

Joint Standards Assessments Sub-Committee

18 September 2023

Report of the Deputy Monitoring Officer

Code of Conduct Complaints received in respect of a CYC Councillor

Summary

1. To consider a complaint of breach of the Code of Conduct received in respect of a CYC 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 A is recommended.

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

Background

3. On 2 August 2023 the Monitoring Officer received a complaint alleging that the Councillor had breached the Code of Conduct by knowingly misleading citizens at a public meeting and thereby bringing the Council/position of Councillor into disrepute. There is also an allegation of unfair treatment through false allegations and maligning of character which might be characterised for the purposes of the Code as disrespect.

Procedure

4. 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?”
5. 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 paragraph applies in this case.
6. In all cases, the subject member is notified of the complaint and may provide comments.
7. 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.
8. 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

9. 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.

10. Factors i and ii are plainly satisfied in this case. Whilst it is likely that deliberately misleading and maligning citizens would be capable of constituting breaches of the Code, members must decide if there is evidence of those things which establishes a case to answer. If not, the matter is out of scope.
11. The Local Government Association publishes guidance on complaints handling which is referred to as a background document. Key aspects of that guidance regarding disrespect are:
 - a. The role of Councillors is such that they will engage in robust debate and are expected to challenge, criticise and disagree;
 - b. It is helpful to focus any criticism or challenge on ideas and policies rather than personalities or personal attributes
 - c. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another;
 - d. 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.
 - e. The requirement to treat others with respect must be balanced with the right to Freedom of expression.
12. 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

13. 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

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

Human Resources (HR)

15. Not applicable to this report.

Equalities

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

Legal

17. 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

18. Not applicable to this report.

Other

19. Not applicable to this report.

Contact Details

Author and Officer

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Report
Approved



Date

8 September 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>