



## **ASSESSMENT DECISION NOTICE**

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

#### **ACTION REQUIRED**

<b>Reference:</b>	<b>CCN047/22/23</b>
<b>Complainant:</b>	<b>Councillor K Johnson – St Cleer Parish Council</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>26 July 2022</b>

#### **Complaint**

The complaint is in two parts:

1. On 27 January 2022, the day after a meeting of the Parish Council, the Subject Member sent an email to the Chairman of the Parish Council about an incident which occurred at the end of the meeting the previous day which the Complainant considers wrongly attributed a statement to him; and
2. On 25 June 2022 the Subject Member sent an email to the Complainant which the Complainant considers breached the Code of Conduct.

#### **Decision and Action**

That, for the reasons set out in this Notice, the Subject Member has breached the Code of Conduct for St Cleer Parish Council.

It is considered that as a remedy for the breach, the Subject Member should apologise to the Complainant within 28 days of the date of this notice. Should the apology not be given, it is recommended to the Parish Council that the Subject Member is censured.

## Reasons for the Decision

In undertaking this assessment, I have had regards to:

1. The complaint as made;
2. The response from the Subject Member; and
3. The views of the Independent Person allocated to this matter.

### 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.

The reasons for this are that the complaint, which relates to the Subject Member's conduct in January, took place immediately following the meeting of the Parish Council, which the Subject Member would have attended in his official capacity. With regards to the emails sent on 27 January 2022 and 25 June 2022, these were both sent from the Subject Member's Council email address, and therefore it can be presumed that a reasonable person would assume these were sent in the Subject Member's official capacity.

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.

### Complaint No 1

The Complainant has set out that, after a meeting of the Parish Council held on 26 January 2022, the Subject Member is alleged to have remonstrated with the Complainant over a matter. The Complainant has said he reacted in a 'constrained manner' as he was being what he considered was unreasonable and inappropriately threatened by the Subject Member.

An email was then sent to the Chairman of the Parish Council on 27 January 2022 by the Subject Member. The Complainant considers this email contained factually incorrect information of a defamatory nature, which the Complainant considers was intended to denigrate his character in the eyes of the Chairman of the Council.

The Complainant has set out that the Subject Member used a particular phrase which was attributed to the Complainant, which the Complainant considers is inaccurate.

### Response from the Subject Member

The Subject Member has responded to this part of the complaint and has said that he did quote the Complainant inaccurately in his email to the Chairman.

By way of an explanation, the Subject Member has said that at the end of the Council meeting in January the Complainant pushed past him and, in doing so, he spoke to the Subject Member about remarks made about a third party at the meeting that

evening. The Subject Member has advised that it was at this point that he thought the Complainant had used the phrase he wrongly attributed to him.

The Subject Member has said that the Chairman of the Parish Council raised the issue with the Complainant, who in turn denied making such a remark. After being advised of this the Subject Member accepted that he had misheard the Complainant and apologised to him for his email to the Chairman.

In responding to Complaint No 1, the Subject Member has forwarded the apology he sent to the Complainant on 2 February 2022 @ 17.17. In this apology, the Subject Member sets out to the Complainant that he apologises unreservedly for the comment he made to the Chairman.

### Defamation

Whilst it is noted within the complaint that the Complainant is of the opinion that the comments made by the Subject Member are defamatory, it is not for the ethical standards regime to determine whether the material published by the Subject Member was defamatory or not as defamation sits outside of the Code of Conduct and the ethical standards process, and it is for a Court to determine if comments are defamatory.

Should defamation be shown via this route, a complaint could then be considered in the future. However, it is worth noting that the bar for bringing a successful defamation action is high. A claimant has to establish, amongst other things, that not only are the words defamatory, but also that they have caused serious harm to their reputation. Case law has established that this is a high threshold and must be determined by reference to the actual facts about the impact of statements made, and not merely the meaning of the words, and the onus is on the potential claimant providing the factual evidence demonstrating serious reputational harm.

As a result, this part of the complaint is not considered further.

### Findings

It is accepted that at times comments can be misheard and, as a result of this, they become wrongly attributed to another person. However, even if they are misheard, this does not take them out of scope of the Code of Conduct.

