



ASSESSMENT DECISION NOTICE

A BREACH OF THE CODE HAS BEEN FOUND

ACTION REQUIRED

Reference:	CCN013/19/20
Complainant:	Mrs Fiona Barnard – Clerk for Gwennap Parish Council
Subject Member:	Cllr David Lanyon, Gwennap Parish Council
Person conducting the Assessment:	Simon Mansell, Corporate & Information Governance Manager
Date of Assessment:	24 December 2019

Complaint

On 24 December 2019 the Monitoring Officer considered a complaint from concerning the alleged conduct of Cllr Lanyon of Gwennap Parish Council. A general summary of the complaint is set out below:

The Complainant has set out that she considers the Subject Member has breached the Code of Conduct by posting what the Council considers is a confidential email online and then by acting in a disrespectful manner towards her.

Decision and Action

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

It is therefore considered that a suitable action to remedy this breach is;

The Subject Member should apologise within 28 days to the developer for disclosing information provided in confidence and if he does not opt to apologise to the developer it is recommended to the Parish Council he is censured; and

For failing to treat the Complainant with respect it is recommended to the Parish Council that the Subject Member is censured.

Breaches of the Code Found

2.1 You must treat other with respect

2.8 You must not disclose information given to you in confidence by anyone

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, which includes a chronology of events and screenshots of social media posts;
- The email sent to members of Gwennap Parish Council on 13 November 2019;
- The emails from the Complainant to the Subject Member asking him to remove his online posts;
- A response from the Subject Member to the complaint; and
- The views of the Independent Person assigned to this matter.

The Complainant has set out that she considers the Subject Member has breached the Code of Conduct by posting a confidential email online and then by acting in a disrespectful manner towards her.

The Subject Member has responded to each of the paragraphs of the Code the Complainant considers he has breached and these responses will be considered in turn at the appropriate point below.

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 of the alleged conduct and was therefore bound by the Code of Conduct as adopted by Gwennap Parish Council.

Findings of Fact

When considering the facts that are presented they are required to be considered objectively and on the balance of probabilities that is; would a reasonable person in possession of the 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 consider if an objective person would view the comments or actions of the member as a breach of the Code, regardless of the background to the complaint.

As a result, whilst the background to the complaint is a potential development in the area of the Parish Council, this can only form the backdrop to the complaint. Therefore, even though the potential development is referenced in this assessment, the validity of the potential development has not at any time being considered and any comments in this assessment should not be taken as supporting, or not, the potential development.

Application of the Code

2.8 You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –

- (i) you have the consent of a person authorised to give it;*
- (ii) you are required by law to do so;*
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees in writing not to disclose the information to any other person before the information is provided to them; or*
- (iv) the disclosure is –*
 - (a) reasonable and in the public interest; and*
 - (b) made in good faith; and*
 - (c) in compliance with the reasonable requirements of the authority, which requirements must be demonstrable by reference to an adopted policy, procedure or similar document of the Council or evidenced by advice provided by the Monitoring Officer or their nominee.*

In considering if paragraph 2.8 of the Code of Conduct has been breached it is necessary to consider if any information has been given in confidence to the Subject Member which has then been disclosed.

The Subject Member's view is that he has not shared any documents that were ever declared secret or confidential and he has further stated that he has heard of the local Cornwall Councillor speak of '*secret talks*' he has had with a company interested in the '*Banger Track*', which is the site of the proposed development.

When considering if the information shared was confidential the opening part of paragraph 2.8 of the Code makes it clear that the person must not disclose information given in confidence, information that is acquired by the member concerned, or information a member, which the member believes, or ought to reasonably be aware, is of a confidential nature. When determining if the member ought to have reasonably been aware, this is determined on the balance of probabilities.

The information concerned was first forwarded to the Subject Member on 13 November 2019 @ 15.32. The email was headed with the project name and referred to a private presentation to the Parish Council but was not otherwise marked with anything that would have made it appear as confidential, though there were a number of email addresses in the header relating to individuals.

Following the receipt of this email the Subject Member then published this on social media in its entirety. The Complainant, being made aware of this, emailed the Subject Member on 14 November 2019 @ 09.18 and asked that he remove the posts from the social media pages he had posted it on. Despite this request the Subject Member continued to post the information on his own social media page.

The Complainant then contacted the Subject Member again on 16 November 2019 @ 00.39 asking him to remove the posts from his personal social media page. Rather than act as requested the email was copied and pasted onto the Subject Member's social media page.

In considering the facts against the Code;

It is arguable whether, on the balance of probabilities that the initial email sent on 13 November @ 15.32 had sufficient marking to enable the reader to determine if it was confidential or not. Whilst reference is made to a private meeting this would not indicate on its own the whole email was confidential, and therefore by receiving it in his official capacity it had placed an obligation on the Subject Member as a Councillor to maintain this confidence. I have considered within this the fact that there were email addresses published by the Subject Member and whilst the approach taken would not seem to have taken into consideration any implication that may arise from publishing personal information online this is a matter for the Information Commissioner to consider if a complaint was made to their offices.

