ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference: CCN023/18/19

Complainant: Mrs Kathy Pemberton
               Ms Sally Greene
               Mr Jonathan Trenouth
               Cllr Richard Higman
               Mrs Dolly Roberts

Subject Member: Cllr Martin Saunders, Padstow Town Council

Person conducting the Assessment: Simon Mansell, Corporate & Information Governance Manager

Date of Assessment: 2 November 2018

Complaint

On 2 November 2018 the Monitoring Officer considered complaints from Mrs Kathy Pemberton, Ms Sally Greene, Mr Jonathan Trenouth, Cllr Richard Higman and Mrs Dolly Roberts concerning the alleged conduct of Cllr Martin Saunders of Padstow Town Council. A general summary of the complaint is set out below:

The Complainants have set out they consider that the Subject Member has breached the Code of Conduct by circulating a letter that related the Neighbourhood Development Plan (NDP) that appears to undermine the democratic process and that attempts to ‘bully’ people into responding to the formal questionnaire in accordance with the Subject Members wishes.

Decision and Action

The, for the reasons set out in this notice the Subject Member has breached the Code of Conduct for Padstow Town Council. As a result the recommended action is that the Subject Member should be removed from the NDP Steering Group and he should apologise to the Steering Group for his actions.
Breaches of the Code Found

2.1 You must treat others with respect

2.10 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council 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;
- A response from the Subject Member; and
- The views of the Independent Person assigned to this matter.

The Complainants have set out they consider that the Subject Member has breached the Code of Conduct by circulating a letter that related the Neighbourhood Development Plan (NDP) that appears to undermine the democratic process and that attempts to ‘bully’ people into responding to the formal questionnaire in accordance with the Subject Members wishes.

Other complaints have set out that;

They are concerned at the audacity of a Councillor trying to directly influence responses by telling members of the public what to write on response to specific questions.

They consider that the actions of the Subject Member have corrupted the survey causing any returns to it being untrustworthy and he has totally abused his position for his own ends;

They were incensed that the Subject Member was instructing the residents on how to respond to the NDP survey and questions how the Council can now go forward with the survey and that what is a very important survey has been destroyed by the actions of the Subject Member.

The Subject Member has responded to the complaint by setting out that he considers that there is no case to answer and within his submission he has requested that the complaints are dismissed.

Application of the Code of Conduct

I am satisfied that for the purposes of this complaint that the Subject Member was acting in his official capacity at the time call to the Complainant and was therefore bound by the Code of Conduct for Cornwall Council.

Background to the complaint
The background to this complaint is the formal survey that was issued on 24 September by Padstow Town Council concerning the NDP.

Several of the complaints have questioned the validity of this survey following the actions of the Subject Member.

This process can only look at the actions of the Subject Member and cannot consider the effect the actions of the Subject Member may, or may not have had, on the formal survey. As a result any comments in this notice and its finding should not be taken as to be reflective of the formal survey.

Findings of fact

In considering any Code of Conduct matter any finding is made on the balance of probabilities. That is; would a reasonable person when considering all the facts, which is all the papers that are before the assessing officer, objectively consider it more likely than not that the actions of the Subject Member has resulted in a breach of the Code of Conduct.

In undertaking this assessment the letter that was issued by the Subject Member in September 2018 first needs to be considered at it is relevant to any later findings.

The letter is headed ‘PADSTOW TOWN COUNCIL’ with the name of Subject Member underneath and in the second paragraph of the letter it then sets out that the Subject Member is writing of one of three ward councillors, and one of six on the NDP Steering Group.

The reader is therefore left with the impression that the letter has come from Padstow Town Council and that it is not the views of the Subject Member alone but that of his ward members and the steering group as there has been no attempt in the letter to set out in clear terms that it is from the Subject Member only.

In the third paragraph the subject Member does set out there are things in the survey which ‘in his opinion’ are critical to Trevone before giving some selective background information and then setting out the suggested responses to the survey from the Subject Member.

With regards to the way the letter is written;

There is no doubt in reading the first part of the letter that the reader would gain the impression that this was a letter from the Town Council and that it was set with the support of the other ward members and linked to the members of the NDP steering group. Whilst the letter does then go on to qualify the responses as the Subject Member has put ‘in my opinion’ as the impression had been gained that this letter is endorsed by the Town Council and other members the reader could also assume that having set these credentials first, that the opinions are then endorsed by others.

