



PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	OVERVIEW AND SCRUTINY COMMITTEE
DATE:	14 FEBRUARY 2019
REPORT OF THE:	COUNCIL SOLICITOR AND MONITORING OFFICER
TITLE OF REPORT:	STANDARDS COMPLAINTS OVERVIEW 2018/19 AND ANNUAL REPORT
WARDS AFFECTED:	ALL

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to update members of the Overview and Scrutiny Committee acting as a Corporate Governance Standards Committee on the matters within the remit of the Committee for the Municipal Year 2018/19 to date.

2.0 RECOMMENDATION(S)

- 2.1 It is recommended that the report be noted

3.0 REASON FOR RECOMMENDATION(S)

- 3.1 To inform the Committee of the operation of arrangements in place to discharge the standards obligations of the District Council.
- 3.2 To better inform the Council's Annual Governance Statement (AGS) by collating oversight from this committee on matters within its remit.

4.0 SIGNIFICANT RISKS

- 4.1 None.

5.0 POLICY CONTEXT

- 5.1 The report supports the corporate aims of the Council.

6.0 BACKGROUND

The Roles of the Overview and Scrutiny Committee acting as a Corporate Governance Standards Committee and the Council's Monitoring Officer

- 6.1 The role and functions of the Overview and Scrutiny Committee acting as a Corporate Governance Standards Committee and the Council's Monitoring Officer

are set out in the Council's Constitution and reproduced for ease of reference in Appendix 1 to this Report.

Operation of Codes and Guidance relating to Members.

- 6.2 Under the present regime the Council is required to adopt its own Code of Conduct that when viewed as a whole is consistent with the principles set out at section 28(1) of the Localism Act 2011 (the Nolan Principles).
- 6.3 Members will be aware that whilst officers do provide advice to Members, if asked, on Members' interests it is the responsibility of individual members to comply with the requirements of the Code of Conduct. Regular reminders are sent to Members regarding updating their Register of Interests.
- 6.4 The Register of Interests requirements are covered in New Member Induction and all new Councillors will be advised to register their interests after the May 2019 District and Parish Council elections. The Monitoring Officer is of the view that this requirement is understood by Members and that if they have queries Members do routinely seek advice in relation to declaration of Interests.
- 6.5 The Code of Conduct for Members, Planning Code of Practice for Members, and the Member/Officer Relations Protocol are contained in the Council's Constitution

Overview and Scrutiny Committee acting as a Corporate Governance Standards Committee– Arrangements

- 6.6 Since July 2012 the Overview and Scrutiny Committee acting as a Corporate Governance Standards Committee has been operating under new arrangements pursuant to the Localism Act 2011. This included the abolition of the Standards Board for England, and the prescribed Code of Conduct.
- 6.7 The Localism Act 2011 also removed the power of Councils Standards Committees or any Appeal Tribunal to suspend Members for misconduct. The Government at the time was of the view that it is the right and proper responsibility of the electorate to determine who represents them and that the abolition of the regime would restore power to local people. This was an important point of principle for the Government.
- 6.8 Section 28(6) of the Localism Act 2011 requires the Council to have in place arrangements under which allegations of breach of the Code can be investigated, and decisions made upon those allegations. Under section 28(7) of the same Act the Council must also appoint an Independent Person whose views are to be sought and taken into account by the Council before it makes a decision on any allegation it has decided to investigate, and whose views may be sought generally.
- 6.9 As Council Solicitor and the Monitoring Officer (MO) I am duly appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct. The detailed arrangements for handling complaints are set out in the Arrangements for Dealing With Complaints Against Councillors.
- 6.10 There are 3 potential stages through which a complaint may proceed:

Stage 1 - Initial Assessment stage where the Monitoring Officer, in consultation with the Council's Independent Person, will decide whether to reject the complaint, seek informal resolution of the matter or refer the complaint for formal Investigation.

Stage 2 - Where a complaint is referred for Investigation, the Monitoring Officer will appoint an Investigating Officer to investigate the matter.

Stage 3 - If the Investigating Officer's final report concludes that there is sufficient evidence of a failure by the Member to comply with the Code, the Monitoring Officer will put the matter before the Corporate Governance Standards Sub-Committee (Hearing Panel) for determination.

