

DECISION NOTICE

In attendance:

Members of the Sub-Committee

Cllr Runciman (Chair)

Cllr Cannon

Cllr Kramm

Advisors to the Sub-Committee

Ms A. Davies – Independent Person

Mr D. Laverick – Independent Person

Ms J. Carr – Democracy Officer

Mr G. McCusker – Deputy Monitoring Officer

Investigation Officer

Ms C. Bainton

Complainants

Mr A. Dickinson

Mrs. R. Dickinson

Subject Member

Cllr J. Galvin – City of York Council

1. Background

- 1.1 The Sub-Committee was constituted in accordance with the process approved by the Joint Standards Committee and followed the Hearing Procedure set-out in pages 7 to 11 of the Agenda.
- 1.2 The Sub-Committee considered the complaints from Mr Dickinson, Mrs Dickinson, and Mr Askew in relation to the conduct of Councillor Galvin at a planning site meeting on 9th

March 2016 and at a meeting of the Planning Sub-Committee held on 7th April 2016.

- 1.3 In attendance at the Hearing were the Complainants, Mr and Mrs Dickinson, Councillor Galvin, the Independent Persons, Ms Davies and Mr Laverick, and the Investigating Officer, Ms Bainton.
- 1.4 The Sub-Committee considered all the Agenda papers and heard representations from the Interested Parties. They also took advice from the Independent Persons.

2. The Standards Complaints

- 2.1 A number of complaints were made against Councillor Galvin. These are helpfully summarised in the Report to the Sub-Committee, and are covered in the Investigator's Report. The Investigator is of the opinion that Councillor Galvin did breach one section of the Code of Conduct in not treating others with respect, but found no breach in respect of the other complaints.
- 2.2 The relevant sections of the Code are recited at pages 2,3, and 4 of the Agenda.
- 2.3 Turning to the Complaints, we will deal with these in the same order as they appear in the Hearing Report.
 - (a) Councillor Galvin's alleged conflict of interest.
- 2.4 At the Planning Sub-Committee held on 7th April, Councillor Galvin declared a personal interest in Agenda items 3a and 3b. This related to a planning application concerning Groves Chapel on Union Terrence, a building owned by the NHS. He was, at the time, a Council appointed Governor of York Teaching Hospital Foundation Trust. Prior to the meeting, Councillor Galvin took advice from the Monitoring Officer, in accordance with para. 2.3 Code of Good Practice for Councillors involved in Planning Process, about his interest as a Governor and he was advised that he had a personal, but not

a prejudicial interest, and was, therefore, entitled to attend, chair and vote at the meeting.

- 2.5 We have looked at the NHS Governors' Code of Conduct. At paragraph 1 (b) (page 183 of the Agenda) it states that Governors are required to "Act in the best interests of the Trust at all times;". It is not clear, however, whether this covers situations when a person is solely acting in their capacity as a Governor, or in a dual capacity. We believe that in his understanding of the role as appointed governor Councillor Galvin acted in the assumption, shared by the investigation officer in her report and by the Monitoring Officer in his advice, that the interests and responsibilities as elected councillor overlay any conflicted interests as appointed governors. It is not part of our remit to decide if this is in line with the understanding of the Trust.
- 2.6 We also note that in the Trust's document "The Role of Governors", it states that "Governors are not responsible for the day to day management of the Trust". The Council of Governors are, however, required to approve "significant transactions", which is defined as 25% of annual turnover, although York NHS Trust reduced this to 15%, which equates to £34m. As the sale of Groves Chapel will realise approximately £710,000, this sum is well below the threshold for approval.
- 2.7 For these reasons we are satisfied that Councillor Galvin did not have a prejudicial interest in the planning application and we therefore find no breach of Part 2 of the Code.
- (b) Councillor Galvin's alleged bias at the Planning meeting.
- 2.8 This complaint is closely associated with the first complaint of a conflict of interest. Having regard to the above facts, and having listened to the Parties' representations, we do not believe that Councillor Galvin acted in a bias manner. It is clear from the evidence, that Councillor Galvin allowed all the speakers at the Planning meeting to put their point of view across. The Investigator has viewed the video recording of the meeting and she did not sense any bias on the part of Councillor Galvin.

