1.0 PURPOSE OF REPORT

1.1 The Commission has been requested to review how the Council deals with Code of Conduct Complaints. The Commission can use the information in the report to consider if a review of the Code of Conduct should be included in the work programme.

1.2 Any work identified should not include the assessment/consideration of individual complaints and should consider the responsibilities of the General Purposes (GP) Committee regarding the Code of Conduct.

2.0 RECOMMENDATION

2.1 It is recommended that the Overview and Scrutiny Commission agrees either:

1) That a review of the way the Council handles Code of Conduct complaints is included in the work programme and, if so;
   - Agrees a scope for the work (including the criteria and work/evidence required); and,
   - Agrees the priority of the review within the programme

   Or

2) That a review of the way the Council handles Code of Conduct complaints is not included in the work programme

3.0 THE REPORT
1. Commission Meeting 29 October 2018

3.1 At the Overview and Scrutiny Commission meeting held on 29 October 2018 a potential future item of work was proposed by a member of the public regarding how Code of Conduct complaints were dealt with. In particular the following points were made:

- The way the Council’s legal and governance department deals with complaints against both councillors and council officers
- Too much power is held by the Head of Legal & Governance /Monitoring Officer
- The Monitoring Officer is entirely independent and impartial and ‘not fully accountable to anyone’ and at the same time there would appear to be a conflict of interest as the Monitoring Officer reports to both the Director of Corporate Affairs & the Chief Executive - How does the Monitoring Officer ensure impartially with any complaints involving either of these two officers or the Leader of the Council
- At present the only person the Monitoring Officer appears to consult in relation to complaints is the Independent Person but he has no power to overrule the Monitoring Officer’s decisions; and their advice is not available to the complainant
- There also seems to be a lack of consistency with the Monitoring Officer choosing to refer some complaints to a standards hearing (where a decision would be made by a panel of councillors) but choosing not to do so in other cases
- When the Monitoring officer decides to take no further action there is no obligation to inform other councillors of the nature of the complaint; or explain clearly why there is no decision to proceed
- Wouldn’t it be so much more open, transparent and fully accountable if ALL complaints were heard by a panel comprising both councillors and legal officers?
- What about complaints against council officers what procedures are in place to ensure that officers who behave improperly, such as providing misleading information to the public, are required to account for themselves and potentially face disciplinary proceedings? At present, this again, seems to be entirely at the discretion of the Monitoring Officer.

3.2 The Commission was asked to consider whether to include Code of Conduct complaint handling in its future work programme; and in particular the role played by the Head of Legal & Governance in assessing and deciding upon complaints. In addition to this during the consideration about the request to review complaint handling by the Commission clarification about the ‘no blame’ culture within the Council was identified.

3.3 It was agreed that the Commission would seek further information about the issues raised before any decision was made to include this item in the future work programme. This report therefore provides additional information for the Commission to consider regarding Code of Conduct complaints.

2. Background

1. Councillor Code of Conduct
3.4 The Localism Act 2011 abolished the England-wide regulatory regime regulating councillors’ conduct and registration of pecuniary interests, with sanctions applied by the Standards Board (established by the Local Government Act 2000). It included the following measures:

- The abolition of Standards for England (previously the ‘Local Government Standards Board for England’);
- A requirement for local authorities to promote and maintain high standards of conduct;
- Provision for the introduction of local codes of conduct and local responsibility for investigating alleged breaches of those codes. Local authorities were to establish a code, which was to be based on the seven ‘Nolan principles’ of public life and to specify sanctions for breaking it; (this must include the appointment of at least one ‘independent person’)
- Requirements concerning how local codes of conduct should treat the registration and disclosure of pecuniary and other interests;
- The creation of a new criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests

3.5 Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an ‘independent person’ to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code. There is no ‘official’ model code of conduct. Councils may choose to retain the standard code of conduct used under the previous regime, most recently updated in 2007. Since the passage of the 2011 Act, model codes of conduct have been produced by DCLG, the Local Government Association, and the National Association of Local Councils

2. Officer Code of Conduct

3.6 There has never been a statutory code covering the conduct of local authority staff in England. The Local Government Act 2000 contained a power to introduce one, but this power was repealed by the Localism Act 2011, so one cannot now be introduced in England. Local authorities are free to decide to institute a code of conduct for their own staff.

