Audit, Governance and Standards Committee
30 January 2018

♦ REVIEW OF CONSTITUTION (STANDARDS PROCEDURE)

Report of Corporate Director & Monitoring Officer

All Wards
Key Decision = Y

1.0 Purpose of Report

1.1 To present an amended Standards Complaints Procedure to incorporate alleged breaches of the Code of Conduct by elected and co-opted members of a Parish/Town council within the District.

2.0 Decisions Sought

2.1 That the revised Standards Complaints Procedure at Appendix 1 be approved.

2.2 That Officers be authorised to appoint a pool of Parish representatives to be available to sit on hearings related to Parish/Town councillors.

2.3 That supplementary updates to the Council’s Constitution be approved as per Section 8.0 of this report to reflect the revised procedure.

3.0 Link to Corporate Priorities

3.1 This action sits within the priority of operating a Fit for Purpose Council.

4.0 The Code of Conduct and Standards Complaints Process

4.1 Section 27(2) of the Localism Act 2011 requires that “relevant authorities” adopt a code of conduct for elected and co-opted members of the authority when they are acting in that capacity. This applies equally to District Councils and Town/Parish Councils.

4.2 Sections 28(6) and (7) of the Localism Act 2011 require that relevant authorities have in place arrangements for the investigation and determination of allegations in respect of the code of conduct.

4.3 This Council’s Code of Conduct and Standards Complaints Procedure were last updated by this Committee in June 2016 (Minute AGS17/16 refers) whereby amendments were made to clarify provisions in relation to declarations of interest, and to make provision for the investigation of complaints in relation to Parish/Town Councillors where the relevant Council was unable to do so itself.
5.0 Revised Standards Procedure

5.1 It is good practice to revisit such procedures from time to time and examine whether there are any areas for improvement. In this case it is considered that the process can be made more straightforward for complainants and for Parish/Town Councils by adopting a consistent approach to the investigation and determination of District and Parish/Town Council complaints.

5.2 In practice this means that rather than investigate complaints in relation to Parish/Town councillors only when requested to do so by that Council, the Monitoring Officer will receive and process all such complaints in the first instance.

5.3 At present, once a complaint has been referred to the Monitoring Officer by a Parish/Town Council for investigation, it is that Council’s responsibility to consider the findings of the Investigating Officer and determine whether a breach has taken place and decide upon appropriate and proportionate sanctions. We have received feedback from a number of Town and Parish Council’s that they find this task difficult in terms of resource and expertise and would greatly appreciate the District Council undertaking the role of determining a complaint and recommending the appropriate sanction.

5.4 The revised procedure would allow the Standards Hearings Panel of this Council, as the Principal Authority, to determine such findings itself in an independent and impartial capacity, and then make recommendations back to the Parish/Town Council on available, appropriate and proportionate sanctions.

5.5 Such an approach better reflects the aim of the Localism Act 2011, which promotes the determination of local complaints by principal authorities as the best placed and most properly resourced to do so.

6.0 Parish Representatives on Hearing Panels

6.1 At present the Council’s Standards Hearing Panel comprises three Members of Audit, Governance and Standards Committee, as well as 1 non-voting independent co-optee and 1 non-voting parish representative. All panel members must have attended relevant training.

6.2 Under the revised procedure (Appendix 1), the Standards Hearings Panel would comprise three Members of Audit, Governance and Standards Committee (not all from same group) and two co-opted parish representatives – this would apply equally to all hearings of allegations whether in relation to District or Parish/Town Councillors. All panel members must have attended relevant training.

6.3 In order to function effectively a pool of parish representatives would be required and it is proposed to seek those representatives by canvassing the Yorkshire Local Councils Association for volunteers. Training would be provided for all those selected.

6.4 Part 2 – Article 8 and Part 3 – Functions Table of the Constitution will require amendment as per Section 6.2 above to reflect the revised composition of the Hearings Panel.
7.1 **Recommendations**

7.1 That the revised Standards Complaints Procedure at Appendix 1 be approved.

7.2 That Officers be authorised to appoint a pool of Parish representatives to be available to sit on the Standards Hearings Panel.

7.3 That supplementary updates to the Council’s Constitution be approved as per Section 6.4 of this report to reflect the revised procedure.

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8.0 **Corporate Implications**

<table>
<thead>
<tr>
<th>Scrutiny Consultation</th>
<th>None</th>
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</thead>
<tbody>
<tr>
<td>Community Engagement</td>
<td>If approved, the Yorkshire Local Council Association would be asked to canvass their members to seek volunteers to act as parish representatives in the determination of parish matters under the code.</td>
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<tr>
<td>Environment &amp; Sustainability</td>
<td>N/A</td>
</tr>
<tr>
<td>Financial Implications</td>
<td>None</td>
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<tr>
<td>Legal Implications</td>
<td>Explained in the report.</td>
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<tr>
<td>Risk Implications</td>
<td>None</td>
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<tr>
<td>Human Resource Implications</td>
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<tr>
<td>Equalities Implications</td>
<td>None</td>
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<tr>
<td>Health &amp; Safety Implications</td>
<td>None</td>
</tr>
</tbody>
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9.0 **Further Information**

9.1 Background Papers – Localism Act 2011 c.20

9.2 File Reference – None

9.3 Appendices – Appendix 1 - Revised Standards Complaints Procedure

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AUDIT AND STANDARDS COMMITTEE

COMPLAINTS PROCEDURE

This procedure is designed to help Members, Officers and members of the public understand the process which the Council uses to assess complaints that a District Councillor or Town/Parish Councillor may have breached the Code of Conduct.

