



BREACHES OF THE CODE OF CONDUCT
YORKSHIRE DALES NATIONAL PARK AUTHORITY (“the Authority”)

Procedure for the local determination of complaints against Members of the Authority

1. Interpretation

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| “Subject of the complaint” | means the Member of the Authority against whom an allegation has been made |
| “Legal Advisor” | means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another qualified legal officer of the Authority, or someone appointed for this purpose from outside. |
| “Clerk” | means the person who provides administrative support to the Standards Committee. |
| “Investigating Officer” | means the person appointed by the Monitoring Officer to investigate a matter referred for investigation by the Standards Committee. |
| “Independent Person” | means the person appointed by the Authority under Section 28(7) of the Localism Act 2011 to give their views to the Authority in relation to allegations of breach of the Authority’s Code of Conduct for Members. |

Where the Standards Committee has referred for investigation an allegation that the Subject of the complaint has failed to comply with Authority’s Code of Conduct the Monitoring Officer will have appointed an Investigating Officer, who will have conducted an investigation and produced a report. If the report makes a finding of breach of the Code and the matter has not been resolved through local resolution then the matter will be determined by the Standards Committee in accordance with this procedure.

2. Pre-hearing process

- a) The Monitoring Officer will ensure that the Complainant and the Subject of the complaint have a copy of any investigation report.
- b) If the Subject of the complaint is a member of another authority, the Monitoring Officer will send a copy of the report to the other authority if they request it.
- c) The Monitoring Officer will:
 - a. provide a copy of the pre-hearing and hearing procedures set out below to the Subject of the complaint;
 - b. outline to the Subject of the complaint their rights and responsibilities;
 - c. propose a date for the hearing;

d. use hearings procedure forms A to F¹, asking for a written response from the Subject of the complaint to find out whether they:

- disagree with any of the findings of fact in the investigation report, including the reasons for disagreement;
- want a solicitor, barrister or any other person to represent them at the hearing;

Note: the Standards Committee will normally give permission for people who are not lawyers to represent the Subject of the complaint but may refuse permission if the representative is directly involved in the matter that the Committee will determine.

- want to give evidence to the Committee, either verbally or in writing;
- want to call relevant witnesses to give evidence to the Committee;
- can attend the hearing on the proposed date;
- want any part of the hearing held in private;
- want any part of the investigation report or other relevant documents withheld from the public.

e. send a copy of the Subject of the complaint's response to the Investigating Officer and invite the Investigating Officer to say by a set time whether they want:

- to be represented at the hearing;
- to call relevant witnesses to give evidence to the Committee;
- any part of the hearing held in private;
- any part of the investigation report or other relevant documents withheld from the public;
- to invite any other witnesses the Committee considers appropriate.

d. The Monitoring Officer or Legal Adviser to the Committee should then prepare a report which sets out the key points of the investigation report and also:

- i. confirms a date, time and place for the hearing;
- ii. confirms the main facts of the case that are agreed;
- iii. confirms the main facts, which are not agreed;
- iv. confirms which witnesses will give evidence;
- v. outlines the proposed procedure for the hearing.
- vi. the Monitoring Officer will provide the information set out in paragraph 3 above to:

¹ **Forms A to F are:**

A: Response of the Subject of the complaint to the evidence set out in the investigation report

B: Other evidence relevant to the complaint

C: Representations to consider on findings of failure to comply with code

D: Arrangements for the Standards Committee

E: Details of proposed witnesses to be called

F: Checklist and summary for the pre-hearing process

- all members of the Committee who will conduct the hearing;
- the Subject of the complaint;
- the Complainant;
- the Investigating Officer who will make any necessary arrangements with witnesses;
- anyone representing the Subject of the complaint.

Guiding and advising the subject of the complaint

3. The Monitoring Officer in consultation with the Chairman of the Committee will make sure that the Subject of the complaint is aware that he/she has the right to:
 - a) go to the hearing and present their case;
 - b) call a reasonable number of witnesses to give relevant evidence to the complaints panel;
 - c) representation at the hearing by a solicitor, barrister or any other person.

The Committee will normally give permission for the Subject of the complaint to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined. The Subject of the complaint must meet the cost of any representation.

