
Joint Standards Committee

14 May 2024

Report of the Head of Human Resources and OD

Summary

1. This report summarises the support available to CYC staff who are considering or who make a complaint against councillors as a result of alleged breaches of the Member Code of Conduct under the Joint Standards Committee Procedures.

Background

2. How officers and elected members should interact whilst working together is governed by the appropriate codes of conduct which can be found in the **Councils Constitution in Appendices 14, 15 and 16**. These are the Member Code of Conduct, the Employee Code of Conduct and the Protocol on Officer Member Relations.
3. Whilst the expectation is that both officers and members treat each other with respect, dignity and courtesy, appreciating each other's roles, occasionally relationships breakdown. Every effort will be made to resolve matters informally. However, sometimes this is not appropriate, and individuals are able to raise concerns about any action or statement relating to them or a colleague which may breach these respective codes through a formal process.
4. All such complaints raised are managed using the appropriate employment procedures for officers and through the joint standards committee procedures, for Elected members (council or parish councillors) see **Annex 1** to this report. It is important to note that the sanctions available to deal with alleged breaches of the Employee Code of Conduct and Member Code of Conduct are different. An employee (or officer) can lose their job. There is no equivalent sanction of disqualification for a Member. It should be recognised that this imbalance may potentially inhibit officers from making complaints. Reassurance that appropriate support will be given to officers who wish to raise complaints is particularly significant in this context.

5. In terms of Council Staff, as an employer, the Council has a duty to promptly address grievances through an implied term in the employees' contracts of employment. Failure to follow an appropriate procedure to do this could leave the council at risk of legal challenge through claims for constructive dismissal and /or discrimination (depending upon the complaint itself). This can, create reputational damage and impact how others may view the council as a place to work.
6. Similarly, if complaints are not appropriately investigated, and if upheld, appropriate action taken, complainants may experience harm, may have prolonged periods of sickness absence and potentially raise a claim for negligence through personal injury. As an employer, the Council has a duty of care to provide a safe place of work with both a moral and legal duty to comply with health and safety legislation in order to safeguard the health, safety and wellbeing of employees and others affected.
7. The procedures for employees and members to raise such complaints are well documented. The purpose of this report is to outline what support is available to staff when raising complaints about elected members through the joint standards committee procedures.

Support available to CYC Staff

8. As a complainant it is reasonable to expect that you will be required to give details of the matters that have given rise to the complaint and how you have perceived the behaviour. This enables everyone to understand what the complaint is which includes any other party for their response. The joint standards process is only applicable to matters which would constitute a breach of the Member Code of Conduct and does not offer a general opportunity to raise grievances. The Monitoring Officer or Deputy Monitor are able to advise on whether a particular complaint is likely to be in scope.
9. Unlike internal employment processes however, employees who raise complaints against an elected member, which following an investigation is referred to a Standard's Hearing, will be viewed as one of the parties to the process. Unless a decision has been taken at the outset to withhold the complainant's identity, they are given full access to the outcome of any investigation report, including statements from other witnesses. They are also invited to attend the hearing in full, rather than attending as appropriate to answer specific questions related to their own testimony.
10. This means that the complainant will hear the findings of the standards committee alongside and at the same time as the subject

member. This becomes especially difficult if either or both complainant and subject member disagree with the outcome and or findings of the hearing potentially leaving both parties, having heard all the evidence to continue to interact with each other in their respective roles. For reference, a list of outcomes and potential sanctions that the hearing panel can impose or recommend is noted in **Annex 2** to this report.

11. Whilst it is important to understand if any misconduct has occurred and appropriate action taken, all parties in any process must be safeguarded. Care must therefore be taken to ensure that neither party feel victimised or undermined, either before, during or after any formal process.
12. Support available to employees will be as per those available through the council's employment procedures.

