

To: Chair & Members of the Standards
Committee

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Wednesday 23rd September 2020

Dear Councillor

STANDARDS COMMITTEE – MONDAY 28TH SEPTEMBER 2020 AT 2PM

Further to your recently circulated agenda for the above meeting, I now enclose the following item of business;

Agenda Item 12 – Publishing Complaints Against Members

Yours faithfully



Solicitor to the Council & Monitoring Officer

STANDARDS COMMITTEE

AGENDA

Monday, 28 September 2020 at 14:00 hours taking place as a Virtual Meeting

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Bolsover District Council

Standards Committee

28th September 2020

Publishing of Complaints Against Members

Report of the Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To present to Members of the Committee the publication document produced by Cornwall Council at the end of the process on a member complaint.
- To outline arguments for and against publication of outcomes of member complaints.
- To present details of possible publication models.

1 Report Details

- 1.1 At the last meeting members discussed whether or not the outcomes of Member complaints should be published. Currently they are not. Members were made aware of Cornwall Council's publication of the outcomes of members' complaints. Two copies are attached to this report. These are lengthy documents with the full reasoning for the decision. I would advise against giving so much detail in a public notice.
- 1.2 There are arguments for and against publication.
- 1.3 In favour of publication:
- Openness and transparency
 - It will show the public that Members are mostly compliant with their codes of conduct and that there is no great problem.
 - It will show the public that the breaches alleged often relate to the way members have treated others and many times in the members' private life not their public one.
 - This will help members of the public understand that currently the Members' Code of Conduct does not relate to a Member's private life.
 - It would tell the world of a councillor's innocence.
- 1.4 Against publication:
- It prolongs the publicity unfairly when the Member is found to be not in breach of the code of conduct.

- Vexatious, scurrilous and capricious accusations from members of the public will be published giving the complainants an extra audience even where the complaint was not upheld. It will also give self-justification to such complainants.
- It may encourage the making of such complaints.
- In the employees situation such things are dealt with in private. Should we treat innocence members any differently?
- There is no control over the notice once published. It is on the website indefinitely and can be copied and manipulated far into the future.
- It will encourage the use of complaints to get at councillors when in reality it is either a political difference or a personal private disagreement.
- This would give the opportunity for anyone with a grudge or political agenda to make multiple complaints hoping that enough mud is thrown some will stick.
- It would be particularly hard on Parish Councillors who are volunteers receiving no allowances.

1.5 There is no requirement to publish. It would be entirely voluntary. As such it is my view that there may be Data Protection requirements to adhere to which I will ask the Data Protection Officer to comment on if members are minded to publish. If however the publications were depersonalised by the removal of names, this would not be a problem.

1.6 in terms of Members' views generally on the subject I have received some feedback from members who have heard that this proposal is being considered. It is my view that the Committee should ask all District Councillors and Parish Councils for their views before taking a decision on whether to publicise and if so at what level. This would assist with it being known that this is what happens if Members do decide to publish.

1.7 If the consultation response is in favour of publication, a form of notice will be developed,

1.8 The options would appear to be:

- Not to publicise, as is the case now.
- Publicise individual cases as and when they occur.
- Publicise individual cases as and when they occur but redact names of complainants and councillors and the relevant Council.
- Publicise cases from a specific period of time (say every 3 months) with full details.
- Publicise cases from a specific period of time (say every 3 months) with full names redacted.
- Publish a table once a year with full details.
- Publish a table once a year with full details redacted.
- Publish as options above but only those cases where fault is found.

2 Conclusions and Reasons for Recommendation

2.1 Members wish to consider publishing the results of Member complaints. As the process affects Members of Parish Councils too, the Parish Councils should be

asked for their opinion. There would need to be sufficient time for the Parish Councils to debate this in their meetings if they wish to do so.

- 2.2 Once the consultation feedback is received, Standards Committee should consider the outcome and take a decision.

3 Consultation and Equality Impact

- 3.1 This report proposes a consultation exercise with Members of Parish Councils who will also be affected by any changes to the existing regime.
- 3.2 An Equality Impact Assessment can be carried out if Members decide at a future meeting to proceed.

4 Alternative Options and Reasons for Rejection

- 4.1 The alternatives are contained in the report.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 De minimis

5.2 Legal Implications including Data Protection

- 5.2.1 The Data Protection Officer would be consulted to ensure compliance in any future scheme to publish.