The Subject of the complaint **must** raise any disagreements with the finding of facts in the investigation report during the pre hearing process. The Committee **will not** consider any new disagreements about the investigation's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The Subject of the complaint does not have to go to the hearing or have representation. If the Subject of the complaint chooses not to go to the hearing, the Committee may make a determination in his/her absence.

Procedures for the hearing

4. Setting the scene

After all the Committee members, officers, Subject of the complaint and Investigating Officer have been formally introduced, the Chairman will explain how the Committee will conduct the hearing. In particular, the Chairman will explain that:

- a) the hearing is a formal process, not an open discussion;
- b) the Committee can only decide on the evidence before it;
- c) no new issues can be introduced;
- d) cross examination does not form part of the Committee's procedures.

Attendance by the Independent Person

5. The Independent Person will attend a Committee meeting when the Committee considers Code of Conduct complaints. Their views may be sought and taken into consideration before the Committee reaches any conclusion on whether the Subject of the complaint's conduct constitutes a failure to comply with the Code of Conduct.

The Independent Person's views may also be sought before the Committee makes recommendations to the Monitoring Officer for action following a finding of failure to comply with the Code of Conduct.

Legal advice

6. The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while considering the outcome. The Committee should share the substance of any legal advice given with the Subject of the complaint and the Investigating Officer if they are present².

Preliminary procedural issues

7. The Committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process. The Chairman will clarify that all present know the procedure that the Committee follow in determining the matter.

The Committee will aim to conclude a hearing in one sitting and will consider adjournment in only the most complicated cases or when good reasons exist.

The Committee will then deal with preliminary procedural matters in the following order:

- a) Quorum

The Chairman confirms that the Committee is quorate. When the Standards Committee meet there must be at least 3 Members present of which at least one must be a Secretary of State Member and one must be a local authority Member.

- b) Declarations of interest

The Chairman will ask the Committee members if they have disclosable pecuniary interests or connections with any party to the complaint and to act accordingly if they make a declaration.

- c) Proceeding in the absence of the Subject of the complaint

If the Subject of the complaint is not present at the start of the hearing:

- i. the Chairman will ask the Legal Advisor whether the Subject of the complaint has indicated his/her intention not to attend the hearing;
- ii. the Committee will then consider any reasons that the Subject of the complaint has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend, and

² In the interests of openness, the Committee may prefer to receive any advice in the hearing room in the presence of the investigating officer and the subject of the complaint. Where this is not practicable, the legal advisor should repeat in the presence of the investigating officer and the member the advice, which he/she has given.

- if satisfied with the reasons for non attendance, it shall adjourn the hearing to another date;
- if not satisfied, or if the Subject of the complaint has not given any such reasons, the Committee will decide whether to consider the matter and make a determination in the absence of the Subject of the complaint or to adjourn the hearing to another date.

d) Exclusion of press and public

The Chairman will ask the Subject of the complaint, the Investigating Officer and the Legal Advisor to the Committee whether they wish to ask the Committee to exclude the press or public from all or any part of the hearing. In the event of a request, the Chairman will ask them to put forward the reasons for their request, seeking responses from other parties. The Committee will then decide whether to exclude the press and public from all or any part of the hearing.

Hearings are normally in public unless there are reasons under the legislation for holding the hearing or any part of the hearing in private. Where the hearing is in public, the agenda and the report which may have been withheld from the press and public in advance of the meeting can then be accessed by the press and public.

Modification of procedure

8. The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

The Committee will proceed to deal with the case in a two stage process to consider the Investigator's report. The first part of the process will be to consider the findings of fact. If the Committee decides to consider whether the Subject of the Complaint failed to comply with the Code of Conduct, it will proceed to the second part of the hearing.

Making findings of fact

9. After dealing with any preliminary issues, the Committee will then move on to hear and consider the report of the Legal Adviser to the Committee, which sets out whether there are any significant disagreements about the facts contained in the investigator's report.

If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.

If there is a disagreement the chairman should invite the Investigating Officer, if present, to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Subject of the complaint an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.

The Subject of the complaint should then have the opportunity to make representations to support their version of the facts, make suggestions to the Committee upon which it should seek advice from the Investigating Officer and, with the Committee's permission, to call any necessary witnesses to give evidence.

