

Complaint

Report to the Deputy Monitoring Officer, City of York Council, of an investigation carried out following a request by the Council's Deputy Monitoring Officer into a complaint against Councillor J Galvin of City of York Council.

From Christine Bainton, appointed as Investigating Officer, for this complaint by Glen McCusker, Deputy Monitoring Officer and Deputy Head of Legal Services, City of York Council.

The Complaint referred for Investigation

1. Complaints were received from three people, Mrs Rosy Dickinson, Mr Michael Askew and Mr Andrew Dickinson.
2. The complaints can be summarised as follows:
 - (a) At the Planning Sub-Committee meeting on 7th April 2016, Councillor Galvin, being both a Governor of York Hospital and a Member of the Council, had a conflict of interest in Agenda items 3 (a) and (b) and should not have taken part in the meeting.
 - (b) That Councillor Galvin acted with bias at the meeting.
 - (c) At the meeting Councillor Galvin failed to treat those present with respect, and bullied and intimidated them.
 - (d) At the site visit on 9th March, Councillor Galvin failed to treat members of the public who were present with respect, bullied, swore, and intimidated them.

Relevant Provisions of the Code of Conduct

3. The Council's code of conduct says
 - "(1) You must treat others with respect.*
 - (2) You must not bully or intimidate any person, or attempt to bully or intimidate them.*
 - (3) You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.*

Disclosure of Interests

- 6(3) If you have a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it would*

likely prejudice your judgement of the public interest then you have a prejudicial interest. This is subject to the exceptions set out in paragraph 6.4

- 6(4) You do not have a prejudicial interest in any business of the authority where that business:
- (a) does not affect your financial position or the financial position of a person or body named in the second schedule:
 - (b) does not relate to the determination of any approval, consent, licence, permission or registration in relation to you or any person or body described in the second schedule;

Second Schedule – Other Interests

1. Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority
2. Any body –
 - (a) exercising functions of a public nature:
 - (b) directed to charitable purposes; ”
4. The treatment of prejudicial interests is covered in Section 5E of the Code of Good Practice for Councillors in the Planning Process (Annex 6). The relevant paragraph states:

“3.2 ...Members should not participate in the debate or vote where they have such an interest and, if the interest arises in a decision making meeting, they should leave the room. Simply being a member of an outside body will not automatically amount to a prejudicial interest but Members need to think about whether their involvement is more significant than that and consider taking specific advice.”
5. Before the meeting Councillor Galvin took advice from the Monitoring Officer and was advised that his interest was personal, but not prejudicial, and was therefore entitled to take part in the debate and vote. At the meeting he declared a personal interest as can be seen from the minutes of the meeting (Annex 7).
6. The meeting was recorded and members of the Sub-Committee can view the recording if it is of assistance.

The Investigation

7. In forming my views I interviewed the following people:

The Complainants

- (i) Mr A Dickinson

- (ii) Mrs R Dickinson
- (iii) Mr M Askew

The Subject of the Complaint

Cllr J Galvin

Members of the sub committee present at the site meeting or sub committee meeting

- (i) Cllr H Shepherd
- (ii) Cllr J Looker

Members of the public present at the site meeting and/or the planning Sub committee meeting

- (i) Mr A McArthur
- (ii) Reverend Alistair Rycroft
- (iii) Liz Henley

An Officer present at the site meeting/planning sub committee meeting

Mr N Massey – A telephone conversation

Documents which were considered

- The Code of Good Practice for Councillors in the planning process.
- I also consulted the Council's web site, viewed the video of the planning sub-committee meeting of the 7th April and consulted the 'Public Participation' page.
- York Teaching Hospital NHS Foundation Trust document "Governors' Code of Conduct".
- York Teaching Hospital NHS Foundation Trust "The Role of Governor".
- Copy of an email sent to Neil Massey from Andrew Dickinson 26/01/16
- A copy of Neil Masseys email response on 29/01/16
- A copy of Neil Masseys email response on 18/01/16.