- 6.11 In stage 1 above where the allegations and information available at that time do not support an allegation that a breach of the Code of Conduct has occurred, there will ordinarily be no further action on the complaint. In the year 2018/19 there have been 6 cases which are summarised in Appendix 2.
- 6.12 The last occasion when the Corporate Governance Standards Sub-Committee had a hearing was in the case relating to Councillor John Raper in 9 February 2017 which resulted in a censure motion before Council on 21 February 2017. The complaint was about Councillor Raper voting twice on two votes at the Council meeting on 8 December 2016.

REPORT

7.0 REPORT DETAILS

- 7.1 The Council's Members' Code of Conduct has been in operation since 19 May 2012.
- 7.2 It should be noted that although the District Council continues to deal with complaints against Parish and Town Council Members, it is entirely a matter for each Parish and Town Council to determine the form of the Code of Conduct they adopt, and to which their Members are subject. The vast majority of Parish and Town Councils in this District have adopted a code drafted by the National Association of Local Councils (NALC).
- 7.3 During 2018/19 to date the District Council received/considered 6 matters of complaint. The table set out at Appendix 2 gives further detail about these matters and their respective outcomes and in two cases pending status.
- 7.4 The Committee is aware that complaints about failure to register a DPI are subject to criminal sanction. The Monitoring Officer is not aware of any action having been taken by the Police in relation to DPI requirements.
- 7.5 All of the complaints referred to in paragraph 6.3 above culminating in a decision were considered by the Independent Person and the Monitoring Officer.
- 7.6 Four of the complaints that resulted in no further action did so because the alleged behaviour could not be said to have taken place when the Councillors against whom the complaints were made were acting in their capacity as elected Members. On this matter, section 27(2) of the Localism Act 2011 provides that the Code of Conduct only applies to a Member when they are acting in that capacity.
- 7.7 This position is further supported by the judgment of the Administrative Court (Queen's Bench Division) in *Livingstone v Adjudication Panel for England* [2006] All ER (D) 230 (Oct).

- 7.8 The regime pursuant to the Localism Act 2011 has now been in operation for almost 7 years. During that time there has been a decline in the number of complaints being made.
- 7.9 The regime has worked very well in reducing red tape and the burden upon resources, and has allowed for a more efficient and effective way of dealing with vexatious complaints. The involvement of the Independent Persons has been particularly invaluable.
- 7.10 However, the removal of the statutory sanctions that could (pre Localism Act 2011) be imposed upon those who had been found in breach of the Code has been a big area of concern. Central Government instead placed more emphasis on criminal offences for failure to comply with the provisions concerning disclosable pecuniary interests.
- 7.11 Consequently, the extent to which the new regime is effective in relation to matters other than those concerning disclosable pecuniary interests is to a large extent dependent upon the willingness and commitment of Members themselves to uphold the principle of the regime.
- 7.12 In addition, the lack of available sanctions is a major consideration when determining whether to use scant resources to undertake a formal investigation and report to the Corporate Governance Standards Sub-Committee. The greatest sanction a District Council has is the passing of a censure motion at Full Council.
- 7.13 Members will be interested to know that Lord Bew (the Chair of the Committee on Standards in Public Life) advised the Prime Minister that the Committee was undertaking a review of local government ethical standards. A public consultation was opened to help inform that review, and which closed at 5pm on 18 May 2018.
- 7.14 The review not only focuses on the current regime, but also seeks evidence of intimidation of Councillors so that it can make recommendations for any measures that could be put in place to prevent and address such intimidation.
- 7.15 On 21 January 2019 the Committee on Standards in Public Life has published its report on local government ethical standards. Further details about the consultation can be found on the Committee for Standards in Public Life's website at: www.gov.uk/government/organisations/the-committee-on-standards-in-public-life
- 7.16 The headline recommendation in the report include bringing back suspension of Councillors for six months for serious breaches of the Code of Conduct with a right of appeal to the Local Government and Social Care Ombudsman and a proposal to decriminalise the requirements on Councillors relating to declarable pecuniary interests (DPI's).
- 7.17 Members are advised that arrangements have been made for training on standards as part of the induction process after the May 2019 District Council elections.

8.0 IMPLICATIONS

- 8.1 All relevant implications have been considered in the body of this report.

