NORTH YORKSHIRE COUNCIL

PROTOCOL FOR RELATIONSHIP BETWEEN CODE OF CONDUCT COMPLAINTS AND LOCAL AUTHORITY GRIEVANCE PROCEDURES

This protocol sets out the legal position regarding the relationship between a local authority grievance procedure and the Code of Conduct regime under the Localism Act 2011.

Summary

Situations may arise where a local authority employee, (including a Town or Parish Council clerk), is of the view that they have not been treated properly by an elected or co-opted member of their authority. The employee may raise such allegations through their authority's grievance procedure.

However, if the allegation is one of bullying, intimidation, harassment or discrimination by a member, the allegation is also likely to be that a member has failed to comply with their authority's code of conduct. The High Court has determined that such allegations cannot be dealt with otherwise than in accordance with the arrangements made under section 28(6) of the Localism Act 2011.

In these circumstances, an employee grievance process cannot therefore be run in tandem with, or as an alternative to, the Localism Act procedure for assessing and determining whether there has been a breach of the code of conduct by elected or co-opted council member.

When an allegation of bullying, intimidation, harassment or discrimination is made against an elected or co-opted member of a local authority the proper course for the formal investigation and determination of such alleged behaviour is through NYC's procedure for considering complaints that the code of conduct has been breached.

The Law

Section 28 of the Localism Act 2011 is the section which makes detailed provision in relation to codes of conduct. Section 28(4) provides: "*A failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with arrangements made under subsection (6)...*"

Subsections 28(6)-(9) set out the statutory process for investigating and determining complaints that a member has failed to comply with a code. Subsection (6) provides that: "*A relevant authority other than a parish council must have in place arrangements under which allegations can be investigated, and arrangements under which decisions on allegations can be made.*" It is in accordance with this section that NYC, as principal authority, has agreed procedures in place for dealing with complaints against NYC members and Town and Parish Council members.

Subsection (7) states: "*Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and (b) whose views may be sought (i) by the authority in relation to an allegation in circumstances not within paragraph (a), (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.*"

"Independent person" is defined in detail in section 28(8). Again NYC's procedure complies with this provision and NYC has appointed 6 Independent Persons.

Section 28(11) states, "(*If a relevant authority finds that a member or co- opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements put in place under subsection (6)) it may have regard to the failure in deciding—*
(a) whether to take action in relation to the member or co- opted member, and
(b) what action to take."

The above provisions were considered by the High Court in *R. (on the application of Harvey) v Ledbury Town Council*, in determining that a grievance process could not be run in tandem with, or as an alternative to, the code of conduct for Councillors established by the Localism Act 2011. In the Ledbury case a town council's decision to impose sanctions on a councillor after finding her guilty of bullying and harassment was therefore determined ultra vires, as the formal process under the code of conduct, including the involvement of an independent person, should have been instigated instead.

It is therefore important that the role of the code of conduct procedure in relation to employee grievances is observed.

Procedure under this protocol

Should any allegation by an employee of NYC or a Town or Parish Council of bullying, intimidation, harassment or discrimination by a member come to the attention of NYC's Monitoring Officer, the Monitoring Officer's approach will comply with section 28 of the Localism Act which contemplates potentially a four-stage process:

1. The making of an allegation
2. An optional non-formal investigatory or mediation stage, or a pause pending other relevant steps being taken;
3. A formal stage, leading to a decision on breach;
4. If breach was found, a formal stage, dealing with action.

In accordance with the provisions of the Localism Act set out above the independent person must be involved and consulted at stages 3 and 4.

In the event that an allegation is made in writing and a non-formal investigation or mediation stage (2) is either not going to take place or has not resulted in a resolution of the complaint, then the member who is the subject of a complaint ('the subject member') will be advised of the code of conduct complaint and copied into any relevant correspondence or complaint form received from the complainant. The Monitoring Officer will review the complaint and consult with the Independent Person in doing so, and will decide whether a complaint merits formal investigation or any other action.

The Monitoring Officer will advise the complainant and subject member, in writing, of their decision about whether or not the matter should be investigated.

Stages 3 and 4 will be through NYC's code of conduct procedure only.