

ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN005/20/21
Complainants:	Cllr Andrew Webb as Chair of the Human Resources Committee of St Cleer Parish Council and Ms Roni Jones as Clerk of St Cleer Parish Council
Subject Member:	Councillor Brian Seage of St. Cleer Parish Council
Person conducting the Assessment:	Joanne Skeplorn, legal officer
Date of Assessment:	28 July 2020

Complaint

On 1st June 2020 the Monitoring Officer received a complaint against Councillor Seage from Councillor Andrew Webb as Chair of the HR Committee of St Cleer Parish Council. On 15th June 2020 the Monitoring Officer received a further complaint against Councillor Seage from Ms Roni Jones as Clerk of St Cleer Parish Council. Given the similarity of these complaints, the Monitoring Officer has conjoined them and considered the complaints together, as is set out in this notice, on 28th July 2020. Within this notice Councillor Webb and Ms Jones are referred to as the Complainants.

A general summary of the complaint is set out below:

The Complainants have alleged that the behaviour towards the Clerk and other Councillors by the Subject Member has been disrespectful and that, together with the submitting of unfounded complaints against the clerk, amounts to bullying of the Clerk. It is also alleged that the Subject Member is predetermined in his view, particularly in respect of planning matters.

Potential breaches of the Code of Conduct identified by the Complainants are:

- Paragraph 2.1 – you must treat others with respect;
- Paragraph 2.2 – you must not treat others in a way that amounts to or which may reasonably be construed as unlawfully discriminating against them;

- Paragraph 2.3 – you must not bully any person;
- Paragraph 2.5 - you must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members;
- Paragraph 2.12 – you must when using the resources of the Council:
 - (i) Have the prior formal permission of the Council;
 - (ii) Act in accordance with the reasonable requirements of the Council;
 - (iii) Ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (iv) Have regard to any statutory or other requirements relating to local authority publicity; and
- Paragraph 2.14 – when reaching decisions on any matter you must have regard to any relevant advice provided to you by the proper officer of the Council (usually the Clerk to the Council).

Decision and Action

That, for the reasons set out in this decision notice, the Subject Member has breached paragraphs 2.1, 2.3, and 2.5 of the Code of Conduct of St Cleer Parish Council.

To remedy the breach, the Subject Member should, within 28 days of the date of this decision notice, write a meaningful letter of apology to the Clerk for his behaviour towards her and if this is not done then it is recommended to the Council that the Subject Member is censured.

Additionally, the Subject Member should attend training on the Code of Conduct within the next 6 months.

In reviewing this complaint as a whole the Subject Member appears to be unclear regarding the role of the Clerk and their responsibilities. This is not uncommon but can lead to members then not understanding why a clerk acts in a certain way. As a result I also consider it would be helpful moving forwards if the Subject Member, though preferable the full Council so all have the same understanding, undertake training on the role and responsibilities of the clerk and on the relationship between the clerk and Councillors after the elections in 2021.

Breaches of the Code Found

Paragraph 2.1 – you must treat others with respect;

Paragraph 2.3 – you must not bully any person; and

Paragraph 2.5 – you must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members.

Reasons

In assessing this complaint, I have had regard to the following:

- The complaints;

- The chronology, emails and letters supplied by the Complainants;
- A response from the Subject Member with supporting evidence; and
- The views of the Independent Person assigned to this matter.

The Complainants main allegation is that the correspondence from the Subject Member to the Clerk and other Councillors has been disrespectful. The Complainants also state that the Subject Member is submitting unfounded complaints against the Clerk, which along with the correspondence, amounts to bullying.

The Subject Member has responded to the complaint by setting out that;

- He has tried to work in the St Cleer Parish Council in a professional and well-informed manner and that this has led him to ask questions;
- The questions raised were justified concerns in respect of a planning issue, emergency Covid-19 meeting, the timing of a book swap library and the way the Covid-19 regulations were being policed;
- He has not received answers from the Parish Council to his questions other than to be informed that his questions are based on his subjective opinion and are not supported by fact;
- The complaints he raised were not investigated but were dismissed and resulted in this Code of Conduct complaint;
- He believes he has acted in a way that fulfils his duty to look after the best interests of the people of St Cleer Parish; and
- He accepts that his approach may have been seen as heavy handed and undiplomatic at times and agrees to change his approach to remedy this.

