

Complaint

Report to the Monitoring Officer, City of York Council, into complaints against Councillor Mark Warters.

From Gerard Allen, appointed as Investigating Officer for this complaint by Janie Berry, Monitoring Officer, City of York Council.

The Complaint referred for Investigation and Background

On 3rd January 2021 Jason Moore and Keira Moore (“the Complainants”) submitted a complaint to City of York Council against Councillor Mark Warters (“Cllr Warters”) who is an Independent Member representing Osbaldwick and Derwent Ward in respect of comments they allege Cllr Warters made to the Complainants in a telephone conversation between them on Saturday 28th November 2020 and more generally the alleged behaviour/conduct of Cllr Warters during that telephone conversation (“the Complaint”).

In addition, during a telephone interview with the Complainants on 3rd February regarding the Complaint, the Complainants informed me that on 26th January they became aware of an email which had apparently been sent by Cllr Warters (at 15:44 hours on 28th December 2020) to various Council officers referring to the Complainants and they wished to complain about the content and tone of that email. Its contents were as follows:

[“Dear All,

Still awaiting CYCs definitive opinion as to the status of this verge.

The owner of the Foot Clinic is now parking a vehicle on this verge (despite the foot clinic supposedly having parking for four vehicles) just simply to stick two fingers up to the residents in that area.

This involves driving over a CYC kerb to access the verge - is anyone going to take any action?

If not then my advice to residents will be to park their cars on the road to prevent this manoeuvre, parking that is perfectly legal as it's not in obstruction of a legitimate dropped crossing.

Look forward to this matter being dealt with ASAP.

Mark.

Regards,

Cllr. Mark Warters.”]

That email has therefore been added to/treated as part of the Complaint. Accordingly the content and context/circumstances of that email has therefore been reviewed and assessed as part of the Investigation of the Complaint and taken into account in the preparation of this Reports and its finding/conclusion.

By way of background, the Complainants operate a business from premises located at 289 Hull Road, York, YO10 5JB known as/trading as York Foot Clinic, which is within the Osbaldwick and Derwent Ward – for which Ward Cllr Warters is one of the elected Members.

On Friday 27th November 2020 it came to the attention of the Complainants that fencing had been erected on behalf of the Council on grassed land opposite properties along Hull Road, including on land which it transpires is registered at the Land Registry in the ownership of the Complainants.

The Complainants immediately sought advice from their solicitor, who advised them to contact their Ward Councillors. They telephoned Cllr Warters and left a brief voicemail asking Cllr Warters to phone them back to discuss the erecting of fencing on the Land.

Cllr Warters returned their call the following morning, on 28th November and it is the telephone discussion which resulted in the Complaint.

The Complainants allege that during the telephone conversation Cllr Warters engaged in the following conduct, contending that:

- (i) Cllr Warters was “aggressive in his manner” from early in the conversation after the Complainants thanked him for returning their call but informing them they had already spoken to Cllr Rowley who was investigating the fencing matter and who would be meeting them on Monday 30th November to discuss the fencing matter.
- (ii) Cllr Warters allegedly stated:
 - (a) That they [the Complainants] were “wrong”, that “it’s the Council land and we will do what we want on it”
 - (b) “It’s not my money” when the Complainants said to him that the land belonged to the Complainants and so erecting of fencing on the Land by the Council was a waste of money and time
 - (c) He had already denied the Complainants’ previous application for dropping/lowering of kerb to facilitate vehicular access to/egress from the land for the purpose of parking vehicles in connection with the operation of the Complainants’ business and that he would deny any future applications they might submit.
 - (d) He had “fought bigger people than [the Complainants] and stopped bigger issues than this”.
 - (e) He had “a million better things to do with his time than deal with people like [the Complainants]” when the Complainants invited him to attend the meeting between them and Cllr Rowley arranged for 30th November.

- (iii) It is further alleged that Cllr Warters refused to accept the land belonged to the Complainants even though they allege that they offered to supply him with documents proving their ownership of the land.