Establishing the facts

Evidence Agreed:

- That there was a site meeting on 9th March 2016.
- That Members of the public were present at the site visit on 9th March

- That Cllr Galvin made an aside remark during the site visit
- That there was a planning sub-committee meeting on 7th April
- That Cllr Galvin declared a personal conflict of interest.
- That Cllr Galvin is Chair of the planning sub- committee.
- That Members of the public attended and presented their views at the planning sub- committee on 7th April
- That Councillor Galvin declared an interest in Agenda items 3a) and 3b).
- That it was a very wet day on 9th March.
- That Councillors and Officers were late arriving at the site visit.

Evidence Not Agreed:

- That Cllr Galvin swore.
- That Councillor Galvin was rude.
- How late Councillors and officers were.

Reasoning as to whether there has been a failure to comply with the Code of Conduct

Findings and conclusion

8. Firstly I should like to deal with the Conflict of Interest and Bias complaints.
9. At the planning sub-committee meeting of 7th April “Councillor Galvin declared a personal interest in Agenda Items 3a) and 3b) Groves Chapel, Union Terrace as he was a Governor of York Teaching Hospital NHS Foundation Trust. The building was owned by the NHS. He clarified that as a Governor, he was appointed by the Council and was not involved in the operational running of any of the hospital’s business matters. He added that membership of the Hospital’s Governing body was open to all.” (printed minutes 7April 2016).
10. Councillor Galvin sought and received officer advice about his interest as a governor of the York Teaching Hospital Foundation Trust. He was advised that he had a personal but not a prejudicial interest.
11. In the Trust’s document the ‘role of the governor’ it is stressed that “governors are not responsible for the day to day management of the Trust”
12. It can be seen that the Council of Governors have to approve ‘significant transactions’ the definition of which is set by Monitor, the NHS regulator. This definition is 25% of annual turnover but in fact the York Hospitals NHS Foundation Trust Board decided to reduce this limit to 15% which for this

Trust means that only for transactions of £34m would approval be sought from the Council of Governors. As the disposal of Groves Chapel would more likely be around £710,000 no such approval was needed. If the transaction is below £1m approval is not even sought from the Board of Directors.

13. It is common knowledge that the Foundation Trust is struggling with the budget and that it has been declaring an accounts deficit for some time. This is in the public domain as it has been reported regularly in the local press and on TV and radio.
14. Councillor Galvin was not in possession of any more facts than any other Councillor at the planning sub-committee as he had not attended any meetings of the Foundation Trust nor, as a governor, did he have any involvement in the business of the Foundation Trust.
15. In the York Teaching Hospital Foundation Trust document "Governors' Code of Conduct" it states that Governors are required to "b) Act in the best interests of the Trust at all times". Councillor Galvin is a nominated representative of the Local Authority, City Of York Council and would contribute by expounding the views and interests of the Council. As an elected Councillor appointed to the Trust by the City of York Council his overriding responsibility is to the Council as a whole and the electorate/residents of York. In general there would not be any conflict between these roles but if a conflict were to arise then Councillor Galvin's duty would be to his role as Councillor first and the Trust Governor role second.
16. I am not persuaded that in the video of the planning sub-committee meeting and in my individual interviews that it was demonstrated Councillor Galvin showed any bias. Councillor Galvin as Chair of the meeting allowed all points to be made by all those wishing to make them. He did not make any reference about the way in which he might vote until such time as it was necessary.
17. For the moment I would like to leave aside the allegation that Councillor Galvin swore at the site meeting on 9th March and consider the allegation that Councillor Galvin failed to treat members of the public who were present with respect, bullied, swore, and intimidated them at the site meeting 9th March and/or the planning sub-committee meeting on 7th April.
18. It is clear from the interviews I conducted that this was a very emotive issue for some people and that there had been a series of emails prior to the meeting between officers and some local people, including two of the complainants.
19. Any citizen or business person can register to speak at the Council's public meetings provided it is about
 - A specific agenda item being considered at the meeting concerned
 - An issue which the meeting concerned is authorised to deal with as set out in the Council's Delegation Scheme (see part 3, Schedule 1 of the constitution)

