

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.

We can also help if English is not your first language.

A handwritten signature in black ink, appearing to be 'SJR Mansell', with a long horizontal stroke extending to the right.

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

