



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN111/23/24
Complainant:	Councillor J Prinn – St Cleer Parish Council
Subject Member:	Councillor K Johnson MBE – St Cleer Parish Council
Person conducting the Assessment:	Simon Mansell, Group Manager - Assurance
Date of Assessment:	10 January 2024

Complaint

The Complainant is of the opinion that the Subject Member has breached the Code of Conduct for the reasons set out in this assessment.

Decision and Action

That, for the reasons set out below, the Subject Member has breached the Code of Conduct:

- The Subject Member is censured by the Council for his conduct, the Parish Council making it clear in the censure that it does not tolerate disrespectful conduct towards its members or members of the public;
- The Parish Council consider if they wish to implement the actions set out in CCN071/23/24 with regards to access to the Parish Council's social media page by the Subject Member;
- Should a Clerk again be employed by the Council, they should consider implementing protective measures as soon as the person is recruited to prevent direct access from the Subject Member, with this done in a way which protects the employee but does not restrict the Subject Member's access to Council business; and

- The Council consider introducing fixed places where meetings can be filmed from to ensure that, going forwards, the rights afforded by the transparency provisions can be exercised but no one can feel intimidated by being filmed.

Reasons for the Decision

In undertaking this assessment I have had regard to the following:

- The complaint as made and the supporting documents;
- The response from the Subject Member; and
- The views of the Independent Person.

I have also taken into account, when considering if an interest should have been declared by the Subject Member, the Decision Notices CCN060/23/24 and CCN071/23/34.

The Complaint

The Complainant has set out that, at a meeting of St Cleer Parish Council, held on 8 November 2023, the Subject Member failed to declare an interest in the agenda item relating to which St Cleer Parish Council were adopting the recommendation in Code of Conduct Decision Notices, CCN060/23/24 and CCN071/23/23 and the censure of the Subject Member. It is said that the Subject Member spoke to the motion to raise a point of order and called for a named vote.

At the meeting the Complainant has said that the Subject Member sat in a different place than normal and set up a camera directly pointing at the Complainant who has said that he considers this was a direct attempt to intimidate him and this differed from the Subject Member's normal actions at a meeting, and just happened to coincide with an important censure motion in relation to him.

The Complainant has then said that the Subject Member has failed to comply with Decision Notice CCN071/23/23 by commenting/posting on the St Cleer Parish Council Facebook page on Saturday 11th November 2023.

Added to this, it is claimed that the Subject Member has failed to comply with decision notice CCN071/23/23 – and sent direct emails to the acting Clerk, despite the notice stating he was not to contact the Clerk. As part of this, it is said that the Council currently has a Cllr as acting Clerk.

In closing, the Complainant has said that the Subject Member has failed to treat him with respect, by sending emails in which he directly calls the Complainant an 'idiot' and the Subject Member has posted comments/views, and shown disrespect to the Complainant's actions as a Councillor and as Chairman, by posting on his social media page 'St Cleer Parish Council, a critical review of performance'. Because of this the Complainant has said that he feels intimidated, harassed and bullied by the Subject Member with his continued emails and social media posts.

The Response from the Subject Member

The response from the Subject Member has been considered as part of this assessment. Given the lack of relevance of some of the comments in the response, this is not reproduced in full. However, in outline, the Subject Member has set out that:

With regards to having an interest, the Subject Member has set out that he does not have an interest in the matter being discussed, namely Decision Notices CCN 060/23/24 and CCN 071/23.24 and, as the entire Parish Council was named as a witness in the complaint, the Subject Member is of the view that if an interest exists for him, it must also exist for all the Parish Council. In particular for CCN071/23/24 the Subject Member considered that the complainant in that matter would also have an interest if the rules were to be applied equitably.

Further on this, the Subject Member has said he did not speak on the matter before Council though, within this, the Subject Member has said he did raise a point of order and asked for a named vote, something which the Subject Member considers he was entitled to do.

In responding to the points about sitting in a different place and setting up a camera which was pointing at the Complainant, the Subject Member has responded by setting out that there is no allocated seating at the meetings and he took a seat as he saw fit.

The Subject Member said he then set up camera to record the meeting, and this is something that he has been doing since 2018.

On the matter of not complying with the recommendation in Decision Notice CCN071/23/24 not to comment on the St Cleer Parish Council Facebook page, the Subject Member has said that the Monitoring Officer [through the ethical standards regime] cannot restrict an individual freedom of expression or the medium by which a person expresses themselves, and therefore the recommendation is flawed.

