



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

SANCTION

Reference:	CCN005/15
Complainant:	Councillor Mike LOVEGROVE
Subject Member:	Councillor Ruth LEWARNE, Penzance Town Council
Person conducting the Assessment:	Simon Mansell, Governance and Information Manager
Date of Assessment:	17TH August 2015

Complaint

On 17th August 2015 the Monitoring Officer considered a complaint from Councillor Mike Lovegrove concerning the alleged conduct of Councillor Ruth Lewarne of Penzance Town Council. A general summary of the complaint is set out below:

It is alleged that;

- At a meeting of the Property and Finance Committee of the Town Council held on 26 February 2015 after the Complainant chuckled at a remark the Subject Member made, the Subject Member then directed an expletive towards the Complainant which he considers failed to treat him with respect; and
- In an email to all members of the Town Council on 15 June 2015 the Subject Member made comments regarding the Complainant and the Mayor to the Town Council, which the Complainant considers demonstrate a further failure to treat others with respect.

Potential breaches of the Code of Conduct raised by the Complainant are that the Subject Member;

- Has failed to treat others with respect;
- Has brought her office and/or her authority into disrepute.

Decision and Sanction

That the Subject Member has failed to treat others with respect due to her comments directed at the Complainant at the meeting on 26 February 2015, and at the Complainant and the Mayor in her email dated 15 June 2015 and by these actions the Subject Member has brought her office, but not her authority, into disrepute. It is considered that a suitable action is that the Subject Member apologises to the Complainant and the Mayor for the comment made.

Breaches of the Code Found

- Bringing your office into disrepute
- Failure to treat others with respect

Reasons

In assessing this complaint I have had regard to the following:

- The complaint;
- The minutes of the meeting of the Finance and Property Committee of Penzance Town Council dated 26 February 2015; and
- The views of the Independent Person assigned to this matter.

No response to the complaint has been submitted by the Subject Member and the Town Clerk has not been contacted with regards to this matter.

This complaint is assessed in two parts;

At a meeting of the Property and Finance Committee of the Town Council held on 26 February 2015 after the Complainant chuckled at a remark the Subject Member made, the Subject Member then directed an expletive towards the Complainant which he considers failed to treat him with respect.

In his letter of complaint the complainant has further set out that he objected at the time to the expletive that was directed to him, the use of which was not denied by the Subject Member.

An email has been provided from a fellow Councillor who was at the meeting who has confirmed that the expletive was used and a second Councillor has set out whilst he can't remember the Subject Member using the expletive; he can remember the Complainant objecting to the use of it. The minutes of the meeting make no reference to the use of an expletive, or a response to its alleged use, but do show that the meeting was one which was open to the public.

All Code of Conduct complaints have to be decided on the balance of probabilities, that is would a reasonable person in possession of all the facts consider that the conduct of the subject member amount to a breach of the Code.

In debating matters in Committee the Code does allow for robust political debate, but does not allow personal attacks to be made on another person, whether they are a fellow Councillor or a member of the public.

The use of the expletive was in response to the Complainant chuckling at something said by the Subject Member. It is considered that a reasonable person would respond in some way to this, though the response may be made at the time or after the meeting. However, it is not considered that a reasonable person would respond, in a public meeting, by addressing a fellow committee member in the manner done so by the Subject Member and the term used in the response crosses the line between the right to challenge and a direct personal attack.

The second part of the complaint as made;

In an email to all members of the Town Council on 15 June 2015 the Subject Member made comments regarding the Complainant and the Mayor which the Complainant considers demonstrate a further failure to treat others with respect.

The email referred to was sent in response to an email which had been circulated by the Complainant earlier in the day which referenced a matter from several years before which the Subject Member had been involved with.

I do consider that a reasonable person would agree with the Subject Members ability to challenge the Complainant with regards to the content of his email, and no breach of the Code can be found with regards to the fact a response was sent, or copied by the Subject Member into all the original addressees.

A large amount of the text of the response by the Subject Member, whilst expressing a forthright opinion, can still be considered to be a reasonable response. However, addressing the Complainant as she has done in the response goes beyond what can be considered reasonable, and is a direct personal attack on the Complainant and crosses the line between 'robust' debate and a failure to treat with respect.

The Subject Member has also used her response to the Complainant to attack the Mayor to the Town Council. Whilst the email from the Complainant was addressed to the Mayor he was not referenced with it, other than in passing.

Notwithstanding this the Subject Member was free in her response to set out concerns that she may have about the Mayor in the context of the matter. There is though, in making such a response an expectation that the terminology used would be appropriate and accusing the Mayor in the manner in which she has fails to treat him with respect, both as an individual Councillor and as Mayor of the Town Council.

In consideration of the above I am of the view that, by her comments at the meeting held on 26 February 2015 and, by her comments in her email sent on 15 June 2015, the Subject Member has breached the Code of Conduct for Penzance Town Council by failing to treat both the Complainant and the Mayor with respect.