Application of the Code of Conduct

I am satisfied that for the purposes of this complaint that the Subject Member was acting in his official capacity at the time of the alleged conduct and was therefore bound by the Code of Conduct as adopted by St Cleer Parish Council.

Paragraph 2.1 - Failure to treat others with respect

When considering if there has been a breach of this, or any part of the Code, the matter is assessed on the balance of probabilities; is it more likely than not that a reasonable person would be of the opinion that the conduct of the Subject Member was such that it was a breach of the Code, after viewing the facts objectively. When considering if the words used could amount to disrespect, for a breach of this part of the Code to be found it has to be shown that there has been a personal attack on a person by a Member. The Code does allow a Member to be critical of others, but this must not be done in such a way that is personal and therefore disrespectful.

The relationship between the Clerk and the Subject Member needs to be taken into account for this part of the complaint. As a Councillor, the Subject Member is the Clerk's employer and a quasi-employer/employee relationship exists between a councillor and an officer of any council. As this relationship exists there is therefore a requirement for the trust and confidence that has to exist between an employer and employee to be maintained. A Councillor also has a duty of care towards the Clerk as their employer.

I have considered the detailed chronology and documents provided by the Complainants. The chronology includes excerpts of emails sent by the Subject Member. I am unable to include all the excerpts due to the volume, but will include sufficient examples:

On 17th February 2020, the Clerk is alleged to have provided incomplete and hasty emails "incomplete and hasty emails on financial matters must be avoided by you".

On 26th February, the Subject Member alleges that the Clerk has placed the parish council in an embarrassing position "we must not again put the parish council in a position in which it could be claimed that it has acted unprofessionally".

On 17th March 2020 the Subject Member describes the Clerk's behaviour as "that of the CEO of the PC and not that of one who has a duty to guide and advise the Chair of the PC who then informs the councillors."

On 19th March 2020, the Subject Member includes comments within his emails to the Clerk to include "it is always encouraging when common sense prevails over hysteria", "how wrong can you be and remain convinced you are right" and "it is always interesting to revisit your emails".

In an email of 17th March 2020, despite being informed that the Clerk is the manager of the Pavilion and responsible for health and safety, the Subject Member continued to question the Clerks actions to close the pavilion stating that "the correct way to do so is for the Clerk to advise the chair.....and for the chair to authorise the Clerk to close the Pavilion."

On 19th March 2020, the Subject Member alleges in an email that the clerk has acted inappropriately stating "it is unusual and contrary to Standing Order 1 sub paragraph 0 that you closed down all debate on what the Council should do" and demanded the minutes from the Clerk within 7 days. Within the same email he challenged the actions of the Clerk of holding the meeting outside and the change in role of the caretaker as a result of Covid-19.

On 9th April 2020, the Subject Member included comments within his email to Councillor Smith and others to include "You and others decided there was nothing we could do for our people and then run for cover", "it was shameful" and "no matter what, as a leader I would never accept the weakness that was displayed at that awful meeting".

On 27th April 2020, the Subject Member responds to an email from the Clerk containing advice from CALC by stating "threatening non-IT savvy councillors with expulsion is hardly conducive to gaining their confidence in joining in".

On 23rd May 2020, the Subject Member wrote to the Human Resources Committee with a complaint against the Clerk asking for it to be formally investigated. A formal investigation was undertaken and found the allegation to be unsubstantiated.

On 28th May 2020, the Subject Member wrote to the Human Resources Committee with a complaint against the Clerk asking for it to be formally investigated. This matter was not investigated as it was based on the Subject Members subjective opinion and there was no evidence to substantiate it.

It should be noted that a Councillor is able to challenge the decisions and actions of the Clerk and part of the role of a Councillor is to do just that. However, the Subject

Member needs to do this in a way which is respectful and treats the Clerk, as an employee, as all employees would expect to be treated and to be mindful of the wording used within his emails and to consider the most appropriate place to raise his concerns.

It is accepted that the Subject Member sought to be well intentioned and considered they were acting for the benefit of the Parish when undertaking the actions complained of however, this does not remove the requirement to comply with the Code of Conduct.