The same Decision Notice also set out that the Subject Member should not contact the Clerk to the Parish Council. However, the Subject Member has said that there has been no Clerk since 23 July 2023, ergo, he cannot have contacted the Clerk. However, the Subject Member has stated that he has contacted the acting Clerk on matters of what he has said are 'entirely appropriate' Parish Council business and again has said it is not within the Monitoring Officer's gift to impose the restrictions of a member to go about their rightful business.

In closing, the Complainant has said that the Subject Member has sent emails in which he directly calls him an idiot and were disrespectful to him. The Subject Member is of the opinion that he did not say the Complainant was an idiot and any finding of fault in the Code of Conduct process would impede the expression of an honestly held opinion, and the Subject Member stated it is absurd to think it ever could.

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.

Consideration of the Facts

There is a need to consider if, as it claimed by the Complainant, the Subject Member has an interest in CCN060/23/24 and CCN071/23/24.

The Code of Conduct sets out that there are two sorts of interest which arise under Code, a disclosable pecuniary interest and non-registrable interests. Both are included in the Code as it is a requirement of the Localism Act 2011 that disclosable pecuniary interests and interests 'other than disclosable pecuniary interests' are set out in Codes of Conduct.

For a disclosable pecuniary interest to arise, the matter under discussion has to relate to a matter on the member's register of interest form. It is not considered that, on reviewing the complaint as made, a disclosable pecuniary interest arises.

For a non-registrable interest to arise the requirements of Part 5B of the Code of Conduct has to be met and this sets out:

You have a non-registrable interest where a decision in relation to a matter being determined or to be determined:

(i) might reasonably be regarded as affecting the financial position or wellbeing of you; a member of your family or any person with whom you have a close association; or anybody or group which you are a member of more than it might affect the majority of council tax payers, rate payers or inhabitants in your electoral division or area; and

(ii) the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest

To consider if the matter under discussion at the Parish Council may affect the Subject Member, there is the need to review the recommendations in the relevant Decision Notices.

CCN060/23/24 found that the Subject Member had breached the Code of Conduct and the recommendations in the Decision Notice were that:

- The Subject Member makes a written, unreserved apology to Council for his actions on 28 June 2023 with the apology to be read out at the next available meeting of the Parish Council;
- The Subject Member is censured for his actions at the meeting held on 28 June 2023.

The Subject Member was again found to have breached the Code of Conduct in CCN071/23/24, and in this Decision Notice the recommendations were:

- The Subject Member is prevented from posting on the Parish Council's social media page for a minimum period of one year from the date of this Notice;

And, in order to protect the Clerk:

- The Subject Member has no direct access to the Clerk, other than at Parish Council meetings, and this includes by email, with another member of the Parish Council being appointed as a mail box for the Subject Member

In considering when a non-registerable interest arises, the matter has to be something that, *'might reasonably be regarded as affecting the financial position or wellbeing of you [this being the member concerned].....'*

In reading the recommendations, it is considered to be clear that, objectively, they would affect the Subject Member's wellbeing, which has been referred to by Tribunals as 'general contentment and happiness' and therefore the first part of 5B is satisfied.

The next part of 5B states that for an interest to arise, it has to affect the Subject Member's wellbeing, *'more than it might affect the majority of council tax payers, rate payers or inhabitants in your electoral division or area'*.

The Subject Member has said that for CCN071/23/24, the Complainant would have an interest in the matter were the rules applied equitably. However, it is considered that this is incorrect.

With all ethical standards matters, once the complaint is made, the assessment and the recommendations are made by the Monitoring Officer, and not the Complainant, with the Complainant being removed from the process. This is acknowledged by the Subject Member in his response to the complaint as he states that, in his view, it is not within the Monitoring Officer's gift to impose restrictions.

In relation to whether the Subject Member has an interest or not, for an interest to arise the requirements of the Code set out that the matter under discussion has to affect the member concerned more than it would the 'majority', and in considering the recommendations from the Monitoring Officer in the two Decision Notices these are written in such a way that they do affect the Subject Member, more than the majority.

The final requirement of paragraph 5B is that:

'The interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest'.

Whilst the Subject Member's view as to whether he has an interest or not are clearly set out, the reasonable person test has to consider all of the facts in determining if the matter would prejudice the Subject Member's judgement. This includes the facts of the complaints which gave rise to the findings in CCN060/23/24 and CCN071/23/24, the breaches of the Code found which in turn gave rise to the recommendations.

