	
<b>3</b>	<b>If you are not presenting your own case, will a representative present it for you?</b>  If 'Yes', please state the name of your representative.	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>	<b>Name:</b>
<b>4</b>	<b>Is your representative a practising solicitor or barrister?</b>  If 'Yes', please give their legal qualifications. Then go to Question 6.	<b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/>	<b>Qualifications:</b>



	If 'No' please go to Question 5.		
<b>5</b>	Does your representative have any connection with your case?  If 'Yes', please give details.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Details:
<b>6</b>	Are you going to call any witnesses?  If 'Yes', please fill in Form E.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	
<b>7</b>	Do you, your representative or your witnesses have any access difficulties? For example, is wheelchair access needed?  If 'Yes', please give details.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Details:
<b>8</b>	Do you, your representative or witnesses have any special needs?  For example, is an interpreter needed?  If 'Yes' please give details	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Details:
<b>9</b>	Do you want any part of the hearing to be held in private?  If 'Yes', please give reasons.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Reasons:

<b>10</b>	<b>Do you want any part of the relevant documents to be withheld from public inspection?</b>  <b>If 'Yes', please give reasons.</b>	<b>Yes</b> <input type="checkbox"/>  <b>No</b> <input type="checkbox"/>	<b>Reasons:</b>
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# NORTH YORKSHIRE COUNTY COUNCIL

## FORM E

### Details of proposed witnesses to be called

Name of witness or witnesses	1 2 3	
<b>Witness 1</b>		
<b>a</b>	<p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Outline of evidence:</p>
<b>b</b>	<p>Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Outline of evidence:</p>

<b>Witness 2</b>			
<p><b>a</b></p>	<p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p>
<p><b>b</b></p>	<p>Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p>

<b>Witness 3</b>			
<p><b>a</b></p>	<p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p>

<b>b</b>	<b>Will the witness give evidence about what action the standards committee should take if it finds that the Code of Conduct has not been followed?</b>  <b>If 'Yes', please provide an outline of the evidence the witness will give.</b>	<b>Yes</b> <input type="checkbox"/>  <b>No</b> <input type="checkbox"/>	<b>Outline of evidence:</b>
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# NORTH YORKSHIRE COUNTY COUNCIL

## FORM F

### Checklist for the pre-hearing process summary

After the standards committee has received responses from the subject member and the monitoring officer or ethical standards officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

<input type="checkbox"/>	the name of the authority
<input type="checkbox"/>	the name of the subject member
<input type="checkbox"/>	the name of the complainant (unless there are good reasons to keep their identity confidential)
<input type="checkbox"/>	case reference numbers of the principal authority or the Standards Board for England
<input type="checkbox"/>	the name of the standards committee member who will chair the hearing
<input type="checkbox"/>	the name of the monitoring officer
<input type="checkbox"/>	the name of the ethical standards officer who referred the matter (if applicable)
<input type="checkbox"/>	the name of the clerk of the hearing or other administrative officer
<input type="checkbox"/>	the date the pre-hearing process summary was produced
<input type="checkbox"/>	the date, time and place of the hearing
<input type="checkbox"/>	a summary of the complaint
<input type="checkbox"/>	the relevant section or sections of the Code of Conduct
<input type="checkbox"/>	the findings of fact in the investigation report that are agreed
<input type="checkbox"/>	the findings of fact in the investigation report that are not agreed
<input type="checkbox"/>	whether the subject member or the monitoring officer or ethical standards officer will attend or be represented
<input type="checkbox"/>	the names of any witnesses who will be asked to give evidence
<input type="checkbox"/>	an outline of the proposed procedure for the hearing

## NORTH YORKSHIRE COUNTY COUNCIL

## STANDARDS COMMITTEE

## COMPLAINT DETERMINATION SUB-COMMITTEE

**COMPLAINT HEARING PROCEDURE****1.0 Interpretation**

- (1) 'Subject member' means the member of the authority who is the subject of the allegation being considered by the Sub-Committee, unless stated otherwise. It also includes the member's nominated representative.
- (2) 'Investigator' means the Monitoring Officer or ethical standards officer and includes their nominated representative.
- (3) 'Sub-Committee' also refers to a Sub-Committee.
- (4) 'Legal adviser' means the officer responsible for providing legal advice to the Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

**2.0 Representation**

- 2.1 The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Sub-Committee, another person. The Sub-Committee may withdraw its permission if the representative disrupts the hearing.

