

ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN002/17/18
Complainant:	Mr Matthew Coot
Subject Member:	Cllr John Brady, Saltash Town Council
Person conducting the Assessment:	Simon Mansell, Corporate and Information Governance Manager
Date of Assessment:	16 August 2017

Complaint

On 16 August 2017 the Monitoring Officer considered a complaint from Mr Matthew Coot concerning the alleged conduct of Cllr John Brady of Saltash Town Council. A general summary of the complaint is set out below.

The Complainant has alleged that a series of emails sent to him by the Subject Member are hurtful, unpleasant to read, are abusive and have failed to treat him with respect.

Potential breaches of the Code of Conduct identified by the Complainant are;

- You must treat others with respect;
- You must not unlawfully discriminate;
- You must not bully;
- 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; and
- You must not do anything that could be reasonably regarded as bringing your office or authority into disrepute

Decision and Action

That, due to the tone and content of an email sent on 7 April 2017 and copied to 11 other recipients, the Subject Member has breached the Code of Conduct for Saltash Town Council.

The recommended action is that the Subject Member should apologise in writing to the Complainant for the tone and content of his email within 28 days of the date of this notice.

Breaches of the Code Found

2.1 You must treat others with respect

2.10 - You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute

Para 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 complaint; and
- The views of the Independent Person assigned to this matter.

No view was received from the Subject Member however, the Subject Member did contact the Independent Person and verbally advised him as to how he viewed the complaint.

The Complainant has alleged the following;

That a series of emails sent to him by the Subject Member are unprofessional and have failed to treat him with respect.

In considering this complaint I have reviewed all of the emails that have been supplied by the Complainant and whilst some of the terminology in them can be considered to be robust, this is not considered to be unduly so in most of the emails.

However, the email sent on 7 April 2017 by the Subject Member in his response to an earlier email sent by the Complainant is particularly strident in the language used and this is considered further.

Application of the Code

2.1 You must treat others with respect

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 people and for concerns to be expressed, but this must not be done in such a way that is personal and therefore disrespectful.

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 that is; is it more likely than not that a reasonable person, after viewing all of the facts objectively, would be of the opinion that the conduct of the Subject Member was a breach of the Code.

Whilst it is appreciated that the Subject Member may not have agreed with the views of the Complainant as set out in the earlier email, the personal nature of the response can not, when viewed objectively, be considered to be warranted. If the Subject Member wished to take the Complainant to task for his earlier correspondence in any way he had the option to do so without resorting to a personal attack, copying a large number of recipients.

Therefore it is considered that due to the tone and content of the email sent by the Subject Member on 7 April 2017 to the Complainant, the Subject Member has failed to treat the Complainant with respect and therefore has breached paragraph 2.1 of the Code of Conduct for Cornwall Council.

2.2 You must not treat others in a way that amounts to or which may reasonably be construed as unlawfully discriminating against them

I have considered the background comments that have been made by the Complainant with regards to this matter and have set these against the comments made by the Subject Member.

Even though the tone and content of the email set on 7 April 2017 is disrespectful I do not think on this occasion that these comments amount to unlawful discrimination as is required by the Code, even when viewed in the context of the other emails sent.

Therefore it is not considered that the Subject Member has breached paragraph 2.2 of the code of Conduct for Saltash Town Council.

2.3 You must not bully any person

Whilst it is considered that the way the Subject Member opted to address the Complainant is ill judged I do not view the comments as bullying. The Subject Member was expressing his concern regarding the Complainants earlier email and whilst the contents of the email may be disrespectful, it is not bullying.

As a result it is not considered that the Subject Member has breached paragraph 2.3 of the Code of Conduct for Saltash Town Council.

2.10 - You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute

For this part of the Code to be breached a reasonable person in possession of all the facts would need to be satisfied that the Subject Members standing in the local community could be damaged by his actions.

The Subject Member has every right to take the Complainant to task if he disagrees with him and a reasonable person would not consider any member doing this in a reasonable manner to be a breach of the Code.

However; the manner in which the Subject Member has opted to approach this and when viewing the personal nature of the comments it is considered that a reasonable person would consider that the Subject Members standing could be damaged by his comments.

