
Joint Standards Assessments Sub Committee

11 April 2025

Report of the Deputy Monitoring Officer

Code of Conduct Complaints received in respect of a City of York Councillor

Summary

1. To consider Complaints of breach of the Code of Conduct received in respect of a City of York Councillor and determine next steps.

Recommendations

2. The options available to the Sub-Committee 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 is recommended.

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

Background

3. On 10 March 2025 the Monitoring Officer received a complaint from a Councillor alleging that another Councillor had breached the Code of Conduct by making a gesture and mouthing allegedly inappropriate words during a meeting of the council. The complaint refers to this alleged behaviour as being outrageous.
4. It can reasonably be inferred that the alleged language and gesture are considered by the complainant to amount to disrespect for the purposes of the Code.

5. The complainant also referred to the behaviour in question being discussed by members of the public on a social media platform. The Monitoring Officer sought clarification on the posts in question and screenshots of these were subsequently provided by the complainant.
6. From the content of the social media posts referenced in the complaint, it is evident that the complainant is concerned that the alleged behaviour has brought the Council or role of Councillor into disrepute which would be contrary to paragraph 5 of the Code.
7. On 1 April 2025 a further complaint was received by the Monitoring Officer from the authors of the social media posts referenced above. The complaint cites the same alleged behaviour and additionally contends that it constitutes discriminatory behaviour contrary to paragraph 2c of the Member Code of Conduct which concerns the promotion of equality.
8. The same event forms the basis of both complaints. In order to make effective use of resources and avoid delay they are being presented together to the Sub-Committee.
9. Meetings of the Council are recorded and webcast by the Council's democratic governance team. The recording of the meeting in question remains publicly available on the Council's You Tube channel. The webcasting team make only one recording from one camera angle and one audio source. Whilst this recording is both live streamed and sent to a backup source, there is no alternative camera angle or audio source which has been recorded by the Council. The Council recording can, if required, be viewed, during the meeting of the subcommittee. It is possible to view this at reduced speed with standard You Tube functionality.
10. It is possible that alternate recordings of the meeting or parts of it were made by third parties. Such recordings are permitted, provided that they do not disrupt council business. Any alternate recordings or eyewitness testimony may be relevant at investigation stage should the assessment sub committee determine that an investigation is the most appropriate course of action.

Procedure

11. 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?"

12. 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.
13. In all cases, the subject member is notified of the complaint and may provide comments. The subject member has provided comments which will be considered by the Sub Committee.
14. An Independent Person is also invited to give a view on what should happen next. The IP's views should be 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.
15. 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

Initial Assessment – Jurisdictional Test (can we look at the complaint?)

16. 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.
17. Factors i and ii are plainly satisfied in this case. Using derogatory words or gestures would be capable of constituting a breach of the Code where it amounts to disrespect and/or disrepute and/or unlawful discrimination.

Members must decide if there is prima facie evidence of such behaviour which establishes a case to answer. If so, the matter is in scope.

2nd Stage Test (Should we look at the complaint?)

18. If the jurisdictional tests have been met, the sub committee should continue to determine the appropriate course of action taking into account the assessment criteria found in paragraph 10 of the Case Handling Procedure namely:
 - a. does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?;
 - b. are there alternative, more appropriate, remedies that should be explored first?;
 - c. where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse or unparliamentary language may be given
 - d. is the complaint in the view of the MO malicious, politically motivated or “tit for tat”
 - e. whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction;
 - f. whether the complaint is the same as one which has previously been considered and no new material evidence has been submitted within the current administration;
 - g. whether the same complaint has been submitted and accepted;
 - h. does the complaint relate to conduct in the distant past (over six months before)? This would include any reason why there had been a delay in making the complaint;
 - i. does the complaint actually relate to dissatisfaction with a Council (or parish council) decision rather than the specific conduct of an individual?; and
 - j. is it about someone who is no longer a councillor or who is seriously ill?
19. Members may consider factors c, d and e relevant to this case.

The Code of Conduct (Constitution Appendix 14)

20. The Code of Conduct states:

“1. Respect

As a Councillor:

a. I treat other Councillors and members of the public with respect.

b. I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.”

“2 Bullying, harassment and discrimination as a Councillor:

I promote equalities and do not discriminate unlawfully against any person.”

“5. Disrepute as a Councillor:

a. I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other Councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow Councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.”

Local Government Association Guidance

21. The Local Government Association publishes guidance on interpretation of the Code and complaints handling which is referred to as a background document. The introductory paragraph on **respect** sets the context:

“You will engage in robust debate at times and are expected to express, challenge, criticise and disagree with views, ideas, opinions, and policies. Doing these things in a respectful way will help you to build and maintain healthy working relationships with fellow councillors, officers, and members of the public, it encourages others to treat you with respect and helps to avoid conflict and stress. Respectful and healthy working relationships and a culture of mutual respect can encourage positive debate and meaningful communication which in turn can increase the exchange of ideas, understanding and knowledge.”

22. Other Key aspects of that guidance regarding disrespect are:

- a. The key roles and responsibilities of councillors; representing and serving your communities and taking decisions on their behalf, require councillors to interact and communicate effectively with others.
- b. Ways in which you can show respect are by being polite and courteous, listening and paying attention to others, having consideration for other people’s feelings, following protocols and rules, showing appreciation and thanks and being kind.
- c. Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment of others.
- d. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another;
- e. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful and include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved
- f. Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, or attempts to shame or humiliate others in public.

23. In relation to discrimination the Guidance highlights the positive duties of Councils under the Equality Act (the Public Sector Equality Duty) to promote equality and to eliminate unlawful discrimination. It reminds Councillors “to be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority’s fulfilment of its positive duties under the Act”.
24. The Guidance states that “Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation”.
25. The guidance highlights several examples of potentially discriminatory behaviour which includes “comments, slurs, jokes, statements, questions, or gestures that are derogatory or offensive to an individual’s or group’s characteristics”.
26. With regard to Disrepute the Guidance states:

“In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor’s behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

 - a) reducing the public’s confidence in them being able to fulfil their role;
or
 - b) adversely affecting the reputation of your authority’s councillors, in being able to fulfil their role.

Options

27. 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

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

Human Resources (HR)

29. Not applicable to this report.

Equalities

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

Legal

31. 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

32. Not applicable to this report.

Other

33. Not applicable to this report.

Contact Details

Author and Officer

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**Report
Approved**



Date 2 April 2025

Wards Affected: All

All ☒

For further information please contact the author of the report

Background Papers:

- Member Code of Conduct
- 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>