The Complainants also contend that Cllr Warters' alleged behaviour during the telephone conversation fails to adhere to the following principles upon which the Code of Conduct is specified as being based:

- (a) Openness – the Complainants allege that they did not have any advance knowledge of, or involvement in, the Council's decision to erect fencing separating the grassed land from their properties. The Complainants consider that the decision to erect fencing on this grassed land 'has been done behind closed doors with its only aim being to harm [the Complainants' business] and to profit others'.
- (b) Accountability – the Complainants allege that Cllr Warters 'flatly refused in a most rude and abrupt manner' their request that he investigate 'potential illegal activity' by the Council in erecting fencing on the land belonging to the Complainants.
- (c) Treat others with respect – the Complainants claim that Cllr Warters was 'aggressive and abusive' with them even though they felt that they had not done anything wrong and consider that there were only 'protecting [their] legal property'.
- (d) Bully/Intimidate – the Complainants contend/consider that Cllrs Warters was intending to bully and intimidate them with his allegedly 'aggressive attitude' and by allegedly claiming that he "had stopped bigger issues than this".
- (e) Equality enactment/legislation – the Complainants contend that Cllr Warters has been discriminatory towards them 'as an independent business owner' by allegedly informed them that he had denied a previous application by them for dropping/lowering of kerb and by allegedly stating to them that he would refuse any further applications from them. They claim this is evidence of a discriminatory attitude to both their business and to persons with disability/mobility issues (as the Complainants says their business involves supplying medical treatments, particularly to persons with mobility issues).
- (f) Bringing the Council into disrepute: - the Complainants contended that Cllr Warters was 'blinded by his aggression/anger' to the extent that they allege he would not listen to them or accept evidence they owned the land.

Relevant Provisions of the City of York Council Members' Code of Conduct

Paragraph 3(1) – duty to treat others with respect

Paragraph 3(2) – duty not do anything which may cause the Council to breach any equality enactment

Paragraph 3(3) – duty not bully or intimidate any person, or attempt to bully or intimidate them

Paragraph 3(4) – duty not do anything which compromises the impartiality of anyone who works for or behalf of the Authority, or do anything that is likely to compromise their impartiality

Paragraph 3(7) – duty not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute

A copy of the complaint can be found at Annex 1 and the Code of Conduct can be found at Annex 2, attached to this report.

The Investigation

On 12th January 2021 I was instructed by the Monitoring Officer to conduct an investigation into the complaint.

Documents which were considered

- a) Letter from Complainants to the Council's Monitoring Officer dated 3rd January 2020 making the Complaint
- b) Email from Cllr Waters dated 15th January setting out his recollection of the background and his full responses to the allegations made in the Complaint.
- c) Emails which Cllr Warters had sent to:
 - (i) Cllr Rowley (and officers in the Council's highways and Property Services departments) dated 30th November regarding ownership of the land, including an email forwarded to Cllr Warters by Cllr Rowley in which an officer in Property Services confirmed to Cllr Rowley that Land Registry records indicated that the land is owned by the Complainants.
 - (ii) Various Council officers referring to the Complainants dated 28th December 2020
 - (iii) Officers in the Highways Dept (streetworks team) of the Council dated between 18th December and 15th January in which he was seeking advice as to whether the grassed area, including the land, was classed as highway verge and whether the surface was vested in the Council as local highway authority

On 15th and 16th January Cllr Waters provided various emails in/to which he:

- (a) Set out his recollection to the background of the matters which he considered preceded/led to the erection of the fencing
- (b) Detailed his response to the allegations made against him in the Complaint from his recollection of the telephone conversation
- (c) Set out his attempts to ascertain from officers in the Council the factual position about ownership of the Land following the telephone conversation, including forwarding copies of emails he had sent to Council officers seeking this information

Cllr Warters stated that:

- (1) Following election as Ward Councillor in 2011 he became involved in 'long running problems' caused to neighbouring residents by the operation of a doctors/GP surgery then located at 289 York Road (run by previous owners of the Complainants' business premises) involving doctors' and patients' cars allegedly being parked in a manner preventing/hindering neighbouring residents in accessing/egressing their properties.
- (2) The grassed area that the land forms a small part of (which Cllr Warters referred to as the verge) has been maintained by the Council for many years to a very tidy standard