Everybody would support the right for concerns to be raised, but nobody would like to be addressed in such a personal manner.

As a result I consider that the Subject Member has brought his office, but not his authority into disrepute by acting as he did and therefore has breached paragraph 2.10 of the Code of Conduct.

Para 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

For the reasons set out above I consider the Subject Member to have failed to adhere to the general principles of public life underpinning the Code. As a consequence of that, and having found a breach of paragraphs 2.1 and 2.10 of the Code, it follows that the Subject Member has conducted himself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct by members and the Subject Member has therefore breached paragraph 2.5 of the Code of Conduct.

Actions to remedy the breach

I have noted the Subject Members views on this matter which were relayed through the Independent Person and have taken into account these views, as well as the overall concern that has been expressed by the Subject Member in the emails and have set this against the complaint as made and the views of the Complainant.

As a result of the above, the recommended action at assessment is that the Subject Member should apologise to the Complainant in writing within 28 days of the date of this Decision Notice and a copy of the apology is to be provided to the Monitoring Officer.

What happens now?

This decision notice is sent to the complainant, the member against whom the allegation has been made and the Clerk to Saltash Town 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.



SJR Mansell MBE
Corporate and Information Governance Manager
On behalf of the Monitoring Officer
Date: 22 August 2017



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN018/18/19
Complainant:	Mr Lewis Challen, Mr Neil Challen and Mrs Sarah Clements
Subject Member:	Cllr John Brady, Saltash Town Council
Person conducting the Assessment:	Simon Mansell, Corporate & Information Governance Manager
Date of Assessment:	4 October 2018

Complaint

On 4 October 2018 the Monitoring Officer considered a complaint from Mr Lewis Challen concerning the alleged conduct of Cllr John Brady of Saltash Town Council. A general summary of the complaint is set out below:

The Complainants, who are all related to the Subject Member, have alleged that the Subject Member has breached the Code of Conduct by failing to treat them, and other family members with respect due to an email sent to all Saltash Town Councillors by the Subject Member saying that Saltash deserves better than the Deputy Mayor and accusing the Deputy Mayor and her family within the email of 'grubbiness'.

Decision and Action

As a result, given the distribution of the email it is considered that an appropriate action to remedy this breach is that the Subject Member writes an open letter of apology to the Deputy Mayors family, which will be provided to them by the assessing officer, and that the Subject Member send this letter to the same recipients as received the email on 27 August 2018.

If this action is not undertaken within 28 days of the date of this notice then it is recommended to the Council that the Subject Member is censured

Breaches of the Code Found

2.1 You must treat others with respect

2.10 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

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 complaint;
- A response from the Subject Member; and
- The views of the Independent Person assigned to this matter.

The Complainants, who are all related to the Subject Member, have alleged that the Subject Member has breached the Code of Conduct by failing to treat them, and other family members with respect due to an email sent to all Saltash Town Councillors by the Subject Member saying that Saltash deserves better than the Deputy Mayor and accusing the Deputy Mayor and her family within the email of 'grubbiness'.

More particularly the Complainants are aggrieved by an email sent on the 27 August 2018 @ 21.44 in which the Subject Member states;

'Good evening all,

It would appear the Deputy Mayors family have moved their puerile contempt for me up a notch?

So be it.

I am left with no option to put in a formal complaint.

This will go forwards tomorrow.

Saltash deserves better than this grubbiness from the Deputy Mayor and her family.

No written response has been received from the Subject Member however, the Subject Member has advised the Independent Person that;

The Deputy Mayor had posted a picture of the Subject Member wearing a clowns hat with the caption 'where's the wally' on her Facebook page;

Complaints had been made about the Deputy Mayor;

That the Deputy Mayor and her family were undermining the authority; and

Having spoken to a legal advisor he considers the number of people making the same complaint is vexatious.

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 Cornwall Council.

Findings of fact

In considering the findings of fact decisions are based on the balance of probabilities, that is, would a reasonable person in possession of all the facts objectively consider that a breach of the Code of Conduct has occurred.

