



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN044/18/19
Complainant:	Mrs Avril Pinckney
Subject Member:	Cllr John Brady, Saltash Town Council
Person conducting the Assessment:	Eleanor Garraway, Corporate Governance Officer
Date of Assessment:	15 April 2019

Complaint

On 15 April 2019 the Monitoring Officer considered a complaint from Mrs Avril Pinckney concerning the alleged conduct of Cllr John Brady of Saltash Town Council. A general summary of the complaint is set out below:

- It is alleged that the Subject Member has bullied and intimidated the Complainant via email, copying in other Members of the Council.

Decision and Action

For the reasons set out in this Notice, 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, within 28 days of this Notice to the Complainant for the manner in which he wrote to the Complainant in various emails in an attempt to cause her disrespect, attempt to intimidate and bully her by copying in other Members of the Council.
- It is further recommended that the Council censure the Subject Member for the reasons as set out above and should consider publishing the censure in a local publication which is available to those living within the vicinity.

Breaches of the Code Found

- 2.1 You must treat others with respect
- 2.2 You must not unlawfully discriminating against others
- 2.3 You must not bully any person
- 2.4 You must not intimidate or attempt to intimidate others
- 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 received from the Complainant;
- A response received from the Subject member; and
- The View of the Independent Person assigned to this matter.

The Complainant has alleged that she has received a number of email correspondence from the Subject Member using his position to attempt to intimidate and bully her.

It should be noted that the case of *Heesom v Public Services Ombudsman for Wales* has been referenced in this assessment.

The background to this complaint is that the Subject Member previously made a complaint against the Complainant in respect of her failing to advise the Chairman or the Council that she was leaving the room when a matter concerning non-payment of Council Tax came under discussion during a meeting of the Council.

In this previous complaint the Subject Member had stated that the actions of the Complainant conflicts with what is set out in the Local Government Financial Act 1992 whereby it states all Members should declare whether they have Council Tax arrears before voting on a matter. The Subject Member stated that the Complainant has failed to declare this and therefore is in breach of the Code.

This previous complaint was rejected on the ground of lack of evidence and being outside the Authority's jurisdiction to consider and should he wish to pursue this matter to address this through the Courts. The Subject Member was further advised that that it is not a breach of the Code for a Member to leave a meeting of their Council.

The Complainant further advises, in her complaint, that she suffers with a medical condition which requires her to attend the lavatory at a short given notice and thus the reason for leaving the room during the course of the meeting.

The Subject Member has responded to the complaint stating that he has been on the receiving end of a number of complaints and that there is a campaign to reduce his standing in the community.

The Subject Member further states that in a response previously sent to the Complainant his reply was reasoned and factual and without malice. The Subject Member further states that the complainant has '*let herself down*' by divulging her medical history and should she had showed the Clerk her bank statements this would have '*cleared the matter up*'.

It should be noted that further email correspondence has been provided by the Complainant from the Subject Member, however as this was received after the complaint was made, whilst these emails are noted, they do not form part of the consideration of the decision made.

Application of the Code

As the Subject Member was communicating using his Councillor email address and discussing matters that had been subject to a previous Code of Conduct complaint I am satisfied that the Subject Member was acting in his official capacity at the time of the alleged conduct therefore was bound the Code of Conduct for Saltash Town Council.

Finding of Fact

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 others but this must not be done in such a way that is not 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 they had viewed the facts objectively.

In viewing the email chains subject to this complaint it is clear it is respect of the contents of the previous complaint made and the Subject Member's accusation that the Complainant had breached the Code by removing herself from a meeting of the Council when the matter concerning non-payment of Council Tax came under discussion and the Subject Member's assumption that the Complainant was in Council Tax arrears.

