



## **ASSESSMENT DECISION NOTICE**

### **A BREACH OF THE CODE HAS BEEN FOUND**

#### **ACTION REQUIRED**

<b>Reference:</b>	<b>CCN062/22/23</b>
<b>Complainant:</b>	<b>Councillor K Johnson</b>
<b>Subject Member:</b>	<b>Councillor B Seage, St Cleer Parish Council</b>
<b>Person conducting the Assessment:</b>	<b>Simon Mansell, Group Manager - Assurance</b>
<b>Date of Assessment:</b>	<b>19 August 2022</b>

#### **1. Complaint**

- 1.1. The Complainant has set out that he considers that the Subject Member has, by his actions, brought about unauthorised expenditure which is contrary to the Council's Standing Orders.

#### **2. Decision and Action**

- 2.1. That, for the reasons set out in this Notice, the Subject Member has breached the Code of Conduct.
- 2.2. It is considered that a suitable action to remedy this breach is that the Subject Member should apologise to the Council for failing to advise them of the previous Chairmans actions, as soon as he became aware of them.

#### **3. Reasons for the Decision**

- 3.1. In undertaking this assessment, I have had regards to:
  - The complaint and two supplemental emails from the Complainant;

- The response from the Subject Member, including additional information;
- Comments from the Clerk to the Council; and
- The views of the Independent Person.

### Application of the Code of Conduct

- 3.2. In considering the complaint as made, I am satisfied that the Subject Member was acting in their official capacity at the time of the alleged conduct and therefore was bound by the Code of Conduct.
- 3.3. As with all ethical standards complaints, this is assessed against the Code of Conduct adopted by the Council and the procedures for assessing complaints adopted by Cornwall Council. The information provided is assessed on the balance of probabilities; this is, would a reasonable person objectively considering of all the facts, be of the view it is more likely than not that the actions of the Subject Member amount to a breach of the Code of Conduct.

### The Complaint

- 3.4. The Complainant has set out that an invoice from Southwest Councils which was presented to Council for payment was not authorised, and it was agreed that the Council had already discontinued the subscription to this body. Further details of this are set out below.
- 3.5. The Complainant is of the opinion that the Subject Member engaged the services of Southwest Councils which incurred unauthorised expenditure. The Complainant has supplied, as confirmation of this, an email from the Subject Member to Southwest Councils.
- 3.6. The complainant has also provided some key dates to support his complaint, and these are compiled into a timeline below.
- 3.7. In a subsequent email, the Complainant has raised the fact that the Subject Member also failed to copy the Clerk in on the correspondence with Southwest Councils.
- 3.8. Overall, the Complainant considered that the Subject Member's activity has resulted in the Council incurring unauthorised expenditure and has undermined the role of the Clerk and the Council.

### The Response from the Subject Member

- 3.9. The Subject Member has responded to the complaint and has, in the initial stages of his response, outlined the background to the matter and the reasons for the previous Chairman seeking the advice from Southwest Councils. The Subject Member has set out that he considers that the previous Chairman was authorised to seek the advice from Southwest Councils with regard to a complex HR situation. He has not commented on the resolution not to use their services.
- 3.10. With regard to the email provided within the complaint, the Subject Member has set out that this was an email to Southwest Councils which was sent to explain that the previous Chairman had resigned and introducing himself as Vice Chairman.

3.11. In closing, the Subject Member has said that there is no evidence that he asked Southwest Councils for advice, and that he did not do so.

Additional Information

3.12. Having noted the comments in the response from the Subject Member relating to the prior contact with Southwest Councils by the previous Chairman, I asked both the Subject Member and the Complainant for any emails which predated the contact with Southwest Councils by the Subject Member on 28 June 2022.