2.1 You must treat others with respect

For there to be a breach of this part of the Code as well as the facts satisfying the balance of probabilities test, there needs to be an element of disrespect that is directed towards someone to someone at a personal level.

Whilst I have noted the points that have been raised in mitigation of this complaint by the Subject Member the point that need to be considered in the assessment are;

Was it disrespectful to send an email to all members of the Council accusing the Deputy Mayors family of being grubby.

In considering the comments in the email, as there is no distinction made between family members, this would include all those that are part of the Deputy Mayors family.

Whilst it is appreciated that the Subject Member may not like the approach taken by the Deputy Mayor, and a spoof post may have been circulating about him there is, in being elected to public office, the requirement to accept these comments more than a member of the public would.

It was noted in *Heesom v The Public Services Ombudsman for Wales* that;

.....politicians are subject to wider limits of acceptable criticism and are required to have thicker skins and to have more tolerance to comment than ordinary citizens.'

In assessing this matter and taking into account the comments in *Heesom* I find it highly unusual that by way of addressing the concerns he had about the Deputy Mayor the Subject Member has opted to make accusations against the Deputy Mayors family, which would include all family related to the Deputy Mayor by birth or marriage.

The use of the word grubbiness is also of concern, taking it a political context this would imply that all family members are contemptable or despicable.

In dealing with any matters Councillors can be critical and can challenge, indeed this is intrinsic to the role of a Councillor. However, the operation of the Code draws a distinction between being critical and challenging to attacking anyone personally.

Heesom does mean should a personal attack be made on Councillor then there is a higher threshold that needs to be attained before a breach of the Code can be found, but this protection does not extend to family members who are members of the public and therefore a lower threshold applies when determining respect.

In this case I consider that the threshold for disrespect is exceeded, there were no grounds for making the comment about the Deputy Mayors family, all of whom are

member of the public, and it is disappointing to note that the Subject Member thought it an appropriate way to address family members.

As a result of the above it is considered that the Subject Member has breached paragraph 2.1 of the Code of Conduct for Saltash Town Council.

It should also be noted that members of the Deputy Mayors family complaining about being referred to as grubby is not considered as vexatious. The Code of Conduct has set a standard of behaviour for elected Councillors and the Localism Act allows anyone who may be aggrieved by the actions of a Councillor to bring a complaint under procedures adopted by the principal authority. In this case members of the Deputy Mayors family were aggrieved by the comments of the Subject Member and therefore brought a legitimate complaint via the correct process.

2.10 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

I do have concerns about the way by which the Subject Member has approached this matter, it is accepted that he may not approve or like the way that the Deputy Mayor conducts herself whilst in office and he may not have liked the post on social media about him, but this does not give him the right to then involve the Deputy Mayors family.

Objectively, it is considered that a reasonable person find being told that a town deserves better than their grubbiness would be aggrieved by this comment and that this would then be something that a reasonable person would find disreputable. The reason for this is that whilst it may be considered to be acceptable to deal with such matters Councillor on Councillor (whether there is a breach of the code or not) it is not something that would be considered to be acceptable to extend to a whole family.

As a result it is considered that the Subject Member has breached paragraph 2.10 of the Code of Conduct for Saltash Town Council.

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

For the reasons set out above I consider the Subject Member has failed to adhere to the general principles of public life underpinning the Code and has therefore conducted himself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct. By breaching paragraph 2.1 and 2.10 of the Code of Conduct the Subject Member has therefore also breached paragraph 2.5 of the Code of Conduct for Saltash Council.

Actions to remedy the breach

It is noted that part of the reason for the Subject Member feeling aggrieved was the spoof posting that was made about him and this assessment has considered if his reaction to this was proportionate in the way he then chose to involve all of the Deputy Mayors family.

As a result of this the findings of fact show that by addressing the family as he did the Subject Member has breached the Code of Conduct for Saltash Town Council as it is not considered that a reasonable person, when viewing the facts objectively, would

liked to be addressed in this manner. In addition it is considered that by extending what is a political argument out to family members in the general approach adopted by the Subject Member is untenable. I accept that the Subject Member was aggrieved by the spoof post but this was a disproportionate response.