2.9 We agree with the Investigating Officer's view and find no breach of the Code in relation to this part of the Complaint.

(c) Councillor Galvin's alleged behaviour at the Planning meeting.

2.10 Councillor Galvin is alleged to have failed to treat those present at the Meeting with respect, bullied and intimidated them.

2.11 All of the residents who had registered to speak were given the full three minutes allowed for speakers. The Council's "Public Participation" document states that there is a maximum of 30 minutes for speakers and that only one speaker in favour and one against a single item will usually be allowed, unless the Chair makes an exception. In this instance, Council Galvin allowed all those registered to speak to have their say.

2.12 In viewing the video of the Meeting, the Investigating Officer did not see any evidence that Councillor Galvin did not treat members of the public who were present with respect. She goes on to say that Councillor Galvin tried to put one of the residents at ease.

2.13 We agree with the Investigating Officer, and find that there was no breach of paragraphs (1) and (2) of the Code of Conduct.

(d) Councillor Galvin's alleged behaviour at the site meeting

2.14 It is accepted by all Parties that this was an emotive and difficult site meeting. It was raining and the Planning Members and Officers, through no fault of theirs, were late attending. On arrival Councillor Galvin did apologise.

2.15 During the meeting a lorry driver was seen to be doing a manoeuvre in Union Terrace. It seems that this was pre-arranged and that the driver was one of the objectors. The driver went up and down the street several times, apparently to demonstrate the access and egress problems. Some Councillors at the meeting said this was distracting them and Councillor Galvin admitted saying: "This man is being a pillock". He says that this remark was said under his breath and was not

intended to cause any offence. It was not directed to anyone at the meeting. "Pillock" is a slang word and is defined as meaning a "stupid person". It is not a swear word, but we do feel that the term is slightly disrespectful.

2.16 We accept the finding of the Investigating Officer, that Councillor Galvin did not treat others with respect, and that a breach of paragraph (1) of the Code occurred. Potential behaviour of members of the public shall not affect the standards of behaviour required of a councillor, acting in the capacity as a Councillor of the City of York Council, particularly when being in a more publicly exposed position like a committee chair. We do not, however, find that he breached paragraph (2).

- Decisions: (i) That the Panel did not believe that Councillor Galvin had acted with bias at the meeting. He had sought the advice of the Monitoring Officer and had acted in accordance with this guidance. Whilst the Panel noted the advice in the NHS Code of Conduct, they believed that there was a lack of clarity and prominence given to the clause "Governors must act in the best interests of the NHS Foundation Trust".
- (ii) That the Panel agreed that, through his conduct at the - site visit, Councillor Galvin had breached 3.1 (1) of the Code of Conduct - "You must treat others with respect".

Sanction: That Councillor Galvin's Group Leader be made aware that Councillor Galvin has been found to have breached paragraph 1 of the Members' Code of Conduct and that the Monitoring Officer offer to make appropriate training available to Councillor Galvin if required.

Recommendations: To address issues raised during consideration of the complaints, the Panel recommended that:

- (i) the NHS be asked to review and update the York Teaching Hospital Governors' Code of Conduct to ensure greater clarity. Consideration should be given to including the wording "when acting in their capacity as a Governor" within the Code. The Panel also recommended that new governors are given training on the Code of Conduct on appointment.
- (ii) the protocol for site visits, including the role of the Chair during these visits, be reviewed.
- (iii) training be made available to Chairs of Planning Committees.

Finally, we wish to record our thanks for the advice and assistance provided to us by the Investigation Officer and the Independent Persons, who have given up their time on a voluntary basis.