YORKSHIRE DALES
National Park Authority

PROCEDURE FOR LOCAL ASSESSMENT OF MEMBER CODE OF CONDUCT COMPLAINTS

1. Introduction

1.1 The Localism Act 2011 introduced a new ethical framework for local government. Local Authorities have a duty to promote and maintain standards and have the ability to decide what arrangements they need to put in place to discharge that duty.

1.2 This procedure sets out the arrangements the Yorkshire Dales National Park Authority has put in place on receipt of a complaint that a Member of the Authority has failed to comply with the Authority's Code of Conduct.

2. Definitions

2.1 The following terms are used in this procedure

Authority	Yorkshire Dales National Park Authority
Code of Conduct	the Code of Conduct adopted by the Authority which applies to all Members
Complainant	the person making the complaint
Determination Procedure	the Procedure for dealing with allegations against Members where an investigation has been completed, the Investigating Officer has found a breach of the Code of Conduct and the Monitoring Officer, having consulted with the Independent Person, sends the matter for hearing before a Hearing Panel of the Standards Committee
Hearing Panel	a sub-committee of the Standards Committee comprising three members of the Standards Committee, appointed by the Monitoring Officer, who will determine whether the Subject Member has breached the Code Conduct and if so, whether any sanction should be applied
Independent Person	the person appointed by the Authority under section 28(7) of the Localism Act 2011
Investigating Officer	the person appointed by the Monitoring Officer to undertake a formal investigation
Local Resolution	the informal resolution of a complaint including the matters set out in paragraph 11 of this procedure

Monitoring Officer	the Authority's statutory officer who oversees the assessment and investigation of complaints against Members under the Code of Conduct with specific responsibility in relation to ethical standards
Standards Committee	the Committee responsible for promoting and maintaining high standards of conduct by Members of the Authority
Subject Member	the Member of the Authority against whom an allegation has been made

3. Procedure for making a complaint

3.1 Any allegation of a failure to comply with the Code of Conduct must be made in writing (including email or electronic communication of a document) and must be against one or more named Members of the Authority. The allegation should be sent to:

Monitoring Officer, Yorkshire Dales National Park Authority, Yoredale, Bainbridge, Leyburn, North Yorkshire DL8 3EL

E-mail: legal.services@yorkshiredales.org.uk

3.2 The complaint should identify:

(i) the Member(s) complained about;
(ii) the conduct that caused the complaint; and
(iii) the part of the Code of Conduct that it is felt has been breached.

3.3 The Complainant should provide their name and a contact address or email address, so that receipt of the complaint may be acknowledged and the Complainant may be kept informed of progress and/or the outcome of the complaint.

3.4 If the Complainant wants to keep their name and address confidential, they should state the reasons for their request, in which case the request will be considered as detailed in paragraph 6. The Authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

4. How the complaint will be dealt with

4.1 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep the Complainant informed of the progress of the complaint. The Monitoring Officer will review every complaint received.

4.2 The Monitoring Officer may also:

a) seek further information to help reach a decision on the complaint which may include entry in the register of interests, information from Companies House or the land registry, any clarification from the Complainant if necessary and other easily obtainable documents;

b) liaise with the Police if the complaint indicates a failure to declare or register a disclosable pecuniary interest;

c) if applicable, contact the Monitoring Officer of another local authority to inform them of the receipt of a complaint;

d) consult with the Independent Person at any stage of this procedure.

4.3 The Monitoring Officer may reject complaints without notifying the Member where they consider that it is clear from the details that the Member was not acting in their capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.

5. Notifying the Subject Member

5.1 The Monitoring Officer will inform the Subject Member about the allegations unless disclosure of the complaint would not be in the public interest, for example if disclosure would prejudice any ongoing or future investigations or if disclosure of the complaint may lead to the identification of the Complainant and intimidation.

5.2 The Subject Member shall be sent a summary or a full copy of the complaint and be invited to comment upon it. The Monitoring Officer shall identify which paragraphs of the Code of Conduct have allegedly been breached and the name of the Complainant (unless the Complainant has requested and been granted confidentiality).

6. Confidentiality of the Complainant's identity

6.1 As a matter of fairness and natural justice, the Subject Member should know who has complained about them. In exceptional circumstances however the Monitoring Officer may grant confidentiality if they are satisfied that at least one of the following grounds for withholding the Complainant's identity is satisfied:

a) The Complainant has reasonable grounds for believing that they will be at risk of physical harm or other victimisation or harassment; or

b) The Complainant is an officer who works closely with the Subject Member and they are afraid of the consequences to their employment or losing their job if their identity is disclosed (the Authority's Confidential Reporting policy provides more information to Authority employees); or

c) The Complainant has medical risks supported by medical evidence associated with the disclosure of their identity; or

d) The Complainant has requested non-disclosure for what the Monitoring Officer considers are good reasons.