A flow chart outlining the procedure is attached as Appendix 1 to this document.

Audit, Governance and Standards and set up

The Audit, Governance and Standards Committee has responsibility under the Council’s constitution for overseeing ethical standards and determining allegations that Members have breached the Members Code of Conduct.

Allegations are initially assessed by the Monitoring Officer in consultation with the Independent Person and they will determine whether the allegation requires investigation. Any disagreement between the Monitoring Officer and Independent Person will result in the allegation being referred to the Audit, Governance and Standards Committee who will decide whether the allegation is investigated.

Following investigation the allegation may be referred to the Standards Hearings Panel for determination.

Allegations of Member Misconduct

Acknowledging receipt of a complaint

The Monitoring Officer will take the administrative step of acknowledging receipt of a complaint and notifying the subject Member that a complaint has been made about them. If the Monitoring Officer determines that further information or evidence is required the acknowledgement letter will make this clear and confirm that the complaint will not be considered until the further information is submitted.

The acknowledgement will inform the complainant that the Member will be informed of both the identity of the complainant and the nature of the complaint and make it clear that an anonymous complaint will only be referred for investigation if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

The Monitoring Officer and Independent person shall decide whether the complaint is exceptionally serious or significant and any disagreement on this issue will be referred to the Audit and Standards Committee.

In all other cases any allegation from a complainant who refuses to disclose their identity will be rejected.

All complaints will be considered by the Monitoring Officer within 20 days of receipt of the complaint or receipt of further information.
Stage 1: Assessment of Complaints

Before starting an assessment of a complaint, the Monitoring Officer and Independent Person must be satisfied that:-

1. It is a complaint against one or more named Members of the Council or a town or parish Council within the District of Richmondshire.

2. The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.

3. The Member was acting in their official capacity (i.e. conducting the business of the authority; acting, claiming to act, or giving the impression they were acting as a representative of the authority) as a Member at the time of the alleged conduct.

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 the above requirements it cannot be investigated as a breach of the code and the complainant will be informed that no further action will be taken in respect of the complaint.

Decisions to refer a complaint for investigation

A complaint is likely to be investigated when it meets one or more of the following criteria:-

- It is serious enough, if proven, to justify the range of sanctions available to the Audit, Governance and Standards Committee.

- It is part of a continuing pattern of less serious misconduct (previously complained of and assessed) that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it, other than by investigation.

In considering the above points, the Monitoring Officer and Independent Person will also take into account the time that has passed since the alleged conduct occurred, generally being no more than 6 months prior to the date of the complaint.

Decisions not to refer for investigation

The Monitoring Officer is unlikely to refer a complaint for investigation where it falls into any of the following categories:-

- The complaint appears to the Monitoring Officer to be vexatious, malicious, politically motivated, relatively minor, insufficiently serious, tit for tat, or there are other reasons why an investigation may not be in the public interest.

- The same, or substantially similar, complaint has already been the subject of an investigation and there is nothing more to be gained by further action being taken (i.e. by seeking the sanctions available to the Audit, Governance and Standards Committee).
• It appears that the complaint concerns, or is really about dissatisfaction with a Council decision, or policy rather than a breach of the Code.

• There is not enough information currently available to justify a decision to refer the matter for investigation.

• The complaint is about someone who has died, resigned, seriously ill or is no longer a member of the Authority; therefore it is not in the public interest to pursue.

• Where the event/s or incident/s took place more than 6 months prior to the date of complaint being received or where those involved are unlikely to remember the event/s or incident/s clearly enough to provide credible evidence.

• The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter and where independent evidence is likely to be difficult or impossible to obtain.

• If the Monitoring Officer is considered that the subject member has provided a satisfactory remedy to the complainant (for example by apologising).

• If the Monitoring Officer is satisfied that having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation does not justify the cost of such an investigation.

• Where the allegation discloses a technical breach of the Members’ Code of Conduct but the Monitoring Officer considers that the complaint is not serious enough to warrant any further action.

Investigation

If it is decided that a complaint should be referred for investigation the Monitoring Officer will make arrangements for an investigation to be undertaken. The investigation may be carried out by the Monitoring Officer, Deputy Monitoring Officer or an independent third party appointed by the Monitoring Officer.

The purpose of the investigation is to seek to establish:

• agreed facts
• facts not agreed and conflicting evidence
• conclusion as to whether it appears that there is a breach of the Code

Once the investigation is completed the Monitoring Officer will consider the report and consult with the Independent Person.

If the report discloses a potential breach the Monitoring Officer will arrange a Hearing Panel to meet within 3 months of the date of the report. Copies of the report will be provided to both the complainant and the Member.