For a member to be considered to have brought their office or authority into disrepute they have to conduct themselves in manner which could be 'reasonably regarded' as doing so. That is a reasonable person would consider that the conduct of the Subject Member was disreputable to either their office or, or authority, or both.

As is set out above, on both occasions, the Subject Member has a right to reply to the Complainants action or email, it is the manner in which she chose to do this which is in question. I do not consider that a reasonable person would view the terminology used on both occasions to be acceptable, the remarks made go beyond what a reasonable person would consider to be a robust response.

It is therefore considered that the Subject Member has also breached to Code of Conduct for Penzance Town Council by bringing her office into disrepute.

However, I do not consider that the Subject Member has brought her authority into disrepute as both at the meeting on 26 February 2015 and in the email dated 15 June 2015 she has responded in her capacity as an individual Councillor.

Given the breaches of the Code of Conduct of Penzance Town Council by the Subject Member a suitable action is; the Subject Member apologies to the Complainant for the way she addressed him at the meeting on 26 February 2015 and for the way she addressed him in the email dated 15 June 2015 and should apologise to the Mayor for the way she referred to him in the email dated 15 June 2015.

What happens now?

This decision notice is sent to the complainant, the member against whom the allegation has been made and the Clerk to Penzance 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 need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

SJR Mansell MBE
Governance and Information Manager
On behalf of the Monitoring Officer
Date: 19th August 2015



ASSESSMENT DECISION NOTICE

NO BREACH OF THE CODE

Reference: CCN003/15 (ii)

Complainant: Mrs Nicola Tremayne

Subject Member: Councillor Nigel Ball, St. Neot Parish Council

Person conducting the Assessment: Simon Mansell, Governance and Information Manager

Date of Assessment: 7 July 2015

Complaint

On 7 July 2015 the Monitoring Officer considered a complaint from Mrs Nicola Tremayne concerning the alleged conduct of Councillor Nigel Ball of St. Neot Parish Council. A general summary of the complaint is set out below:

The Complainant has alleged that, at a meeting of St Neot Parish Council held on 27 May 2015 the Subject Member should have declared an interest in planning application PA15/03849 (the Application) as he is a member of Save Our Cornish Landscape.

Potential breaches of the Code of Conduct raised by the Complainant are that the Subject Member;

- has failed to have regard to advice given by the Clerk to the Council; and
- has failed to act in accordance with the Code when having an interest in a matter under discussion.

Decision

That no breach of the Code of Conduct has been demonstrated and that no further action needs to be taken.

Reasons for the Decision

In assessing this complaint I have had regard to the following:

- The complaint;
- The response to the complaint submitted by the Subject Member;
- Correspondence from the Clerk to the Parish Council; and
- The views of the Independent Person assigned to this matter.

The Complainant has alleged that, at a meeting of St Neot Parish Council held on 27 May 2015 the Subject Member should have declared an interest in planning application PA15/03849 (the Application) as he is a member of Save Our Cornish Landscape ('SOCL'). In a later email the Complainant has stated that it is not the Subject Member, but a member of his family, who is a member of SOCL.

The Subject Member has responded by saying that;

- That he has never been a part of SOCL or read any email communication from them.

In dealing with the objections raised by the Subject Member first; the issue of predisposition and predetermination is not one that falls under the Code of Conduct and an interest under the Code does not arise if statements of objection or support are made. As a result this part of the complaint is not considered further.

There is a potential for two type of interest to arise under the Code; these are, a disclosable pecuniary interest or a non-registerable interest.

For a disclosable pecuniary interest to arise the matter under discussion has to be something that will affect the Subject Member or their spouse or partner, and come under one of the categories of registerable interests as set out at Part 5A of the Code. Whilst land is listed as one of these categories it is not alleged, and nothing has been presented, to suggest that land in which the Subject Member has a beneficial interest in would be affected by the decision and therefore it is not considered that a disclosable pecuniary interest has arisen.

However, as it is claimed a member Subject Member's family is a member of SOCL there is the potential for a non-registerable interest to arise. A non registerable interest is described in Part 5B of the Code as something that;

- (i) might reasonably be regarded as affecting the financial position or well being of you; a member of your family or any person with whom you have a close association; or any body or group which you are a member of more than it might affect the majority of council tax payers, rate payers or inhabitants in the parish; and
- (ii) the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest.

There is no indication that the Subject Member, or his family would be affected by the Application but it should be considered if their well being could be affected.

In the submissions made the Subject Member has stated he is not involved with SOCL, and it is not suggested that SOCL is a group which has been established by the Subject Member's family member, only that they are part of it.

Alleged breaches of the Code are required to be considered objectively with a consideration of all the facts and, in looking at this allegation it needs to be considered would the well being of the Subject Member's wife be affected by the determination of the Application.

Whilst it is alleged the family member is a member of SOCL, and if this is correct would be interested in their activities, this does not mean they are linked to the group in such a way that their well being would be affected by the decision.

Membership of different groups can be problematic for Councillors when deciding whether to declare an interest or not. There has to be the ability for members of a Councillor's family to participate in local matters freely without this then having an adverse effect on the Councillor's ability to vote on a matter when it comes before the Council and alleged breaches of the Code are considered on a case by case basis.

