

# NORTH YORKSHIRE COUNCIL

## ETHICAL FRAMEWORK

### Complaints of breach of Members' Code of Conduct

#### Jurisdiction and Assessment Criteria

References in this document to the Monitoring Officer include reference to the Deputy Monitoring Officer.

#### Jurisdiction

Before assessment of a complaint begins, the Monitoring Officer, in consultation with the Independent Person for Standards, should be satisfied that the complaint meets the following tests:

1. it is a complaint against one or more named Members/voting co-opted Members ("Members") of North Yorkshire Council or of a parish or town council within the Council's area;
2. the named Member was in office at the time of the alleged conduct and the relevant Code of Conduct was in force at the time;
3. the complaint relates to matters where the councillor was acting as a councillor or representative of the authority and it is not a private matter; and
4. the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and the complainant must be informed that no further action will be taken in respect of the complaint. If there is any doubt as to whether any of the above first stage criteria are met, then the complaint should proceed to be assessed against the second stage Assessment Criteria below.

#### Assessment Criteria

All complaints falling within the jurisdiction of the standards regime will be assessed by the Monitoring Officer, in consultation with the Independent Person, in accordance with the criteria below.

More than one criteria may be applicable to a complaint.

#### 1. Capacity

##### **Was the Member acting in their official capacity at the time of the alleged conduct?**

If the answer is **no**, then unless there is some direct link between the activity and the Member's office, the Code did not apply to the Member at the time of the alleged conduct and therefore there can be no breach of the Code. The response should therefore be: "The Member concerned was not acting in their official capacity at the time of the alleged conduct and therefore the Code of Conduct for Members did not apply to

the Member at that time. Consequently no potential breach of the Code has been disclosed and no action may be taken in respect of the complaint.”

The Code does not currently apply to Members’ conduct outside of the performance of their functions as Members. Only if they have engaged in private conduct/activity which has a link with the functions of the office of member, might the conduct in question be covered by the Code.

2. Potential criminal offence or regulatory breach

**Does the complaint disclose a potential criminal offence or regulatory breach?**

If the complaint identifies potential criminal conduct or breach of other regulation, the Monitoring Officer will consult the Police and/or such other regulatory agencies as they consider appropriate. This may have an impact on the handling of the standards complaint and may require it to be held in abeyance, or other action taken, pending the outcome of any criminal or regulatory investigation.

3. Current Membership

**Is the complaint about someone who is no longer a Member of the relevant council?**

The subject Member may have been a councillor at the time of the alleged misconduct but may have since ceased to be a councillor. The Monitoring Officer will need to consider whether North Yorkshire Council still has jurisdiction. If so, then the Monitoring Officer may decide not to take any further action unless they believe the matter is so serious, and the councillor may return to the authority, that it would still be in the public interest to pursue the matter. If they do pursue the matter the range of potential sanctions ultimately available is inevitably more limited.

**Is the complaint about someone who is no longer a Member of the authority, but is a member of another authority? If so, does the Monitoring Officer wish to refer the complaint to the monitoring officer of that other authority?**

If the answer is **yes**: “Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the Monitoring Officer of that authority for consideration.”

If a councillor is still a member of a town or parish council within North Yorkshire, then the principal authority can still deal with the matter if it relates to matters at the town or parish council.

4. Ill health

**Is the complaint about a Member who is seriously ill?**

If the Member the subject of the complaint is seriously ill at the time of assessment, the Monitoring Officer will need to decide, in the prevailing circumstances and in the public interest, what action is most appropriate to take in relation to the complaint at that time. This may include deciding to hold the complaint in abeyance for a period of time.

5. Sufficient Information

**Has the complainant submitted enough information to satisfy the Monitoring Officer assessing the complaint that the complaint should be referred for investigation or other action?**

If the answer is **no**, the response should be: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the Monitoring Officer is taking no further action on this complaint.”

6. Prior Investigation/Action

**Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

Where:

- a substantially similar complaint has been submitted and accepted; or
- a substantially similar complaint has previously been considered and no new material evidence has been submitted;

then the Monitoring Officer may decide that there is no merit in any further action being taken in relation to the complaint.

If the answer is **yes**: “The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.”

7. Passage of Time

**Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

Where a matter happened some time ago then the Monitoring Officer may decide that any further action would be unwarranted. The Monitoring Officer should consider whether there is any reason why there has been a delay in making the complaint.

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

8. Nature of the parties

**Is the complaint by one Member against another?**

The Monitoring Officer will consider the capacity in which the complainant has brought the complaint: where the complaint is by one Member against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression.

