

Joint Standards Assessments Sub-Committee

21 February 2024

Report of the Deputy Monitoring Officer

Code of Conduct Complaints received in respect of a CYC Councillor

Summary

1. To consider a Complaint of breach of the Code of Conduct received in respect of a CYC 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 A is recommended.

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

Background

3. On 15 January 2024 the Deputy Monitoring Officer received a verbal complaint from a citizen alleging that the Subject Member had breached the Code of Conduct by failing to respond to them, failing to rectify the alleged disability discrimination they had suffered and that this equated to disrespect for the purposes of the Code.
4. The complainant provided no written complaint but the records of email correspondence which are relevant to the complainant's verbal complaint have been extracted from CYC files.

5. It is important to note that the code of conduct complaint is being considered in tandem with a corporate complaint relating to the Council Tax function and failures to (a) correctly formulate a bill and (b) communicate the bill formulation effectively and in accordance with reasonable adjustments sought under the Equality Act 2010. This part of the wider complaint is beyond the purview of JSC.

Procedure

6. 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?”
7. 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.
8. In all cases, the subject member is notified of the complaint and may provide comments.
9. An Independent Person is also invited to give a view on what should happen next. 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.
10. 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

11. 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.
12. Factors i and ii are plainly satisfied in this case. Whilst a failure to respond appropriately to concerns raised may be capable of constituting a breach of the Code through disrespect, members must decide if there is evidence of such failure which establishes a case to answer. If not, the matter is out of scope.
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. 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
14. As to a member's duty to be responsive to members of the public, it cannot be reasonable to interpret the Code as requiring councillors to be continuously available to citizens.

15. The assessment committee is entitled to take the view that interacting effectively with citizens includes redirecting their queries and concerns to appropriate officers.
16. It is the view of the Deputy Monitoring Officer that there is no evidence capable of demonstrating failure to treat others with respect contrary to Paragraph 1 or Paragraph 5 of the Code of Conduct.

Options

17. 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

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

Human Resources (HR)

19. Not applicable to this report.

Equalities

20. Councillors are offered the support of an Independent Person as part of the Complaints Handling Procedure. In this case the Subject Member requested and was provided with the IP's contact details in together with an explanation of their role.

Legal

21. 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

22. Not applicable to this report.

Other

23. Not applicable to this report.

Contact Details

Author and Officer

Responsible for the report:

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**Report
Approved**



Date

9 February 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
- <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respect>