Taking all of the above facts into account, it is considered any reasonable person would consider the facts to be significant and be of the view that the Subject Member had an interest when CCN060/23/24 and CCN071/23/24 were discussed as they affected him more than others.

As it is established that the Subject Member had an interest, the Subject Member is then required to act in accordance with paragraph 3.5 of the Code of Conduct which sets out:

3.5 *If you are present at a meeting and you are aware that you have a non-registerable interest, a disclosable pecuniary interest or an interest by virtue of any trade union membership in any matter being considered or to be considered at the meeting you must disclose that interest to the meeting if that interest is not already entered in the register and, unless you have the benefit of a current and relevant dispensation in relation to that matter, you must:*

- (i) not participate, or participate further, in any discussions of the matter at the meeting;*
- (ii) not participate in any vote, or further vote, taken on the matter at the meeting; and*
- (iii) remove yourself from the meeting while any discussion or vote takes place on the matter, to the extent that you are required to absent yourself in accordance with the Council's standing orders or other relevant procedural rules*

Having noted the submission by the Complainant and as it stated in the response from the Subject Member, which demonstrates that he did not comply with any part of 3.5, as he 'participated' in the matter by asking for a recorded vote, and did not leave the meeting as is required by the Code, I am of the view that the Subject Member has breached paragraph 3.5 of the Code of Conduct.

The next part of the complaint relates to the Subject Member sitting in a different place at the meeting and filming it, something the Complainant has said was designed to intimidate him.

I have carefully considered this and fully appreciate that the actions of the Subject Member could subjectively be seen as intimidatory.

However, whilst there is the perception that the Subject Member set out to intimidate, I cannot show on the balance of probabilities that this was the deliberate intent of the Subject Member. As a result of this, and in consideration of the fact there is no fixed seating places at Parish Council meetings, I cannot find a breach of the Code with regards to the Subject Member's choice of seat and then filming the meeting.

Further, the Complainant has said that the Subject Member has failed to comply with Decision Notice CCN071/23/23 by commenting/posting on the St Cleer Parish Council Facebook page on Saturday 11th November 2023.

The recommendations relating to CCN071/23/24 did not set out that the Subject Member was not to post on the Parish Council's social media page but recommended that:

'The Subject Member is prevented from posting on the Parish Council's social media page for a minimum period of one year from the date of this Notice'

The block on using the social media page was something which was recommended to the Parish Council, if they wish to implement it, and was not something which required the Subject Member to voluntarily not post on the page.

As a result, I do not consider that by posting on the Parish Council's social media page the Subject Member has breached the Code of Conduct as the recommendation, which could still be put in place, was for the Parish Council to implement, and not the Subject Member.

The purpose of the recommendation which related to the Subject Member not having direct access the Clerk was designed to protect the then Clerk from further contact with the Subject Member. This is a recommendation which is compliant with case law when dealing with concerns about employees of a Council and can be made by the Monitoring Officer. It would be for the Parish Council, as with the access to the social media page, to put any necessary blocks in place.

However, as there is no employee currently in post, and the work of the Clerk is being undertaken by a Councillor, the recommendation can no longer apply and therefore it stands that the Subject Member cannot be in breach of the Code for contacting the current acting Clerk.

With regard to the Subject Member calling the Complainant an 'idiot' and being disrespectful to him:

The Subject Member has said this phrase was not used, and it is his opinion that any finding of fault in the Code of Conduct process could never impede the expression of an honestly held opinion and the Subject Member stated it is absurd to think it ever could.

I have noted this. However, I have also noted that the Subject Member has referred to the Complainant and Mr Price, the previous Chairman, as being intellectually deficient, having intellectual dwarfism, and within this the Subject Member implies that there is an undeclared learning difficulty. Specifically with regards to the time Mr Price was Chair the Subject Member refers to his tenure as chairman of the council as 24 days of 'Leeanderthal'.

The Code of Conduct, which the Subject Member as opting to be a member of the Parish Council has agreed to be bound by, sets an expected standard of conduct for all elected members and the wording of the Code is consistent across Cornwall, and is broadly similar across the United Kingdom and has been the same or similar since the Code was first introduced in 2002.

This higher standard of conduct requires that those bound by the Code treat others with respect and, rather than being 'absurd' as is suggested by the Subject Member, this is one of the mainstays of the Code.

Whilst the Code does allow members to be critical and challenging, it also requires that members are not unduly personal. This then fits with the civility and respect agenda that is currently being promoted by the Local Government Association and the Cornish Association of Local Councils.

