



## **ASSESSMENT DECISION NOTICE**

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

#### **ACTION REQUIRED**

<b>Reference:</b>	<b>CCN078/22/23</b>
<b>Complainant:</b>	<b>Councillor L Price</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>18 October 2022</b>

#### **Complaint**

The Complainant is of the view that, due to comment made in an email sent to him by the Subject Member on 23 September 2022, the Subject Member has breached the Code of Conduct.

Further details of the content of the email are set out below.

#### **Decision and Action**

That, for the reasons set out in this Notice, it is recommended that the Subject Member be Censured by the Council and a notice placed on the Parish Council's web site setting out the Censure which is to be decided upon by the Parish Council.

#### **Reasons for the Decision**

In undertaking this assessment, I have had regards to:

The Complaint as made; and  
The views of the Independent Person.

No response has been received from the Subject Member.

### Application of the Code of Conduct

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.

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

The complaint relates to an email sent by the Subject Member on 23 September 2022 @ 10.23. The email was sent in response to an email sent by the Complainant, in which the Subject Member set out to the Complainant:

*'You missed out stupid and obese in your otherwise accurate description of yourself'.*

### Consideration of the Facts

In reviewing the email which is the subject of this complaint, I have been provided with the thread of emails which put the comments in the email dated 23 September 2022 into context. This is done as the thread gives the background to the exchange between the Subject Member and the Complainant.

In particular, I have noted that email sent on 23 September 2022 was sent in response to an email from the Complainant to the Subject Member sent on 22 September 2022 @ 20.09 which described a response on a matter by the Subject Member to be 'boring and meaningless'.

Paragraph 2.1 of the Code of Conduct sets out that you must treat others with respect.

Guidance on the Code has always made the distinction between the right of a member to be critical and challenging and the need to ensure that comments made by any member are not unduly personal. What is personal is objective based on the views on a reasonable person considering the facts.

As a result, I have to take in to account the email sent by the Complainant on the 22 September 2022 which appears to have been the catalyst for the response from the Subject Member, and the fact that this, whilst not under assessment, did prompt the reply as received.

However, the response as sent by the Subject Member then seeks to make unduly personal remarks with regards to the Complainant, and these would seem to be disproportionate when considering the thread of emails which precede this, and I do not consider that a reasonable person would consider calling the Complainant 'stupid and obese' in response to his email to be an appropriate response.

Therefore, by sending the email on 23 September 2022, it is considered that the Subject Member has failed to treat the Complainant with respect and has breached paragraph 2.1 of the code of Conduct.

Even though this was an email between members, the Code does require that consideration is given as to whether a reasonable person would be of the opinion that the Subject Member has brought his office, or his Council, into disrepute.

In sending a response to the email dated 22 September 2022, a reasonable person would have sought to make their reply proportionate to the comments used, perhaps challenging whether their response had been boring and predictable as quoted.

I do not consider that a reasonable person would expect to be called obese and stupid as the Subject Member sought to do, and therefore this response would be seen as completely unwarranted.

There is no doubt that, by responding as he did, this would be seen as a breach of paragraph 2.10 but only in that the Subject Member has brought his office, and not his authority, into disrepute.

Having breached paragraphs 2.1 and 2.10 of the Code, it follows that the Subject Member has failed to uphold the high standards of conduct which are required of him under the Code of Conduct, and therefore is also in breach of Paragraph 2.5 of the Code.

#### Views of the Independent Person

The IP has formed a view having relied upon the details of the complaint provided by the Corporate Governance Officer, Cornwall Council Assurance Service Customer and Support Services Directorate together with information provided by the Complainant.

The IP has not received written or telephone contact from the Subject Member.

The IP noted an unnecessary and insulting comment sent to Cllr Price from Cllr Seage. There being no evidence to the contrary, IP's view is that Cllr Seage has breached the Code of Conduct.

Failed to treat others with respect (2.1)

Conducted himself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct (2.5)

Bringing his office or council into disrepute (2.10)

#### Summary and Actions

It could be accepted that the Subject Member wished to respond to the comment from the Complainant which referred to his response to a matter as boring and meaningless. However, it cannot be accepted that the response should be so personal.

There can be no basis for the Subject Member responding as he did with the aim of the words seemingly intending to take a swipe at the personal attributes of the Complainant.

This is not acceptable conduct for an elected member, nobody would expect to receive a response like this and, in considering the sanction, and given the thread of emails, there seems little to be gained from asking the Subject Member to apologise.

As a result, is it recommended that the Subject Member be Censured by the Council at the first meeting of the Council after the period for a review has expired. The Council is free to decide how the Censure should be worded. However, it is recommended that a copy of the Censure, once it has been recommended by the Council, be placed on the Parish Council's web site.

### **What happens now?**

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 published on Cornwall Council's web site.

### **Right of review**

At the written request of the Complainant, 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.

We must receive a written request from the Complainant 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, 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 so substantive this may request result in a different outcome.

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.

### **Additional help**

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.

We can also help if English is not your first language.