

**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 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 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 A is recommended in respect of the complaint.

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

**Background**

3. On 15<sup>th</sup> June 2023 the Monitoring Officer received a complaint from a resident alleging that a CYC Councillor had breached the Code of Conduct by making remarks which were deliberately false and defamatory and such behaviour from an elected member reflects badly on City of York Council.
4. In Code of Conduct terms this can be interpreted as an allegation of failing to treat the complainant with respect (paragraph 1), bullying and

harassment (paragraph 2) and bringing the role or local authority into disrepute (paragraph 5).

## **Procedure**

5. 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?”
6. 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.
7. In all cases, the subject member is notified of the complaint and may provide comments.
8. If a complaint passes the initial filter, an Independent Person is invited to give a view on what should happen next and where the matter is referred to an assessment sub committee the IP comments should be included in the report. 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.
9. These will be the options available to the Sub Committee today if either 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**

10. 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.

11. Factors i and ii are plainly satisfied in this case. It is not however clear that the Councillor was acting in the role of Councillor. If the Committee considers they were not then the matter is out of scope.
12. If the Committee concludes that the Councillor was acting in the role of Councillor it must go on to determine whether behaviour complained of is capable of constituting a breach of the Code.
13. The Committee may wish to note the final investigation report and comments given by Alex Oram (IP) in respect of a previous similar allegation.
14. 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 role of Councillors is such that they will engage in robust debate and are expected to challenge, criticise and disagree;
  - b. It is helpful to focus any criticism or challenge on ideas and policies rather than personalities or personal attributes;
  - c. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another;
  - d. 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;
  - e. The requirement to treat others with respect must be balanced with the right to Freedom of expression.
15. 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.

16. 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.

17. In addition there is specific guidance offered by the LGA on use of social media. This encourages engagement with citizens in the digital world and recommends good practice for maintaining respect and civility on all sides of public debate, recognising that councillors can themselves become victims of online bullying and intimidation.

18. It is the view of the Deputy Monitoring Officer that on balance the Councillor was acting in their private capacity in respect of the behaviour complained of and the matter is therefore out of scope.

19. If the committee concludes that the matter is in scope, both in that the Councillor was acting in their role as Councillor and the matters complained of are capable of constituting a breach of the code, then the paragraph 10 considerations should be applied in determining the appropriate course of action.
20. The question of potential defamation is not an issue for the committee. Defamation is a tort which relates to the publication of a statement that has caused, or is likely to cause, serious harm to a person's reputation. It is a defence to prove the statement is true or an honest comment. It is a matter for the complainant to decide whether or not to pursue legal action.

## **Options**

21. 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**

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

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

23. Not applicable to this report.

### **Equalities**

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

### **Legal**

25. 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**

26. Not applicable to this report.

### **Other**

27. 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** 16<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>