6.2 If the Monitoring Officer decides to refuse a request for confidentiality, the Complainant shall be given the opportunity to withdraw the complaint.

7. Withdrawing Complaints

7.1 If a Complainant asks to withdraw the complaint prior to the Monitoring Officer making a decision on it, the Monitoring Officer will decide whether to grant the request. In making a decision, consideration will be given to whether:

a) the public interest in taking some action on the complaint outweighs the Complainant's wishes;

b) the complaint is such that action can be taken on it without the Complainant's participation;

c) an identifiable underlying reason exists for the request to withdraw the complaint,

d) the Subject Member or another person has put pressure on the Complainant to withdraw the complaint.

8. Initial Assessment

8.1 The Monitoring Officer will as soon as reasonable and usually within 20 working days of receipt of the complaint, consider and determine what action to take on the complaint in accordance with the assessment criteria in the **Appendix**.

8.2 The Monitoring Officer will decide either:

a) That no action should be taken in respect of it (see paragraph 10); or
b) To seek local resolution (see paragraph 11); or
c) To refer the complaint for investigation (see paragraph 12).

8.3 If witnesses to the circumstances giving rise to the complaint are named by the Complainant or by the Subject Member, they may be contacted at this stage for comment. The identity of the Complainant and the Subject Member may be disclosed to any such witnesses.

8.4 After making the decision, the Monitoring Officer will produce a written decision which will include the main points considered, the decision and the reasons for that decision.

8.5 The decision will be sent as soon as possible to the Complainant and to the Subject Member.

9. The Role of the Independent Person

9.1 The role of the Independent Person is set out more fully in the **Independent Person Protocol**.

9.2 The Monitoring Officer may seek the views of the Independent Person before deciding what action to take.

9.3 The Authority must seek the views of the Independent Person and take them into account before deciding what action to take on a complaint which they have decided to investigate.

9.4 The Subject Member may seek the views of the Independent Person at any stage. The arrangements for contact should be made through the Monitoring Officer.

10. No action to be taken in respect of the complaint

10.1 Where the Monitoring Officer decides that no action should be taken in respect of the complaint, the Monitoring Officer will give notice in writing of that decision and the reasons for it to the Subject Member and to the Complainant.

10.2 If the Monitoring Officer has sought the views of the Independent Person prior to deciding that no action should be taken, then the decision should record that the views of the Independent Person have been sought and have been taken into account and, where the decision taken is not in accordance with those views, the decision notice should give reasons.

10.3 Where the Monitoring Officer decides that no further action is warranted in relation to the complaint, the complaint will be closed and there is no appeal process.

11. Local Resolution

11.1 In appropriate cases, the Monitoring Officer may consider that the matter can be reasonably resolved and may seek to resolve the complaint informally.

11.2 This may involve:

a) the Subject Member accepting that their conduct was unacceptable and offering an apology;
b) arranging for the Subject Member to attend training;
c) arranging for the Subject Member and the Complainant to engage in a process of conciliation;
d) other remedial action (not including an investigation) as appears appropriate to the Monitoring Officer.

12. Referral by the Monitoring Officer for Investigation

12.1 Where the Monitoring Officer refers the complaint for investigation, they will appoint an Investigating Officer who may be an Authority officer, an officer from another Authority or an external investigator.

12.2 The Investigating Officer should prepare a report containing the findings of the investigation. The purpose of this report is to assist in the determination of whether the Subject Member has acted in breach of the Code of Conduct.

12.3 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints and should aim to complete the investigation within 3 months of being appointed.

12.4 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the Complainant and to the Subject Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.

12.5 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person will review the Investigating Officer's report and if satisfied will confirm the findings of no failure to comply with the Code of Conduct.

12.6 Where paragraph 12.5 applies, the Monitoring Officer will write to the Complainant and to the Subject Member with the decision and the Investigating Officer's report.

12.7 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

12.8 Where the Investigating Officer finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted with the Independent Person, either send the matter for hearing before a Hearing Panel of the Standards Committee or seek informal resolution in appropriate cases (the outcome of which will be reported to the Standards Committee). Where that is not appropriate or possible (for example if the Member fails to engage in the suggested resolution), the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee.

12.9 All references to a Hearing Panel of the Standards Committee will be conducted in accordance with the **Determination Procedure**. The Hearing Panel will decide whether or not the Subject Member has acted in breach of the Code of Conduct and, if so, whether to impose any of the sanctions open to the Hearing Panel.

