

Joint Standards Assessments Sub-Committee

30 November 2023

Report of the Deputy Monitoring Officer

Code of Conduct Complaints received in respect of Parish Councillors

Summary

1. To consider complaints of breach of the Code of Conduct received in respect of Parish Councillors

Recommendations

2. The options available to the Sub-Committee are as follows:
 - a. Rule that the complaints are out of scope.
 - b. Rule that the complaints are 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(ii) is recommended in respect of complaint 1 and part of the complaint 2.

Option (a) is recommended in respect of the remainder of Complaint 2.

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

Background

3. On 3 November 2023 the Monitoring Officer received a complaint from a resident alleging that 9 parish councillors had breached the Code of Conduct by treating them disrespectfully.
4. On 9 November 2023, the complainant submitted supplementary material.

5. On 13 November 2023 a further complaint was received from another resident which expressed concern about the same Council as a whole and enquired about disbanding it.

Procedure

6. Under the Case Handling Procedure an initial filter is applied to all complaints, essentially “is there a case to answer?”
7. The Monitoring Officer is responsible for applying that filter except that under paragraph 5 of the Procedure, cases of complaints made by or against a member of the Executive or Shadow Executive or a committee chair or deputy, must be referred to a JSC Sub Committee. This case falls under that paragraph.
8. In all cases, the subject member is notified of the complaint and may provide comments.
9. An Independent Person is also invited to give a view on what should happen next. The assessment of the IP 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.
10. 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 Complaint 1

11. 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.

12. The Local Government Association publishes guidance on complaints handling which is referred to as a background document. Key aspects of that guidance relevant to this complaint are:
 - a. Examples of 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
 - b. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another;
 - c. 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 and the behaviour of anyone who prompts the alleged disrespect.
 - d. 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.
 - e. It is subjective and difficult to define.
13. The IP recommends informal resolution.

Complaint 2

14. The second complaint strays into the territory of governance of the Parish Council as a corporate entity rather than the conduct of its members. City of York Council has no role in the former, only the latter. Complaints about the running of Parish Councils should be dealt with in accordance with its own published procedures.
15. The complaint suggests that the Parish Council is no longer fit for purpose and may need to be disbanded.
16. Parish/town councils can only be abolished via the Community Governance Review (CGR) process which is a duty only CYC could undertake as principal authority. In order to commence a CGR, CYC would either need a formal request from the parish/town council (CYC would not be obliged to act on this request, but it is considered good practice to do so) or CYC could be petitioned to undertake the CGR. Where a valid petition is received (i.e. signed/supported by the requisite

number of local government electors in the relevant area) then CYC is obliged to undertake the CGR.

17. The CGR process is statutory and must include consultation on the proposals with certain statutory consultees and with all affected parties which would include local residents. The consultation process is not prescribed. The draft abolition Order, if the CGR finds that abolition is the recommended outcome, should be consulted on before being submitted to Full Council for approval.
18. However, government guidance states: abolition of councils is “undesirable” – unless very low populations or it is being replaced. In theory, CYC could resolve to abolish a parish council but would need solid evidence through the consultation process that local residents supported this move. If residents supported abolition but were keen to retain that level of representation, then one option could be to group with a neighbouring parish council and form a new parish council covering the wider area. Elections would be held for members of this new parish council. For this reason, any new councils are often set up to take effect on 1 April during the year of the next ordinary elections (i.e. 2027) to avoid the additional cost of running interim elections, because the new council must get back into sync with the ordinary election cycle as soon as possible.
19. Abolishing a parish council and then establishing a new parish council for exactly the same area is technically possible but would be likely to give the impression of being a politically motivated process designed to remove certain elected members and would be a decision vulnerable to challenge through judicial review.
20. There is no lawful means of removing current parish councillors from office and electing new councillors. As with CYC councillors, all parish councillors are elected (regardless of whether this was via an election or they stood unopposed or were co-opted) for a term of office that ends at the date of the next ordinary elections and the term of office can only be terminated before that date where:
 - a. The councillor dies in office
 - b. The councillor resigns their seat
 - c. The councillor is disqualified through non-attendance at meetings for a period of 6 months

- d. The councillor fails to remain qualified through not remaining a registered elector in the area (but only if this was the sole qualification in place at the time of nomination/election)
- e. The councillor is disqualified through receiving a prison sentence of three months or more (custodial or suspended) or is declared bankrupt.

Implications

Financial

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

Human Resources (HR)

- 22. Not applicable to this report.

Equalities

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

Legal

- 24. 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

- 25. Not applicable to this report.

Other

- 26. Not applicable to this report.

Contact Details

Author and Officer

Responsible for the report:

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**Report
Approved**



Date 21 November 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>