



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN010/20/21
Complainant:	Cllr Patricia Moore
Subject Member:	Cllr Adrian Fisher, Lanteglos by Fowey Parish Council
Person conducting the Assessment:	Eleanor Garraway, Corporate Governance Officer
Date of Assessment:	30 October 2020

Complaint

On October 2020 the Monitoring Officer considered a complaint from Cllr Patricia Moore concerning the alleged conduct of Cllr Adrian Fisher of Lanteglos-by-Fowey Parish Council. A general summary of the complaint is set out below:

It is alleged that the Subject Member has failed to treat the Clerk to the Parish Council with respect in various email correspondence regarding a cleaning contract at three separate lavatory sites.

Decision and Action

That, for the reasons set out in this decision notice, the Subject Member has breached the Code of Conduct for Lanteglos-by-Fowey Parish Council.

To remedy the breach, the Subject Member should provide a written apology, within 28 days, to the Clerk. If the Subject Member fails to apologise within the timeframe specified, the Parish Council should consider censuring the Subject Member.

Breaches of the Code Found

Paragraph 2.1 – you must treat others with respect

Paragraph 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;
- The email evidence supplied by the Complainant; and
- The views of the Independent Person assigned to this matter.

The main aspect of this complaint is the Subject Member's comments in various emails to the Complainant. However, these were mainly addressed to the Clerk to the Parish Council and concerned a cleaning contract at 3 separate lavatories within the vicinity.

The Complainant further also sets out that the Subject Member has a registerable interest in this matter due to his spouse having held the cleaning contract at the lavatories.

The Complainant has stated that the Members of the Parish Council communicate through an online forum. On 14 May the Clerk to the Council wrote to all Councillors asking those members who did not have an interest in the matter, to provide a response to several questions surrounding the lavatories and reminded the members that that were contracted to continue to pay the cleaning contract.

On 19 May the Subject Member's wife (herein referred to as 'Mrs X') sent a copy of her current business insurance certificate to the Clerk who identified that the policy was in the Subject Member's name and asked for confirmation that she was covered. Mrs X said that herself and the Subject Member are a partnership and trade under his name.

At a virtual meeting of the Parish Council on 26 May (the Subject Member was not in attendance) it was resolved to re-open two of the disabled lavatories however, the Parish Council and Mrs X could not reach an agreement in respect of the costs of doing this, and PPE equipment.

On 3 June an updated insurance certificate was provided to the Clerk by the Subject Member and went on to state –

“Given that you keep harassing [Mrs X] for the same details, for clarity, I have contacted Direct Line to ensure it is clear [Mrs X] name is on the documents. You will see from the correspondence [Mrs X] has previously sent you, this policy has always covered both of us. If you require any further information on this matter, the Parish Council will be billed an administration fee at £50 per hour – minimum 1 hour”.

On 9 June, an extraordinary meeting of the Council was called to discuss the lavatory cleaning contract. Due to the Subject Member’s interest in this matter, the Clerk, out of courtesy, emailed all those members with an interest to advise of the meeting.

On 15 June, an independent risk assessment was carried out which confirmed that the lavatories could be opened however, a deep clean must be undertaken first.

It was agreed that the current contractor, Mrs X, had failed to clean the lavatories despite being given an opportunity to do so and therefore the Parish Council issued a Notice of Termination of Contract and it was agreed on 16 June at the extraordinary meeting of the Council that this would be sent.

Following Mrs X’s termination of contract, a temporary 3-month contract was issued to Cormac to service the lavatories. In circulating the meeting papers and quotation received from Cormac to all members, the Subject Member subjected the Clerk and Complainant to a torrent of disrespectful comments. These are set out later in the notice.

In preparing this it should be noted that the Subject Member has failed to exercise his right to respond to the complaint raised.

Application of the Code

Due to the matter under discussion being on Council business I am satisfied that the Subject Member was acting in his official capacity at the time of the alleged conduct therefore was bound by the Code of Conduct for Lanteglos-by-Fowey Parish Council.

Finding of Fact

Paragraph 2.1 - Failure to treat others with respect

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. When considering if the words used could amount to disrespect, 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 personal and therefore disrespectful.

Furthermore, the relationship between the Clerk and the Subject Member needs to be taken into account for this part of the complaint. As a Councillor, the Subject Member is the Clerk's employer and a quasi-employer/employee relationship exists between a councillor and an officer of any council. As this relationship exists there is therefore a requirement for the trust and confidence that has to exist between an employer and employee to be maintained. A Councillor also has a duty of care towards the Clerk as their employer.

I have considered the detailed complaint provided by the Complainant which includes excerpts of emails as well as full email chains being provided. Whilst it is not practical or necessary to include all the comments in this notice, all have been considered as part of this assessment. As set out above following the Clerk providing all of the Parish Council members with the quotation received from Cormac. In response on 18 June 2020, the Subject Member stated –

“Lack of respect! Bloody hell Gillian, the amount of money you have costs the PC, mainly for not sharing information, is disgusting. You may have thought you had been acting in the best interest of the PC, but you made a very expensive mistake.”

