

Members Code of Conduct complaints case handling procedure

Standards arrangements

These arrangements set out how you may make a complaint that an elected or co-opted Member of the York and North Yorkshire Combined Authority, which includes the elected Mayor has failed to comply with the Combined Authority's Code of Conduct for Members.

These arrangements are made under Sections 28(6) and (7) Localism Act 2011.

1 Independent Person

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

2 Members' Code of Conduct

The Combined Authority has adopted a Code of Conduct for Members, which is also published on the Authority's website.

3 Making a Complaint

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

The Monitoring Officer
York and North Yorkshire Combined Authority
County Hall
Northallerton
North Yorkshire
DL7 8AD

email: monitoring.officer@yorknorthyorks-ca.gov.uk.

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

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

4 Timescales

We aim to deal with any complaint, so far as possible, within 3 months of receipt, or as soon as possible thereafter.

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

5 Assessment for Investigation or Other Action

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

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

This assessment will take place, where possible, within 20 working days of receipt of the complaint or as soon as possible thereafter. The Monitoring Officer may request more information to assist the decision as to whether investigation is appropriate.

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

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

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

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

If the Monitoring Officer has a conflict of interest or does not for any other reason consider it appropriate that they undertake initial assessment of a complaint, it will be

referred to the Audit and Governance Committee. The Audit and Governance Committee will also be informed of the outcome of all complaints received.

6 Informal Resolution

Wherever possible the Monitoring Officer will seek to resolve a complaint informally without the need for formal investigation or referral to the Audit and Governance Committee. This may involve trying to mediate between the parties, aiming to clarify misunderstandings, or encouraging discussion between the Complainant and subject Member to enable a resolution between them, or where appropriate, an apology. It may also involve other remedial action by the Combined Authority.

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

7 Investigation

If the Monitoring Officer concludes that a matter merits investigation, the Complainant will be invited to submit all information they wish to submit in support of their allegation within 10 working days of request.

Once the information is received it will be sent to the Member who is subject to the complaint, who would also be invited to submit all information they wish to be considered in response within 10 working days.

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

The Monitoring Officer may also appoint someone to oversee the gathering of information relating to the matter which will comprise the investigation. This Officer will consider whether any further information is needed and take steps so far as possible to secure its production. A report containing the information provided by the Complainant and subject Member will be prepared by the Officer and copied to both parties and sent to the Monitoring Officer. The report will conclude with a recommendation as to whether it is considered that there has been a breach of the Code.

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

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

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

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

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

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

10 Hearing

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

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

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

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

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

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

The Panel may:

- (a) issue a letter of censure to the Member and where appropriate require an apology to be given to the Complainant;
- (b) recommend to the Member's Group Leader that they be removed from any or all committees or sub-committees of the Combined Authority;
- (c) instruct the Monitoring Officer to arrange training for the Member.

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

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

12 What happens at the end of the hearing?

The Chair of the Panel will announce the decision of the Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action it deems necessary. The Monitoring Officer will prepare a Decision Notice which will be given to the subject Member and the Complainant within 10 working days. The outcome will be reported to the next meeting of the Audit and Governance Committee.

13 Revision of these arrangements

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

14 Appeals

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

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

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ANNEX A – Jurisdiction and Local Assessment Criteria

Jurisdiction

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

1. it is a complaint against one or more named Members/co-opted Members of the Y&NYCA (“Members”) or of the Mayor;
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, 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.

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. Triviality

Is the complaint too trivial to warrant further action?

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

3. 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."

4. Current Membership

Is the complaint about someone who is no longer a Member of the Combined 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."

5. 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?

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."

6. Passage of Time

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

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."

7. Underlying Motivation

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

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".

8. 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.

9. 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:

1. Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
2. 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 (this should be covered by the Combined Authority's Whistle-Blowing Policy);
3. 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;
4. 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;
5. Whether it is possible to investigate the complaint without making the complainant's identity known;
6. 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.

10. 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:

1. Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
2. Is the complaint such that action can be taken on it, for example, an investigation, without the complainant's participation?
3. 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 may decide to refer the complaint for investigation or other action (for example, training, conciliation); or may decide that no action should be taken in respect of the complaint.