



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN024/20/21
Complainant:	Councillor J Prinn
Subject Member:	Councillor B Seage, St Cleer Parish Council
Person conducting the Assessment:	Simon Mansell, Corporate & Information Governance Manager
Date of Assessment:	5 February 2021

Complaint

The Complainant has set out that he is of the view that due to the members actions covering several different matters, the Subject Member has breached the Code of conduct for St Cleer Parish Council.

Decision and Action

Due to the reasons set out below it is considered that the Subject Member has breached the Code of Conduct for St Cleer Parish Council.

After considering the facts of this matter a suitable sanction is that the Council censure the member.

Breaches of the Code Found

Paragraph 2.1 – for failing to treat others with respect;

Paragraph 2.4 – for intimidating others;

Paragraph 2.5 – for acting in a manner that is contrary to the Councils duty to promote and maintain high standards of conduct;

Paragraph 2.10 – for bringing his office into disrepute;

Paragraph 3.5 – has at a meeting failed to act in accordance with the Code when having an interest.

Reasons

In undertaking this assessment, I have considered;

- The compliant and associated papers as submitted by the Complainant;
- The response from the Subject Member and associated papers as supplied by the Subject Member;
- The views of the Independent Person.

The Complainant has set out that he is of the view that due to the members actions covering several different matters that the Subject Member has breached the Code of conduct for St Cleer Parish Council.

There are two main strands to the consideration of this complaint, the fact that the Subject Member is disrespectful and bullying towards members of the Parish Council and the Clerk and that he failed to declare an interest when a matter concerning his censure was to be discussed by the Council on 28 October 2020.

In considering the complaint, as made, the facts are considered objectively adopting the reasonable person test which is, would a reasonable person in considering all of the facts view the subject members actions as a breach of the Code of Conduct.

Lack of respect and bullying

In assessing this aspect of the complaint the conduct of the member in the chamber and outside the chamber needs to be considered.

With regards to the conduct in the chamber, with this including virtual meetings; whilst it is accepted that others may view that Subject Member as having a very individual view on matters, he is able to air these views in the chamber if he has an honestly held belief that they are correct. In addition to this the interpretation of the Code has always allowed what has been termed 'robust debate' with the threshold for a breach of the Code being found far higher when the comments are from one member to another. As was noted in *Heesom v The Local Government Ombudsman for Wales* there is an expectation that elected representatives will have thicker skins.

As a result, and notwithstanding the allegation that the Subject Member failed to declare an interest which is covered below, there is nothing in the complaint with regards to the Subject Members conduct in the chamber which would give rise to a breach of the Code. However, this should not be taken that being challenging does not give rise to a breach of the Code, only on this occasion the complaint as made has not given rise to a breach.

In considering the way the Subject Member communicates with other Councillors and the Clerk; it is clear reading the correspondence that the Subject Member has his own firm view of what is correct and he is able to hold such views. The concern that has been expressed is that there is an expectation that others will meet this same standard, and if not the Subject Member then takes them to task.

When working in a democratic environment there is no obligation to accept other people's views, but there has to be a respect for them otherwise this undermines the

ability for elected officials to be able to express their own views, whether right or wrong.

In the correspondence supplied the Subject Member clearly demonstrates that he does not have respect for other views. This is shown by emails which quote the law and dictionary definitions to members which, on reading the emails is done in order for the Subject Member to seek to ensure that only his view prevails.

I do not consider approaches such as this are acceptable or conducive to ensuring that all members of the Council would feel they can freely express their views without fear of reprisal from the Subject Member in some form.

As a result, I am of the opinion that a reasonable person would consider all members of the Council should be free to express their views free from any form of reprisal. They would not consider it to be reasonable that were they to express a view that the Subject Member did not agree with, they would be provided with a dictionary definition, for example and this lacks respect for the views of others, breaching paragraph 2.1.

Likewise, such a reasonable person would also consider that the approaches made by the Subject Member were designed to intimidate them into not putting their views forwards breaching paragraph 2.4 and this then is something that brings the Subject Members office into disrepute breaching paragraph 2.10. The reasoning for finding disrepute is that the reasonable person would consider that the Subject Member was damaging his standing in the community by seeking to intimidate others which would in turn stop other elected representatives in their area from expressing their own individual views.