3.13. Copies of emails, as covered in the timeline below, were received from the Subject Member.

Consideration of the Facts

3.14. Both the Complainant and the Subject Member have provided dates which they consider are relevant to the complaint. These have been combined into the following timeline:

- At a meeting held on 27 April 2022 the annual subscription to Southwest Councils was presented for payment. The Complainant considers that this payment was already not authorised due to a decision at a meeting in April 2022, despite the fact that it appeared to be, and this was an error that needed correcting;
- During the meeting of the Council held on 25 May 2022, it was resolved not to renew the subscription to Southwest Councils. The Subject Member is stated to have been at this meeting;
- At an extraordinary meeting of the Council on 8 June 2022, the error from April 2022 was corrected regarding the authorisation of payment to Southwest Councils;
- 23 June 2022 @ 14.27 – the then Chairman of the Council, Councillor Prinn resigns;
- The Complainant has set out that a series of emails which commenced on 28 June 2022 and concluding on 5 July 2022 appear to show the Subject Member engaging the services of Southwest Councils, despite the resolution on 25 May 2022;
- On 27 July 2022 it was agreed with Southwest Councils, who had been pressing for payment from the Council for advice received by the ex-Chairman and the Subject Member, that a pro-rata rate for the period April – July 2022 would be paid by the Parish Council

3.15. The question of whether unauthorised expenditure arose relates specifically to the contact that the Subject Member and before that the previous Chairman had with Southwest Councils. As part of this, I have sought to put the contact into context and have been supplied with emails which show the contact between the previous Chairman and the Subject Member with Southwest Councils, and a timeline from these is as follows:

- 23 June 2022 @ 10.35 – the previous Chairman of the Council contacts Southwest Councils direct and asks for advice on a matter. The Subject Member is not copied in.
- 23 June 2022 @ 17.14 – a reply is sent from Southwest Councils back to the previous Chairman, the Subject Member is not copied in.

- 23 June 2022 @ 22.23 – the previous Chairman forwards the advice from Southwest Councils to the Subject Member and the Clerk to the Council. In the emails he explains he is forwarding it to them as he has resigned.
- 28 June 2022 @ 10.06 – The Subject Member emails Southwest Councils, in the email the Subject Member does not ask for further advice but acknowledges the advice received and asked that he be provided with any further relevant correspondence relating to the matter received by Southwest Councils.
- No further information has been provided with regards to correspondence to or from Southwest Council after 28 June 2022, which would suggest that the contact was initiated by the Subject Member and that the contact incurred further unauthorised costs.

#### Response from the Clerk to the Council

- 3.16. The Clerk to the Council has responded to this matter and has said that the previous Chairman contacted Southwest Councils because he had been closely involved with an employment matter.
- 3.17. Further, the Clerk has said that following this, as the previous Chairman had resigned both as Chair and as Councillor with immediate effect and as Southwest Councils had replied, the Subject Member responded to them.

#### Findings of Fact

- 3.18. Based on the information provided by both the Complainant and the Subject Member, the following facts are considered to be found.
- 3.19. The Council had agreed not to use the services of Southwest Councils as from 25 May 2022, though I am of the view that this can be taken as a fact that this was later considered to be April 2022.
- 3.20. The Subject Member did not initiate the contact with Southwest Councils which forms the backdrop to this complaint. Based on the information provided, this contact was initiated by the previous Chairman. This is confirmed by the Clerk to the Council.
- 3.21. I have noted that within his response, the Subject Member considers that the previous Chairman had the ability to ask for this advice and has stated this in his response.
- 3.22. After resigning his position as Chairman, the previous Chairman advised the Subject Member and the Clerk of the advice he had been seeking from Southwest Councils.
- 3.23. It is therefore considered to be a fact that, as from 23 June 2022 @ 22.23, both the Subject Member and the Clerk were aware of the previous correspondence with Southwest Councils
- 3.24. It is shown as a fact that the Subject Member did contact Southwest Councils on 28 June to introduce himself and asked that further correspondence be provided to him.

3.25. Whilst it is a fact that the Subject Member contacted Southwest Councils on 28 June 2022, no facts have been presented that show that the contact from the Subject Member directly incurred unauthorised expenditure.