Anthony Winship
Council Solicitor and Monitoring Officer

Author: Anthony Winship, Council Solicitor and Monitoring Officer
Telephone No: 01653 600666 ext: 267
E-Mail Address: anthony.winship@ryedale.gov.uk

The Role of the Standards Committee

ARTICLE 8 - THE OVERVIEW AND SCRUTINY COMMITTEE ACTING AS A CORPORATE GOVERNANCE STANDARDS COMMITTEE

8.1 Corporate Governance Standards Committee

The Council will have a Corporate Governance Standards Committee operated by the Overview and Scrutiny Committee.

8.2 Composition

- (a) **Membership** The Corporate Governance Standards Committee will comprise:
The membership of the Overview and Scrutiny Committee;
- (b) **Independent Persons** Where required by law the Corporate Governance Standards Committee will receive representations from the Independent Persons but will not be entitled to vote at meetings.

8.3 Roles and Functions

The terms of reference for the Corporate Governance Standards Committee are set out in Part 3 of this Constitution entitled "Responsibility for Functions" under the terms of reference for the Overview and Scrutiny Committee.

The Corporate Governance Standards Committee will:

- seek to promote and maintain a high standard of conduct in the transaction of all Council and Local Council business.
- assist in the observation of the Members' Code of Conduct (set out in Part 5 of this Constitution).
- advise on the adoption, revision or monitoring of the Members' Code of Conduct.
- take a general overview on all ethical issues and issues of probity.
- conduct hearings into complaints referred to it from the Monitoring Officer.

TERMS OF REFERENCE: OVERVIEW AND SCRUTINY ACTING AS A CORPORATE GOVERNANCE STANDARDS COMMITTEE

The Overview and Scrutiny Committee has been given delegated authority to exercise the Corporate Governance Standards Committee role for Ryedale District Council. References in these Terms of Reference to the Corporate Governance Standards Committee is a reference to the Overview and Scrutiny Committee exercising the Corporate Governance Standards Committee role for Ryedale District Council.

MEMBERSHIP

All the Members of the Overview and Scrutiny Committee.

FREQUENCY OF MEETINGS:

Corporate Governance Standards Committee agenda items will be a standing item on the Overview and Scrutiny Committee agenda on at least two occasions each year.

FUNCTIONS

The Corporate Governance Standards Committee will have the following roles and functions:

- (a) Promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives and officers.
- (b) Assisting the Councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct.
- (c) Advising the Council on the adoption or revision of the Members' and officers' Codes of Conduct.
- (d) Monitoring the operation of the Members' and Officers' Codes of Conduct.
- (e) Advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct.
- (f) To consider and determine allegations that individual Members have breached the Members' Code of Conduct.
- (g) Taking all decisions that are necessary to deal with individual cases of alleged breaches of the Code.
- (h) The exercise of (f) and (g) above in relation to the Town or Parish Councils wholly or mainly in the Ryedale district and the Members of those Councils; and
- (i) Reviewing and monitoring the Council's response to:
 - (i) Probity and standards issues arising from internal audit functions and reports of the external auditor.

- (ii) Corporate Governance issues, including overview of whistle blowing and complaints handling.
- (iii) Local Ombudsman's investigations.
- (j) The power to grant dispensations to Members and Co-opted Members.
- (k) Any other functions allocated to the Corporate Governance Standards Committee by Council under any enactment from time to time.

Terms of Reference of the Corporate Governance Standards Sub-Committee

1. Terms of Reference

- (a) The Corporate Governance Standards Sub-Committee is established to determine complaints that a Member of Ryedale District Council or a Town or Parish Council within the Ryedale district has failed, or may have failed, to comply with that Authority's Code of Conduct.
- (b) Upon completion of an investigation by the Investigating Officer, the Sub Committee shall be responsible for determining whether:
 - (i) It accepts the Investigating Officer's finding of no failure to observe the Code of Conduct.
 - (ii) It accepts the Investigation Officer's finding of a failure to observe the Code of Conduct.
- (c) Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1(b), the Sub-Committee shall state its reasons for that decision.

2. Sanctions

In the event that the Corporate Governance Standards Sub-Committee makes a finding of a failure to observe the Code of Conduct it may impose any or all of the following sanctions:

- (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 he/she be removed from any or all Committees or Sub-Committees of the Council.
- (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.

3. Composition of the Corporate Governance Standards Sub-Committee

- (i) The Corporate Governance Standards Sub-Committee shall comprise three Members of the Overview and Scrutiny Committee.

- (ii) Political proportionality is not applied for the Corporate Governance Standards Sub-Committee.

