



ASSESSMENT DECISION NOTICE

NO BREACH OF THE CODE

Reference:	CCN025/22/23
Complainant:	Mr T Aughey
Subject Member:	Councillor D Edwards, Botus Fleming Parish Council
Person conducting the Assessment:	Simon Mansell, Group Manager - Assurance
Date of Assessment:	30 June 2022

Complaint

The Complainant has set out that the Subject Member has acted in a bullying and disrespectful manner towards him, and has failed to remain impartial when acting as Chairman of the Parish Council.

Decision

That, for the reasons set out in this Notice, the Subject Member has not breached the Code of Conduct and no further action needs to be taken.

Reasons for the Decision

In undertaking this assessment, I have had regard to the following;

- The complaint as made;
- The response from the Subject Member; and
- The views of the Independent Person.

In undertaking this assessment, it is noted that the Complainant is of the view that, as the Subject Member is a member of the Standards Committee, and therefore there is a 'professional relationship' created with the Subject Member and officers of the Council, this matter should have been passed outside of the Council for assessment.

As the Independent Person has noted, there is no conflict of interest and no legitimate reason to transfer investigation of this complaint outside the current Cornwall Council investigation procedures.

Being involved with members due to involvement in a Committee or other body does not create an interest, there has to be something more which would create close association for an interest to exist. As a result, it is not considered that an interest exists.

Application of the Code of Conduct

In considering the complaint as made, I am satisfied that the Subject Member was acting in their official capacity at the time of the alleged conduct and therefore was bound by the Code of Conduct.

As with all ethical standards complaints, this is assessed against the Code of Conduct adopted by the Council and the procedures for assessing complaints adopted by Cornwall Council.

The information provided is assessed on the balance of probabilities; this is, would a reasonable person objectively considering of all the facts be of the view it is more likely than not that the actions of the Subject Member amount to a breach of the Code of Conduct.

The Complaint

The Complaint is extensive and covers a range of matters which include the conduct of the Subject Member.

The following are not considered as part of this complaints process:

- Previous complaints made under this process or to the Parish Council as matters over 6 months old are outside the scope for this process, though some of the commentary has been considered as it is relevant to the current complaint;
- Allegations of wrong-doing by the Clerk, which includes the publication of papers, are a Parish Council/employment matter and not within the scope of this process; and
- If the Complainant is unhappy with items placed on the Parish Council's web site and Facebook Page, this is a matter for the Parish Council and not within the scope of this process.

This complaint will consider if, by his actions or words, the Subject Member has acted in a way towards the Complainant which can be classed as disrespectful and bullying or has failed to act in an impartial manner.

In considering the remaining points put forward by the Complainant, these relate to his not being allowed to speak at the meeting and being interrupted by the Subject Member.

Within this the Complainant seeks to challenge the Council on the way it undertakes matters. At one point the Complainant makes it clear he intends to speak for as long as is necessary, and the Subject Member is said to respond to this by saying, 'we had

hours of this last year', with this one example of how the Complainant considers that the Subject Member attacked his integrity.

The Response from the Subject Member

The Subject Member has responded to the complaint to say that he has never sought to suppress the Complainant, but he considers that the Complainant seeks to monopolise meetings and displays animosity to him and the Clerk. Due to the way the Complainant will not allow others to talk, and repeating himself, acting as the Chairman of meetings is difficult.

The response covers all of the points raised by the Complainant, but principally the Subject Member has said if he interrupts the Complainant, it is not that he is being disrespectful, but it is often to give other parties the opportunity to input to the discussion.

In closing the Subject Member has set out that:

'I respectfully submit this response in the honest belief that I have convincingly proved that the complainant's accusations are without any foundation, and in the hope that my fellow Parish Councillors, the Parish Clerk and I will be protected against further baseless, injurious and highly stressful allegations that undermine our honest attempts to serve our community.'

Councils Standing Orders

Standing Orders for the Council set out with regards to public speaking the following:

At 2(a) – (c) allows the Chairman of the meeting to deal with conduct at a meeting which is improper, up to the suspending the meeting;

3(e) does allow representations to be made on items on the agenda, but the duration of this shall not exceed 3 minutes, unless directed by the Chairman

Knowles on Local Authority Meetings

With regards to the power of the Chair, Knowles on Local Authority Meetings sets out that the power of the person Chairing the meeting is generally not found in statute, the power is drawn from the meeting. However, Knowles is clear in that the Chair, other than by a motion to remove him, has virtually absolute rule over a meeting.

Providing the Chair acts in good faith, a decision of the Chair, even if not strictly correct, would be upheld by the court, though if someone wishes to challenge a decision this can only be done through the courts.

Findings

In considering this matter, both the Complainant and the Subject Member have provided large amounts of information. I accept that the Complainant's view of the Subject Member, and more largely the Parish Council, is that procedures are not being followed as he would expect, though this does not mean that the Council is not conducting its business correctly.

In particular, the Complainant has set out that he considers that the Subject Member has exceeded his authority as Chairman at meetings by not being impartial, and within this the Complainant is of the opinion that, by his words and actions at meetings, the Subject Member has failed to treat him with respect.