5.3 Human Resources Implications

- 5.3.1 None

6 Recommendations that

- 6.1 The Monitoring Officer write out to all District Councillors and Parish Councils asking for their views on publication and giving the details of the options in paragraph 1.8 above.
- 6.2 Parish Councils are asked in addition to seek the views of their individual Councillors and ask that they send responses to the Monitoring Officer.
- 6.3 Following the consultation, a report is presented to Standards Committee on the outcome of consultation.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><i>BDC: Revenue - £75,000 <input type="checkbox"/></i> <i>Capital - £150,000 <input type="checkbox"/></i> <i>NEDDC: Revenue - £100,000 <input type="checkbox"/></i> <i>Capital - £250,000 <input type="checkbox"/></i></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	N/A
<p>District Wards Affected</p>	All indirectly
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
Report Author	Contact Number
Sarah Sternberg	Ext 2414

Report Reference –



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN001/19/20
Complainant:	Mr and Mrs Poland
Subject Member:	Cllr John Hicks, St. Allen Parish Council
Person conducting the Assessment:	Eleanor Garraway, Corporate Governance Officer
Date of Assessment:	4 July 2019

Complaint

On 4 July 2019 the Monitoring Officer considered a complaint from Mr and Mrs Poland concerning the alleged conduct of Cllr John Hicks of St. Allen Parish Council. A general summary of the complaint is set out below:

The Complainants have alleged since the Decision Notice of CCN039/18/19 dated 28 May 2019 was issued, which found the Subject Member to be in breach of the Code of Conduct and asked to apologise to the Complainant one, the Subject Member has failed to apologise and therefore has again failed to treat the Complainant with respect.

Decision and Action

Due to the failure to provide Complainant one with a written apology within 28 days of Decision Notice CCN039/18/19 the Subject Member has breached the Code of Conduct for St. Allen Parish Council.

As a result of this breach of the Code of Conduct the recommended action is that the Subject Member be censured by St. Allen Parish 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 your 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; and
- The views of the Independent Person assigned to this matter.

No response has been received to the complaint from the Subject Member, though the Subject Members response to Decision Notice CCN039/18/19 has been noted and the further request for a review of this decision was rejected.

For the purpose of this Notice I will be distinguishing the two Complainants as Complainant One and Complainant Two.

The Complainants have alleged the following;

The Complainants have alleged since the Decision Notice CCN039/18/19 was issued, which found the Subject Member to be in breach of the Code and asked him to apologise to Complainant one, the Subject Member has failed to do so or make contact in way.

It is further alleged that the Complainants have spoken to the Clerk to St. Allen Parish Council who advises that the Subject Member has failed to attend Code of Conduct training as recommended in Decision Notice CCN039/18/19. This aspect of the original Decision Notice has not been considered in carrying out this current assessment as when the original Decision was written, the Subject Member was given a period of 6 months to comply with this recommended action, it is noted that this 6 month period has not yet lapsed.

This Decision Notice should be read in conjunction with Decision Notice CCN039/18/19 which set out that the Subject Member's actions which equated to the Subject Member having breached the following paragraphs of the Code of Conduct;

3.5 Failure to declare an interest

2.1 You must treat others with respect

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 your 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.

The sanctions applied in Decision Notice CCN0039/18/19 are as follows:

The Subject Member should apologise in writing within 28 days of this Notice to the both Complainants for the way in which he approached Complainant One during and after the Parish Council meeting on 17 December 2018.

It is further recommended that the Subject Member attend Code of Conduct training within 6 months from the date of the Notice for the failure to declare a non-registerable interest and should take not part in any discussions relating to this footpath in the future.

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, or whilst the Code does allow a member to be critical of people, a member cannot conduct themselves in such a way that is personal and/or 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 sufficiently for a breach of the Code to be found. As a result the Subject Member was asked to apologise for the manner and tone which he spoke to Complainants one.

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

After reviewing the facts it is not considered that the request for an apology was a unreasonable one and that the action set out in CCN005/17/18 was appropriate.

The Complainants have advised that no apology or any contact in any way has been forthcoming since the original Decision notice which was dated 26 February 2019.

Therefore by failing to apologise to Complainant One as required in Decision Notice CCN039/18/19 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.

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

By failing to apologise to Complainant One it is considered that a reasonable person would be of the view that this would add weight to Subject Member's standing in the local community being damaged.

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 Complainant one 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 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 breach

Whilst the Subject Member has not responded directly to this complaint I have noted his earlier views on the matter but do not consider that this would outweigh the request for an apology.

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

In taking into account all of the above it is considered that, due to the failure to provide Complainant one with an apology within 28 days of Decision Notice CCN039/18/19, the Subject Member has breached the Code of Conduct for St. Allen Parish 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 St. Allen Parish Council.

What happens now?

This decision notice is sent to the Complainants, the member against whom the allegation has been made and the Clerk to St. Allen 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.

A handwritten signature in cursive script, appearing to read 'E. Garraway'.

Eleanor Garraway
Corporate Governance Officer
On behalf of the Monitoring Officer
Date: 4 July 2019

ASSESSMENT DECISION NOTICE

NO BREACH OF THE CODE

Reference:	CCN010/19/20
Complainant:	An employee of St. Just in Penwith Town Council
Subject Member:	Cllr Marna Blundy, St. Just In Penwith Town Council
Person conducting the Assessment:	Eleanor Garraway, Corporate Governance Officer
Date of Assessment:	8 November 2019

Complaint

On 8 November 2019 the Monitoring Officer considered a complaint from an employee of St. Just in Penwith Town Council concerning the alleged conduct of Cllr Marna Blundy of St. Just in Penwith Town Council. A general summary of the complaint is set out below:

It is alleged the Subject Member stated inappropriate, sexist and racial comments to the Complainant when speaking of her predecessor to the role.