**3.0 Legal advice**

The Sub-Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Sub-Committee should be shared with the subject member and the investigator if they are present.

**4.0 Setting the scene**

- 4.1 After the members and everyone involved have been introduced, the chair should explain how the Sub-Committee is going to conduct the hearing.

**5.0 Preliminary procedural issues**

- 5.1 The Sub-Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

**6.0 Making findings of fact**

- 6.1 After dealing with any preliminary issues, the Sub-Committee will then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.
- 6.2 If there is no disagreement about the facts, the Sub-Committee can move on to the next stage of the hearing.

- 6.3 If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub-Committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The Sub-Committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.
- 6.4 The subject member should then have the opportunity to make representations to support their version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.
- 6.5 At any time, the Sub-Committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
- 6.6 If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
- 6.7 If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-Committee will consider whether it would be in the public interest to continue in their absence. After considering the member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:
- (a) continue with the hearing, relying on the information in the investigator's report
  - (b) allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary
  - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already.
- 6.8 The Sub-Committee will usually move to another room to consider the representations and evidence in private.
- 6.9 On their return, the chair will announce the Sub-Committee's findings of fact.
- 7.0 **Consideration of whether the subject member failed to follow the Code of Conduct?**
- 7.1 The Sub-Committee will then consider whether, based on the facts it has found, the subject member has failed to follow the Code.
- 7.2 The subject member should be invited to give relevant reasons why the Sub-Committee should decide that they have not failed to follow the Code.
- 7.3 The Sub-Committee should then consider any verbal or written representations from the investigator.
- 7.4 The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.
- 7.5 The subject member should be invited to make any final relevant points.
- 7.6 The Sub-Committee will then move to another room to consider the representations.
- 7.7 On completion of their deliberations, the Chair will announce the Sub-Committee's decision as to whether the subject member has failed to follow the Code.



8.0 **Where the subject member is not found to have failed to follow the Code of Conduct**

8.1 If the Sub-Committee decides that the subject member has not failed to follow the Code, the Sub-Committee can move on to consider whether it should make any recommendations to the authority.

9.0 **Where the subject member is found to have failed to follow the Code of Conduct**

9.1 If the Sub-Committee decides that the subject member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject member as to:

- (a) whether the Sub-Committee should apply a sanction
- (b) what form any sanction should take

9.2 The Sub-Committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

9.3 The Sub-Committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

9.4 On their return, the chair will announce the Sub-Committee's decision.

10.0 **Recommendations to the Council**

10.1 After considering any verbal or written representations from the investigator, the Sub-Committee will consider whether it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

11.0 **The written decision**

11.1 The Sub-Committee will announce its decision on the day and also provide a short written decision on that day. It will also need to issue a full written decision if reasonably possible within two weeks of the hearing. The written decision will be issued to the relevant parties, being:

- the subject member
- the complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned

**Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determinations by standards committees) are:**

- Information relating to any individual.
- Information which is likely to reveal the identify of an individual.
- Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- Information which reveals that the authority proposes:
  - i. to give under any enactment a notice under or by virtue of which requirements are imposed on a person
  - ii. to make an order or direction under any enactment.
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 7A) Information which is subject to any obligation of confidentiality.
- 7B) Information which relates in any way to matters concerning national security.
- 7C) Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matters under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Source: Appendix 3 is an extract from the Local Government Act 1972 (as modified in relation to local determination by standards committee).

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

30 November 2009

**Independent Member Appointments**

**1.0 PURPOSE OF REPORT**

- 1.1 To consider the arrangements for appointments to two of the Independent Member positions on the Standards Committee.

**2.0 BACKGROUND**

- 2.1 Ms Fleming was appointed to the Standards Committee as an independent Member until the annual County Council meeting in May 2011. Owing to work commitments, Ms Fleming has tendered her resignation from the Committee. Ms Fleming expects to be able to attend Standards Committee and any relevant Sub-Committee meetings until the end of the year. The Committee will wish to thank Ms Fleming for her invaluable contribution to the Committee and its work over the years and wish her well for the future.
- 2.2 In June 2009, Mr Daglish was appointed to the Standards Committee as an independent Member for a further year, until the annual County Council meeting in May 2010.
- 2.3 Given Ms Fleming's resignation, it is necessary to embark on a recruitment process for her successor. Given that Mr Daglish's term of office expires next year, it is recommended that a combined recruitment process is undertaken for the appointments to the independent Member positions currently held by Mr Daglish and Ms Fleming.

