



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