These include:

- Consideration by the Monitoring Officer in discussion with the Independent Person as to whether the complainant's identity should be kept confidential if there is a fear of reprisal and /or a risk of physical harm.
- Access to the employee assistance scheme provided by Health assured.
 - o This programme is a confidential employee benefit designed to help employees deal with personal and professional problems that could be affecting their home or work life, health and general wellbeing. It offers expert advice and compassionate guidance 24 hours a day 7 days a week;
- Line Manager Support:
 - o Listening to concerns, accessing appropriate guidance, facilitating as requested assistance to help the employee resolve matters informally alongside providing ongoing health and wellbeing support to the individual throughout the process.
 - o This might require, with guidance from HR, temporary measures put in place to limit or eliminate contact between both parties during any investigation. This could include redirecting the subject member to another member of staff on matters they would normally contact the complainant for; or allowing the employee to work from a different location to reduce/ eliminate contact. Such actions would only be taken with the agreement of the employee.
 - o Ongoing monitoring of the interactions between the two individuals to ensure that future contact is appropriate, and any recommended actions are adhered to.

- As needed, carryout a stress risk assessment with the complainant to identify and put in place other measures of support that might be needed.
- Ensure any incidents involving violence, aggression, threatening behaviours, and verbal abuse are reported appropriately on the council's health and safety incident system, to ensure that the matter is appropriately reported, investigated with appropriate risk assessment put in place as required.
- Trade Union representation
 - Trade union representative will provide support to individual employees on how best to address an issue and as needed will assist employees to raise those concerns with the appropriate person. They will also accompany individuals to discussions regarding their complaint where procedures permit and provide the individual with advice/guidance on options.
- Right to be accompanied
 - Both the complainant and the subject of the allegations can request support from The Independent Person about the standards committee process prior to and/ or for the hearing itself.
 - Members might want to consider reviewing the existing procedure to enable and make explicit that the complainants who are members of staff be given a right to be accompanied by a fellow employee or TU representative in any investigatory meeting and or formal hearing. This is normal practice in internal employment procedures and will provide those employees with support during what could be a difficult process.
- HR advice and guidance
 - Provided to both the line manager and individual around appropriate procedures through which to raise concerns and other safeguards that might need to be put in place temporarily or permanently depending upon the allegations and any findings from the appropriate procedure.

Implications

13. **Financial** - Not applicable to this report.
14. **Human Resources (HR)** - Contained within the main body of this report.
15. **Equalities** – Not applicable to this report.

16. **Legal** - Section 28 of the Localism Act 2011 provides that LAs (other than parish councils) must put in place 'arrangements' that set out the process for dealing with complaints of misconduct and the actions which may be taken against a member or co-opted member who is found to have failed to comply with the Member Code of Conduct. There is local discretion in respect of these arrangements subject to minimum statutory requirements including the involvement of an Independent Person.

The Localism Act does not give the LA or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. Where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited.

The Council follows guidance produced by the Local Government Association on the handling of complaints referenced in this report as a background document.

17. **Crime and Disorder, Information Technology and Property** - Not applicable to this report.

Recommendations

13. Joint Standards Committee are recommended to;
- a. Note the contents of the report and the context of the support and obligations that are afforded to employees from their employer.
 - b. To maintain confidence in the Standards process, any review of current procedures should consider:
 - i. enabling and making explicit that complainants who are members of staff be given a right to be accompanied by a fellow employee or TU representative in any investigatory meeting and or formal hearing in line with other employment practices.
 - ii. how best to support a complainant who is an officer during and after any Standards investigation and/or Hearing.

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Report
Approved

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Specialist Implications Officer(s):

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

- Annex 1
 - For employees (i) Employee Grievance Procedure (ii) Dignity at Work Procedure
 - For Members
Joint Standards Committee Procedure – Council Constitution Appendix 29 ([Public Pack](#))[Agenda Document for Constitution, 19/04/2024 00:00 \(york.gov.uk\)](#) - please open section 3 appendices and then Appendix 29 in the table of contents.
- Annex 2 Outcome and Potential Sanctions ([Public Pack](#))[Agenda Document for Constitution, 19/04/2024 00:00 \(york.gov.uk\)](#) - please open section 3 appendices and then Appendix 29 para 35 in the table of contents.

Other relevant documents to this report held in the constitution can be found in:

- Appendix 14 Member Code of Conduct
- Appendix 15 Employee Code of Conduct and
- Appendix 16 Protocol on officer Member Relations