20. All of the residents who had registered to speak, were given a full three minutes to speak.
21. There was a full debate of the pros and cons of the application at the meeting.
22. As Chair of a meeting it was Councillor Galvin's responsibility to keep control of the meeting and ensure that the meeting was conducted within the rules, that it ran smoothly and to time. The meeting was taking a long time and there were a number of other items on the agenda. Councillor Galvin may have demonstrated some impatience with the length of time taken to ask some questions.
23. The Council's own 'Public Participation' document states that there is a maximum of "30 minutes to listen to public speakers" and goes on to say "Only 1 speaker can speak in favour of and only one speaker against a single issue, unless the councillor chairing the meeting is prepared to make any exceptions". In this instance Councillor Galvin allowed all those who had registered to speak to have their say.
24. I did not see any evidence on the video that Councillor Galvin did not respect residents. Councillor Galvin tried to put one of the residents at ease, by suggesting that there was "nothing to be nervous about".
25. At the site meeting on 9th March, it was alleged that Councillor Galvin swore but there was no consensus as to what he actually said. During his interview, he said that he made an aside comment to another Councillor. He said "This man's being a Pillock" in reference to the person who was driving a lorry around Union Terrace. This is a slang term defined as meaning "stupid person" (www.oxforddictionaries.com). It is not a swear word. It was not said directly to a member of the public. Whilst objectors may have viewed the presence of the lorry as demonstrating their concerns, some Councillors in attendance at the meeting, whom I interviewed, commented that the lorry was distracting from the business of the site visit.
26. Unfortunately Councillors and officers were delayed in arriving at the site. There is no consensus as to how late they were. It was a very wet day and residents had been standing around waiting in the rain. Residents do not recall an adequate apology being made, but there was no consensus about this, as others did believe an apology was made. It is normal practice for officers and committee members to arrive together for site visits. Therefore there was no opportunity to contact residents, who were waiting in the rain, to explain the meeting would be delayed.
27. On arrival at the site Councillor Galvin said that he apologised and said that they could have only got there quicker if they had used a helicopter. He believes that he made this comment to diffuse a hostile situation.

Conclusions

28. Site visits are for Councillors to look at the application's context. Officially members of the public can attend and make their point but there is not a

presumption that members of the public can ask questions. However it is common practice to allow members of the public to ask questions. No debate should take place at the site meeting as it is important that Councillors are open-minded when they enter into debate at the planning meeting.

29. The Council's own document Public Participation does not deal with planning site visits and the specific contributions that members of the public can or cannot make at site meetings. It is not defined in the 'planning process' document either. On arriving at the site, Councillor Galvin stated the purpose of the meeting and informed residents that they would be allowed to ask questions at the end of the officer presentations. Residents who were present and had been kept waiting in the rain for some time reasonably assumed, until told otherwise, that they could freely ask questions and those who needed to return to work wished to make their points early in the meeting. This brought a degree of frustration to the meeting and was compounded by the comment about helicopters from Councillor Galvin which was not received in the spirit in which it was delivered. The presence of the lorry created a distraction from the business of the site visit and therefore Councillor Galvin was keen to ensure, that as the Chair he controlled the meeting and ensured that officers were not subjected to undue pressure. Councillors have a duty of care to Council employees.
30. It is clear from my interviews that members of the public, and also Councillors, were frustrated by the way in which the visit was being conducted. In my view, Councillor Galvin was trying to effectively chair a difficult meeting. This was done by ensuring the rules of the visit were adhered to and that the meeting was not distracted from its purpose. There was no consensual evidence given at my interviews that demonstrated that Councillor Galvin bullied, swore or intimidated members of the public.
31. In order to avoid such frustration, at future site meetings the Council may wish to consider making the rules of visits more accessible for residents prior to attendance. It might be more appropriate if at least one officer were to travel separately to the visit in order that a telephone call can be made to the site to update on expected arrival time. In this way residents would not be left standing in the rain for an undue length of time.
32. That Councillor Galvin used the term "pillock" is not in itself a breach of the code. He said this under his breath and it was not intended to cause offence as he did not direct it at any one person. It is however a derogatory term made at the meeting and was made specifically about a member of the public. We are all beneficiaries of freedom of speech and Councillor Galvin, like any one of us, is entitled to express his views. He is however in a position of authority which has a clearly proscribed code of conduct which states he must 'treat others with respect'. Residents were aware he had made a remark but were unable to specify what it was. This does not detract from the fact that he did make a remark which was derogatory about a member of the public and therefore I find that Councillor Galvin did in fact breach the code of conduct by not treating others with respect.