3. The Role of Monitoring Officer

3.7 The Monitoring Officer’s role is set out section 5 of the Local Government and Housing Act 1989, which was amended by Schedule 5 of the Local Government Act 2000. Additional responsibilities relating to standards and conduct can be found in Part III of the 2000 Act. The role cannot be exercised by the authority’s head of paid service in a county, county borough, district or London borough, the Greater London Authority or the Common Council of the City of London in its capacity as a local authority, police authority or port health authority.

3.8 In general the Monitoring Officer has three principal responsibilities:

- To report on matters they believe are, or may be, illegal or amount of
maladministration. There is particular provision in the 1989 Act as to how these reports should be framed, and how they should be responded to;
- To be responsible for the conduct of councillors
- To be responsible for the operation, review and updating of the constitution

3.9 The MO is not generally responsible for officer conduct.

4. Harrogate Borough Council (HBC) Councillor Code of Conduct

3.10 The Code of Conduct arrangements and procedures for HBC were agreed in January 2012, see APPENDIX A. The Code of Conduct is contained in Part 5 of the Constitution (see APPENDIX B) this also includes the process for the consideration of complaints and the roles of the Monitoring Officer and Independent person.

3.11 Part 5 of the Constitution (Members Code of Conduct) includes the following sections:

I. Conduct of Members

- The General Principles of Public Life
- Scope of Rules
- Inspection of Land, Premises, Etc
- Special Interest Declarations by Cabinet Members
- Cabinet Member Attendances at Overview and Scrutiny
- Legal Advice on Interests Issues
- Complaints on Conduct of Members

II. Members Code of Conduct

Part 1 General Provisions
Part 2 Disclosable Pecuniary Interests
- Effect of Interests on Participation
- Sensitive Interests

III. Supplementary Protocol – Disclosure of Confidential Information Under Paragraph 5 of the Code

IV. Guidance for Members on the Acceptance of Gifts and/or Hospitality

- Gifts
- Giving and receiving hospitality
- Checklist and register

3.12 Most of the comments about Code of Conduct complaints are about the way that complaints are dealt with and the roles of the Monitoring Officer and Independent Person. The following is therefore a summary of the process for dealing with standards complaints at HBC.
5. HBC Arrangements for Dealing with Standards Allegations
Under the Localism Act (APPENDIX B)

I. Making a complaint

3.13 Complaints are received in writing to the Monitoring Officer (MO). The MO has statutory responsibility for maintaining the register of members’ interests and administering the system in respect of complaints of member misconduct. The MO will acknowledge receipt of the complaint within five working days of receiving it, and will keep the complainant informed of progress.

II. Will the complaint be investigated?

3.14 The MO reviews all complaints received and may, after consultation with the Independent Person, decide whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of the complaint. Where the MO has taken a decision, he/she will inform the complainant and the reasons for that decision.

3.15 The MO may decide not to investigate a complaint if he/she decides it is inappropriate to do so, there are a number of potential reasons listed, (approved by Council) to reject a code of conduct complaint. The MO may consult the Independent Person at this stage and in those circumstances must take their opinion into account before deciding whether or not to nominate an investigating officer.

3.16 If at this stage or at any point during an investigation it appears likely that a criminal offence has been committed the MO may refer the matter to the Police or such other regulatory agencies as the MO considers appropriate and, if necessary, halt the investigation pending their consideration and/or criminal proceeding.

III. How is the investigation conducted?

3.17 If the MO decides that a complaint merits formal investigation, they will appoint an Investigating Officer who may be:

- Another officer of the authority
- An officer of another authority
- An external investigator.

3.18 It is the Investigating Officer that will decide whether they need to meet the complainant or speak to them and suggest what documents they need or who to interview.

3.19 At the end of the investigation, the Investigating Officer will produce a draft report and send copies to the complainant and to the member concerned for comment.

3.20 Having received and taken account any comments the Investigating Officer will send the final report to the MO.
IV. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

3.21 The MO will review the Investigating Officer’s report and, if satisfied will write to the complainant and to the member concerned indicating that no further action is required enclosing a copy of the final report. If the MO is not satisfied that the investigation has been conducted properly or feels that further clarification is required, the MO may ask the Investigating Officer to reconsider the report.

V. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

3.22 The MO will review the Investigating Officer’s report in the same way as above and will then either send the matter for local hearing before the Hearing Panel or, after consulting the Independent Person, seek local resolution:

- Local Resolution

3.23 The MO may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the MO will consult the Independent Person and the complainant and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. This may include:

- The member accepting that his/her conduct was unacceptable and offering an apology
- and/or other remedial action the authority

3.24 If the member complies with the suggested resolution, the MO may report the matter to the General Purposes Committee in respect of a breach of the Code, but will take no further action. However, if the complainant informs the MO that any suggested resolution would not be adequate, the MO will give further consideration to referring the matter for a local hearing and may take the Independent Person’s view into account in making that decision. However, the decision as to whether the matter should proceed to a hearing is for the MO, who will exercise their discretion reasonably.