Decision

That for the reasons set out in this notice the Subject Member has not breached the Code of Conduct for St. Just in Penwith Town Council and no further action needs to be taken.

Reasons for the Decision

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 Complainant states that on 18 or 19 June 2019, the Subject Member stated inappropriate, sexist and racial comments to the Complainant when speaking of her predecessor to the role.

For the purposes of clarity the Complainant is currently employed as the Locum Clerk to the Town Council.

It is alleged that the Subject Member came to see the Complainant on 18 or 19 June 2019 to discuss Council business. In the discussion the Subject Member raised the subject of mistakes to previous minutes made by the Complainant's predecessor and questioned his nationality, stating:

"...he's been in England long enough to have better English"

It is alleged the Subject Member further stated that she appreciated a female Clerk and stated:

"Whist he was a nice man, it's just better having a lady and an all lady team".

The Complainant took the comments to be inappropriate, sexist and racist.

It should be noted that the previous Clerk has not been approached to provide his comments to this complaint.

The Subject Member has responded to the complaint stating that she believes the conversation took place on 18 June when she introduced herself to the new Locum Clerk, where they had an informal conversation and in particular spoke of Council business. She has stated that she does not recall bringing up the matter of previous Council minutes and errors however does appreciate the passage time from the date of the meeting to the date of this complaint being made.

However, the Subject Member goes on to state that she believes it they discussed the next Council minutes as the previous Clerk's style was *'sometimes unusual'* and this was due to his upbringing with Italian parents. The Subject Member states she made this comment as a factual statement and not a criticism or a racial remark.

The Subject Member further advises that the comments surrounding a female 'team' was stated in a light heartened manner to make the new Locum Clerk feel comfortable in her position.

In her commentary, the Subject Member has stated that she always treats others with respect and strives to maintain those principles of public life in private as well as in public and further if her comments have caused any distress to the previous Clerk, she apologises

and respects him as a valued colleague and an equal and his parentage and genre made no difference to how she worked with him or viewed him.

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 of the alleged conduct and was therefore bound by the Code of Conduct as adopted by St. Just in Penwith Town Council.

The Code of Conduct sets out, at paragraph 2.1 that a Councillor must 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.

For disrespect to be shown there has to be a clear attack on an individual however on occasion this may be extended to a group.

Under the Localism Act 2011 members should promote equality by not discriminating unlawfully against another and thus treating them with disrespect because of one of the protected characteristics presented under the Equality's Act 2010. That is their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers.

In considering all of the information available to me I am of the opinion that due to the conflicting opinions of those in attendance I am unable to form a view with absolute certainty that the alleged comments stated were made and this is the same as the complaint can be viewed on the balance of probabilities.

There were no witnesses to the incident so no clarity either way could be gathered by the assessing officer as to the alleged statements and, despite the clear importance the Complainant has attached to the matter, there are no notes of the meeting and the date was not recorded by her.

Therefore in considering the facts of the information available to me at assessment it is clear that both the Complainant and the Subject Member have differing views on the comments surrounding the parentage of the previous Clerk. It is clear from viewing the Subject Member's commentary that she cannot with absolutely certainty recall the event due to the passage of time.

When considering whether or not the incident did in fact take place as stated by the Complainant, the problem that is presented in this, and all other similar matters, is that

when there a conversation takes place and no witness details are provided the threshold for disrespect is unlikely to be met as what was said is not quantifiable.

I have considered referring this part of the complaint for further investigation but, as the ethical standards regime does not allow statement of truth to be made, or interviews to be conducted under caution, the alleged conduct will remain a case of one word against the other. It is therefore not considered to be in the public interest to refer this for further investigation as it would not be possible to resolve these conflicting statements.

For the reasons given above, I am unable to make a finding under the Code of this aspect of the complaint.

However I have further considered the comments regarding the Council being a female 'team'.

The Subject Member has not disputed the comments were made however I believe how they have been received by the Complainant has been misconstrued although it is appreciated that the interpretation of vocal communication can be highly subjective.

The Subject Member has stated that the Town Council had traditionally been a male enclave and was acknowledging, in an informal setting, of the fact that this custom had transitioned.

On viewing both statements of those present, I believe, on the balance of probabilities, the comment stated by the Subject Member was said in a light hearted manner which was done so in trying to make the new Locum Clerk feel comfortable in her role. The fact that the comment made has been misinterpreted by the Complainant is unfortunate.

Whilst the complainant may have found the comments made impudent, I do not believe a reasonable person would constitute the comments made would amount to disrespect and therefore I am unable to find the Subject Member to be in breach of the Code of Conduct for this aspect of the complaint.

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 as I consider the Subject Member has not failed to adhere to the general principles of public life underpinning the Code and has not therefore conducted herself in a manner contrary to the Council's statutory duty to promote and maintain high standards of conduct for St. Just in Penwith 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 St. Just in Penwith Town Council.

Right of review

At the written request of the Complainant, the Monitoring Officer can review and is able to change a decision not to refer an allegation for investigation or other action. To ensure impartiality in the conduct of the review different officers to those involved in the original decision will undertake the review.

We must receive a written request from the Complainant 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.

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: 8 November 2019