If the report discloses no breach then copies of the report will be provided to both the complainant and the Member and the matter will not be taken any further.

Any hearing will be conducted in accordance with the Council’s Hearings Procedure.
Standards Hearings Panel

The Standards Hearings Panel is a sub-committee of Audit, Governance and Standards Committee. The Panel will comprise three members of Audit, Governance and Standards Committee as well as two parish representatives. Parish representatives may take part in any discussion and advise the panel but may not vote. All those sitting on the Panel must have attended appropriate training.

Complaints about Town or Parish Councillors

The District Council’s decision on whether a breach has occurred is final, however it has no power to impose sanctions on a Town or Parish Councillor. The District Council may however recommend appropriate and proportionate sanctions to be considered and implemented by the relevant Town/Parish Council.

The Town or Parish Council may agree or disagree on the recommended sanctions but must be satisfied in imposing any further sanctions that they are lawful and proportionate (Taylor v Honiton Town Council [2016] EWHC 3307 (Admin)).

If the complaint is about a number of Town or Parish Councillors then advice will be given by the Monitoring Officer to the clerk about how the Town or Parish can obtain a dispensation to allow them to consider the matter.

Complaints about a Town or Parish Clerk are not matters that can be considered under the Code of Conduct or this complaints procedure.
RICHMONDSHIRE DISTRICT, TOWN & PARISH COUNCILLOR
COMPLAINTS HANDLING FLOW CHART

**Formal Complaint**
with supporting evidence received in writing by Monitoring Officer.

**Stage 1**: Preliminary tests to be applied by Monitoring Officer or Deputy Monitoring Officer:
- Acting in capacity as a Councillor / under definitions of the relevant Code? IF NO - REJECT.
- In office at time of alleged misconduct? IF NO - REJECT.
- Potential criminal offence? IF YES - REFER COMPLAINANT TO POLICE.
- Need to seek additional information, e.g. from subject members, as required prior to making a decision? WRITE TO COMPLAINANT TO OBTAIN. NO FURTHER ACTION UNTIL THIS INFORMATION RECEIVED.

**Stage 2**: IF NOT REJECTED AT STAGE 1: Complaint will be considered by Monitoring Officer or Deputy Monitoring Officer in consultation with the Independent Person (‘IP’):
- Potential breach of the Code? IF NO, REJECT.
- Very minor, trivial, tit-for-tat or politically motivated? IF YES, REJECT.
- Vexatious or malicious? IF YES, REJECT.
- Timing: is the complaint in relation to an incident or action that occurred over 3 months before complaint submitted? IF YES – REJECT.
- Has a similar complaint been subject to an investigation or other action relating to the relevant Code? IF YES, REJECT.
- Has the complaint been subject to an investigation by other regulatory/other body? IF SO REJECT.

**Stage 3**: Confirm decision with reasons:
- Reject with reasons.
- Informal resolution (meeting, mediation, or training).
- Refer for Investigation.

**Stage 4**: Investigation and report:
- Monitoring Officer or Deputy will undertake or appoint, internal or external investigator to prepare report within 3 months.
- Report to include agreed facts; facts not agreed and conflicting evidence and conclusion on whether appears to be a breach of the Councillors Authority Code.

**Stage 5**: Report will be considered by Monitoring Officer or Deputy Monitoring Officer in consultation with the IP:
- IF REPORT DISCLOSES POTENTIAL BREACH: arrange a Sub-Committee Panel Hearing within 3 months. Provide copy of report to complainant and Councillor. OR
- IF REPORT DISCLOSES NO BREACH – confirm outcome and provide copy of the report to complainant and Councillor.

**Stage 6**: Hearing Sub-Committee Panel consider complaint in consultation with IP (final determination).
- Hearing: consider evidence, find facts and conclude if there has been a breach of the Councillor’s Authority Code.
- Decision with reasons:
  - No breach. MATTER NOW ENDS.
  - If finding of breach, confirm with any sanctions:
    - No action.
    - Training and/or Censure of Councillor, or
    - Recommendation to Council that Councillor subject to formal censure at Full Council.
    - If Town or Parish Council confirm decision and recommend to Town or Parish Council that Councillor is censured at Town or Parish meeting.
  SUBJECT TO THE ABOVE THE MATTER IS NOW CONCLUDED

Appendix 1

**Stage 1**: Monitoring Officer / Deputy acknowledges complaint within 5 working days/ can seek additional information/supporting evidence if required. Informs Councillor subject to complaint.

**Stage 2**: IF NOT REJECTED AT STAGE 1: Complaint will be considered by Monitoring Officer or Deputy Monitoring Officer in consultation with the Independent Person (‘IP’):
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- Very minor, trivial, tit-for-tat or politically motivated? IF YES, REJECT.
- Vexatious or malicious? IF YES, REJECT.
- Timing: is the complaint in relation to an incident or action that occurred over 3 months before complaint submitted? IF YES – REJECT.
- Has a similar complaint been subject to an investigation or other action relating to the relevant Code? IF YES, REJECT.
- Has the complaint been subject to an investigation by other regulatory/other body? IF SO REJECT.

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