**3.0 RECRUITMENT PROCESS**

- 3.1 The Standards Committee (England) Regulations 2008 state that a person may only be appointed as an independent Member of a standards committee if the appointment is:
- (a) approved by a majority of the members of the authority;
  - (b) advertised in one or more newspapers circulating in the area of the authority, and in such other publications or websites as the authority considers appropriate;
  - (c) of a person who submitted an application to the authority.

It will therefore be necessary for the authority to advertise for new independent Members and to refer the appointments to full Council for approval by a majority. Regard must be had to the Regulations and the relevant Standards for England Guidance in the appointment of independent Members to the Standards Committee.

- 3.2 All functions in respect of the publication of independent Member vacancies were delegated to the Standards Committee by the Executive on 8 July 2008. The Standards Committee agreed, following such delegation, that all such functions should then be delegated to the Monitoring Officer in consultation with the Chair of the Committee. However, given that this particular recruitment process would relate to the positions held by the Chair and Vice Chair, it is recommended that the Monitoring Officer, on this occasion, should exercise her delegated functions in relation to the recruitment process in consultation with another nominated Member of the Committee (the “nominated Member”).
- 3.3 The power to assist in the recruitment of independent Members to the Standards Committee (but not to approve individual appointments) was also delegated to the Committee by the Executive on 8 July 2008.
- 3.4 It is therefore proposed that an appropriate advertisement be placed in a local newspaper (and in the Council's own newspaper, NY Times, if publication timescales permit) and on the Council's website (and publicised in any other ways the Monitoring Officer and nominated Member of the Committee deem suitable), after which the nominated Member and the Monitoring Officer would undertake short-listing of the applicants.
- 3.5 Subsequently a meeting of a panel of Members drawn from this Committee would be required to interview the short-listed candidates and make recommendations to the Standards Committee as to the most suitable candidates. It is recommended that the panel should be comprised of two independent Members and two elected Members and also attended by the Monitoring Officer (not part of the panel) and the Principal Committee Administrator (to take notes, also not part of the panel). Members are requested to indicate their willingness to participate in the interview panel.
- 3.6 The Standards Committee would subsequently consider the panel's recommendations re the most suitable candidates and make recommendations to the Authority as to which candidates should be appointed.
- 3.7 A suggested timetable for the recruitment process is set out at Appendix 1 to this report for Members' consideration.

#### **4.0 RECOMMENDATIONS**

- 4.1 That the Committee notes the contents of this report.
- 4.2 That a combined recruitment process for the independent Member positions currently held by Ms Fleming and Mr DGLISH be commenced.
- 4.3 That Members approve the proposed recruitment process set out in this report.
- 4.4 That Members nominate and agree a Member of the Committee (other than the Chair and Vice Chair) to assist the Monitoring Officer with her functions in relation to the publication of the independent Member vacancies and the shortlisting of applicants.
- 4.5 That Members indicate their willingness to participate in the interview panel.

CAROLE DUNN  
Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

Background Documents:

The Standards Committee (England) Regulations 2008

Standards for England Guidance on the Role and Make Up of Standards Committees

County Hall  
NORTHALLERTON

20 November 2009

### **Proposed Timetable for Independent Members' Recruitment**

Standards Committee is due to meet on 1 February and 10 May in the early part of 2010.

A formal recommendation from the Committee to Council re the candidates to be appointed is required.

Council will meet on 17 February and 19 May in the early part of 2010.

Suggested timetable on basis of reporting to 1 February Standards Committee and February Council:

- Mon 30.11.09: Standards Committee agrees recruitment process
- Draft advert by Fri 4.12.09
- Advertise in a local paper - Yorkshire Post usually - during w/c 14.12.09 (if possible)
- Advertise in NY Times (if publication timescales permit), along with accompanying standards Article if possible
- Put advert and application pack on Council website
- Mention interview date in advert
- Closing date: Wed 13.1.10
- Monitoring Officer and nominated Member to shortlist between 13.1.10 and 18.1.10 at latest (to give at least one week's notice of interview, although try to put interview date in advert)
- 22.1.10: agenda out for Standards Committee on 1.2.10
- Interviews by panel of Committee - w/c 25.1.10
- 1.2.10: Standards Committee meeting (will decide on panel's recommendations and determine its own recommendations to full Council)
- 17.2.10: Standards Committee recommendations go to February Council meeting