

Report of the Deputy Monitoring Officer

Code of Conduct Complaints received in respect of a City of York Councillor

Summary

1. To consider a Complaint of breach of the Code of Conduct received in respect of a City of York 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 B(i) is recommended.

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

Background

3. On 15 May 2024 the Monitoring Officer received a complaint from a councillor alleging that another Councillor had breached the Code of Conduct in relation to a Twitter post of 14 May 2024 by:
 - a. Failing to treat others with respect.
 - b. Attempting to bully and intimidate.
 - c. Bringing the council into disrepute.

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. Paragraph 5 applies in this case.
6. In all cases, the subject member is notified of the complaint and may provide comments. These have been provided.
7. An Independent Person is also invited to give a view on what should happen next. The IP’s views have also been provided. 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 to iii are satisfied in this case. The Councillor's post refers both to their role as a councillor and concerns local authority business so it would be reasonable to assume they are acting in capacity and the Code is engaged.
11. The Local Government Association ("LGA") publishes specific Social Media Guidance for Councillors. The following extract sets the general approach:

Councillors are still subject to the Code of Conduct on social media where there is an explicit link between the content posted and council business or your role as councillor. As a general rule, councillors should demonstrate good conduct at all times and so should act as though their public engagement on social media falls in scope of the Code of Conduct.

When posting to social media you should remember that:

- *you are an elected representative of your council*
 - *what you post can affect the reputation of your council*
 - *your council is a corporate decision-making body – you can't, independently, make decisions for the council on social media*
 - *some issues and communications are best left to your council's official social media channels, which are usually managed by officers*
 - *having a single voice or message can be critical in some situations – for example, in the event of major flooding*
 - *you don't have to respond to or comment on everything on social media – and sometimes it's best not to.*
12. The LGA also publishes guidance on complaints handling. Key aspects of that guidance regarding disrespect are:
 - a. 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.
 - b. 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.

- c. Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment of others.
- d. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another.
- e. 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.
- f. A very clear line must be drawn between the Code of Conduct's requirement of respect for others, including councillors with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.

13. The Guidance on bullying includes the following:

- 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 can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics.
- c. Bullying behaviour may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.
- d. 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.

- e. 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.

14. 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.”

15. It is the view of the Deputy Monitoring Officer that there is no evidence capable of demonstrating failure to treat others with respect, bullying and intimidation or bringing the council or office of councillor into disrepute contrary to Paragraphs 1, 2 or Paragraph 5 of the Code of Conduct.

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 2 July 2024

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
- LGA Introduction to Social Media for Councillors
[An introduction to social media for councillors | Local Government Association](#)
- LGA Guidance on the Code of Conduct
<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respect>