As a result, given the distribution of the email it is considered that an appropriate action to remedy this breach is that the Subject Member writes an open letter of apology to the Deputy Mayors family, which will be provided to them by the assessing officer, and that the Subject Member send this letter to the same recipients as received the email on 27 August 2018.

If this action is not undertaken within 28 days of the date of this notice then it is recommended to the Council that the Subject Member is 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 Saltash Town 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.



SJR Mansell MBE
Corporate and Information Governance Manager
On behalf of the Monitoring Officer
Date: 4 October 2018



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN046/17
Complainant:	Mr Matthew Coot
Subject Member:	Cllr John Brady, Saltash Town Council
Person conducting the Assessment:	Simon Mansell, Corporate & Information Governance Manager
Date of Assessment:	20 April 2018

Complaint

On 24 April 2018 the Monitoring Officer considered a complaint from Mr Matthew Coot concerning the alleged conduct of Cllr John Brady of Saltash Town Council. A general summary of the complaint is set out below:

The Complainant has alleged since the Decision Notice CCN002/17/18 was issued, which found the Subject Member to be in breach of the Code and asked him to apologise to the Complainant, the Subject Member has failed to apologise to and therefore has again failed to treat the Complainant with respect.

Potential breaches of the Code of Conduct identified by the Complainant are;

- You must treat others with respect;
- 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; and
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute

Decision and Action

That, due to the failure to provide the Complainant with an apology within 28 days of decision notice CN002/17/18 the Subject Member has breached the Code of Conduct for Cornwall Council as is set out in this notice.

As a result of this breach of the Code of Conduct the recommended action is that the Subject Member be censured by Saltash Town Council.

Breaches of the Code Found

2.1 You must treat others with respect

2.10 - You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute

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 complaint;
- Responses from the Subject Member; and
- The views of the Independent Person assigned to this matter.

The Complainant has alleged the following;

The Complainant has alleged since the Decision Notice CCN002/17/18 was issued, which found the Subject Member to be in breach of the Code and asked him to apologise to the Complainant, the Subject Member has failed to apologise to and therefore has again failed to treat the Complainant with respect.

This Decision Notice should be read in conjunction with Decision Notice CCN002/17/18 which set out that due to the tone and content of an email sent on 7 April 2017 to the Complainant by the Subject Member the Subject Member had breached the following paragraphs of the Code of Conduct;

2.1 You must treat others with respect

2.10 You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute

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.

The Subject Member has, in response to this complaint, that he does not intend to apologise.

In considering the application of the Code.

2.1 You must treat others with respect

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. Also, whilst the Code does allow a member to be critical of people, this must not be done in such a way that is personal and therefore disrespectful.

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.

In undertaking the original assessment it was considered that the above points had been satisfied sufficient for a breach of the Code to be found. As a remedy for the breach the Subject Member was asked to apologise to the Complainant.

There was, due to the conduct of the Subject Member an expectation on the part of the Complainant that an apology be given however, with no apology given the Complainant has then limited way to directly seek redress against the Subject Member, other than to submit a further complaint.

As part of this assessment the reasons why the Subject Member will not apologise are noted however, in assessing this complaint this is done against the facts as were presented in the original complaint, that is as of 16 August 2017.

After reviewing the facts it is not considered that the request for an apology was an unreasonable one. No form of words was suggested for the apology and no caveat regarding the apology was set, leaving the Subject Member free to apologise as he considered appropriate, providing it was in writing to the Complainant. It is therefore considered that the request the Subject Member apologise was appropriate and even taking into account the fact the Complainant has recently stated that he did not want the Subject Member to further contact him, there has been a period of 8 months prior to this during which an apology could have been given.

Therefore by failing to follow to apologise to the Complainant as required in Decision Notice CCN002/17/18 the Subject Member has failed to treat the Complainant with respect and therefore has breached to paragraph 2.1 of the Code of Conduct for Cornwall Council.

2.10 - You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute

For this part of the Code to be breached a reasonable person in possession of all the facts would need to be satisfied that the Subject Members standing in the local community would be damaged by his actions.