On this occasion only membership of the group is alleged and, as a result, I do not consider that any family member's involvement with SOCL is sufficient on this occasion for an interest to have been created and the finding at assessment is therefore that there has been no breach of the Code of Conduct on the part of the Subject Member relating to the allegations as made.

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. Neot Parish 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 need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

Simon Mansell, Governance and Information Manager

On behalf of the Monitoring Officer

Date: 10 July 2015



ASSESSMENT DECISION NOTICE

NO FINDING OF WHETHER THERE IS A BREACH OF THE CODE

Reference:	CCN001/15
Complainant:	Mr and Mrs Davies
Subject Member:	Councillor Scott Parry, Deviock Parish Council
Person conducting the Assessment:	Simon Mansell, Governance and Information Manager
Date of Assessment:	8 June 2015

Complaint

On 8 June 2015 the Monitoring Officer considered a complaint from Mr and Mrs Davies concerning the alleged conduct of Councillor Scott Parry of Deviock Parish Council. A general summary of the complaint is set out below:

The Complainant has alleged that, at a meeting of Deviock Parish Council, held on 9 April 2015, the Subject Member should have declared an interest in planning application PA15/02746 (the Application) as he was employed by the estate agent that sold the applicants the development site.

Potential breaches of the Code of Conduct raised by the Complainant are that the Subject Member;

- Has failed to act in accordance with the Code when having an interest in a matter under discussion.

Decision and breaches of the Code Found

The finding at assessment is that there is no finding of a breach of the Code of Conduct for Deviock Parish Council and no further action needs to be taken.

Reasons

In assessing this complaint I have had regard to the following:

- The complaint;
- The response to the complaint submitted by the Subject Member;
- The Subject Member's register of interests form; and
- The views of the Independent Person assigned to this matter.

The Complainants have alleged that, at a meeting of Deviock Parish Council, held on 9 April 2015, the Subject Member should have declared an interest in planning application PA15/02746 (the Application) as he was employed by the estate agent that sold the applicants the development site.

The Complainants have also raised a number of concerns about the Clerk and the way the minutes relating to the meeting on 9 April 2015 were prepared however; the ethical standards regime can only consider a complaint against individual councillors and if the Complainants have concerns about the actions of the Clerk or the Council they should make a formal complaint to the Parish Council.

Additionally, the possibility of the Subject Member being biased or predetermined in his support of the Application has been raised. Whilst these comments are noted, bias and predetermination are not matters that are dealt with by the Code as they are civil matters decided by the courts, and therefore these are not considered further as part of this Assessment.

The Subject Member has responded by saying that;

- He does not have a disclosable pecuniary interest in the Application;
- He ceased employment with the estate agent concerned on 31 March 2015; and
- The land concerned was sold to the planning applicants in late 2014.

There is a potential for two types of interest to arise under the Code, these are; a disclosable pecuniary interest or a non-registerable interest.

For a disclosable pecuniary interest to arise the matter under discussion has to be something that will affect the Subject Member, or their spouse or partner, and come under one of the categories of registerable interests as set out at Part 5A of the Code.

In this case the interest most likely to be affected is that relating to employment, given that the Subject Member was employed by the estate agent that sold the planning applicants the land.

For the Subject Member to be required to act under the Code the matter under discussion would have to affect the Subject Member's interest, that is his employment. However; I do not believe in consider this matter that the interest is affected for the following reasons;

- Even if the Subject Member were still employed by the same company it is unlikely that a disclosable pecuniary interest would arise as, whilst business dealings can give rise to an interest under the Code these do not, for practical reasons, last in perpetuity;

- The Subject Member left the employ of the estate agent prior to the decision being made and it does not appear that the decision made could now affect the Subject Member's employment.
- It should be noted that were the business transaction more recent and/or the Subject Member still in the employ of the estate agent this reasoning would be different.

However, there is the potential for a non-registerable interest to arise. A non registerable interest is described in Part 5B of the Code as something that;

- (i) might reasonably be regarded as affecting the financial position or well being of you; a member of your family or any person with whom you have a close association; or any body or group which you are a member of more than it might affect the majority of council tax payers, rate payers or inhabitants in the parish; and
- (ii) the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest.

In dealings of this nature it is possible that a form of close association may be created which could lead to a non-registerable interest arising however; whilst the Subject Member has stated he was contacted by the planning applicants this does not in itself create a close association, neither does just knowing a person, and I have nothing else presented that suggest such a close association exists.

As a result I do not consider there were grounds for the Subject Member to act in accordance with the Code when the Application was discussed and the finding at assessment is that there is no finding of a breach of the Code of Conduct for Deviock Parish Council and no further action needs to be taken.

What happens now?

This decision notice is sent to the complainant, the member against whom the allegation has been made and the Clerk to Deviock Parish 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.

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SJR Mansell MBE
Governance and Information Manager
On behalf of the Monitoring Officer
Date: 8 June 2015