- (3) He stated that he understood from neighbouring residents that following the acquisition of 289 York Road by the Complainants and their operation of York Foot Clinic, the Complainants and their customers had regularly:
- (i) Parked vehicles in a manner preventing/hindering neighbouring residents in accessing/egressing their properties.
 - (ii) Parked vehicles on the verge, causing damage to the condition of the verge and driving over the kerb separating the verge from the adjoining highway
- (4) On the evening of 27th November, after returning from work, Cllr Warters said that he listened to phone messages received on his phone from the Complainants and Cllr Rowley – following which he states that:
- (i) He replied to Cllr Rowley.
 - (ii) He tried to speak to the Complainants and left a voicemail on their phone .
 - (iii) He sent an email at 9 p.m. to officers in the streetworks team of the Council's Highways Department asking for clarification regarding ownership of the verge including the Land, namely whether it formed part of the adopted highway owned by the Council as highway authority or if instead the land is owned by the Complainants, given the proposal for the Council to instruct a contractor to erect fencing to protect the verge from parking of vehicles as he said this was requested by all of the residential households along this section of Hull Road.
- (5) During the telephone conversation with the Complainants on 28th November:
- (i) Cllr Warters said that he 'had no aggression or anger when talking with the complainant'. Cllr Warters denied saying to the Complainants that he had "fought bigger people than you and stopped bigger issues than this". Cllr Warters reported that the telephone conversation was 'perfectly amiable to start with' and that it was the Complainant (Mr Moore) who became increasingly 'animated and aggressive when realising that I was not going to be a pushover for the complainant to get his way'.
 - (ii) He strongly denied ever stating "it's not my money" in response to the Complainants stating that the erection of the fencing was a waste of money. Cllr Warters stated that his response to the Complainants was to say "I was happy to see the ward money being spent on supporting the residents on this section of the road who had put up with so much over the years". He also denied ever stating to the Complainants that he had "better things to do with his time than deal with people like you". Cllr Warters said that he informed the Complainants that he had already spoken with the Council's contractor the previous evening (27th November) to instruct the contractor not to erect fencing on the part of the grass verge opposite Number 289. He states that he explained to the Complainants that he "[has] a million and one things to do in a morning before I finally get out to work". He said the reason why he declined the Complainants' invitation to attend a meeting between them and Cllr Rowley on 30th November was that, at the point of the telephone conversation, he did not know the legal position as to whether the land was owned by the Council as highway authority or was in the private ownership of the Complainants, so considered any meeting/further discussion should await him obtaining clarification of the ownership position from Council officers.

- (iii) Cllr Warters denied ever stating in the telephone conversation that he had 'already denied the Complainants' application for a dropped kerb and would deny any future applications that [the Complainants] would make'. he said he was aware of the process for determining applications for vehicle crossing/dropping of kerbs and said that he knew that such applications are not a matter for him to make the determination on. Cllr Waters said that he simply informed the Complainant/Mr Moore that he was aware they had previously unsuccessfully applied for permission to drop the kerb and park vehicles on the land
- (iv) Although the Complainants stated at the end of the telephone conversation that they would forward to him documents which they told him showed they own the land, Cllr Warters said that he never received the documents from the Complainants. He denied failing to listen to the Complainants

Interviews and consideration of evidence

Councillor Warters (Subject Councillor)

Cllr Warters was interviewed on 3rd February 2021. In that interview Cllr Warters:

- (a) Confirmed that he spoke with the Complainants by telephone on 28th November 2020;
- (b) Disputed the allegations made against him by the Complainants in the Complaint letter, stating that those allegations were untrue;
- (c) Denied behaving in the manner alleged by the Complainants in the Complaint letter during the telephone conversation, in particular denying:
 - (i) Making any of the statements attributed to him by the Complainants in the Complaint letter;
 - (ii) That he had behaved in an aggressive or bullying manner towards the Complainants;
 - (iii) He confirmed that the parties to the telephone conversation were Cllr Warters and Jason Moore;
- (d) Said that no-one else was present at his end during the telephone conversation and, as far as he knew, no-one else was with Mr Moore so Cllr Warters believed there were no witnesses to the telephone conversation and he did not have a recording of the telephone conversation.

Jason Moore and Keira Moore (Complainants)

On 3rd February 2021 Jason Moore and Keira Moore (the Complainants) were interviewed. A friend of theirs – Arif – was also present during the telephone interview. In that interview the Complainants:

- (a) Confirmed their account of the telephone conversation detailed in their Complaint letter;
- (b) Repeated the allegations against, and complaint against, Cllr Waters set out in their Complaint letter;
- (c) Confirmed that the parties to the telephone conversation were Cllr Warters and Jason Moore;
 - Mr Moore said that no-one else was present at his end during the telephone conversation and, as far as he knew, no-one else was present at Cllr Warters' end either. Therefore Mr Moore believed there were no

witnesses to the telephone conversation and he did not have a recording of the telephone conversation;

- (d) Said they had recently (on 26th January) received an email from a Council officer (in the Streetworks team of Network Management) which appended various emails including some emails which had apparently been sent by Cllr Warters to various Council officers referring to the Complainants, in particular an email that Cllr Warters had seemingly sent (at 15:44 hours on 28th December 2020);

The Complainants forwarded that email to me during the Interview, they said that they wanted me to include this email as part of their complaint. (Its contents have been sent out at the top of the report).