Email sent 23 February 2019 @ 10.11am. This email is sent by the Subject Member addressed to the Complainant and is copied to others Members of the Council. I note the following comments made by the Subject Member in respect of the potential Council Tax arrears held by the Complainant :

"This is something I discussed with my solicitor yesterday, albeit off the record, and I will consider over the weekend what my next action will be. If you were not in Council Tax arrears by 2 months or more at the 6 December 2018, you have nothing to fear. There will be no apology forthcoming."

In considering whether this part of the Code has been breached I have had consideration to the case of *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 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. Whilst the Subject Member has stated in his response that comments made were reasoned, factual and without malice however there is no proof behind the previous allegation made and therefore he should have refrained from bringing this matter to the forefront in the manner and conduct in which he did.

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. However on viewing the comments above made there is clearly an attempt to cause the Complainant disrespect. This is further shown by copying in other Members of the Council and the Complainant having to justify her absence by revealing personal medical ailments.

The use of the wording "*there will be no apology forthcoming*" in this case I consider that the threshold for disrespect is exceeded, there were no grounds for making the comments above and especially for stating there would be no apology forthcoming. It is disappointing to note that the Subject Member thought it an appropriate way to address the Complainant through the use of emails and copying others in.

Therefore for the reasons given above, I consider the comments made via email and the manner in which this was done, by copying in other Members and the refusal to offer any future apology shows a lack of respect and therefore it is considered that the Subject Member has breached paragraph 2.1 of the Code of Conduct for Saltash Town 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

In considering the application of this part of the Code I have considered the protected characteristics under the Equality Act 2010 and the way in which they are worded, in particular discrimination due to harassment.

Harassment occurs if a person is subjected to conduct which is unwanted and conduct can include any form of act or omission.

In her submission the Complainant has set out her medical disability which she felt forced to declare to the Subject Member in an open email even after receiving the reasons for the Complainant's absence at the course of the meeting previous considered under the Code. The Subject Member has continued to harass through correspondence with the Complainant threatening to seek further legal advice and doing so in an open email. However, the original complaint was about the reference to the fact the complainant left the meeting when the setting of the precept was discussed and, as set out in *Heesom* there is an expectation of more robust debate in

the political arena and therefore a higher threshold is set before a breach of the Code is found.

As a result, and for the purposes of the Code of Conduct only, I do not consider that the Subject Member has discriminated by way of harassment and has therefore has not breached paragraph 2.2 of the Code of Conduct for Saltash Town Council. I do however, consider that the conduct amounts to bullying as is set out below.

2.3 *You must not bully any person*

Bullying, as defined in the Code, follows the ACAS guide and may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

In an email sent 21 February 2019 @ 18.08pm, sent by the Subject Member addressed to the Complainant and is further copied to other Members of the Council, states:

".....I am again seeing my Solicitors tomorrow at 1430..... I will also now be putting my last complaint with Devon and Cornwall Constabulary....."

An email of 21 February 2019 @ 19.07pm, sent by the Subject Member addressed to the Complainant and is further copied to other Members of the Council, states:

"You have been drawn in the 'web', despite your protestations! This is the 'web' that you and others have sown. Even at this late hour of the Mayoral year, you and your group can still find time to spend you energies on maligning and attacked me. This is disgraceful and shows you and a few others are not representing your residents by your own Agenda. You have not the courage to tell members why the latest complaint went in against you, but you have the 'gall' to wade in without knowing the facts or accepting the repercussions. Accept that you have dug a hole for yourself?"

In reviewing the email threads and in particular the comments that are referenced above, whilst the views of the Subject Member are noted it is considered, objectively, that this is a pattern of conduct that can be viewed as intimidating, insulting and humiliating. The conduct exhibited by the Subject Member is such that it is something that could be considered derogatory to the Complainant.

As a result of way pattern of behaviour exhibited by the Subject Member, and viewing the facts objectively against the definition of bullying. I am satisfied that the Subject Member has entered into a pattern of bullying conduct against the Complainant and therefore it is considered that the Subject Member has breached paragraph 2.3 of the Code of Conduct for Saltash Town Council.

