

Joint Standards Assessments Sub-Committee

26th June 2023

Report of the Deputy Monitoring Officer

Code of Conduct Complaint received in respect of a Parish Councillor

Summary

1. To consider a complaint of breach of the Code of Conduct received in respect of a Parish Councillor and determine next steps.

Recommendations

2. The options available to the Sub-Committee in respect of the complaint are as follows:
 - a. Rule that the complaint is out of scope.
 - b. Rule that the complaint is in scope and choose to (i) take no further action, (ii) seek to resolve the matter informally; or (iii) refer the matter for investigation.

Option B (iii) is recommended in respect of this complaint.

In either case there are no rights of appeal to this decision.

**Background
Complaint 1**

3. On 16th April 2023 the Monitoring Officer received a complaint from a resident alleging that a Parish Councillor had breached the Code of Conduct.
4. The action complained of should be assessed by the Committee as a potential breach of the relevant Parish Council's Code of Conduct.

Procedure

5. Under the Case Handling Procedure set out in Appendix 29 of the Constitution, an initial filter is applied to all complaints, essentially “is there a case to answer?”
6. The Monitoring Officer is responsible for applying that filter except that under paragraph 5 of the Procedure, cases of complaints against a member of the Executive or Shadow Executive or a committee chair or deputy, must be referred to a JSC Sub Committee. Paragraph 5 applies in this case.
7. In all cases, the subject member is notified of the complaint and may provide comments. The Parish Councillor has provided comments.
8. If a complaint passes the initial filter, an Independent Person is invited to give a view on what should happen next. The assessment of the IP, as well as that of the Chair or Vice Chair of the JSC is considered in determining which of the following actions, under paragraph 9 should follow, namely
 - a. to take no further action;
 - b. to seek to resolve the matter informally; or
 - c. to refer the matter for investigation.
9. These will be the options available to the Sub Committee today if the complaint is determined to be in scope. Guidance on factors to be taken into account is offered in Paragraph 10 of the Procedure.

Advice of Deputy Monitoring Officer

10. The matters to consider in applying the initial filter are set out in Paragraph 4 of the Procedure:
 - i. check that the complaint is against a councillor;
 - ii. that they were in office at the time of the alleged incident; and
 - iii. that the matter would be capable of being a breach of the Code.
The Council has no authority to deal with complaints which relate solely to a councillor’s private life or things they do which are not related to their role as a councillor or as a representative of the council.

11. The factors are likely to be satisfied in this case with the actions alleged on the face of it being capable of constituting a breach of paragraphs 3 and 4 of the Code, namely:
 3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
 4. He/she shall use the resources of the Council in accordance with its requirements.
12. The Local Government Association publishes guidance on complaints handling which is referred to as a background document. Key aspects of that guidance regarding misuse of position are:
 - a. Councillors should not use, or attempt to use, their public office either for their own or anybody else's personal gain or loss;
 - b. Most decisions will inevitably benefit some people and will be to the detriment of others. It's important when you make those decisions to make them in what you think is the public interest and not be influenced by private interests.
 - c. The term 'improperly' is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that councillors are elected or appointed to public office to serve the public interest.
 - d. Any conduct that unfairly uses a councillor's public position to promote private interests over the public interest will be improper
13. With regard to misuse of resources the Guidance states:

"You may be provided with resources and facilities by your local authority to assist you in carrying out your duties as a councillor.
Examples include:

 - office support
 - stationery
 - equipment such as phones, and computers
 - transport
 - access and use of local authority buildings and rooms

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act 1986."

14. It also highlights the following:

- a. You should never use local authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes;
- b. Your authority may authorise you to use its resources and facilities for legitimate political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct
- c. Resources could include any land or premises, equipment, computers, and materials. The time, skills, and assistance of anybody employed by the authority, or working on its behalf, are also resources, as is information held by the authority which it has not published.
- d. Often it is impractical to separate a councillor's political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents.
- e. You must ensure that there is a sufficient connection between the use of resources and the business of the authority. Only improper use of resources will be a breach of the Code of Conduct.
- f. You should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using the local authority's resources in

these circumstances, you should not appear to be seeking to influence public opinion in favour of you, your party colleagues, or your party.

15. It is the view of the Deputy Monitoring Officer that there is sufficient evidence within the complaint to demonstrate a potential breach of the Code. Factors in favour of progressing to investigation are that the complaint is from a resident, is not tit for tat or repetition of a similar previous complaint. The potential breach is at the more serious end of the spectrum of breaches of the member code. Factors against progressing to investigation are cost and efficacy of available sanctions.

Options

16. The Sub-Committee must now consider the following options:
 - a. Rule that the complaint is out of scope.
 - b. Rule that the complaint is in scope and choose to (i) take no further action, (ii) seek to resolve the matter informally; or (iii) refer the matter for investigation.

Implications

Financial

17. There will be costs incurred in the event that the matter progresses to investigation.

Human Resources (HR)

18. Not applicable to this report.

Equalities

19. Councillors are offered the support of an Independent Person as part of the Complaints Handling Procedure.

Legal

20. The Monitoring Officer is required to consider all formal complaints received in respect of the Code of Conduct in line with the published Procedure for managing Code of Conduct Complaints.

Crime and Disorder, Information Technology (IT) and Property

21. Not applicable to this report.

Other

22. Not applicable to this report.

Contact Details

Author and Officer

Responsible for the report:

Frances Harrison

Deputy Monitoring Officer

Tel No. 01904 551988

**Report
Approved**



Date

15th June 2023

Wards Affected: All

All



For further information please contact the author of the report

Background Papers:

- City of York Council Code of Conduct and Procedure for Handling of Complaints
- City of York Council Constitution
- <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respect>