- Local Hearing

3.25 If the MO considers that local resolution is not appropriate or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the MO will report the Investigating Officer’s report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. The Council has agreed a procedure for local hearings, which is attached as Appendix 4 to the Members’ Code of Conduct (APPENDIX B).

VI. The Hearings Panel

3.26 The Hearings Panel is a panel of General Purposes (GP) Committee and will comprise a maximum of three members of the Committee. The
Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member’s conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

VII. The Independent Person

3.27 The Independent Person’s role is as set out in the Localism Act and the Constitution. The Authority must consult the Independent Person in certain circumstances and may do so in others. The subject of a complaint may also contact them. There is no statutory provision for contact between a complainant or potential complainant and the Independent Person. In particular, whilst the Independent Person is a source of advice, they will not express an opinion on any particular complaint, unless and until it reaches a Hearings Panel.

3.28 The Independent Person is a person who has applied for the post following advertisement of a vacancy, and is appointed by a positive vote from a majority of all the members of Council. There are restrictions on who can be the Council’s Independent Person (see APPENDIX B).

VIII. What happens at the end of the hearing?

3.29 At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Panel resolves to take.

3.30 As soon as reasonably practicable thereafter, the MO shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to the complainant, to the member (and to the Parish Council) and make the decision notice available for public inspection.

IX. What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

3.31 The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. These are detailed in APPENDIX B.

X. Appeals

3.32 There is no right of appeal for the complainant or for the member against a decision of the MO or of the Hearings Panel. If the complainant feels that the authority has failed to deal with a complaint properly, they may make a complaint to the Local Government Ombudsman.

6. Officer Code of Conduct

3.33 The Council has an Officers’ Code Of Conduct see APPENDIX C. The MO is not responsible for complaints against officers and it is the responsibility of line managers for individual officers to deal with complaints against them.
The MO will only be involved when complaints are linked with the MO’s statutory duties. The Council has policies and procedures in place to deal with performance/disciplinary/capability and also customer complaints. A copy of the Disciplinary Procedure is attached at APPENDIX D.

7. Review/Reporting/Monitoring

3.34 GP Committee is responsible for advising Council on all matters relating to the promotion and maintenance of high standards of conduct, this includes revisions to the Member Code of Conduct (or adopting a new one) and monitoring it’s operation. It advises Council on the procedures for resolving or determining complaints against Members.

3.35 In March each year the Committee considers a summary of the complaints made to the Monitoring Officer about alleged breaches of the member’s code of conduct. This includes complaints against Borough Council and Parish Council members and their outcome, a copy of the report for 2017/18 is attached at APPENDIX E.

3.36 In March each year GP Committee considers the complaints to the Local Government and Social Care Ombudsman (LG&SCO) and the Housing Ombudsman (other than those which were rejected for being premature). A copy of the report for 2017/18 is attached at APPENDIX F.

3.37 The operation of the Member and Officer Code of Conduct is reviewed as part of the statutory review of governance arrangements. This is reported as part of the process for the signing of the Annual Governance Statement by the Audit and Governance Committee, Chief Executive and Leader of the Council in July each year.

8. Comments on Member Code of Conduct Complaints

3.38 To provide the Commission with some comparative information Code of Conduct information from 15 CIPFA Nearest Neighbour Councils and 6 other North Yorkshire District Councils was considered (as far as possible), see APPENDIX G. This information is considered in outline in the following sections so that an initial comparison can be made with processes/procedures at Harrogate Borough Council. It should be noted that the information obtained was only that publicly available from other councils. This was not consistent and in some cases contradictory procedures were indicated on the same website.

- The role of the Monitoring Officer/Independence/Impartiality

3.39 The role of the MO is a statutory appointment and is detailed in paragraphs 3.7-3.8. In all of the Council’s compared (21) it was the responsibility of the MO to deal with Councillor Code of Conduct complaints.