13. Revision of these arrangements

13.1 The Monitoring Officer has delegated authority to make minor amendments to these arrangements.

14. Appeals

14.1 There is no right of appeal against a decision of the Monitoring Officer or the Hearing Panel.

14.2 If the Complainant or Subject Member considers that the Authority has failed to deal with their complaint properly then they may make a complaint to the Local Government and Social Care Ombudsman:

Website:	www.lgo.org.uk/contact-us: details of submitting a complaint online or by typetalk.
Telephone:	0300 061 0614
Postal Address:	PO Box 4771, Coventry CV4 0EH

APPENDIX

CRITERIA FOR ASSESSMENT OF COMPLAINTS

The Monitoring Officer shall apply the following criteria when considering any complaint that a Member of the Authority has failed to observe the Authority's Code of Conduct in order to decide what action, if any, to take.

The criteria have been adopted with the intent of determining complaints in the public interest in a timely, proportionate and pragmatic way.

The Monitoring Officer may seek the views of the Independent Person before deciding how to deal with the complaint.

1. INVALID COMPLAINTS

The Monitoring Officer is unable to accept the following as valid complaints:

a) Complaints that are not in writing.

b) Complaints where a Member is not named.

c) Complaints about someone who is a member of another Authority. The Monitoring Officer will consider whether to refer the complaint to that authority.

d) Complaints about incidents or actions that are not covered by the Code.

e) Complaints about a fault in the way the Authority has or has not done something or matters relating to the policies or performance of the Authority. These are matters which are more appropriately addressed through the Authority's complaints procedure.

f) Complaints about employees.

g) Where the substance of the complaint refers to incidents which happened before the member was appointed.

2. ASSESSMENT

(i) Criteria which indicate *no further action* should be taken:

a) The Subject Member has admitted making an error and the matter would not warrant a more serious sanction.

b) The alleged conduct occurred so long ago that there would be little benefit in taking action now or where the evidence in support of the allegation is insufficient to demonstrate a potential breach of the code or so weak or old that it should not be relied upon.

c) The complaint discloses a potential breach of the Code of Conduct, but the complaint is considered insufficiently serious to merit further action.

d) The complaint is about someone who is no longer a Member of the Authority or who is seriously ill and further action would not be in the public interest.

e) The complaint appears politically motivated, malicious or vexatious or tit for tat. Such a complaint may be recognised:

   i. Through repeated allegations making the same, or broadly similar, complaints against the same Member(s) about the same alleged incident;
   ii. As intending to cause annoyance, frustration, or worry to the other party (generally vexatious complaints);
   iii. Through use of aggressive or repetitive language of an obsessive nature through repeated complaints that disclose no breach of the code (generally persistent complaints);
   iv. Where it seems clear that there is an ulterior motive for making a complaint or complaints;
   v. From counter-allegations against a Member who previously made a complaint (generally "tit for tat");
   vi. Where a Complainant refuses to let a matter rest once they have exhausted the complaints process.

f) The complaint is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter to justify further consideration.

g) Complaints which have already been the subject of an investigation or other action relating to the Code of Conduct or have been the subject of an investigation by another investigatory or regulatory authority and no new material evidence has been submitted which justifies further action.

(ii) Criteria which indicate the complaint should be dealt with by *Local Resolution*

a) An apology by the Subject Member would be appropriate.

b) An explanation by the Subject Member would be appropriate.

c) A personal undertaking from the Subject Member would be appropriate.

d) The nature of the complaint indicates that the Subject Member would benefit from training.

e) The nature of the dispute indicates that some form of dispute resolution would be appropriate.

f) The circumstances that gave rise to the complaint could be avoided in the future by introducing (or amending) a policy or procedure.

(iii) Criteria which indicate that the complaint should be dealt with by *Investigation*

a) The complaint discloses a potential breach of the Code of Conduct that is considered sufficiently serious to justify the cost of an investigation.

b) The complaint is by or involves a member of staff which ought to be investigated by reason of the nature of the complaint and/or in the interests of transparency.

c) Other forms of action have been tried without satisfactory outcome and the nature of the complaint is sufficiently serious to warrant investigation.

d) The nature of the complaint suggests that there is a wider problem throughout the Authority and it is appropriate to extend the action to other members who are not the subject of the complaint.

4. In exceptional circumstances the Monitoring Officer may consider appointing a Monitoring Officer from a different Authority to assess the complaint: -

a) Where the status of the Member, or the number of Members about whom the complaint is made, or the nature and circumstance of the complaint, would make it difficult for the Monitoring Officer to deal with it. This could happen where complaints give rise to a potential conflict of interest of the Monitoring Officer, other officers or Members of the Standards Committee and suitable alternative arrangements cannot be implemented to address the conflict.

b) Where the complaint is from the Chief Executive and/or the Monitoring Officer.

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