

## **ASSESSMENT DECISION NOTICE**

### **NO BREACH OF THE CODE**

<b>Reference:</b>	<b>CCN006/19/20</b>
<b>Complainant(s):</b>	<b>Mr Barry Milligan Mr Michael Chapman Miss Katherine Morgan</b>
<b>Subject Member:</b>	<b>Cllr Tim Dwelly, Cornwall Council</b>
<b>Person conducting the Assessment:</b>	<b>Simon Mansell, Corporate &amp; Information Governance Manager</b>
<b>Date of Assessment:</b>	<b>15 August 2019</b>

### **Complaint**

On 15 August 2019 the Monitoring Officer considered a complaint from the complainants concerning the alleged conduct of Cllr Tim Dwelly of Cornwall Council. A general summary of the complaint is set out below:

The Complainants have set out that due to comments made on the Sunday Politics Show South West on Sunday 14 July 2019 the Subject Member has breached the Code of Conduct by making statements that are anti-Semitic and are disrespectful.

### **Decision**

The decision at assessment, as set out below, is that the Subject Member has not breached the Code of Conduct for Cornwall Council.

As a result of this finding no further action needs to be taken.

## Reasons for the Decision

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

- The complaints;
- A response from the Subject Member;
- A transcript of the interview on the Sunday Politics Show on 14 July 2019; and
- The views of the Independent Person assigned to this matter.

The Complainants have set out that due to comments made on the Sunday Politics Show South West (the 'Show') on Sunday 14 July 2019 the Subject Member has breached the Code of Conduct by making statements that are anti-Semitic and are disrespectful.

All of the complaints that have been submitted have been read but are not reproduced in full in this notice.

The Subject Member has raised several points in response to the complaints. These will be considered and referenced in this Notice where it is considered appropriate to do so.

### ***Application of the Code of Conduct***

I am satisfied that for the purposes of this complaint that the Subject Member was acting in their official capacity at the time of the alleged conduct and was therefore bound by the Code of Conduct as adopted by Cornwall Council.

### ***Background matters – the interview on the Show***

The background to the interview was that the Show were running an item on anti-Semitism in the Cornwall Labour Party and there was a discussion surrounding this. The Subject Member was attending in his capacity as the ex-Labour Party Leader within the Council.

In the interview the Subject Member referred to a page that was moderated by Jennifer Forbes (who was on the Show) saying that there was anti-Semitic material on the page, *'...about Rothschilds and all sorts of stuff.'*

Jennifer Forbes then accuses the Subject Member of saying that she was anti-Semitic because of these posts.

The Subject Member responds by stating, *'For the record I didn't say you were anti-Semitic. I said very clearly that you moderated a page with anti-Semitic material on it....'*

In the Show the interviewer also asked the question, *'But it's an issue [referring to racism] surely in either party there are these very significant parts of our society in either party who feel they are victims of racism and abuse.'*

Jennifer Forbes, speaking for the Labour Party says in response to this, *'absolutely'* and then with regards to anti-Semitism that, *'I want us to deal with anti-Semitism and absolutely stamp it out.... I find it upsetting that people that are Jewish are saying they feel uncomfortable in the Labour Party. They are feeling that it is anti-Semitic and they are not allowed to speak.'*

The Interviewer then asks, *'Tim [the Subject Member] what do you make of these people'*.

The Subject Member replies, *'No no no, this is ridiculous absolutely ridiculous. It is absolutely obvious that the whole Jewish community apart from a very small number of left-wing Labour supporter or Corbyn supporters who may take a different view but some of them are really quite cranky people including holocaust deniers'*.

In terms of the comments made during the Show the Subject Member has raised several points and these need to be considered as part of this assessment as they are relevant to the findings of fact.

The Subject Member considers that the views he expressed were challenging racism and were made under his right to free speech. The Subject Member sets out that he has the right to disagree with a small number of people who take a different stance and sets out within his submission states that one group include in within their number people who have questioned aspects of the holocaust. It was this group the Subject Member said he had in mind in the interview.

Adding to this the Subject Member has stated that he thinks it is reasonable for him to point out a wide range of Jewish people regard those who deny anti-Semitism in Labour as fringe left and in some cases 'cranky'. The Subject Member says in his response to the complaint it is his view, and one he is entitled to hold and one which is shared widely by the Jewish community in the UK.

The Subject Member has also raised concerns regarding the accuracy of the complaints with regards to what he said on the Show.

### ***Findings of Fact***

In considering that facts that are presented these are required to be considered objectively and on the balance of probabilities that is; would a reasonable person in possession of all the facts view the actions of the Subject Member as a breach of the Code of Conduct.

The Code also requires that it is only the facts of the complaint that are considered and it is a fundamental requirement of the way complaints are assessed that the assessing officer

has to look past the complainant to consider if an objective person would view the comments or actions of the member as a breach of the Code; regardless of who may have made the complaint.

With regards to the inaccuracy of the complaints; in order to ensure that the assessment takes only what was said by the Subject Member on the Show as a fact a transcript of the key part of the Show has been prepared. This has not been done to cause a disadvantage or advantage to either side in this complaint but has been done to ensure that the statements that are attributed to the Subject Member are accurate and reflect what he said, not what he may have said.

