

**Joint Standards Assessments Sub-Committee**

**26<sup>th</sup> June 2023**

Report of the Deputy Monitoring Officer

**Code of Conduct Complaint received in respect of a Parish Councillor**

**Summary**

1. To consider a complaint of breach of the Code of Conduct received in respect of a Parish Councillor and determine next steps.

**Recommendations**

2. The options available to the Sub-Committee in respect of the complaint 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 B (ii) is recommended in respect of the complaint.

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

**Background**

3. On 20<sup>th</sup> April 2023 the Monitoring Officer received a complaint from a resident alleging that a Parish Councillor had breached the relevant Parish Council Code of Conduct by conduct amounting to disrespect and bullying/intimidation.

## **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 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. If a complaint passes the initial filter, an Independent Person is invited to give a view on what should happen next. The assessment of the IP, as well as that of the Chair or Vice Chair of the JSC is 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 to iii are plainly satisfied in this case. It also appears clear that the Parish Councillor was acting as a Councillor in respect of the behaviour complained of.
11. The Code of Conduct applicable to this complaint is the relevant Parish Council's Member Code of Conduct.
12. It is not clear that all aspects of the complaint are capable of constituting any form of breach of the Code. Some do appear to fall within the parameters of disrespect and/or bullying and intimidation.
13. 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 key roles and responsibilities of councillors; representing and serving your communities and taking decisions on their behalf, require councillors to interact and communicate effectively with others;
  - b. The role of Councillors is such that they will engage in robust debate and are expected to challenge, criticise and disagree;
  - c. 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, being kind, using appropriate language in meetings and written communications, and allowing others time to speak without interruption during debates;
  - d. It is helpful to focus any criticism or challenge on ideas and policies rather than personalities or personal attributes;
  - e. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another;
  - f. 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;

- g. The requirement to treat others with respect must be balanced with the right to freedom of expression;
- h. Councillors are allowed to respond to criticism, and where that criticism is robust, then they can be robust in response. However, councillors should always seek to try to be civil and demonstrate leadership in their communication.

14. With regard to bullying and intimidation the Guidance states:

- a. 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;
- b. Bullying behaviour may be in person, by telephone or in writing, including emails, texts, or online communications such as social media;
- c. Like disrespectful behaviour, bullying can be difficult to define. When allegations of bullying are considered it's likely that the person handling the complaint will consider both the perspective of the alleged victim, and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied;
- d. Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual's conduct or behaviour, or when the behaviour by both the complainant and councillor contributed equally to the breakdown in relations.

15. It is the view of the Deputy Monitoring Officer that there is sufficient evidence to demonstrate a potential failure to treat others with respect and the complaint could therefore proceed to investigation. However, in considering what action is commensurate, members of the committee should consider the following relevant factors outlined at paragraph 10 of the case handling procedure:

- a. are there alternative, more appropriate, remedies that should be explored first?

- b. whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction.

## **Options**

16. 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**

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

### **Human Resources (HR)**

18. Not applicable to this report.

### **Equalities**

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

### **Legal**

20. 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**

21. Not applicable to this report.

### **Other**

22. Not applicable to this report.

## Contact Details

### Author and Officer

Responsible for the report:  
Frances Harrison

### Deputy Monitoring Officer

Tel No. 01904 551988

Report  
Approved



Date

15<sup>th</sup> June 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>