At any time, the Committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the subject of the complaint.

If the Subject of the complaint disagrees with most of the facts, it may be prudent for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.

If the Subject of the complaint disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Committee will consider whether it would be in the public interest to continue in their absence.

After considering the Subject of the complaint's explanation for not raising the issue at an earlier stage, the Committee may then:

- a) continue with the hearing, relying on the information in the Investigating Officer's report;
- b) allow the Subject of the complaint to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary;
- c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if they are not already.

Representations

10. The Chairman will allow the Complainant to make a representation to the Committee if he/she believes that such a variation in procedure is necessary in the interests of fairness.

The Chairman will invite the Independent Person to make any representations.

On hearing the representations, the Chairman will check that members of the Committee are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

The Committee will move to another room to consider the representations and evidence in private.

On their return, the Chairman will announce the Committee's findings of fact and whether the Committee will progress with a hearing.

Making findings on the code of conduct

11. The Committee needs to consider whether, based on the facts it has found, the Subject of the complaint has breached the Code³. This will include considering the reports of the Legal Adviser to the Committee and the Investigating Officer.

The Committee may, at any time, question anyone involved on any point raised during their representations.

The Chairman will invite the Subject of the complaint to give relevant reasons why the Committee should decide that they have not failed to follow the Code.

The Committee will then consider any verbal or written representations from the Investigator.

The Chairman will invite the Subject of the complaint to make any final relevant points.

The Chairman will invite the Independent Person to make any representations.

On hearing the representations, the Chairman will check that members of the Committee are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

The Committee will then move to another room to consider the representations.

The Committee will make a decision on the balance of probability based on the evidence that it received at the hearing.

The Committee may at any time return to the main hearing room in order to seek additional evidence from the Investigating Officer or the Subject of the complaint.

On the Committee's return, the Chairman will announce the Committee's decision as to whether the Subject of the complaint has breached the Code or not.

³ If the Investigating Officer is not present, the committee should only conduct a hearing if it is satisfied that there are no substantial points of dispute, or that the points of dispute can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the committee shall determine on the advice of the Legal Advisor which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.

No breach of the Code of Conduct

12. If the Committee decides that the Subject of the complaint has not breached the Code, the Committee can move on to consider whether it should make any recommendations to the Authority of which the Subject of the complaint is a Member.

Failure to follow the Code of Conduct and consideration of sanctions

13. If the Committee decides that the Subject of the complaint has not followed the Code, it will consider any verbal or written representations from the Investigator and the Subject of the complaint as to:

- whether the Committee should apply a sanction;
- what form any sanction should take.

The Committee may question the Investigating Officer and Subject of the complaint, and take legal advice, to make sure they have the information they need in order to make an informed decision.

On hearing the representations, the Chairman will check that members of the Committee are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

The Committee will then deliberate in private to consider whether to impose a sanction on the Subject of the complaint and, if so, the nature of the sanction.

If the Committee decides that the Subject of the complaint has breached the Code of Conduct and that it should impose a sanction, it may do any one or a combination of the following:

- a. Censure;
- b. Publication (in whatever way might be chosen) of the fact that the Subject of the complaint been found to have breached the code of conduct;
- c. Recommendation to the Authority to remove the Subject of the complaint from any Committee or outside body appointment(s);
- d. Recommendation to the Authority to restrict the Subject of the complaint's access to Authority premises, facilities etc. (so long as they are still able to perform their essential role);
- e. Undertake training.

The Monitoring Officer and the Committee have no power to suspend or disqualify the Subject of the complaint nor to withdraw their basic or special responsibility allowances, or to recommend other outcomes.

Recommendations to the Authority

14. After considering any verbal or written representations from the Investigating Officer, the Committee will consider whether it should make any recommendations to the Authority of which the Subject of the complaint is a Member, with a view to promoting high standards of conduct among Members.

Closing the hearing

15. At the end of the hearing, the Chairman will state the conclusion of the Committee as to whether the Subject of the complaint breached the Code of Conduct and the actions that the Committee wishes to recommend.

Before making any recommendations the Chairman will provide a further opportunity to the Subject of the complaint to make further representations and may hear further from the Independent Person before making a recommendation on action that the Monitoring Officer will take.