As a result I am of the view that the letter can, on the balance of probabilities, to be construed as having been written on behalf of the Town Council and other members therefore giving far greater legitimacy to the letter than if it was from an individual member.
With regards to the content of the letter;

The role of a member is to influence public opinion providing this is done in a manner that is compatible with the Code and other laws. By being in public office there is a greater responsibility placed on an elected official to comply with these laws as many will place their confidence in the views of their elected officials.

Within the letter the Subject Member is clear about what he considers the responses to some of the questions should be as he has set out in precise terms as to how the residents should answer.

Looking at this without considering the fact that reader may consider this to be a letter from the Town Council I do not consider that by expressing his own views that this would come under the Code of Conduct as, providing these views are legal a member can be free to express them.

However, in reading the letter in the context that it appears to have come from the Council this does mean that this is something that should be considered against the Code.

**Paragraph 2.1 - You must treat others with respect**

In considering if this part of the Code has been breach it has to be shown that a reasonable person would objectively view the actions of the Subject Member to be disrespectful.

In expressing a view on a matter, whilst this creates a concern regarding predetermination that is addressed below, if this was done in a manner that can be seen to be just the view of the Subject Member then this is unlikely to be disrespectful in itself. The Subject Member is entitled to set out a counter view however, the letter gives the impression it came from the Town Council, it could have been supported by other members and rather than just a counter view it give clear instructions on how to complete the survey.

I do consider the combination of writing the letter in a manner, even though I do believe this was potentially unintentional, that gave the impression it was from the Town Council and to dictate to others how they should response to be disrespectful to the Town Council and the NDP Steering Committee.

Included in this consideration has to be the fact that NDP’s are highly contentious and can be extremely time consuming and costly to the Council and the Subject Member should have known, or should have reasonably have known, the effect that his letter would have had on this processes and the potential damage it could do to it.

As a result I am satisfied that by acting as he did the Subject Member has breached paragraph 2.1 of the Code of Conduct for Padstow Town Council.

*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*

Whilst the Code of Conduct only requires that it needs to be shown on the balance of probabilities the Subject Member could be regarded as having damaged his standing
in the community there have been a larger than average amount of complaints about the actions of the Subject Member that would indicate this is the case.

In objectively considering the facts; that the Subject Member may hold views he considers were relevant to the NDP is not something that could be considered to be a breach of the Code, that he chose to share these facts in a manner that gives the reader the impression that they originated from the Council is something that can be considered.

The Subject Member does not have the ability to hold himself out as acting as the Council. Whilst, as set out above, it is not believed this was his intent and objective consideration of the facts indicates this would be not how a reasonable person would view the letter and they would see it as carrying the weight of the Town Council.

Canvassing view and opinion or championing causes is within the role of a Council but to state in writing, rather than suggest, how each person should deal with the survey goes beyond this role.

As a result it is considered that a reasonable person would consider the approach taken to be disreputable.

As a result it is considered that the Subject Member has breached paragraph 2.10 of the Code of Conduct by bringing his office into disrepute.

I have considered if the actions of the Subject Member could be considered, on the facts, to have brought his authority into disrepute but on this occasion I do not believe it to be the case.

*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 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 and 2.10 of the Code of Conduct the Subject Member has therefore also breached paragraph 2.5 of the Code of Conduct for Padstow Town Council.

No other breaches of the Code of Conduct have been found in undertaking the assessment of this complaint.

*Actions to remedy the breach*

In considering this matter it is the way by which the subject Member has held himself out that concerns the Code of Conduct and that he has used the authority of the Town Council and his fellow Councillors, to promote his views.

It is accepted that this may have been something that was done inadvertently but this way that the Subject Member wrote the letter should have been something he should have carefully considered before sending it out.

Whilst receiving multiple complaints about a matter does not indicate that there has been a breach of the Code it does demonstrate there members of the public feel
strongly enough about the actions of the Subject Member to complaint about them and it is clear several of them consider that he has tainted the NDP process.

As a result the recommended action is that the Subject Member should be removed from the NDP Steering Group and he should apologise to the Steering Group for his actions.

In addition to this there is a need to address the views of the Subject Member with regards to the NDP which are within his letter.

Whilst a member can express a prior view regarding a matter, and often does so, there is a fine line between this which is predisposition and expressing a view which indicates a closed mind, which is predetermination.

Predetermination is something that sits outside of the Code of Conduct however, the Council and the Subject Member should carefully consider if it is appropriate for the Subject Member to be involved in any votes on the results of the survey as he has clearly set out his view in his letter and he could therefore be predetermined with regards to the final outcome.

**What happens now?**

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Padstow 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 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.
SJR Mansell MBE
Corporate and Information Governance Manager
On behalf of the Monitoring Officer
Date: 2 November 2018