

Standards Hearing Sub-Committee

18 April 2024

Public Report

Report of the Monitoring Officer

Complaint received in respect of a City of York Councillor: REF 2023/14

Background

1. On 16 October 2023, the Monitoring Officer received a complaint from an officer of the Council, alleging that a Councillor had breached the Code of Conduct by copying third parties into a formal complaint that the Councillor had made against that officer's conduct. On the same day, a second officer submitted a complaint relating to the same incident and giving additional detail as to the potential breach of the Member/Officer Protocol and the Member Code of Conduct.
2. The complaint was assessed by a Deputy Monitoring Officer, in consultation with the Independent Person, and subsequently referred for investigation by a Senior Lawyer employed by City of York Council.
3. The investigating officer's report has been completed and provided to the subject member for comments and must now be considered by a Joint Standards Committee Hearings Committee in accordance with the Case Handling Procedure set out at Appendix 29 of the Constitution.
4. The investigating officer is of the opinion that the Councillor did breach the Code of Conduct.
5. The panel have received a copy of the complaint, the investigating officer's report, as well as a copy of the Council's Code of Conduct.

The Member/Officer Protocol

6. The Protocol for Officer / Member Relations forms Appendix 16 to the City of York Council Constitution. The relevant provisions include:

- *A member must treat others with respect, must not bully or harass people;*
- *Officers can expect members:*
 - *to treat them fairly and with respect, dignity and courtesy*
 - *to act with integrity, to give support and to respect appropriate confidentiality*
 - *to comply at all times with the Member Code of Conduct, the law, the Constitution and such other policies, procedures, protocols and conventions agreed by the Council.*
- *A member who is unhappy about the actions taken by, or conduct of, an officer should:*
 - *avoid personal attacks on, or abuse of, the officer at all times*
 - *ensure that any criticism is well founded and constructive*
 - *ensure that any criticism is made in private*
 - *take up the concern with the Chief Operating Officer or appropriate Chief Officer*

The Code of Conduct

7. As required by the Localism Act 2011, the City of York Council has adopted a Code of Conduct which sets out the conduct expected of Councillors when acting as such. Particularly relevant to this complaint are the following requirements of members:

- *I treat all persons fairly and with respect; and*
- *I lead by example and act in a way that secures public confidence in the role of Councillor.*
- *I treat other Councillors and members of the public with respect.*
- *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.*
- *I do not bully any person.*
- *I do not harass any person.*

8. The Local Government Association publishes guidance on complaints handling which is referred to as a background document. Key aspects of that guidance regarding the general obligations under the code of conduct are:

- i. Respect. 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. 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, showing appreciation and thanks and being kind.
- ii. Bullying. Bullying may be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Bullying behaviour may be in person, by telephone or in writing, including emails, texts, or online communications such as social media.

Examples of bullying include inappropriate comments about someone's performance, abuse of authority or power such as placing unreasonable expectations on someone in relation to their job, responsibilities or hours of work.

- iii. Disrespectful behaviour. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. It is important to remember that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour.
- iv. Recent case law has confirmed that local authority officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to offensive, abusive attacks and unwarranted comments that prevents them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example chief executives or heads of services, will also be expected to have a greater degree of robustness.

The Hearing Process

9. The Joint Standards Committee has approved a procedure for hearings. In line with that procedure the complainant and subject member have been asked to indicate whether they intend to attend the hearing, to identify facts which they say are in dispute, and provide their views as to whether any part of the hearing should be in public. These responses have been shared with the Panel.

Issues to be determined

10. Has the Councillor breached the Code of Conduct?
11. In the event that the Sub committee finds that the Code has been breached, it will need to determine whether a sanction should be imposed and if so, what sanction.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

The Council has a duty of care to its employees and failure to protect employees from harmful behaviour could lead to grievance/ tribunal proceedings.

Equalities

The Equality Act 2010 places specific duties on Local Authorities, including the presence of a clear and concise Code of Conduct which prohibits unlawful discrimination and gives the public confidence in Councillors. Ensuring that the Code of Conduct is maintained meets the Nolan principles and also supports the prohibition.

Legal

As detailed within this report.

Crime and Disorder, Information Technology (IT) and Property

Not applicable to this report.

Other

Not applicable to this report.

Contact Details

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Report **Date** 10 April 2024
Approved

Wards Affected:

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