Failure to declare an interest

The Code of Conduct sets out that there are two types of interest that would require a member to declare an interest and leave the meeting, unless the member either exercised their rights under paragraph 3.5A or they had the benefit or a current dispensation. The interests are a disclosable pecuniary interest and a non-registerable interest.

A disclosable pecuniary interest arises if the matter under discussion has the ability to affect any of the items declared on the members register of interest form.

The matter concerned at the meeting of the Council was agenda item 7 and this was stated to be, '*Motion to Censure Councillor Seage Pursuant to MO Decision*', having checked the minutes they confirm that this was the matter that was discussed. After having considered the complaint and the response by the Subject Member I do not consider that the Subject Member had a disclosable pecuniary interest in the matter under discussion.

The Code of Conduct sets out at paragraph 5B the definition of a non-registerable interest and this says;

You have a non-registerable 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 precept 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

The Code of Conduct then gives some exemptions to the requirement to declaring an interest and these exemptions, found at paragraphs 5B(iii) – (vii) and relate to school meals, statutory sick pay, allowances paid to members, ceremonial honours, and the setting of the precept.

In responding to this part of the complaint the Subject Member has set out that he had no interest in the legal sense of the word (pecuniary or non-registerable) and so did not declare an interest. I also note the Subject Members views on the agenda item itself however, whether he agrees or not with the wider actions of the Council this would need to be challenged by a separate route and would not remove the need for him to declare an interest.

Paragraph 5B creates an interest if the matter under discussion might reasonably be regarded as affecting the financial position or well-being of the member concerned. Whilst the agenda item does not affect the members financial position given the item on the agenda was to censure him, I am of the view that having noted the subject members subjective views, a reasonable person would objectively consider that this would affect his wellbeing, which has been described as 'general contentment and happiness'.

This therefore would then create an interest as it is something that affects the Subject Member more than other local precept payers or inhabitants and, as a reasonable person would consider a censure to be detrimental to the Subject Member, this is an interest that a reasonable person would take the objective view that this is sufficient to prejudice the members judgement.

As a result, whilst I note the Subject Members subjective views on this, objectively I do consider that the Subject Member had a non-registerable interest in agenda item 7 of the meeting held by the Council on 28 October 2020.

When a member has a non-registerable interest in the item under discussion, unless they have a dispensation, the Code of Conduct requires that they act as follows;

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 reviewed the minutes for this meeting no granting of a dispensation is mentioned and next to agenda item 7 it states that the Subject Member did not declare an interest in this matter and did not absent himself from the meeting. This is not disputed by the Subject Member.

As a result I consider that the Subject Member has breached paragraph 3.5 of the Code of Conduct due to the fact that, at a meeting of the Council on 28 October 2020, he had a non-registerable interest in agenda item 7 and then failed to act as is required by the provisions of paragraph 3.5.

I also consider that, given the breaches of the Code of Conduct that are set out above the Subject Member has acted in a manner that is contrary to the Council's duty to promote and maintain high standards of conduct thereby breaching paragraph 2.5 of the Code of Conduct.

Views of the Independent Person

The Independent Person has set out that they have noted sufficient evidence to indicate examples of the Subject Members contentious behaviour relating to his attempts to intimidate other members of the Council.

The Independent Person has concluded that from the evidence seen the Subject Member demonstrates ongoing bullying, being consistently disrespectful to members of the Parish Council undermining the Chair and the Clerk whilst undertaking official duties.

The Independent Person considers that the Subject Member has breached paragraphs 2.1, 2.4, 2.5, 2.10 and 3.5 of the Code of Conduct.

Summary and Actions

I have noted the complaint and the way the Subject Member has expressed his views to fellow Councillors. It is clear in determining this matter that the Subject Member has very firm opinions of his own, which he is entitled to have, but does not seem to accept that others may have felt equally strongly about their opinions.

Opinions cannot be wrong, the way they are expressed may contain terminology that may not be correct however, as it set out above, I do not consider a reasonable person would view action, such as sending out dictionary definitions to make a point to be acceptable. Were all elected officials to adopt this approach to each other the situation would become untenable.

At this time the ethical standards regime has limited sanctions that are open to it and whilst a request can be made that the Subject Member considers the way he addresses his peers, this is not something that can be binding.

As a result, the recommended action is that the Council censures the Subject Member.

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.

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 14 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed. The grounds for a review must be substantive and cannot simply seek to disagree with the findings.

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.