

**Notice of meeting of
Joint Standards Committee - Assessments Sub-Committee**

- To:** Councillors Fisher and Pavlovic (CYC Members)
Councillor Chambers (Parish Council Member)

Mr J Leigh and Ms R Mazza (Independent Persons)
- Date:** Tuesday, 23 July 2024
- Time:** 4.30 pm, **or on the rising of Joint Standards Committee, 23 July 2024, 4.00 pm.**
- Venue:** West Offices - Station Rise, York YO1 6GA

A G E N D A

- 1. Appointment of Chair**
To appoint a member to chair the meeting.
- 2. Declarations of Interest** (Pages 1 - 2)
At this point in the meeting, Members and co-opted members are asked to declare any disclosable pecuniary interest, or other registerable interest, they might have in respect of business on this agenda, if they have not already done so in advance on the Register of Interests. The disclosure must include the nature of the interest.

An interest must also be disclosed in the meeting when it becomes apparent to the member during the meeting.

[Please see attached sheet for further guidance for Members].

- 3. Exclusion of Press and Public**
To consider excluding the public and press from the meeting during consideration of the private reports at Agenda Items 4, 5 and 6, on the grounds that they contain information relating to individuals and information likely to reveal the identity of individuals.

This information is classed as exempt under Private Document Pack paragraphs 1 and 2 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

Note: the private reports referred to above follow the public report on each item in the agenda papers.

4. Code of Conduct Complaint received in respect of a City of York Councillor (Pages 3 - 34)

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

5. Code of Conduct Complaint received in respect of a City of York Councillor (Pages 35 - 56)

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

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democratic Services Officer responsible for this meeting:

Name: Ben Jewitt

Contact details:

- Telephone: (01904) 553073
- E-mail: benjamin.jewitt@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

Alternative formats

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我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

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Declarations of Interest – guidance for Members

- (1) Members must consider their interests, and act according to the following:

Type of Interest	You must
Disclosable Pecuniary Interests	Disclose the interest, not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Directly Related) OR Non-Registrable Interests (Directly Related)	Disclose the interest; speak on the item <u>only if</u> the public are also allowed to speak, but otherwise not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Affects) OR Non-Registrable Interests (Affects)	Disclose the interest; remain in the meeting, participate and vote <u>unless</u> the matter affects the financial interest or well-being: (a) to a greater extent than it affects the financial interest or well-being of a majority of inhabitants of the affected ward; and (b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest. In which case, speak on the item <u>only if</u> the public are also allowed to speak, but otherwise do not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.

- (2) Disclosable pecuniary interests relate to the Member concerned or their spouse/partner.
- (3) Members in arrears of Council Tax by more than two months must not vote in decisions on, or which might affect, budget calculations,

and must disclose at the meeting that this restriction applies to them. A failure to comply with these requirements is a criminal offence under section 106 of the Local Government Finance Act 1992.



Joint Standards Assessments Sub-Committee**23 July 2024**

Report of the Deputy Monitoring Officer

Code of Conduct Complaint received in respect of a City of York Councillor**Summary**

1. To give fresh consideration to a complaint of breach of the Code of Conduct received in respect of a CYC Councillor and to 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 21 February 2024 a Joint Standards Committee Sub Committee considered a complaint received on 15 January 2024 alleging that a Councillor had breached the Code of Conduct by failing to treat the disabled complainant with respect.
4. The Sub Committee found no evidence of disrespect within the meaning of the Code and ruled the complaint out of scope.

5. The complaint handling process provides no rights of appeal against such a decision. The complainant however complained to the Monitoring Officer that the complaints handling process had been unfair in failing to provide an opportunity for them to make verbal representations to the sub committee. It was further submitted that in light of the complainant's disability, this would have been a reasonable adjustment.
6. The Equality Act 2010 obliges local authorities to make reasonable adjustments to avoid putting persons with protected characteristics at a disadvantage in accessing services.
7. In response to the process complaint, the Monitoring Officer determined that it would be appropriate to take Counsel's advice on the extent of reasonable adjustments required by law. Counsel was asked to advise generally, and specifically on whether the complainant should be afforded an opportunity to make verbal representations to sub committee notwithstanding this is not a facility made available to non disabled complainants.
8. Counsel's opinion was received on 9 June 2024 and confirmed:
 - a. An appropriate adjustment was made to the Case Handling Procedure so that the complainant could make their complaint verbally rather than being required to put it in writing;
 - b. To be effective in removing any substantial disadvantage the adjustment of allowing a verbal complaint should ensure it is recorded/used in the same way that a written complaint from a non-disabled person would be used;
 - c. Although the Council took reasonable steps to ensure that the complainant was not at a substantial disadvantage in terms of having to *submit* the complaint in writing, it failed to takes steps to ensure that they were not put at a substantial disadvantage in terms of the *procedure overall* by not ensuring that a record/note of their verbal complaint was included in the report to the JSC or was otherwise available to the JSC;
 - d. The Councillor was not in breach of the Equality Act 2010 when they referred the original complaint to the relevant department of the Council and the original advice to the sub-committee on the substance was correct;

- e. The Case Handling Procedure should make reference on its face of to the possibility of the procedure being adapted if necessary to account for an individual's disability. It may also be sensible to say that a complaint may be made verbally as well as in writing;
 - f. There had been no breach of the duty to make reasonable adjustments in failing to allow the complainant to make verbal representations to the JSC.
9. In order to remedy the potential procedural defect, the complaint is re submitted for assessment together with an additional note of the meeting between the DMO and the complainant.
10. For transparency this note was recorded on the date of the meeting in the form of a draft letter to the complainant.

Implications

Financial

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

Human Resources (HR)

12. Not applicable to this report.

Equalities

13. This re hearing has been arranged to ensure fair access to the complaints handling process for a complainant with a protected characteristic.

Legal

14. 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 as adjusted in compliance with the Equality Act 2010 where applicable.

Crime and Disorder, Information Technology (IT) and Property

15. Not applicable to this report.

Other

16. 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 1 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
- <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respect>

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Joint Standards Assessments Sub-Committee**23 July 2024**

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 **Date** 2 July 2024
Approved

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>

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