2.4 *You must not intimidate or attempt to intimidate others*

In viewing the email chains supplied it needs to be considered whether the Subject Members had caused the Complainant to feel intimidated or has attempted to intimidate her.

Whilst it would need to be determined whether the Subject Member was acting in his official or not, it is clear that the comments as made were in reference to the previous complaint and therefore I believe the Member was acting in his professional capacity.

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.

As mentioned above the comments made in the emails were copied in to other Members of the Council. This shows that the Subject Member is attempting to intimidate the Complainant by trying to gain potential support. The matter under discussion, whilst is in respect of a previous complaint made, the Complainant felt obliged to disclose personal medical details in an attempt to quash any allegations. It was unnecessary for the Subject Member to act in this manner and should he have wished to discuss the matter with the Complainant he should have done so in a private manner and not in an open email.

I note that in the Subject Member's response to this complaint, he states that the Complainant should not have disclosed medical information and if she had shown her bank statements it would have '*cleared the matter up*'. There is no obligation for a member to supply personal information to this effect and in the Subject Member stating that she should, he is trying to justify the actions of his correspondence.

I have further considered whether '*threatening*' to seek legal opinion and consult the police on the matter, as referenced under the emails under consideration paragraphs 2.1 and 2.13, it is stated as an attempt to intimidate the Complainant and by stating this fact it is considered that it was used as a way to further intimidate the Complainant

In stating the comments made in an open email to Members of the Council shows that the Subject Member is attempting to intimidate the Complainant, the Subject Member has breached 2.4 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 Member's standing in the local community would be damaged by his actions.

In viewing the commentary received from the Subject Member, he has not disputed the comments were made however does provide further elaboration on them. Whilst the comments and reasoning's are noted, it does not mean the Subject can do as he wishes.

In considering if this part of the Code has been breached the view at assessment was that the way in which the Subject Member corresponded with the Complainant, copying in other Members of the Council is considered disrespectful and done in an attempt to intimidate and bully the Complainant. It would be considered that a reasonable person would consider that the Subject Member's standing could be damaged as no-one would like to have critical comments made in an open email in this manner and the Subject Member should have been aware that the comments made could be considered disrespectful.

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 2.11 - 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

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 Member could, objectively, be regarded as having caused an advantage to himself by conducting himself in the manner he did.

Whilst I have noted all the correspondence received in this matter, and found the comments made to be disrespectful, and made in an attempt to intimidate and bully, I do not consider that the comments made were written in an attempt to confer or secure an advantage.

Whilst it could be argued that the Subject Member has made remarks in an attempt to undermine the integrity and upstanding of the Complainant, I do not feel that this would cause the Subject Member to gain an advantage.

As a result the Subject Member has not breached paragraph 2.11 of the Code of Conduct for Saltash Town Council.

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, 2.3, 2.4 and 2.10 of the Code it follows that the Subject Member has conducted herself 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 Breaches found

Whilst the Subject Member has responded directly to this complaint I do not consider that the comments made outweigh the breaches found.

I have also noted the views of the Independent Person assigned to this matter with regards to the Subject Member's conduct.

In taking into account all of the above it is considered that, the Subject Member has breached the Code of Conduct for Saltash Town Council for the reasons as is set out in this Notice.

As a result of these breaches of the Code of Conduct the recommended action is that the Subject Member writes a meaningful apology to the Complainant for the manner in which he wrote to her in various emails in an attempt to cause her disrespect, attempt to intimidate and bully her by copying in other Members of the Council. Whilst discrimination was not found the Subject Member should be mindful that there is a fine line between his demonstrated conduct and discrimination being found.

As a result of the about breaches it is further recommended that the Council censure the Subject Member for the reasons as set out above and should consider publishing the censure in a local publication which is available to those living within the vicinity.

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.



Eleanor Garraway
Corporate Governance Officer
On behalf of the Monitoring Officer
Date: 15 April 2019