In considering the emails concerning the Clerk, I do not believe that the reasonable person would find the emails from the Subject Member in respect of the Clerk, taking into account the quasi employer/employee relationship, to be acceptable. No employee would expect to be addressed by their employer in this manner and, if the Subject Member considers the Clerk as an employee is at fault, this should have been dealt with as an employment matter.

I therefore find that the Subject Member has breached Paragraph 2.1 of the Code of Conduct.

In respect of the email of 9th April 2020 addressed to Councillor Smith, I also do not believe a reasonable person would find the email to be acceptable. I note, however, that in the Subject Members response to the complaint he has acknowledged his email was not appropriate and that he has apologised to Councillor Smith in writing. As this process cannot recommend any further sanction and given the acceptance of the Subject Member of the error in sending this email it is not considered further.

Paragraph 2.2 – Discrimination

On the information provided I have not seen any evidence of discrimination and therefore there is no breach of paragraph 2.2 of the Code of Conduct.

Paragraph 2.3 – Bullying

Bullying can be categorised as a pattern of offensive, intimidating, insulting or humiliating behaviour; an abuse of authority which tends to undermine an individual, gradually eroding their confidence and capability. The continuous emails undermining the Clerk in respect of her role and decisions in addition to the unfounded complaints to the HR committee could, to the reasonable person in possession of all the facts, be considered as bullying. The behaviour has been ongoing for several months and the Clerk has stated she feels bullied by the Subject Member and has asked the Human Resources Committee to consider a grievance against the Subject Member.

The relationship between the Subject Member and the Clerk is that of employer/employee and therefore a duty of care is owed to the clerk. St Cleer Parish Council has a Human Resources Committee who deal with complaints against the Clerk and this is the route the Subject Member should take for any genuine complaints against the Clerk. This process however should not be misused. In light of the evidence provided which is set out above, I consider that the Subject Member has breached Paragraph 2.3 of the Code of Conduct.

Paragraph 2.5 – Conducted themselves in a manner which is contrary to the Councils duty to promote and maintain high standards of conduct

As a result of the breaches found in 2.1 and 2.3 of the Code of Conduct, I also am of the view that the Subject Member has conducted themselves in a manner which is contrary to the Councils duty to promote and maintain high standards of conduct and therefore is in breach of Paragraph 2.5 of the Code of Conduct.

Paragraph 2.12 – You must not misuse resources of the Council

The Subject Member has to date made two formal complaints against the Clerk. Although one was unfounded and the other not investigated, this is the correct place to raise grievances and two complaints would not at this stage be considered by the reasonable person with all the facts to be excessive. The Subject Member should however note that this process must be used for genuine complaints and concerns and should not be misused.

The Complainants estimate that the actions of the Subject Member has to date resulted in over 30 hours of time. The Subject Member should be mindful of this when sending emails and placing complaints and ensure that these are necessary and appropriate in all the circumstances.

At this time, I do not consider there to be a breach of Paragraph 12 of the Code of Conduct.

Paragraph 2.14 - Failure to have regard to any relevant advice provided by the Proper Officer of the Council (usually the Clerk to the Council) when reaching decisions

The Subject Member has throughout his email correspondence refused to accept the advice and recommendations of the Clerk, questioning her role and her advice. However, given the questioning of the Clerk by the Subject Member it is clear that he has had regard to the advice, which is all that is required by the Code. As a result, I do not consider that the Subject Member has breached Paragraph 2.14 of the Code of Conduct.

Predetermination

Under s25 of the Localism Act 2011, a decision maker must not have had a closed mind, or appeared to have had a closed mind, when making a decision. This issue falls outside of the Code of Conduct and so has not been considered further.

What happens now?

This decision notice is sent to the Complainants, the member against whom the allegation has been made and the Clerk to St. Cleer Parish Council.

Right of review

At the written request of the Subject Member, the Monitoring Officer can review and is able to change a decision not to refer an allegation for investigation or other action. A different Officer to that involved in the original decision will undertake the review.

We must receive a written request from the Subject Member to review this decision within 15 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed.

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.

It should be noted reviews will not be conducted by the same person who did the initial assessment.

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.



Joanne Skeplorn
Legal Officer
On behalf of the Monitoring Officer
Date: 28 July 2020