On 23 June the Clerk received the following from the Subject member in respect of the quotation –

“I assume we will have others to compare this to. What on earth were you thinking! Still don't know what you were thinking – doubt we ever will!”

and

“all the issues stem from you and not sharing information – pretending you were acting in the best interest of the Council. Well look where this has left the Council. Not willing to admit your mistakes and causing a breakdown in communication. A previous Clerk was sacked from this kind of behaviour. This is fact. You made a mistake in not sharing vital guidance from CALC. The arrogance of you and the Chairman in dealing with this is astonishing”

It is not clear the 'guidance' stipulated above by the Subject Member however the Complainant has advised that CALC were contacted in respect of how a grievance against the Subject Member should be dealt with.

The Clerk has responded to the Subject Member stating her views and that she feels as though he is being 'vindictive' towards her.

It should be noted that a Councillor is able to challenge the decisions and actions of the Clerk and part of the role of a Councillor is to do just that. Whilst it is clear that the Subject member feels strongly on this matter under discussion, the Subject Member needs to do this in a way which is respectful and treats the Clerk, as an employee, as all employees would expect to be treated and to be mindful of the wording used within his emails and to consider the most appropriate place to raise his concerns.

I consider the use of the wording “.....a previous clerk was sacked for this kind of behaviour” as clearly threatening use of wording. Cllr Fisher is entitled to express his view on the cost of the new contract, however, his accusations and implication that Clerk’s behaviour may have similar consequences to those of a predecessor are intimidating.

It is accepted that, due to his close personal involvement the Subject Member feels strongly about how the matter concerning the contract was dealt with however, this does not remove the requirement to comply with the Code of Conduct.

In considering the emails concerning the Clerk, I do not believe that the reasonable person would find the emails from the Subject Member to the Clerk, taking into account the quasi employer/employee relationship, to be acceptable. No employee would expect to be addressed by their employer in this manner and, if the Subject Member considers the Clerk as an employee is at fault, this should have been dealt with as an employment matter. I therefore find that the Subject Member has breached Paragraph 2.1 of the Code of Conduct.

The Code of Conduct sets out at paragraph 3.5;

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 room in which the meeting is taking place in 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*

Both the Localism Act 2011 and the Code, paragraph 3.5 set out if the member has an interest/disclosable pecuniary interest in any matter they may not participate in the discussion or vote on the matter.

In considering this aspect of the complaint I have viewed the Subject Member's Register of Interest form held. This states the following under employment –

“[Mrs X] has cleaning contract the Public Conveniences for the Parish Council”

The Code clearly sets out the following –

Within 28 days of becoming a Member you must notify the Council's Monitoring Officer of any disclosable pecuniary interest that you have and your membership of any trade union(s) at the time of giving the notification.

This extends to the Subject Member's spouse and the duty to declare the same.

Whilst there is no doubt that the Subject Member has correctly registered his wife's employment however, it needs to be considered in being a business partner with his spouse whether the Subject Member has breached 3.5 of the Code of Conduct.

It is shown and he has admitted that he has a shared business with his spouse and that the business is held in his name. However, I have been supplied with no evidence that the Subject Member has failed to declare any interest in the matter when the cleaning contract agenda item came before the Parish Council.

Whilst his clear frustration that his wife had her contract terminated the comments put to the Clerk following the quotation from Cormac are in respect of the amount quoted and not his wife's terminated cleaning contract.

Therefore, for the reasons as set out above, I do not find the Subject member in breach of 3.5 of the Code of Conduct.

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

In considering if this part of the Code has been breached it has to be considered, objectively, if the Subject Members standing in the community could reasonably be regarded as being disreputable.

I have considered all of the conduct of the Subject Member as set out above and believe that for the breach found a reasonable person, would consider the Subject Member's conduct disreputable. I have particular concern towards the Subject Member's conduct to the Clerk as Proper Officer of the Parish Council.

in terms of the comment made by the Subject Member to the Clerk, is it doubted that any Proper Officer would expect to be spoken to in the manner as stated above.

It is accepted that a member may not be satisfied with the performance of any Officer and all employees have procedures in place to allow these concerns to be expressed and would expect that these procedures were followed.

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 as 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 members by breaching paragraphs 2.1, 2.10 and 2.5 of the Code of Conduct for Lanteglos-by-Fowey Parish Council.

I do not consider that with regards to the complaint as set out at the start of this Notice there have been any other breaches of the Code of Conduct.

Independent Person's views

In considering the complaint I have noted the views of the Independent Person assigned to this matter with regards to the Subject Member's conduct. The Independent Person did not consider the alleged actions of the Subject Member would result in a breach of the Code.

As set out in our procedures the Independent Person's written views are set out below:

In my view, Cllr Fisher used inappropriate language during his correspondence with the Parish Clerk and exhibited a disrespectful attitude towards her. This culminated in appearing to intimidate the Clerk by stating that similar actions, which he accused her of, had resulted in the dismissal of a previous post holder. His accusations were made in the wider domain of other councillors and without apparent regard for confidentiality or appropriate process.

In my view councillor Fisher has breached paragraphs 2.1, 2.4, 2.5 and 2.10 of the Code of Conduct.

What happens now?

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Lanteglos by Fowey 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 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: 30 October 2020