3.40 The MO in each authority would have arrangements similar to Harrogate and therefore would deal with complaints about the Leader of the Council. There were no references in Code of Conduct arrangements for any Council to deal with complaints against persons in this position separately.
• **Consultation with the Independent Person**

3.41 The Council must have at least one independent person whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate. The MO must therefore consult the Independent Person in certain circumstances and may do so in others. The views of the Independent Person may also be sought by the following:

- A member, or co-opted member, of the authority if that person’s behaviour is the subject of an allegation
- By a member, or co-opted member, of a parish council if that person’s behaviour is the subject of an allegation and the authority is the parish council’s principal authority

4.42 There is no statutory provision for contact between the Independent Person and the complainant/potential complainant.

• **Monitoring Officer referral of complaints to Hearing Panel**

4.43 Complaints would only be considered by the Hearing Panel if it is determined that there has been a breach of the Code of Conduct. The Hearing Panel does not consider complaints where it has been determined that there is no breach. The process is summarised below:

1) The MO in consultation with the Independent Person, has decided that the complaint merits formal investigation (See 3.13-3.15)
2) An Investigating Officer has been appointed (another officer/officer of another authority/external investigator) (See 3.16-3.19)
3) The Investigating Officer’s report indicates a breach of the Code. This is then reviewed by the MO and the matter will either be sent for local hearing before the Hearing Panel or, after consultation with the Independent Person, local resolution is sought (See 3.20-3.21)

4.44 In addition, after the above:

4) If the MO considers that local resolution is not appropriate or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the MO will report the Investigating Officer’s report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member (See 3.24)
5) If the complainant informs the MO that any suggested resolution would not be adequate, the MO will give further consideration to referring the matter for a local hearing and may take the Independent Person’s view into account in making that decision. However, the decision as to whether the matter should proceed to a hearing is for the MO, who will exercise their discretion reasonably (See 3.23)

4.45 The information available from CIPFA nearest neighbours and North Yorkshire councils indicated that 14 (out of 21) had the same arrangements detailed above, 4 did not provide sufficient information and 3 had some
variation to the above although this was not always clear. The councils that indicated some differences were Mid-Sussex, Horsham and Stroud.

- **Monitoring officer decisions to take no further action and communication of the outcome**

4.46 The Monitoring Officer would decide that no further action is required as summarised below, this also includes communication of the outcome:

1) After receipt of a complaint the MO, after consultation with the Independent Person, decides that no formal investigation is required.

   *Where the MO has taken this decision, he/she will inform the complainant and the reasons for that decision (See 3.13-3.14)*

2) If the complaint has been investigated and the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct.

   *The MO will review the report and, if satisfied will write to the complainant and to the member concerned indicating that no further action is required enclosing a copy of the Investigating Officer's final report (See 3.20)*.

4.47 The information available from CIPFA nearest neighbours and North Yorkshire councils regarding these issues is the same as detailed in paragraph 4.42.

9. **Comments on Member Code of Conduct Complaints**

4.48 The procedures in place for complaints against officers are summarised in paragraph 3.31. The Officers Code Of Conduct is attached at APPENDIX C and a copy of the Disciplinary Procedure is attached at APPENDIX D.

4.49 The MO is not responsible for complaints against officers and will only be involved when complaints are linked with the MO’s statutory duties.

10. **No Blame Culture**

4.50 The issue of a ‘no blame culture’ has been the subject of public questions at a number of Council meetings since 2016. These are detailed below with the relevant sections of the minutes attached at APPENDIX H

- Question to the Cabinet Member for Culture and Sport, on 5 October 2016
- Question to General Purposes Committee on 10 November 2016
- Question to Leader of the Council, Councillor on 8th February 2017 (Council)
- Question to Leader of the Council on 1st March (Council) 2017
- Question to Leader of the Council on 6 December 2018 (Council) – Minutes not yet available

**Definition**
4.51 The following definition of No Blame Culture is provided by Oxford University Press:

No blame culture “Is the phrase used to describe the tolerance of mistakes within an organisation providing that people learn from these mistakes. It is usually associated with empowerment and the learning organisation, where employees are responsible for making their own decisions. An empowered employee must be free to make mistakes and then learn from these by evaluating the outcomes and discussing the issues with work colleagues. For many managers, the no blame culture presents particular problems because they must resist the temptation to tell employees what to do and instead persuade and encourage them to reach their own decisions. This is often more time-consuming”.

Oxford University Press

4.52 The following is a description of what a no blame culture looks like from Investors in People (IIP) : https://www.investorsinpeople.com/what-does-a-no-blame-culture-actually-look-like/

- **What is a no blame culture?**

“No blame cultures embrace the possibility of errors and encourage their reporting. They are underpinned by the belief that errors are inherent to the existence of organisations. Errors, or deficiencies that may cause errors, are treated as systemic factors (rather than personal faults) and responded to accordingly.