33. Turning to the allegation that Councillor Galvin had a prejudicial interest. The Code of Conduct states that you have a prejudicial interest

“If you have a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it would likely prejudice your judgement of the public interest then you have a prejudicial interest.”

This is subject to the exceptions set out in paragraph 6.4

- 6(4) *You do not have a prejudicial interest in any business of the authority where that business:*

- (c) *does not affect your financial position or the financial position of a person or body named in the second schedule:*
- (d) *does not relate to the determination of any approval, consent, licence, permission or registration in relation to you or any person or body described in the second schedule;*

Second Schedule – Other Interests

3. *Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority*

4. *Any body –*

- (c) *exercising functions of a public nature:*
- (d) *directed to charitable purposes; ”*

34. Councillor Galvin declared a personal interest as a member of the governors of the York Teaching Hospital Foundation Trust and “He clarified that as a Governor, he was appointed by the Council and was not involved in the operational running of any of the hospital’s business matters. He added that membership of the Hospital’s Governing body was open to all.”

35. The sale of Groves Chapel would have brought in an estimated £710,000 to the accounts of the Trust. This sum, whilst reducing the deficit, would not make any significant impact on a predicted £13.3m deficit. Councillor Galvin was in a position to criticise financial decisions at the Trust but not in any position to make financial decisions. Whilst the decision to sell the Groves Chapel did affect the hospital’s finances it was not such a significant affect that it could be demonstrated that Councillor Galvin had any more interest than any of the other Councillors present at the meeting. Councillor Galvin does have a duty for the well-being of all York electors and residents and as such should take this into account when considering the planning applications. Councillors must consider and balance the benefits for the electorate as a whole with the benefits or otherwise for those electors affected by a planning application. This was clearly demonstrated by the debate which took place at this particular meeting. In acting as a Governor of the Trust Councillor Galvin as a nominee of the Council is there in his capacity as a Councillor representing the York electors/residents. I do not consider that

Councillor Galvin breached the Code of Conduct in this instance as he did not have a prejudicial interest that was so significant that it would materially affect his judgement.

36. There was much debate at the planning committee meeting and all those who had registered to speak were allowed their three minutes. I am not persuaded that Councillor Galvin did anything other than try to keep the meeting running smoothly and ensure that not too much time was taken for this one particular agenda item. I was not furnished with any consensus views that persuaded me that Councillor Galvin had bullied or intimidated anyone at the meeting. I would conclude therefore that Councillor Galvin did not Breach the Code of conduct as alleged.
37. The planning process whilst dealing with applications within the law has constrained the ability of residents to make their voices heard. This only serves, in some instances, to frustrate those who are clearly passionate campaigners/advocates for objection. The planning process document could make it much clearer what the purpose of site visits are and emphasise the site visit process. This would allow residents to digest what they are allowed to do and come to the visit better prepared to accept that it is not the debating chamber. It is not acceptable to leave people standing in the rain. It would be more appropriate to have an officer already present at the site to take calls from the committee and explain the delays to residents.
38. To conclude I find that Councillor Galvin did breach the code by commenting, within earshot of members of the public at a public meeting, "This man's being a Pillock" he was not treating others with respect but that he did not breach the code with regard to having a prejudicial interest. In addition he did not breach the code by bullying or intimidating anyone present at either the site meeting or the Planning sub-committee meetings.