Adopting the stance of a reasonable person with regards to Complaint No 1, I do accept that, objectively, no one would like to have a quote of the nature of the one set out in the complaint attributed to them.

Paragraph 2.1 of the Code of Conduct requires that a member must treat others with respect, and within this there is a need for some care to be taken when statements are being attributed to another person.

I do accept that the Subject Member misheard the Complainant, but even after taking this into account, it is more likely than not that a reasonable person would consider that by wrongly attributing the quote to them this would be viewed as disrespectful. Therefore, I am of the opinion that, by sending the email on 27 January 2022, the Subject Member breached paragraph 2.1 of the Code of Conduct for St Cleer Parish Council.

In considering if other sections of the Code have been breached: As it is considered that a reasonable person would accept that the statement was misheard, and an

apology was made at the time, no other breaches of the Code of Conduct arise as a result of Complaint No 1.

### Complaint No2

This relates to the email sent by the Subject Member to the Complainant on 25 June 2022.

In this part of the complaint, the Complainant has set out that this was, in his view, the culmination of Council business where a valid disagreement had taken place.

The email, which was supplied by the Complainant, makes no reference to the matter which may have been under discussion, and makes no reference to any business which the Council may have been conducting, but rather opts to be personally abusive towards the Complainant.

### The response from the Subject Member

The Subject Member has responded to part of the complaint and has set out that he totally accepts that the email he sent was very undiplomatic and somewhat insulting, and he is willing to apologise for it to the Complainant.

### Findings

Whilst the text of the email sent on 25 June is not reproduced in this Notice, it has been considered as part of the assessment and was provided to the Independent Person to allow them to give their views on it.

In terms of whether reasonable person would be of the opinion that the email was a breach of the Code, I have no doubt that, when the contents of the email are considered against paragraph 2.1 of the Code, they would be viewed as disrespectful.

There is no context in which the comments as set out in the email could be made in which they would be considered acceptable, this was an email sent which appears to have the aim of being insulting to the Complainant.

Because of this, I also consider that the email is a breach of paragraph 2.10 of the Code of Conduct, in that by sending it a reasonable person would consider the Subject Member has brought his office into disrepute.

However, I do not consider that the Subject Member has brought his Council into disrepute. The reason for this is that it is clear from the email that this was sent by the Subject Member in his capacity as an individual Councillor, and he was not trying to hold himself out as acting for the Council.

Having found a breach of paragraph 2.1 and 2.10, it follows that the Subject Member has also breached paragraph 2.5 of the Code of Conduct, as he has failed to uphold the standards of conduct which are expected of him as an elected member.

There are no other breaches of the Code of Conduct arising from Complaint No 2.

### View of the independent Person

The Independent Person 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 complainants and two telephone contacts by the Subject Member.

The Independent Person noted a phrase which the Subject Member believed had been used against him by the Complainant.

Cllr Seage has apologised and admitted that he inaccurately made an assumption.

The Independent Person noted in relation to the Subject Member's reaction directed towards the Complainant that Cllr Seage accepts that he was "undiplomatic and somewhat insulting and is willing to apologise to Cllr Johnson".

The Independent Person's view is that Cllr Seage has breached the Code of Conduct

### Summary and Actions

Whilst I accept that the Complainant may have been unhappy that he was misquoted, as any objective person would be, it is disappointing that, despite the fact the Subject Member has apologised from this error in early February, the Complainant still decided to bring this forward as a complaint.

The purpose of the ethical standards process is to seek to provide remedies where the parties are not willing to settle their differences, not to consider matters which have already been resolved locally.

As a result, and whilst a breach of the Code was found with regards to complaint No 1, as the Complainant apologised at the time, no further action is required from the Subject Member.

However, with regards to Complaint No 2, it is considered that the email sent by the Subject Member on 25 June 2022 was not warranted and there could be no justification for him sending this. There is nothing in the email which links to anything relating to the functions of the Parish Council, and it is difficult to imagine even if this were the case, how the comments could be justified.

I have noted that the Subject Member is willing to apologise for sending this email, and the recommended action is that the Subject Member should apologise to the Complainant for sending the email to him on 25 June 2022 within 28 days of the date of this Notice. Should the apology not be given within this time, then it is recommended to the Parish Council that the Subject Member be censured.

### **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 will be published on Cornwall Councils 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.