As there is a requirement when considering Code of Conduct complaints to consider all the facts objectively, the starting point for this is the power of the Chairman at meetings.

Whilst there is a right for members of the public to attend meetings, there is no automatic right for them to speak, and when it is allowed this is within parameters which are often set out by standing orders, though it often falls to the Chair on how to interpret these.

As a result, and having considered the points raised by the Complainant, I do not consider that by seeking to restrict his right to speak the Subject Member was breaching the Code of Conduct. As it stands, the Subject Member did not seek to suspend the meeting (which he could have done if a member of the public was interrupting) but, mindful of other members of the public present, and based on the submissions from both the Complainant and the Subject Member, only sought to curtail the ability for the Complainant to raise matters which it is apparent have been raised before or were, in the opinion of the Chair, not suitable for discussion at the meeting.

Considering this point further, public speaking also cannot be used as a member of the public may wish, or the Complainant may have assumed. Some councils adopt a strict stance in that public speaking is limited to matters on the agenda. However the Chair can limit the public ability to speak, and considering the powers of the Chair as found in Knowles, this would include the Subject Member having the right to restrict the Complainant from speaking at any point.

This right would not, however, extend to terminology which was considered to be disrespectful or abusive.

In terms of the comments by the Subject Member at Council, both the Subject Member and the Complainant are generally in agreement about what is said and when, there is a discrepancy over the frequency of the requests to speak by the Complainant and the precise words used, but otherwise it is clear that the Complainant has sought to raise matters with the Parish Council he considers are of relevance and relate to previous complaints. However, these were also quite old, some going back over several years.

There is, for example, a disagreement as to whether the word in a statement was hour, or hours, but in adopting the stance of a reasonable person and accepting the frustration the Subject Member was experiencing in dealing with the Complainant, I do not consider that by saying that 'we've had hours of this last year', which is the worst case, to be a breach of the Code and I do not consider other comments by the Subject Member to be a breach of the Code.

In reaching this decision I consider a reasonable person would seek to ensure that there was balance struck between the right of all of the public at a meeting to speak, and the right for the Chairman to control the meeting in a manner in which he considers to be appropriate.

This will always, at times, seem to be unfair by members of the public and often the terminology used by the Chair can be deemed as unwarranted and unduly personal, but this does not mean it is automatically a breach of the Code of Conduct.

Views of the Independent Person

The Independent Person's view is that there is no impropriety as alleged by the Complainant within the information submitted in his complaint that would expose the Council at risk of placing Councillors in breach of the Code of Conduct for lack of openness, or within principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

The Independent Person noted the ongoing persistent obsessive, bullying intimidating and harassing behaviour over a long period by Dr Aughty towards the Botus Parish Council.

The Independent Person has formed a view having relied upon the details of the complaint provided by the Corporate Governance Officer, information provided by the Complainant and in the response by the Subject Member.

The Independent Person's view is that, whilst the Complainant included a transcript of what he believed to be examples of Cllr Edwards' behaviour, Cllr Edwards submitted the Full Transcript of the Annual General Meeting of the Botus Fleming Parish Council' which supports the Independent Person's view that the Subject Member has not breached the Code of Conduct.

The Independent Person noted Cllr Edwards' submission of a 21-page report which was read and taken into consideration in its entirety by the Independent Person in forming the view that Cllr David Edwards has not breached the Code of Conduct.

Having considered all the information provided by the Complainant and the Subject Member, the Independent Person's view is that Cllr Edwards has not breached any part of the Code of Conduct.

Summary and Actions

It is clear that the Complainant is dissatisfied with the way the Council overall undertakes its business, and this dissatisfaction goes back over several years and has resulted in numerous exchanges between the Complainant and the Subject Member/Council.

However frustrating this may be for the Complainant, this does not give him any additional rights as a member of the public to speak at a meeting of the Council, neither does this remove the Chair's powers to regulate the meeting as he sees fit.

There has to be, in considering if the Code has been breached, an objective balance struck which would be the view of the independent observer considering all of the facts.

I do accept that the Complainant may be dissatisfied with the actions of the Subject Member, but in adopting the objective standpoint this has to be from the point of view

of the person seeking to Chair a meeting and would they, when considering the facts of the matter, be of the view the Subject Member was wrong to act as he did.

As a result, I am of the view that in this case, the objective consideration of the facts is that there has been no breach of the Code and no further actions are required.

What happens now?

This decision notice is sent to the Complainant, the member against whom the allegation has been made and to the Clerk to Botus Fleming Parish Council and published on the Council's web site.

Right of review

At the written request of the Complainant, the Monitoring Officer can review and, if the review is successful, this may result in a change to the finding made in the original assessment.

We must receive a written request from the Complainant to review this decision within 14 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed. The grounds for requesting a review must be substantive, a re-submission of the original complaint will not be classed as substantive and neither will a request that sets out the findings are disagreed with, there must be fresh information in the request which was not considered at assessment which is so substantive this may result in a different outcome.

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.