However; on 14 November 2019 @ 09.18 the Subject Member was made aware that the information he had posted online was subject to confidentiality yet despite this, and despite the fact that the Subject Member was advised again on 16 November 2019 @

00.39 that the information was confidential, the information was reposted several times online. As a result of this I do consider that when viewed objectively it can be considered that the Subject Member knew, or ought to have known, by the time he received the email sent by the Complainant on 14 November 2019 @ 09.18 that the information was confidential and it is from this time it is considered if a breach of the Code has occurred.

2.8 (i) – (iii) can give rise to a single reason that can give grounds to support the sharing. In looking at each of these in turn;

(i) The Subject Member did not have the consent of the person authorised to give it that is his Clerk or the Applicant, to publish the information;

(ii) the Subject Member was not required by law to publish the information; and

(iii) the disclosure was not made to a third party with the purpose of obtaining professional advice.

2.8(iv) sets out three points that each need to be supported for the sharing for the disclosure to be reasonable;

- (a) I have considered if the disclosure was reasonable and in the public interest. I do consider that this sharing undertaken by the Subject Member on 13 November 2019 was reasonable as while it was arguable that the data was confidential, this was not clear and it was not marked accordingly. However, after receiving the email on 14 November 2019 I do not consider this to be the case, the Clerk had made clear at this point that the information was confidential and, as this was a matter that was at the pre-application stage, it cannot be argued that there was any urgency to the disclosure which could give rise to public interest;
- (b) I do not consider, having read the online comments from the Subject Member that the disclosure was made in good faith, the disclosure seems to have been made by the member as a deliberate attempt to discredit the application;
- (c) Nothing has been provided by the Subject Member to show that the disclosure was then made in compliance with the reasonable requirements of the authority.

As a result of the above and in considering the facts I am of the view that, as from when the Subject Member had read the email from the Complainant that was sent on 14 November 2019 @ 09.18 that by posting the information sent by the Clerk to all members on 13 November 2019 and by reposting it, he is in breach of paragraph 2.8 of the Code of Conduct for Gwennap Parish Council.

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.

The relationship between the Complainant, as the Clerk to the Council, and the Subject Member needs to be taken into account for this part of the complaint. As a Councillor the Subject Member is the Clerk's employer and a quasi-employer/employee relationship exists between a councillor and an officer of any council. As this relationship exists there is therefore a requirement for the trust and confidence that has to exist between an employer and employee to be maintained.

With regards to disrespect the Subject Member has set out that he denies the allegation and there is no way of quantifying this and, having watched PMs questions in the House of Commons, the Subject Member has said he understands what standards are acceptable in public office.

It should be noted that the law and standards that bind locally elected officials and Members of Parliament are different and a comparison cannot be drawn between the two.

In approaching the Subject Member the Complainant has been reasonable in her advice setting out to him the fact that the information should not be shared and the potential implications of doing so. It is noted that the Subject Member has not named the Clerk when sharing the advice he received but it is clear from the text who had prepared the advice.

However, the Subject Member has ignored the advice and has then posted the advice on social media stating that this is how the 'system' shuts down Councillor who feel strongly about their area and it is their duty to not be part of a system that fails the electorate.

Part of the role of the Complainant, as the Clerk is to advise her members when they may be in breach of the law, and therefore the advice that was re-posted was given by the Complainant was given in accordance with her role. By acting as he did the Subject Member then sought to publically snub this advice.

Whilst it is accepted that the Subject Member may have considered he was being shut down this does not give him grounds to deride the advice he has received and no employee would expect their employer to treat them in this manner, when the advice has been given in good faith, in the best interests of both the council and the councillor and factually correct.

As a result I consider that by posting the email advice he had received from the Complainant and doing so in a manner that leaves the reader with the impression that the advice was wrong and a deliberate attempt to shut him down, I am of the view that the Subject Member has failed to treat the Complainant with respect and therefore has breached paragraph 2.1 of the Code of Conduct for Gwennap Parish Council.

Paragraph 2.11 - You must not use or attempt to use your position as a Member of the Council improperly to confer on or to secure for yourself or any other person an advantage or disadvantage.

In responding to this part of the complaint the Subject Member has said that he denies this allegation as nothing he has said would generate an advantage or disadvantage, the information was due to be shared at the PC meeting in a few days so no advantage or otherwise could be gained from starting early.

With regards to the comments from the Subject Member this overlooks the fact that whilst the information was due to be considered at the meeting of the Council this was to be in closed session, as is often the case for pre-application matters. Additionally it is clear from the social media posts that the Subject Member was seeking to generate public opposition to the development therefore was seeking to cause a disadvantage to the applicant.

