

Joint Standards Committee Hearings Sub-Committee

Thursday, 18 April 2024

Decisions

Complaint Against A Member Of A Council Covered By The Joint Standards Committee

City of York Council Constitution Appendix 29: Joint Standards
Committee Procedures

Paragraph 34 Decision Notice (Hearing)

Dated: 18/04/2024

Date of Complaint	23/08/2023
Date of Initial Assessment by DMO	30/08/2023
Hearing Date	18/04/2024
Independent Person	Joe Leigh

Panel

The Panel comprised Councillor K Lomas (Chair), Councillor T Fisher and Parish Councillor C Chambers. The Panel is not required to be politically balanced.

The Independent Persons' views were provided to the Panel and taken into account at all relevant times in the procedure. The Independent Persons were not voting members of the Panel.

The Hearing

The Panel resolved to exclude the Press and Public from the meeting due to the consideration of exempt information defined as "Information relating to any individual" and "Information which is likely to reveal the identity of an individual". They noted that such information is exempt information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Whilst the Panel was aware the subject member had expressed that they did not require the matter to be kept confidential, the Panel were mindful that there were other individuals involved, and that there was a need to maintain public confidence in the ability to raise complaints.

The Complaint

On 23 August 2023 the Monitoring Officer received a complaint from an officer of the Council alleging that Cllr Mark Warters had breached the Code of Conduct by using racially discriminatory language and behaving in a manner that was disturbing, disrespectful and upsetting. The officer further alleged that Cllr Warters had shared confidential information about a customer with a third party, and that he had displayed aggressive and discourteous behaviour to the wider team over a period of time. The complainant maintained that these actions and behaviours were contrary to the City of York Council Code of Conduct.

Decision – Findings of fact on the balance of probability

The Panel members considered the evidence gathered by the Investigating Officer from the complainant. The Investigating Officer explained that Cllr Warters had initially agreed to meet to be interviewed; having changed the date of the interview Cllr Warters then advised via email that he would not meet or correspond with the Investigating Officer. In that email, Cllr Warters provided an explanation for his use of the term that the complainant claimed was racially offensive. The Panel accepted that the subject member had been provided with ample opportunity to contest both the alleged facts and the issue of whether those facts amounted to a breach of the Code. The Panel noted that Cllr Warters refused to co-operate further with the investigation process, however they were prepared to accept a number of late submissions received by Cllr Warters in the days leading up to the Hearing. The Panel adjourned for 15 minutes to allow all members the opportunity to read the submissions received. The Panel considered the submissions did not offer mitigation for the issues referred to by the complainant, and that some of the submissions strengthened the case of the complainant. The Panel accepted the investigating officer's analysis of the facts with and concluded as follows:

We make the following findings on the balance of probabilities:

1. The use of the term referred to by the complainant can be considered a breach of the Code of Conduct due to its potential to cause distress, irrespective of its factual nature.
2. Councillor Warters' aggressive and discourteous communication, while rooted in frustration, is a breach of the Code of Conduct's emphasis on respectful behaviour.
3. While the sharing of address information might be deemed justifiable in the given circumstances, it raises concerns

regarding privacy and confidentiality expectations. The Council's data breach reporting process is therefore the appropriate route to thoroughly assess and determine the implications of this issue.

Was there a breach?

Members of the Panel considered the LGA guidance set out in the report and the facts set out by the Investigating Officer as well as the late submissions provided by Cllr Warters. The Panel were unanimous in their decision that the Code of Conduct had been breached in the following respects:

- Rule 1 (Respect)
- Rule 2 (Bullying, harassment and discrimination as a Councillor)
- Rule 5 (Disrepute as a Councillor)
- Rule 8 (Complying with the Code of Conduct as a Councillor)

Decision – Sanction

Where a Hearings Panel makes a finding of breach of the Code it may impose one or more of the sanctions listed in the case handling procedure (p726 Constitution) or impose no sanction.

The Panel considered the investigating officer's recommendation on sanctions and heard the Independent Persons' views.

The Panel agreed that it was proportionate and appropriate to apply the following sanctions:

- i. Cllr Warters will be requested to attend appropriate Equalities and Diversity training.
- ii. A restriction will be placed on Cllr Warters' ability to communicate directly with staff in the relevant team. The Monitoring Officer is delegated to determine, in consultation with the Chief Operating Officer, the level of seniority of staff within the team with whom Cllr Warters will be permitted to communicate. This restriction will be for an initial period of six months, and the Monitoring Officer is delegated to extend the restriction after the initial term, should he consider it necessary to do so.

The Independent Person

For transparency, the Independent Persons' views were that there had been a breach of the code and sanctions should be imposed.

There is no internal right of appeal against this decision.

All parties will be notified of the Hearing Panel's decision.

A decision notice will be published on the Council website within 5 working days of the Hearings Panel decision.

Signed

Councillor K Lomas
Chair of Hearings Panel