9. Triviality

**Is the complaint too trivial to warrant further action?**

The Monitoring Officer will need to consider whether the complaint is sufficiently serious to warrant any action being taken in relation to it. A referral of a complaint for investigation or other action costs both public money and officer and councillor time. This is an important consideration when the complaint is minor or petty.

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

#### 10. Underlying Motivation

**Does the complaint appear to be simply malicious, vexatious, politically motivated or tit-for-tat?**

The Monitoring Officer discourages such complaints but will consider, regardless of any alleged motive of the complainant, whether the complaint itself is sufficiently serious to warrant any further action regardless of the motive. A complaint may appear on the face of it to be politically motivated, for example, because of the timing of its submission, but if it raises sufficiently serious matters it would nevertheless need to be considered fully.

If the answer is **yes**: “The matter appears to be simply malicious, vexatious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

#### 11. Public Interest

**Is it in the general public interest to take any action in relation to the complaint?**

The Monitoring Officer will, in assessing the complaint in consultation with the Independent Person, consider the information presented by the complainant and subject Member and balance it against the various important considerations contained in the Assessment Criteria. The Assessment Criteria are, however, only indicative and the Monitoring Officer will need to take all circumstances into account, including local knowledge and experience, in assessing whether it is in the general public interest to take any action in relation to a complaint.

This can include looking at whether the behaviour complained of has already been addressed, for example through an apology having already being given by the subject Member.

This can also include looking at any background context in which the complaint has arisen and considering whether the standards regime is the appropriate process for dealing with the complaint in the prevailing circumstances and whether a referral of the matter for investigation or other action under the standards regime is likely to resolve the issues. This can include where there is evidence of dysfunction within the relevant council and in its relationships, standards of behaviour, conduct of meetings and entrenched views.

It may be the case that there are alternative, more appropriate, remedies that should be explored first.

Where the Monitoring Officer concludes that it would not be in the public interest to take any action in relation to the complaint, the assessment record will set out the rationale for this decision.

#### 12. Anonymous Complaints

**Is the complaint under consideration anonymous?**

If the answer is **yes**, the Monitoring Officer will only refer such a complaint for investigation or some other action if it includes documentary or photographic evidence

indicating an exceptionally serious or significant matter and/or if there is a significant public interest in doing so.

### 13. Requests for Confidentiality

#### **Has the complainant asked for their identity to be withheld?**

If the answer is **yes**, the Monitoring Officer will need to consider the request by the complainant for confidentiality alongside the substance of the complaint itself.

As a matter of fairness and natural justice, Members will usually be told who has complained about them. Requests for confidentiality should only be granted in exceptional circumstances and at the discretion of the Monitoring Officer, in consultation with the Independent Person.

The following considerations may assist the Monitoring Officer's deliberations in this respect:

- (a) Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) Whether the complainant is an officer who works closely with the subject Member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (NB: this should be covered by the Council's Whistle-Blowing Policy);
- (c) Whether the complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, the Monitoring Officer may wish to request medical evidence of the complainant's condition. In such cases, the Monitoring Officer may give the complainant the option of requesting a withdrawal of their complaint;
- (d) Whether the disclosure of the complainant's identity is necessary for the investigation of the complaint; for example, this may be relevant in a bullying allegation. In such cases, the Monitoring Officer may give the complainant the option of requesting a withdrawal of their complaint;
- (e) Whether it is possible to investigate the complaint without making the complainant's identity known;
- (f) Whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject Member.

Where the Monitoring Officer decides to refuse a request by a complainant for confidentiality, the Monitoring Officer may, in the particular circumstances, decide to offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

### 14. Withdrawal of Complaints

#### **Has the complainant indicated that they wish to withdraw their complaint?**

If the answer is **yes**, the Monitoring Officer will need to decide whether to grant the request. The following considerations may assist the deliberations in this respect:

- (a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?

- (b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured to withdraw the complaint?

### **Possible decisions**

The Monitoring Officer assessing a complaint, in consultation with the Independent Person, may decide to refer the complaint for investigation or other action (eg training, conciliation); or may decide that no action should be taken in respect of the complaint.

The assessment of the complaint is not an investigation and makes no determination as to the truth or otherwise of the allegations. It simply looks at whether the complaint falls within jurisdiction disclosing a potential breach of the Code and, if so, whether it warrants any further action being taken in all the circumstances.

There is no right of appeal in relation to the assessment decision. If a complainant feels that the Council has failed to deal with the complaint properly they may make a complaint to the Local Government and Social Care Ombudsman.

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