In considering the right to freedom of speech; this is a right which is exercised under Article 10 of the Humans Rights Act which gives the right to a freedom of expression and the freedom to hold opinions, without interference by public authority.

However, the exercise of these freedoms is limited by Article 10(2) which states, 'the exercise of these freedoms, since it carries with it duties and responsibilities, maybe subject to such formalities, conditions, restrictions or penalties as are prescribe by law and are necessary in a democratic society for the...protection of the reputation and the rights of others...'

The rights allowed by Article 10 which are exercised by a politician are considered to be wider, if it can be shown that that person concerned had a genuine belief that the statement they were making was correct, and there was nothing that would show the member knew they were inaccurate.

The limitations on this right are imposed by common law and in the case of an elected member to a Council, the Code of Conduct and the requirements set within it, providing these are correctly employed.

With regards to some of the terminology used in the Show; the Subject Member has stated that he had in mind a particular group with regards to the use of the word 'cranky', though it is noted this was not stated at the time.

### ***Application of the Code***

*2.2 You must not treat others in a way that amounts to or which may reasonably be construed as unlawfully discriminating against them*

The Code would not consider if a person had been anti-Semitic but does provide for it to be considered if the member concerned had discriminated against someone or was disrespectful towards them.

As the purpose of the Show was to consider anti-Semitic incidents in the Labour party and for different people to comment on them the consideration of the statements made by the Subject Member have to be viewed in that context.

I have reviewed a transcript of the Show and have viewed the segments of the Show concerned. As a result of this and after reviewing the comments that were made, I do not consider that the Subject Member has discriminated against someone.

There are no facts provided that would indicate this was the case and the terminology used, within the context of that used by all parties, was not discriminatory and within the context of the overall discussion.

Therefore the finding at assessment is that the Subject Member has not breached paragraph 2.2 of the Code of Conduct.

### *2.1 You must treat other with respect*

For a breach of 2.1 to be found there have to be comments made that can objectively be viewed as disrespectful.

There does not always need to be a particular person identified with regards to whom the disrespect is directed, but it needs to be shown – objectively – that a reasonable member of the public would view the comments as disrespectful.

In looking at the concern that some of the comments may have been disrespectful towards Jenifer Forbes by alleging that she was anti-Semitic.

Whilst I have noted the Subject Members comments that were made about the page that is moderated by Jennifer Forbes I do not consider that these are disrespectful.

The Subject Member initially raises the fact that there is anti-Semitic material on the page and is then challenged by Jennifer Forbes as she says to the Subject Member that it is inappropriate to say that she is anti-Semitic because of the posts.

However, I do not consider that a reasonable person would view the words used by the Subject Member as meaning this. The Subject Member was making a point about a labour page moderated by Jennifer Forbes on which other people, not Jennifer Forbes, had posted things on which were anti-Semitic.

As a result I do not consider that the comments made by the Subject Member with regards to the online postings were disrespectful to Jennifer Forbes, or any other person as this was a factual statement about the online posts.

With regards to the comment; *'No no no, this is ridiculous absolutely ridiculous. It is absolutely obvious that the whole Jewish community apart from a very small number of*

*left-wing Labour supporter or Corbyn supporters who may take a different view but some of them are really quite cranky people including holocaust deniers’.*

In considering the statement made by the Subject Member; he is not setting out within the statement that everyone should agree with him but stating that there are a small number of Labour, or Corbyn, supporters who may take a different view.

Whilst no evidence has been provided that this small number of people exists, objectively it is considered that a reasonable person would adopt the same view as the Subject Member in that there will always be people that will take a different view of the matter.

The Subject Member then goes on to qualify this statement, in respect of these people, by saying *‘but some of them are really quite cranky people and holocaust deniers’.*

The Subject Member did not qualify this statement at the time but in his submission has said he had a particular group in mind.

In considering the operation of Article 10 the Subject Member genuinely believes that this group exists, and therefore it becomes an objective consideration as to whether this is something that can be classed as disrespectful and the Code therefore limiting the right for this statement to be made.

It is accepted that some people may not like to be classed as cranky or holocaust deniers but the Subject Member has, when referring to this group, used the term *‘some of them...’.*

There is nothing to show that some of the people referred to are not cranky or holocaust deniers and by stating that this refers only to *‘some’* of them this would not mean that a reasonable person, when objectively reviewing the statement, would consider the statement referred to them directly if they did not consider they were the *‘some of them’.*

I do accept that given the subject matter of the discussion, on hearing the statement during the Show, someone may have found the comment objectionable and whilst I do consider that the statement by the Subject Member could have been phrased better it is not, after considering the statement very carefully, disrespectful.

Therefore as a result of this I do not consider that the Subject Member has breached paragraph 2.1 of the Code of Conduct for Cornwall Council.

*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 not failed to adhere to the general principles of public life underpinning the Code and has not therefore conducted himself in a manner contrary to the Council’s statutory duty to promote and maintain high standards of conduct for Cornwall Council.

### *Actions to remedy the breach*

As no breach of the Code of Conduct has been found 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 Cornwall Council Political Group Leader.

### **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 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.



**Simon Mansell, Corporate and Information Governance Manager**

On behalf of the Monitoring Officer

Date: 15 August 2019