4. Quorum

The quorum for a meeting of the Sub-Committee shall be three Members.

5. Frequency of Meetings

The Sub-Committee shall only meet as and when required to hear and determine any allegation(s) against an elected or co-opted Member of the Council and Town and Parish Councils.

The Role of the Council's Monitoring Officer

ARTICLE 11 - Officers

11.4 Functions of the Monitoring Officer

- a) **Maintaining the Constitution** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.
- b) **Ensuring lawfulness and fairness of decision making** After consulting the Head of Paid Service and Chief Financial Officer, the Monitoring Officer will report to the Full Council if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c) **Supporting the Overview and Scrutiny Committee acting as the Corporate Governance Standards Committee** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Overview and Scrutiny Committee acting as the Corporate Governance Standards Committee.
- d) **Conducting investigations** The Monitoring Officer will conduct investigations into matters and make reports or recommendations in respect of them to the Overview and Scrutiny Committee acting as the Corporate Governance Standards Committee
- e) **Providing advice** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Councillors.
- f) **Restrictions on posts** The Monitoring Officer cannot be the Chief Financial Officer or the Head of Paid Service.

11.5 Provision of sufficient resources to the Head of Paid Service, Chief Financial Officer and Monitoring Officer

The Council will provide the Head of Paid Service, the Chief Financial Officer and the Monitoring Officer with such offices, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

Complaints Summary: Decisions on Complaints made between 1 April 2018 and 11 February 2019

Complaint No.	Provision of the code alleged to have been breached	Outcome
2018/1	<p>Complaint about Ryedale District Councillor(s)</p> <p>Report of Professor John Raine - Alleged Bullying of Officers by Councillor(s)</p>	<p>Pending.</p> <p>Barry Khan Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer at North Yorkshire County Council was appointed on 23 August 2018 as a Deputy Monitoring Officer to deal with allegations of Bullying of Officers by Councillor(s) contained in the Report of Professor John Raine under the District Council's arrangements for dealing with complaints under the Members' Code of Conduct.</p> <p>The appointment of Barry Khan as the Deputy Monitoring Officer was requested and made further to the meeting of the Corporate Governance Standards Sub-Committee meeting on 19 July 2018.</p> <p>A copy of the Report of Professor John Raine has been supplied to Barry Khan.</p> <p>The District Council's Independent Person (IP) has been alerted to the case and the contact details of the Independent Person have been supplied to Barry Khan.</p>
2018/2	<p>Complaint about Parish/Town Councillor</p> <p>Bringing office into disrepute – posting on social media</p>	<p>Rejected at stage 1 following consultation with IP:</p> <ul style="list-style-type: none"> (i) Postings were not made by person acting as a parish councillor – they were not made in capacity as a parish councillor. They were acting in a private capacity; (ii) Conduct complained of was not serious enough to warrant an investigation and not in the public interest to expend further resources on investigation
2018/3	<p>Complaint about Ryedale District Councillor.</p> <p>Breach of Nolan Principles</p> <p>Bringing office into disrepute – posting comments on world wide web</p>	<p>Rejected at stage 1 following consultation with IP:</p> <ul style="list-style-type: none"> (i) Postings were not made by person acting as a parish councillor – they were not made in capacity as a parish councillor. They were acting in a private capacity; (ii) Conduct complained of was not

APPENDIX 2

		serious enough to warrant an investigation and not in the public interest to expend further resources on investigation
2018/4	Complaint about Ryedale District Councillor. Bringing office into disrepute – posting on social media	Rejected at stage 1 following consultation with IP: (i) Postings were not made by person acting as a parish councillor – they were not made in capacity as a parish councillor .They were acting in a private capacity; (ii) Conduct complained of was not serious enough to warrant an investigation and not in the public interest to expend further resources on investigation
2018/5	Complaint about Parish/Town Councillor Bringing office into disrepute - Claiming a mandate and representing themselves as acting as a parish/town councillor.	Rejected at stage 1 following consultation with IP: (i) The actions were not made by person acting as a parish/town councillor – they were not made in capacity as a parish councillor. They were acting in a private capacity; (ii) Conduct complained of was not serious enough to warrant an investigation and not in the public interest to expend further resources on investigation
2019/1	Complaint about District Councillor Allegedly compromising the impartiality of Officers by lobbying	Pending - under assessment