In no blame cultures, speaking up about errors is a fundamental duty of every employee. No blame cultures can exist in highly hierarchical organisations, flat organisations and everything in between, but the mandate to speak up transcends hierarchy.

This is the traditional conception of a no blame culture, which has since evolved. The more modern incarnation is less about learning from errors and more about encouraging experimentation by ensuring employees are not personally affected by the negative consequences of experimentation (such as failure).

- **Where do no blame cultures come from?**

No blame cultures originate in organisations where tiny errors can have catastrophic consequences. These are known as high reliability organisations (HROs) and include hospitals, submarines and airlines.

Because errors can be so catastrophic in these organisations, it’s dangerous to operate in an environment where employees don’t feel able to report errors that have been made or raise concerns about deficiencies that may turn into future errors.

No blame cultures embrace the possibility of errors and encourage their
reporting.

No blame cultures were therefore introduced to make sure errors and deficiencies were highlighted by employees as early as possible. This has happened in different industries but the most commonly-cited is the airline industry.

The National Transportation Safety Board (NTSB), which supervises air traffic across the United States, is now underpinned by the belief that errors are inherent to human activity rather than causally linked to poor performance.

- What are the characteristics of no blame cultures?

No blame cultures tend to be driven by specific organisational characteristics, including:

- **A shared understanding of complexity**: unfortunately humans are biased to attribute errors to people, even if the cause is systemic. No blame cultures spend time and energy ensuring employees understand how complex organisations are, so they can better attribute errors to systemic factors.

- **An appreciation for others**: air traffic control organisations expose employees to the stresses and problems that arise in their colleagues’ jobs so that, if things go wrong, everyone is more likely to understand why it went wrong, rather than blame poor performance.

- **Belief in honesty**: honesty is an oil that lubricates the functioning of high reliability organisations. Without honesty, organisations don’t have a true overview of where they are and therefore aren’t able to make effective and informed decisions. No blame cultures therefore value and incentivise honesty.

- **The regular use of debriefs**: critique is fundamental to the success of no blame cultures because it allows processes to be effectively understood, deconstructed and put back together in better ways. Debriefs help ascertain what went wrong and what should be changed in future and ensure everyone is on the same page.

- **Deferece to expertise**: operational decision-making in normal organisations tends to follow the organisational chart, despite subject-matter experts often in a better position to make informed decisions. In no blame cultures, the hierarchy is loose enough that experts are able to lead on operational issues where appropriate.

- **A focus on behavioural expectations**: in an increasingly complex world, achieving outcomes becomes more difficult because of the number of variables involved. Judging people on outcomes can therefore be unfair, while judging them on behaviours encourages alignment with organisational values.

- **Realistic understanding of human beings**: holding people to high standards can encourage performance, but organisations shouldn’t ignore the realities of human beings.
(for example, that people can have ‘off days.’) No blame cultures are underpinned by the reality of being a human being and people are not expected to be superheroes. Instead, they are encouraged to see themselves as imperfect but valuable parts of a wider system.”

10. The Way Forward

4.53 The Commission has been requested to review how the Council deals with Code of Conduct Complaints. This report provides information about the Member and Officer Code of Conduct and how complaints are handled including the Roles of the MO and Independent Person. In addition to this some comparative information from CIPFA nearest neighbours and North Yorkshire councils has been provided so that the Commission can (where possible) compare/take into account how complaints are handled in other similar Councils.

4.54 The Commission can use the information in the report to consider if a review of the Code of Conduct should be included in the work programme. If a review is to be undertaken a scope should be agreed identifying the criteria for the review, the work/evidence required and also the priority of the review within the programme.

4.55 Any work identified should not include the assessment/consideration of individual complaints and should consider the responsibilities of the GP Committee regarding the Code of Conduct.

4.0 REQUIRED ASSESSMENTS AND IMPLICATIONS

4.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.

5.0 CONCLUSIONS

5.1 This report presents information that the Commission can consider to agree if a review of the Code of Conduct should be included in the work programme.

OFFICER CONTACT: Please contact Mark Codman (Scrutiny, Governance and Risk Manager), if you require any further information on the contents of this report. The officer can be contacted at Legal and Governance, PO Box 787, Harrogate, HG1 9RW or 01423 500600 Ext 58595 or by e-mail – mark.codman@harrogate.gov.uk