In considering if this part of the Code has been breached the view at assessment was that the language used towards the Complainant which brought about the findings in CCN002/17/18 was such that it was considered that a reasonable person would consider that the Subject Members standing in the community could be damaged as no one would like to be addressed in this manner.

As a result it is considered that the Subject Member has brought his office, but not his authority into disrepute by failing to apologise to the Complainant and therefore has breached paragraph 2.10 of the Code of Conduct.

Para 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

For the reasons set out above I consider the Subject Member to have failed to adhere to the general principles of public life underpinning the Code. As a consequence of that and having found a breach of paragraphs 2.1 and 2.10 of the Code it follows that the Subject Member has conducted himself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct by members and the Subject Member has therefore breached paragraph 2.5 of the Code of Conduct.

Actions to remedy the breach

I have also noted that the views of the Independent Person assigned to this matter with regards to the Subject Members conduct who considers that there has been a breach of the Code.

In taking into account all of the above it is considered that, due to the failure to provide the Complainant with an apology within 28 days of decision notice CN002/17/18, the Subject Member has breached the Code of Conduct for Saltash Town Council as is set out in this notice.

As a result of this breach of the Code of Conduct the recommended action is that the Subject Member be censured by Saltash Town Council.

What happens now?

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Saltash Town 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.

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SJR Mansell MBE
Corporate and Information Governance Manager
On behalf of the Monitoring Officer
Date: 24 April 2018



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN020/18/19
Complainant:	Cllr John Brady
Subject Member:	Cllr Gloria Challen, Saltash Town Council
Person conducting the Assessment:	Simon Mansell, Corporate & Information Governance Manager
Date of Assessment:	17 October 2018

Complaint

On 17 October 2018 the Monitoring Officer considered a complaint from Cllr John Brady concerning the alleged conduct of Cllr Gloria Challen of Saltash Town Council. A general summary of the complaint is set out below:

The Complainant has alleged that the Subject Member has breached the Code of Conduct by voting on a matter which she had an interest in when the matter was discussed by the Council on 2 August 2018.

Decision and Action

That, for the reasons as set out in this notice there has been a breach of the Code of Conduct

As a result of the above I consider that the Subject Member should attend training on the Code of Conduct to allow her to better understand when an interest arises and when she should leave the chamber. Whilst I am aware that the Subject Member has recently attended Code of Conduct training it is suggested that the Subject Member undertakes training in 2019 as this training will focus on interests.

Breaches of the Code Found

3.5(ii) & (iii) - 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:

- (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.

2.11 - You must not use or attempt to use your position as a Member of the Council improperly to confer on or to secure for yourself or any other person an advantage or disadvantage.

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 complaint;
- A response from the Subject Member;
- Comments from the Clerk of Saltash Town Council; and
- The views of the Independent Person assigned to this matter.

The Complainant has alleged that the Subject Member has breached the Code of Conduct by voting on a matter which she had an interest in when the matter was discussed by the Council on 2 August 2018.

The Complainant has further set out that the Subject Member had a dispensation in to speak on the matter under discussion but that the dispensation did not extend to voting on the matter and that in an emailed apology for her error the Subject Member sought to blame the Proper Officer to the Council.

In responding to the complaint the Subject Member has set out that she did not realise that at the time of the vote that the dispensation did not cover her to vote and that she sent an email to Town Councillors apologising for her error. The email sets out that the Subject Member sincerely apologises to the Town Council for what was a genuine mistake and an oversight on behalf of the Subject Member. The Subject Member adds that should she would have benefited from some advice on the matter at the time from the Clerk.

The Clerk has provided a copy of the dispensation form and has set out he did not recall any advice being given or sought with regards to dispensations at the meeting on 2 August 2018.

Application of the Code of Conduct

I am satisfied that for the purposes of this complaint that the Subject Member was acting in her official capacity at the time call to the Complainant and was therefore bound by the Code of Conduct for Cornwall Council.

Findings of fact

In considering the findings of fact decisions are based on the balance of probabilities, that is, would a reasonable person in possession of all the facts objectively consider that a breach of the Code of Conduct has occurred.