Mrs Moore said that she and her husband were upset and annoyed at the tone and content of this email, in particular their contention that in it Cllr Warters appeared to say the Moores wanted to “stick two figures up” to local residents and stated that he would be advising neighbouring local residents to park their cars on the road in front of the ‘verge’ to prevent the Moores driving onto the ‘verge’.

Mrs Moore said that she and her husband have good/friendly relations with most of the local residents living near their business premises but they had experienced aggression and hostility from two nearby residents. Mrs Moore said that she and her husband were not sure if this behaviour is being encouraged by Cllr Warters.

She said they try to get their patients to park their vehicles in a manner that does not inconvenience local residents. The Complainants said Cllr Warters had not sought their point of view in relation to parking. Mrs Moore said she and her husband do not park on the grass land opposite York Foot Clinic for any protracted period of time on any occasion – sometime Mrs Moore temporarily reverses her car onto the land from the driveway in order to let their other podiatrist reverse out and drive away but Mrs Moore then parks her car back on the driveway again. She and her husband said they could not understand why Cllr Warters seemingly had such a problem with her occasionally temporarily driving onto the land given that they say the land is owned by them, not the Council. They could not understand the reason for Cllr Warters’ alleged comments/manner in the telephone.

No Independent Witness

In the separate respective interviews with Cllr Warters and Mr & Mrs Moore, both parties confirmed that there were no independent witnesses to the telephone conversation. When Cllr Warters telephoned Jason Moore’s mobile phone on 28th November, the only parties to the telephone conversation were Cllr Warters and Jason Moore.

Finding and conclusion

The Complaint relates primarily to the content of a telephone conversation between the Complainants and Cllr Warters to which were there no independent witnesses and of which no recording is available. Therefore it has been very difficult to reach a clear unequivocal finding/conclusion regarding what was said by Cllr Warters to Mr Moore during the telephone conversation because the Complainants and Cllr

Warters have given fundamentally different/conflicting accounts of what was said by, and the conduct/manner of, Cllr Warters during the telephone conversation.

However, when viewed against the background of the content of the email sent by Cllr Warters to various persons at 15:44 hours on 28th December 2020, Cllr Warters is seeking advice from the Council as to ownership of the land, which indicates that he is wanting a resolution on this point. The email does give me a flavour of perhaps his feelings towards the owners of the Foot Clinic, using terms such as “just simply to stick two fingers up to the residents in that area” and “my advice to residents will be to park their cars on the road to prevent this manoeuvre”. Such a view is not helpful in resolving such a situation and there is a chance that this view could have spilled out during the telephone conversation. If Cllr Warters did have this view when he spoke with Mr Moore than his manner/tone during the conversation may have been perceived to be hostile/aggressive towards the Complainants. That said, as I have already stated, I am faced with a situation whereby differing accounts have been provided and I cannot prove/reach a definitive conclusion one way or another what was said during the telephone conversation.

My finding/conclusion is that whilst it is likely that the views of Cllr Warters in the email did remain present during the telephone conversation, I cannot conclude one way or another whether the conversation Cllr Warters had with Mr Moore did breach the Code of Conduct. I have been asked to consider the email within this context and it is clear that Cllr Warters sent the email in his capacity of Ward Councillor, and the enquiry was Council business, therefore, the contents of the email does require consideration. Whilst the email was not initially sent to the Complainants, they did receive a copy when an Officer was attempting to deal with the matter.

On considering the email, in sending that email, I find that Cllr Warters failed to treat the Complainants with respect (Clause 3(1) Code of Conduct). I do not find that any other part of the Code of Conduct was breached.

In mitigation of my above finding, I consider that Cllr Warters took the following steps to assist the Complainants/resolve the issue they had contacted him about:

- (i) When he became aware on the afternoon of Friday 27th November that the Complainants objected to the erection of fencing on the area of land in question opposite their business premises at 289 Hull Road, he contacted the Council’s contractors to instruct them to halt erection of fencing on it.
- (ii) After the telephone conversation, he made significant efforts to ascertain from Council officers whether the grassed land opposite 289 Hull Road was classed as adopted highway (and therefore vested in the Council as local highway authority) or was in the private ownership of the Complainants.

Gerard Allen - Investigating Officer
11th March 2021

Annex B – City of York Council Members' Code of Conduct