

Joint Standards Assessments Sub-Committee

23 January 2025

Report of the Deputy Monitoring Officer

Code of Conduct Complaints received in respect of a City Councillor

Summary

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

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

Background

3. On 6th November 2024 the Monitoring Officer received a complaint by email from an Officer complaining that the Subject Member had made comments directed to them at a public meeting of the Council which amounted to disrespect for the purposes of the Code.
4. The complainant provided a written explanation of why they felt the comments were disrespectful. Specifically, the complainant said that one comment made by the Councillor “*appears to suggest officers have deliberately misrepresented or falsely reported information in a paper at the behest of members*”.

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 to the case.
7. In all cases, the subject member is notified of the complaint and may provide comments. The Subject Member’s comments have been obtained.
8. An Independent Person is also invited to give a view on what should happen next and this has 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.
9. 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.
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. An allegation of disrespect is capable of constituting a breach of the Code. Members

must decide if there is evidence of disrespect which establishes a case to answer. If not, the matter is out of scope.

The Code of Conduct (Constitution Appendix 14)

12. The Code of Conduct states:

“1. Respect

As a Councillor:

a. I treat other Councillors and members of the public with respect.

b. I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.”

The Protocol for Member Officer Relations (Constitution Appendix 16)

13. The Council Protocol sets the context for Member Officer relations by reference to the following guidance from the LGA:

Both Councillors and Officers are servants of the public and are indispensable to one another. Together, they bring the critical skills, experience and knowledge required to manage an effective local authority. At the heart of this relationship, is the importance of mutual respect. Councillor-officer relationships should be conducted in a

positive and constructive way. Therefore, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy, should show mutual appreciation of the importance of their respective roles and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party. . .

The roles are very different but need to work in a complementary way.

It is important for both sides to respect these differences and ensure that they work in harmony. Getting that relationship right is an important skill. That is why the code requires councillors to respect an officer's impartiality and professional expertise. In turn officers should respect a councillor's democratic mandate as the people accountable to the public for the work of the local authority."

14. Paragraph 2.4 of the Protocol states, amongst other things, that officers can expect councillors to:

- treat them fairly and with respect, dignity and courtesy
- recognise that officers work to the instructions of their senior officers and not to individual members or political groups

15. Paragraph 4.3 of the Protocol states:

"Councillors should not raise matters relating to the conduct or capability of an officer, or of officers collectively, in a manner that is incompatible with this protocol at meetings held in public. This is a long-standing tradition in public service. An officer has no means of responding to criticisms like this in public."

16. Paragraph 13 states:

"13.3 Where an officer feels that they have not been properly treated with respect and courtesy, or is concerned about any action or statement relating to themselves or a colleague by a councillor and wishes to raise a grievance, they should raise the matter with their line

manager, director or the Head of Paid Service as appropriate.

In these circumstances the Head of Paid Service or relevant Chief Officer will take appropriate action either by approaching the individual councillor and/or the party group leader.

13.4 Where an officer wishes to make a complaint under the Member Code of Conduct this should be made to the Monitoring Officer and dealt with in accordance with the procedure in Appendix 14 of the Constitution.”

The Local Government Association (“LGA”) Guidance

17. The LGA publishes guidance on the Code of Conduct and on complaints handling which is referred to in the background documents. 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;
 - f. Public servants such as local government officers are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians such as councillors. Officers do not necessarily have the same right of reply

to such comments as councillors do and councillors should take care not to abuse or exploit this imbalance;

- g. Recent case law has confirmed that local authority officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to offensive, abusive attacks and unwarranted comments that prevents them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example chief executives or heads of services, will also be expected to have a greater degree of robustness.

18. The case handling guidance highlights matters which may be suitable for informal resolution. These include cases of interpersonal conflict and allegations about how formal meetings are conducted.

The Subject Member's Comments on Procedure

19. The Subject Member has raised concerns about the handling of the complaint as a Code of Conduct complaint.
20. The Guidance is clear that whilst Local authorities may produce a complaint form for Code of Conduct complaints, it cannot compel complainants to use a complaint form. This Council has been careful to ensure that its complaints process is accessible and does not create bureaucratic barriers to complaints. The Monitoring Officer neither solicits nor discourages complaints.
21. All submissions made to the Monitoring Officer must be handled so that fairness is afforded to both Subject Member and Complainant. The Monitoring Officer took the view in this case that a complaint, which had been received in writing, sufficiently outlined a complaint under paragraph 1 of the Code (respect) without requiring that part of the Code to be specifically cited.
22. An extended period was allowed for the Subject Member's response in light of initial queries they raised.
23. The Subject Member expresses concern that the matter has been referred inappropriately to a public meeting. Again, the LGA guidance is clear:

“while there should be a presumption that a hearing following an investigation would normally be held in public (see guidance on hearings) there will be a strong presumption towards an assessment being treated as exempt information. The meeting may have to consider unfounded and potentially damaging complaints about councillors, which it would not be appropriate to make public because of the risk of unfounded reputational damage or the potential risk of prejudicing any future investigation.”

24. The usual practice of the JSC sub committee is to consider initial assessments in private in accordance with this guidance albeit that each decision regarding exempt information is made by Members of the Committee at the relevant time on its own merits.
25. The Subject Member has expressed concerns regarding procedure but has fully co-operated with the process. As part of their submissions they make an apology for any misunderstanding and express desire for a meeting.

Options

26. 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

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

Human Resources (HR)

28. Not applicable to this report.

Equalities

29. Councillors are offered the support of an Independent Person as part of the Complaints Handling Procedure. The Subject Member has not requested the support of an IP.

Legal

30. 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

31. Not applicable to this report.

Other

32. Not applicable to this report.

Contact Details

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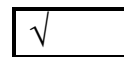
**Report
Approved**



Date 27 December 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>