



## **ASSESSMENT DECISION NOTICE**

### **A BREACH OF THE CODE HAS BEEN FOUND**

#### **ACTION REQUIRED**

<b>Reference:</b>	<b>CCN007/19/20</b>
<b>Complainant:</b>	<b>Miss Kirsty Thyer</b>
<b>Subject Member:</b>	<b>Cllr Pauline Giles, Cornwall Council</b>
<b>Person conducting the Assessment:</b>	<b>Eleanor Garraway, Corporate Governance Officer</b>
<b>Date of Assessment:</b>	<b>18 October 2019</b>

#### **Complaint**

On 18 October 2019 the Monitoring Officer considered a complaint from Miss Kirsty Thyer concerning the alleged conduct of Cllr Pauline Giles of Cornwall Council. A general summary of the complaint is set out below:

The complaint in summary is that the Subject Member posted a defamatory statement on social media, which was directed at an individual who held opposing views.

#### **Decision and Action**

For the reasons as set out in this Notice, the Subject member has breached the Code of Conduct for Cornwall Council.

For the reasons set out in this Notice, the Subject Member should issue a public apology on her social media page within 28 days of this date of this Notice.

## Breaches of the Code Found

- Para 2.1      You must treat others with respect.
- Para 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.

## Reasons

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

- The complaint received from the Complainant and a screen shot of the social media page in question;
- A response received from the Subject Member; and
- The view of the Independent Person assigned to this matter

The complaint in summary is that the Subject Member posted a defamatory statement on social media, which were directed at an individual who held opposing views.

It should be noted that the person who the comments were aimed at has not been contacted to provide her views to the complaint, neither has she responded to the allegations made.

## *Application of the Code of Conduct*

The Code of Conduct applies to a member in the following circumstances;  
.... whenever you [the member]

- (a) conduct the business of the Council, which in this Code includes the business of the office to which you have been elected or appointed; or
- (b) act, hold yourself out as acting or conduct yourself in such a way that a third party could reasonably conclude that you are acting as a representative of the Council

In terms of the postings on social media; it is clear on reading the post that this is not the Subject Member conducting the business of her authority however; it does need to be considered if the Subject Member was acting in such a way a third party could conclude she was acting as a representative of her authority.

I have considered the Subject Member's social media profile page in that it states that she is a Councillor and that her comments are her own. As a result it is considered that the

posts on the social media page can be taken to be made by the Subject Member in her official capacity but these should not be interpreted as being the views of her authority, for example.

Therefore 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 Cornwall Council.

### *Finding of Fact*

#### *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. The Code does allow a Member to be critical of others but this must not be done in such a way that is not personal and therefore 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 they had viewed the facts objectively.

In dealing with any matters Councillors can be critical and can challenge, indeed this is intrinsic to the role of a Councillor. However, the operation of the Code draws a distinction between being critical and challenging to attacking anyone personally.

On viewing the comments made; it is accepted that the Subject Member has a strong opinion regarding her views on the subject, which she posted on, and is passionate about them.

However, when viewing the comment that was made this is not one that an objective person would view as falling within the bounds of being critical but would, on the balance of probabilities consider the comments to be a personal attack.

Therefore due to the way the comments are made I consider that the threshold for disrespect is exceeded, as there were no grounds for addressing another person in this manner.

As a result I consider that the Subject Member has breached paragraph 2.1 of the Code of Conduct.

*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 her actions.

In viewing the commentary received from the Subject Member, she has not disputed that she made the comments and is apologetic of having done so. Whilst all elected officials, as any ordinary person, have differing views on matters, they are generally under high level of public scrutiny. As a result, and whilst the comments and reasoning's are noted, it does not mean the Subject Member can act in a manner some may consider as unseemly towards another person.

In considering if this part of the Code has been breached the view at assessment is that the way in which the Subject Member acted when posting on social media was considered disrespectful. It would therefore follow that a reasonable person would consider that the Subject Member's standing could be damaged as no-one would like to be addressed in the manner posted on social media.

As a result I consider that the Subject Member has brought her office, but not her authority, into disrepute by acting as she did 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 Breaches found*

In response to the complaint the Subject Member has stated that the comments made were in retaliation to public comments made by a by another person and that on reflection of the same she should not have written the comments stated. I note that the Subject Member further states that she has removed the post referred to from her social media site and removed her employment status from her page also.

On assessment, having checking the Subject Member's social media page, I can confirm that she has indeed removed the employee status as she states. Therefore any further comments the Subject Member may make would no longer be conceived as acting in her official capacity.

I have also noted the views of the Independent Person assigned to this matter with regards to the Subject Member's conduct. The Independent Person agreed with the findings set out in this Notice in respect of 2.1 and 2.5. The Independent Person however did not believe that the Subject Member breached 2.10 and whilst I take this into consideration I believe that a reasonable person would consider that the Subject Member's standing could be damaged and therefore have found a breach of this part of the Code.

As a result; whilst the Subject Member has removed the post referred to and whilst this is taken into consideration in considering a sanction, there is no indication of how many people viewed the post prior to it being removed. It is therefore considered that a suitable remedy for this breach is that the Subject Member posts a public apology on the same social media page to that the original comments were made. This apology needs not be specific to the terminology used but should seek to apologise for any upset that the forthright comments may have caused.

### **What happens now?**

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Subject Member's political party's Group Leader.

### **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 black ink, appearing to read 'E. Garraway', written in a cursive style.

**Eleanor Garraway**

**Corporate Governance Officer**

On behalf of the Monitoring Officer

Date: 17 October 2019