*The actions of the Subject Member*

3.26. In considering the actions of the Subject Member against the Code of Conduct, there is nothing provided that suggests he asked Southwest Councils for advice which incurred any expenditure. As the previous Chairman copied the Clerk in on his emails to Southwest Councils on 23 June 2022, it is considered after this date the Clerk can be considered to have been aware of this advice and who had requested it.

3.27. I do consider that the Subject Member was correct to go back to Southwest Councils as he did on 28 June 2022 to set out that the previous Chairman had resigned and ask for any further correspondence received. Even though the contact with Southwest Councils has not been initiated by him, this did need to be closed.

3.28. However, even though the contact with Southwest Councils was not initiated by the Subject Member, and he may have been of the opinion that the previous Chairman had the ability to contact Southwest Councils due to a previous resolution the decision of Council dated 25 May 2022, this resolution should have, as a minimum, been sufficient to make the Subject Member question the contact and whether it was authorised.

3.29. I am of the opinion that, regardless of the subject matter, the wider membership of the Council should have been advised of the contact with Southwest Councils initiated by the previous Chairman, as soon as the Subject Member became aware of it. The reason for this is that, given the resolution passed on 25 May 2022, it should have been clear that the contact may not have been authorised and this could be incurring additional costs for the Council that were not authorised.

3.30. In applying the Code of Conduct to this, a reasonable person who would consider all of the facts would be of the view that, as there was a resolution of the Council dated 25 May 2022 and further contact was then initiated after this by the previous Chairman, the Vice Chairman should have informed the rest of the Council and, as part of this, questioned if any further recharges to the Council were authorised.

3.31. It is accepted that the Subject Member may have been unhappy with the decision of Council to dispense with the services of Southwest Councils, and even the actions of Council relating to the employment matter. However, as the Vice Chairman, I am firmly of the view it was incumbent upon him to advise Council of the situation created by the previous Chairman.

3.32. By not doing so, a reasonable person would be of the view that this failed to treat the wider membership of the Council with respect and was, in part, disreputable. I am not of the view that this was a deliberate snub of the wider membership, but one that arose out of an assumption that the actions of the previous Chairman were correct without further considering resolutions which had been adopted.

3.33. As a result, it is considered that the Subject Member has breached paragraph 2.1 and 2.10 of the Code of Conduct, though with regards to paragraph 2.10

I do not consider that that Subject Member has brought his Council into disrepute, only his office.

### Views of the Independent Person

3.34.I do not consider these actions were a breach of the Code of Conduct and the Subject Member carried out his responsibilities correctly, using his initiative to respond effectively to a problem which had arisen.

### Summary and Actions

3.35.There has to be, in all Councils, good communications on any matter which is likely to affect the Council as a whole, and incurring expenditure is one of these things.

3.36.Whilst there is nothing to show that the Subject Member was directly responsible for the incurring unauthorised expenditure, he should have acted far sooner when he became aware of the actions of the previous Chairman. Had the Subject Member informed the wider membership of the situation on 23 June 2022 or immediately after, this complaint would have been avoided.

3.37.Therefore, in mitigation of the breach, I consider that the Subject Member should apologise for not informing the wider membership of the Council of the actions of the previous Chairman sooner.

## **4. What happens now?**

4.1. This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to St Cleer Parish Council and placed on Cornwall Council's web site.

## **5. Right of review**

5.1. At the written request of the Subject Member, the Monitoring Officer can review and, if the review is successful, this may result in a change to the finding made in the original assessment.

5.2. We must receive a written request from the Subject Member to review this decision within 14 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed. The grounds for requesting a review must be substantive, and a re-submission of the original complaint will not be classed as substantive, and neither will a request that sets out the findings are disagreed with. There must be fresh information in the request which was not considered at assessment which is such that this may result in a different outcome.

5.3. If we receive a request for a review, we will write to all the parties mentioned above, notifying them of the request to review the decision.

## **6. Additional help**

- 6.1. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010.
- 6.2. We can also help if English is not your first language.