



## **ASSESSMENT DECISION NOTICE**

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

#### **ACTION REQUIRED**

<b>Reference:</b>	<b>CCN003/19/20</b>
<b>Complainant:</b>	<b>Mr Michael Newbery</b>
<b>Subject Member:</b>	<b>Cllr Claire Tyler, Lewannick Parish Council</b>
<b>Person conducting the Assessment:</b>	<b>Eleanor Garraway, Corporate Governance Officer</b>
<b>Date of Assessment:</b>	<b>30 August 2019</b>

#### **Complaint**

On 30 August 2019 the Monitoring Officer considered a complaint from complainant concerning the alleged conduct of Cllr Tyler of Lewannick Parish Council. A general summary of the complaint is set out below:

During the course of a meeting of the Parish Council the Subject Member belittled the Clerk in front of the Council and thus treating her with disrespect.

#### **Decision and Action**

For the reasons as set out in this Notice, the Subject Member has breached the Code of Conduct for Lewannick Parish Council.

It is considered that a suitable remedy for this breach is that, the Subject Member should apologise to the Clerk, within 28 days of the date of this Notice. This is to be a substantive response that, due to the way the allegations were made, the apology is to be made at a meeting of the Council.

Should no apology be made it is recommended to the Council that they should censure the Subject Member and she should not be allowed to be involved in any staffing matters for a minimum period of 12 months.

### **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 you 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 original complaint received and subsequent requested further information;
- A response received from the Subject Member and supporting documentation;
- The Minutes of the Extraordinary meeting of 28 May 2019;
- A recording and transcript of the above said meeting;
- Comments received from the Clerk; and
- The view of the Independent Person assigned to this matter.

The Complainant has alleged that during the course of an open meeting on 21 May 2019, the Subject Member stated, in a loud manner, that she did not trust the Clerk and further had no confidence in her role as Responsible Finance Officer.

It is further alleged that the Subject Member attempted to 'lay the blame' of altered documents at the Clerk in respect of audit reports. This matter was subject to a separate investigation by the Information Commissioners Office and the Police and due to a lack of evidence, no further action was taken.

It is alleged that the Clerk has been subject to a torrent of abuse by a local community group to which the Subject Member is closely associated with. As a direct result of this treatment, the Clerk has taken an absent of leave from her role as Clerk.

In the Subject Member's comments it is noted that the incorrect meeting was referring to in the original complaint and the incident complained about took place at the Extraordinary Meeting on 28 May 2019. Having viewed the minutes of both the meeting on 21 May and 28 May I am satisfied that the alleged incident did in fact occur during the course of the meeting on 28 May 2019.

An Extraordinary Meeting was called on 28 May 2019 to discuss concerns raised by the Council's external auditors to address objections raised by members of the public in respect of the submitted Annual Statement of Governance. The Subject Member has stated that the Annual Governance and Accountability Return (AGAR), which was discussed during this meeting, was incorrectly prepared by the Clerk, this was subject to review by external bodies and with the correct completion of this Return the Subject Member states openly that she did had '*lost confidence*' in the Clerk.

It should be noted in her submission the Clerk has stated that the Subject Member was using hand gestures directing towards her in '*venom*'. Whilst this has been taken into consideration at assessment, in light of the information available to the assessing officer this part of the Clerk's submission has not been able to be considered further.

The Subject Member has further stated, in response to the allegations made, that she did not shout but spoke in a robust manner due to being interrupted. She has not denied making the statement.

It should be noted that the consideration of audit or employment issues relating to an Authority cannot be considered under the regime and any complaints in this regard would have to be taken to the appropriate body.

#### *Application of the Code.*

I am satisfied 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 at that time.

#### *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.

In assessing this complaint it is assessed on the balance of probabilities that is, would a reasonable person, when viewing the facts objectively, consider that the actions of the Subject Member amount to a breach of the Code. Part of this consideration is also the fact that there is a quasi-employer/employee relationship between the Subject Member and the Complainant and there is a requirement for trust and confidence to be maintained between both sides.

The Complainant had stated in his submission that the Subject Member had stated that she did not trust the Clerk and further had no confidence in her role as Responsible Finance Officer. I have viewed the transcript and audio recording of the meeting in

question and whilst the Subject member has not stated that she did not trust the Clerk, she has stated she had *'lost confidence'* in her.

When discussions of suggest *'fraudulent behaviour'* were under discussion in respect to the submission of the AGAR, another member present stated that the incorrect submission was down to *'human error'* and it was an insertion of *'incorrect completion of boxes on a form'*. The Subject Member responded by stating -

*"By our Clerk, by our Clerk. I've lost confidence in our Clerk"*.

This comment was said in a forcible manner. Whilst the concerns that the Subject Member had about the Clerk were clear from the meeting there is a time and place to address concerns of this nature. In stated that she had lost confidence in the Clerk in front of others present shows a clear lack of respect.

If the Subject Member did not agree that the original documents in respect of the audit had been submitted correctly, whilst this can be challenged openly and can even be critical of it, the Code does not allow a member to be personal in doing this. By setting out that she does has *'lost confidence'* in the Clerk this is a personal attack on her integrity as a Proper Officer to the Council and there is no basis for this.

When considering whether a reasonable person would consider the comments made as disrespect it has been considered whether an ordinary person would find it acceptable for their employer to state in public that they had lost confidence in their employee and it is the opinion at assessment that no employee would expect to be treated in this way.

Regardless of what part of the community the Subject Member may be representing it is expected that the trust and confidence that has to exist between the employer and employee would be maintained at all times. If the employer, in this case the subject Member, considered that they had lost confidence in the employee this is an employment matter and not one for public debate.

As a result it is the view at assessment that the threshold for disrespect has been crossed and as a result it is considered that by saying she has *'lost confidence'* in the Clerk the Subject Member has breached paragraph 2.1 of the Code of Conduct for Lewannick Parish Council.

*2.10 - You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute*

In considering if this part of the Code has been breached it has to be considered, objectively, if the Subject Members standing in the community could reasonably be regarded as being disreputable.

In terms of the comment that has been made by the Subject Member is it doubted that any employee would like to have their employer state, that their standing as a Proper Officer was questioned. This is part of the foundation of the employer/employee relationship and is something that should be maintained at all times.

It is accepted that a member may not be satisfied with the performance of an officer and there are procedures in place to allow these concerns to be expressed and any employee would expect that these procedures were followed.

As a result I am satisfied that the actions of the Subject Member are such that a reasonable person would consider, objectively, that he has brought his office, but not his authority, into disrepute and has thereby breached paragraph 2.10 of the Code of Conduct for Lewannick Parish Council.

*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 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 & 2.10 and 2.5 of the Code of Conduct the Subject Member has Lewannick Parish Council.

I do not consider that with regards to the complaint as set out at the start of this notice there have been any other breaches of the Code of Conduct.

#### *Actions to remedy the Breach*

Whilst the Subject Member has responded directly to this complaint I do not consider that the comments made outweigh the breaches found.

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, the Subject Member has breached the Code of Conduct for Lewannick Parish Council for the reasons as is set out in this Notice.

As a result of these breaches of the Code of Conduct the recommended action is that the Subject Member apologises, to the Clerk within 28 days from the date of this Notice. This is to be a substantive response that, due to the way the allegations were made, the apology is to be made at a meeting of the Council.

Should no apology be made it is recommended to the Council should censure the Subject Member and he she not be allowed to be involved in any staffing matters for a minimum period of 12 months.

### **What happens now?**

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Lewannick 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.



**Eleanor Garraway**

**Corporate Governance Officer**

On behalf of the Monitoring Officer

Date: 30 August 2019