

**Joint Standards Committee**  
**Hearings Sub Committee – 18 December 2023**  
**Code of Conduct Complaints Relating To City of York**  
**Council and Osbaldwick Parish Council**

Date of Complaint	16/04/2023
Date of Initial Assessment by JSC	26/06/2023
Hearing Date	18/12/2023
Independent Person	Joe Leigh

**Panel**

The Panel comprised Councillor C Runciman (Chair), Councillor T Fisher and Parish Councillor M Waudby. The Panel is not required to be politically balanced.

The Independent Person's view was provided to the Panel and taken into account at all relevant times in the procedure. The Independent Person was not a voting member of the Panel.

**The Hearing**

The Panel resolved to exclude the Press and Public from the meeting due to the consideration of exempt information, namely "Information relating to any individual" and "Information which is likely to reveal the identity of an individual". They noted that such information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The individuals concerned were the subject member, the witnesses and the complainant. Whilst the Panel was aware the subject member had expressed that they had no interest in the matter being confidential, that was not the sole viewpoint to consider. There was a clear interest in maintaining public confidence in bringing complaints forward without fear of unwanted public attention.

**The Complaint**

On 16 April 2023 the Monitoring Officer received a complaint from a resident alleging that Cllr Mark Warters had breached the Code of Conduct by arranging for his election leaflet to be circulated with the Osbaldwick Parish Council Spring newsletter (which was very similar in appearance). The resident expressed concern that the newsletter was publicly funded and its distribution at the same time as Cllr Warters' election literature was designed to attribute the achievements of the Parish Council to Cllr Warters and thereby constituted a misuse of resources and an attempt to gain an advantage, contrary to the Parish Council Code of Conduct.

**Decision – Findings of fact on the balance of probability**

The Panel members considered the evidence gathered by the Investigating Officer from the complainant and from the Parish Clerk. They accepted that the subject member had been provided with ample opportunity to contest both the alleged facts and the issue of whether those facts amounted to a breach of the Code. They noted

that the subject member had emphatically declined to participate in the investigation and hearing but were prepared to accept two late testimonials on behalf of the subject member. None of the subject member or supporter comments however went to the facts of the case which were effectively undisputed. The Panel accepted the investigating officer's analysis of the facts with one minor amendment and concluded as follows:

We make the following findings on the balance of probabilities:

1. Cllr Warters prepared and arranged the printing of both documents and failed to ensure that distribution was carried out separately;
2. The format and layout of the documents is strikingly similar;
3. Cllr Warters arranged for other members of the Parish Council to distribute some or all of the documents alongside copies of the Parish Council newsletter. This amounted to the use of Parish Council resources;
4. At least some of the Parish Council members delivered the leaflets together with one document tucked inside the other;
5. It was reasonably foreseeable that delivering the two documents in this way would create the impression that he was trying to strengthen his campaign for re-election by associating it with the work and achievements of the Parish Council;
6. By acting in this way, it was reasonably foreseeable that the impression of seeking an unfair advantage would be created.

### **Was there a breach?**

Members of the Panel considered the LGA guidance set out in the report and applied their own knowledge of Parish matters and election publicity restrictions. Because the delivery of the Parish newsletters used council resources and the impression created by the similarity of the two documents and their delivery together was foreseeably favourable to his election campaign, Cllr Warters had acted in breach of paragraph 3 of the Code.

### **Decision – Sanction**

Where a Hearings Panel makes a finding of breach of the Code it may impose one or more of the sanctions listed in the case handling procedure (p726 Constitution) or impose no sanction.

The Panel considered the investigating officer's recommendation on sanction and the Independent Person's view. The Investigating Officer invited a recommendation to the Parish Council to pass a motion of censure.

The Panel agreed that to take no action in respect of a clear breach was wrong. It decided however that the sanction should squarely address what had gone wrong and provide guidance for the future. As there was no evidence of a deliberate effort to cast a favourable impression on the councillor's election campaign, a punitive effect was not appropriate. The Panel therefore resolved to:

Instruct the Monitoring Officer to (or recommend that the parish council) arrange

training for the subject member.

This would be by issuing an open letter of advice which would help to avoid the risk of the same issue recurring inadvertently and be of assistance to both other councillors and parish council staff.

**The Independent Person**

For transparency the Independent Person's view was that there had been a breach of the code and a sanction should be imposed.

***There is no internal right of appeal against this decision.***

***All parties (and the clerk in parish cases) will be notified of the Hearing Panel's decision.***

***A decision notice will be published on the Council website within 3 working days of the Hearings Panel decision.***

Signed

Councillor C Runciman  
Chair of Hearings Panel



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Members and Clerk  
Osbalwick Parish Council

**By email only**

21<sup>st</sup> December 2023

Dear Sirs

**Code of Conduct Complaint Outcome**

The Council's Joint Standards Committee has recently dealt with a complaint against the chair of a parish council. The Hearings Sub-Committee found that there had been a breach of the Member Code of Conduct. It resolved to send a letter of advice to the parish council concerned and also to make that an open letter, accessible to all parish councils.

The complaint related to election literature published by the chair of the parish council, who was standing for re-election as a member of the City Council. The member played a central role in creating and publishing the parish newsletter. He also created and published his own election leaflet at around the same time. The same print company was used for both documents. Members of the parish council, who were responsible for delivering the newsletter, agreed to also deliver the chair's election leaflet.

The complainant, a local resident, received both leaflets at the same time with one tucked inside the other. He complained that this was likely to give the impression that the member's re-election campaign and the work and achievements of the parish council were connected.

The Hearings Sub-Committee found that the member concerned had prepared and arranged the distribution of both documents. One or more of the other members of the parish council had taken part in delivering both documents together. The parish newsletter and the election leaflet were strikingly similar in appearance, which gave the impression that they were connected. As a result, the member gained an electoral advantage from his use of parish council resources and had breached the Code. It was reasonably foreseeable that delivering the documents in this manner would create this impression. The Sub-Committee was also concerned that other members of the parish council appeared to have facilitated this by delivering the documents together.

The Code requires Members at all times to avoid obtaining political advantage from the use of council resources, but this is especially important during the run-up to an election. The learning points for members include:

- Political and council publications should not be delivered together. In this case, there were good reasons why the two deliveries had to take place around the same time, but it was the responsibility of the chair to ensure that they were not delivered together;
- In this case, the two documents had been written by the same person and printed by the same printer and were almost identical in appearance. The realities of parish council administration often mean that one person is responsible for several roles, but this makes it especially important to ensure that the publications that they produce do not give a misleading impression;
- The complaint related to the chair of the parish council only, but the Sub-Committee was concerned that other members of the parish council had facilitated this by the way in which they delivered the

documents. It is the personal responsibility of every member to ensure that they do not become involved in a breach of the Code.

For further guidance see:

LGA Councillor Code of Conduct and Guidance at  
<https://www.local.gov.uk/our-support/guidance-and-resources/civility-public-life-resources-councillors/councillor-conduct> :

Code of Practice on Local Authority Publicity at  
<https://assets.publishing.service.gov.uk/media/5a75a04aed915d506ee80433/1878324.pdf>



Yours faithfully,

Frances Harrison  
Head of Legal Services & Deputy Monitoring Officer