There are two types of interest that can arise under the Code of Conduct these are a disclosable pecuniary interest or a non-registerable interest. There has been nothing supplied by the Complainant that would suggest that this is a disclosable pecuniary interest, that is an interest that affects one of the matters as found at 5(b)(i) – (vii) of the Code of Conduct.

However, as the Subject Member is a member of the Chamber of Commerce the interest is one that will be a non-registerable interest, the definition of which is set out a paragraph 5B of the Code.

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 well being of you; a member of your family or any person with whom you have a close association; or any body 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

The reasoning for this is that the matter to be determined will affect the financial position of the Chamber of Commerce more than the majority of council tax payers in the area and this is an interest that, as it relates to a grant for several thousand pounds, is one that a reasonable person would consider would affect the Subject Members judgement.

As it is established that the Subject Member has an interest in the matter under discussion it should now be considered how the Subject Member should have acted due to this interest. Paragraph 3.5 of the Code sets out that;

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.*

Whilst the dispensation that was granted to the Subject Member extends to 3.5(i) above it does not allow the Subject Member to remain in the room and vote.

As a result of the above it is considered that by staying in the room and voting on the matter that related to the Chamber of Commerce on 2 August 2018 the Subject Member has breached paragraph 3.5(ii) & (iii) of the Code of Conduct for Saltash Town Council.

2.11 You must not use or attempt to use your position as a Member of the Council improperly to confer on or to secure for yourself or any other person an advantage or disadvantage.

I have noted the background to this matter and what was under discussion and that, the vote, one way or the other, would affect the Chamber of Commerce in a positive or negative manner therefore it can be considered that the Subject Member could have conferred an advantage or disadvantage by way of her vote.

Whilst the interest the Subject Member has in due to being a member of the Chamber of Commerce it is noted that despite the fact she had an interest the Subject Member voted in a manner that caused the Chamber of Commerce a disadvantage rather than an advantage.

As a result of this I am satisfied that the Subject Member, by voting on the matter relating to the Chamber of Commerce on 2 August 2018 has breached paragraph 2.11 of the Code of Conduct for Saltash Town Council.

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

For the reasons set out above I consider the Subject Member has failed to adhere to the general principles of public life underpinning the Code and has therefore conducted herself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct. By breaching paragraph 3.5(ii) & (iii) and 2.11 of the Code of Conduct the Subject Member has therefore also breached paragraph 2.5 of the Code of Conduct for Saltash Council.

Actions to remedy the breach

The Subject Member has set out in her apology email to the Town Council that it would have been nice to receive some advice from the Clerk to the Town Council. It is noted in this email that this did not apportion blame to the Clerk as is alleged.

With regards to the finding of a breach of the Code, paragraph 1.3 of the Code of Conduct sets out;

It is your responsibility to comply with the provisions of this Code.

This makes it clear that it is an individual members responsibility to comply with the Code and this is reflected in the finding of a breach of paragraphs 3.5(ii) & (iii), 2.5 and 2.11 of the Code of Conduct for the Town Council.

However, I do consider this point to be one that is relevant to consider in mitigation of an action to be taken as there is a certain amount of responsibility placed on the Proper Officer of the Council to ensure that the meetings of the Council are undertaken in a correct and lawful manner and that a prompt regarding a dispensation which has been granted by the Proper Officer is helpful in ensuring this.

I have also noted in mitigation that the Subject Member has already apologised to the Town Council for her failure to act in accordance with the Code at the meeting on 2 August 2018.

As a result of the above I consider that the Subject Member should attend training on the Code of Conduct to allow her to better understand when an interest arises and when she should leave the chamber. Whilst I am aware that the Subject Member has recently attended Code of Conduct training it is suggested that the Subject Member undertakes training in 2019 as this training will focus on interests.

What happens now?

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Saltash Town 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.

A handwritten signature in black ink, appearing to be 'S. Jones', with a long horizontal line extending to the right.

SJR Mansell MBE
Corporate and Information Governance Manager
On behalf of the Monitoring Officer
Date: 17 October 2018