The comments made about the Complainant and Mr Price shows a lack of understanding of the very basic principles of the Code, and deliberately ignores the standards the Code of Conduct has established in the last 20+ years in showing such a complete disregard for any restrictions the Code may impose the Subject Member seemingly setting his own standard of conduct, which apply to others.

No reasonable person would expect to be addressed in this manner by anyone, much less an representative on a local Council, and I consider that by comments made about the Complainant and Mr Price as he has done, the Subject Member has breached 2.1 of the Code of Conduct.

In reviewing the facts of this complaint, I also am of the view that the Subject Member has breached 2.10 and 2.11 of the Code of Conduct. The reason for this is that the Subject Member has brought his office into disrepute by failing to declare an interest as is set out above and by being deliberately disrespectful to the Complainant. I also consider that the Subject Member has used his position to gain an advantage by asking for a recorded vote when the matter of CCN060/23/24 and CCN071/23/24 were discussed. Had an interest been correctly declared and the Subject Member had complied with 3.5 of the Code, he would not have had the option to ask for the vote as he would not have been in the meeting.

Finally, the Subject Member's conduct falls well short of the expect standards and therefore, having breached 3.5, 2.1, 2.10 and 2.11 it is also found that the Subject Member is in breach of 2.5 of the Code of Conduct.

Views of the Independent Person

Cllr Johnson states that in discussion with the IP it was broadly agreed that the vast majority of the complaint was completely fanciful and generally without foundation. My recollection is that this is not accurate. I did not express a view that any part of the complaint was fanciful. I did agree that there were parts of the complaint that were not, in my view, a breach of the Code, but this is not the same as claiming that I agreed they were without foundation. The foundation of a complaint is the personally held belief, by the Complainant, that there has been a transgression of the Code, irrespective of the Subject Member's personal opinion of the Complainant.

I expressed to Cllr Johnson that, whilst he is entitled to express critical opinion on the management of the Council, his expressive commentary, in my view, descended into disrespectful personal comments about Cllr Prinn and Mr Price, and I consider the is a breach of the Code of Conduct.

On the issue of having an interest when CCN060/23/24 and 071/23/24, I consider that Cllr Johnson's has greater weight and find there to be no interest to declare.

With regards to the placement of the camera the IP has stated that, the placement of the recording equipment is a breach of the procedures Cllr Johnson's argues should be adhered to and is a breach of the Code as it fails to treat council with respect.

On this issue of the posting on the Council's social media site, the IP finds no breach of the Code.

It is my view that Cllr Johnson continues to openly express disrespect for others, in breach of the Code of Conduct's requirement 'Respect for others – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.'

In acting as he did, it is my view that Cllr Johnson's actions bring his office and the council into disrepute, and he is failing to maintain the standards his office requires, he is in breach of paragraph 2.5 and 2.10 of the Code of Conduct.

Summary and Actions

It is clear that the Subject Member has a complete disregard for any rules that do not suit him and views them as something others should adhere to, and this includes the Code of Conduct.

As is set out above, the Subject Member's interpretation of the Code is incorrect and is done to suit him, and I have no doubt that his conduct is designed to get those present at a meeting to adhere to his view, and his view only.

As such, it is not considered worthwhile making any recommendations which would require the Subject Member to act on them as, given his clear disdain for this process it is highly unlikely that this would be productive.

However, there is a need to show that, within the constraints of the legislation as it currently exists, there is a need to be as robust as possible. This is to ensure that anyone who may be thinking of becoming a Councillor is not deterred from doing so by the actions of the Subject Member.

As a result, the following actions are recommended to remedy the breach:

- The Subject Member is censured by the Council for his conduct, the Parish Council making it clear in the censure that it does not tolerate disrespectful conduct towards its members or members of the public;
- The Parish Council consider if they wish to implement the actions set out in CCN071/23/24 with regards to access to the Parish Council's social media page by the Subject Member;
- Should a Clerk again be employed by the Council they should consider implementing protective measures as soon as the person is recruited to prevent direct access from the Subject Member, with this done in a way which protects the employee but does not restrict the Subject Member's access to Council business; and
- The Council consider introducing fixed places where meetings can be filmed from to ensure that, going forwards, the rights afforded by the transparency provisions can be exercised but no one can feel intimidated by filmed.

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 a copy placed on Cornwall Council's web site.

Right of review

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.

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.

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.