I have carefully considered if this provision of the Code has been breached. While there is a clear attempt by the Subject Member to drive opposition to the proposed application, I have also taken into account this was at the pre application stage and there would be the opportunity for the applicant to deal with concerns raised before a full application was made.

As a result, but for different reasons to the Subject Member I do not consider that the conduct of the Subject Member has caused a disadvantage to the applicant and therefore has not breached paragraph 2.11 of the Code of Conduct for Gwennap Parish Council.

2.13 - When reaching decisions on any matter you must have regard to any relevant advice provided to you

The Subject Member has set out that it is impossible for a 3rd party to say whether he had regard to the advice given or not and I would agree with this. Whilst the Subject Member may have ignored the advice there is nothing to show that he did not have regard to it and this is the only obligation placed on a member, the advice does not have to be followed.

Therefore it is considered that the Subject Member has not breached paragraph 2.13 of the Code of Conduct for Gwennap Parish 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

In responding to this part of the allegation the Subject Member's view is that responses from the public have been of gratitude, which is contrary to the definition of disrepute.

However, this only takes into consideration a subjective view of the member's actions and when considering if this part of the Code has been breached all of the facts have to be

viewed objectively and then an objective consideration made as to whether the Subject Member's conduct could be considered disreputable.

In adopting this approach the reasonable person needs to consider the facts as to whether disclosing information after being specifically requested not to, and then treating an employee with disrespect is disreputable.

I do not believe that the reasonable person would find the actions of the Subject Member against the Complainant, taking into account the quasi employer/employee relationship, to be acceptable. Whilst a reasonable view would be that, were an employer to be unhappy with the actions of an employee they would deal with the matter using the organisations adopted procedures, no employee would expect to have their advice posted online with the commentary indicating that the advice was a deliberate attempt to stifle them.

Therefore, I am of the view that when the facts are taken together and viewed objectively the Subject Member has brought his office, but not his authority into disrepute and has therefore breached paragraph 2.10 of the Code of Conduct for Gwennap Parish 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 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 for Gwennap Parish Council and has breached paragraph 2.5 of the Code of Conduct for Gwennap Parish Council.

I do not consider there are any other breaches of the Code of Conduct arising from this matter.

Predetermination

It is raised in some of the emails concerned whether the Subject Member could be considered to have formed a view with regards to the planning application by his actions, meaning he has predetermined the matter and is therefore unable to be involved with the matter as a decision maker.

Whether a member is predetermined, or predisposed is not something that can be considered under the ethical standards regime. However, the Subject Member is strongly advised to consider taking separate advice on this.

Actions to remedy the breach

It is noted within the posts made by the Subject Member that he considers that the system is shutting him down. This is not the case and this emotive approach is neither correct nor

helpful to his Clerk who undertakes a difficult role balancing the needs of those elected to the Council, the wishes of the public and the requests of organisations, such as the developer. It is set out at every Code of Conduct training session organised by Cornwall Council, that there will always be times when a member, or a group of members will feel strongly about something and wish to share it, and if this is the case then the Monitoring Officer can be contacted for advice on how this can be achieved.

This is due to the fact that whilst not all those elected to public office would support development, it is a fact that development occurs and there is a need to ensure that developers have the trust of their locally elected officials to enable them to discuss matters at the pre application stage.

They do not have to do this at Parish Council level and it would be unfortunate were they then to stop in the area of Gwennap Parish Council engaging in such a manner. Such early engagement with elected officials is welcome and necessary but it cannot always involve all those elected officials may like to have involved.

Once it was realised that the Subject Member wished to share the information his Clerk then correctly advised him on the fact the information could not be shared. However, rather than then working with the Clerk and the developer to seek a resolution to the impasse, the Subject Member sought to ignore the authority of his Clerk.

It is a fact that, had the Subject Member opted to follow the advice of the Complainant a breach would not have occurred.

Therefore as a suitable action for the breach I consider that for disclosing the information after he was advised not to do so by the Clerk he should apologise to the developer in the hope this will help restore the trust in the Parish Council. However, if the Subject Member fails to apologise within 28 days it is recommended to the Parish Council he is censured.

For the breach relating to the way the Subject Member has ignored the advice of the Clerk posting her advice online and for treating her as an employee with disrespect, it is recommended to the Parish Council that the Subject Member be censured.

I would also recommend to the Subject Member that he undertakes Code of Conduct training as soon as he is able to do so.

What happens now?

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

A handwritten signature in black ink, appearing to read 'SJR Mansell', with a long horizontal flourish extending to the right.

SJR Mansell MBE
Corporate and Information Governance Manager
On behalf of the Monitoring Officer
Date: 24 December 2019