



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:	Clr 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 Clr 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 finding 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 respond.

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



Mr Lane
Saltash Town Council
The Guildhaall
12 Lower Fore Street
Saltash
PL12 6JX

Your ref:
My ref: 056755/CCN018/18/19
Date: 18 October, 2018

Dear Ray,

Request to review Decision Notice CCN018/18/19

I write to advise we have reviewed a request to review the Decision Notice CCN018/18/19 in which we found Cllr Brady to be in breach of the Code of Conduct.

Paragraph 5 of Cornwall Council's procedures for the assessment and determination of breaches of the Code of Conduct sets out the procedure for requesting a review of a decision made under the Code.

The reasons for asking for a review are as follows;

Cllr Brady states that the Decision Notice sets out that he is related to the complainants which he states is untrue.

Cllr Brady does not accept the decision as set out as he believes the overall context was not taken into consideration. He further sets out that he does not agree with the sanctions as set out in the Notice as he feels that he should be the recipient of such apology as Cllr Brady states he was simply responding to distasteful postings on social media.

Our adopted procedures set out that a review shall be rejected if substantive reasons are not given to support the review, and in considering your submission your request is rejected for the following reasons;

Cllr Brady has closed his request by setting out that he does not believe that the Deputy Mayor has complied with the principles of public life and has used her family to attack and undermine him. However; in the decision notice the case of Heesom v The Public Services Ombudsman for Wales is noted and this sets out in it 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.'


INVENTORIS ES PEOPLIS
The Cornwall Council does not accept service of any legal proceedings or process via email or other electronic device

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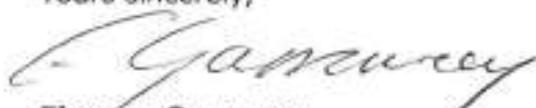
Whilst Cllr Brady may not agree with the actions of the Deputy Mayor, or her family, there were no justifiable grounds for sending out the email to all members of the Town Council accusing the Deputy Mayor and her family of grubbiness not matter how strongly he may feel about their actions. As part assessing the complaint against him, and this is the same for all members, it is only his actions, that is the sending of the email that are considered. In assessing the matter and considering the wording in Heesom was it then deemed unreasonable for Cllr Brady to extend his differences to the Deputy Mayor to her family – we advised Cllr Brady that Mrs Clements is the Deputy Mayor's sister and is therefore part of the Deputy Mayor's family.

I can confirm that a clerical error was made in the Decision Notice whereby it was stated Cllr Brady was related to the complainants. It was supposed to state that the complainants were all related to each other, not him. I have amended the Decision Notice to this effect and append a copy to this letter for your records.

Cllr Brady, in his request for a review stated that he is not a politician; whilst he may not be a member of a political party the law considers that as he has stood and has been democratically elected to a public office he is in fact a politician and therefore enjoy the rights, such as qualified privilege when speaking in the chamber, that is afforded to a politician.

For the reasons given above we have rejected the request for a review. You do not need to do anything further in respect of this letter we are just writing to advise you that a request to review the Decision has been received and rejected.

Yours sincerely,



Eleanor Garraway
Corporate Governance Officer (acting)
Assurance Service
Cornwall Council
Tel: 01209 614304
Fax: 01872 323833
DX number: 122620 Truro 4
Email: eleanor.garraway@cornwall.gov.uk

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Tel: 0300 1234 100 www.cornwall.gov.uk



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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.

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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

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Corporate and Information Governance Manager
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Date: 4 October 2018