



## **ASSESSMENT DECISION NOTICE**

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

#### **ACTION REQUIRED**

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| <b>Reference:</b>                        | <b>CCN056/23/24</b>                                       |
| <b>Complainant:</b>                      | <b>Councillor S Blake – Poundstock Parish Council</b>     |
| <b>Subject Member:</b>                   | <b>Councillor T O’Sullivan, Poundstock Parish Council</b> |
| <b>Person conducting the Assessment:</b> | <b>Simon Mansell, Group Manager - Assurance</b>           |
| <b>Date of Assessment:</b>               | <b>14 August 2023</b>                                     |

#### **Complaint**

The Complainant considers that the Subject Member has breached the Code of Conduct due to comments he has made in an email about other members of the Council.

#### **Decision and Action**

In considering a suitable action to remedy this breach the Subject Member is:

- Requested to apologise to the Parish Council in an unqualified manner within 28 days of the date of this Notice for setting out that there is a bullying culture at Poundstock Parish Council and the members of the Council are seeking to destroy its credibility.
- Should this not be done, it is recommended that the Parish Council censure the Subject Member and a copy of this Notice and the censure is placed on the Parish Council’s web site.

#### **Reasons for the Decision**

In undertaking this assessment, I have had regards to the following:

- The complaint as made;
- The response of the Subject Member;
- The views of the Independent Person.

### The Complaint

The Complainant has set out that he considers that the Subject Member has breached the Code of Conduct due to some of the wording in an email the Subject Member sent to a member of the public on 11 July 2023, which was also copied to 4 members of the Parish Council. The background to the email is a matter relating to the disclosure of information following a request by a member of the public.

In particular, the Complainant is of the view that the following statement is a breach of the Code:

*"The bullying culture being pursued by the unelected & unelectable Councillors currently controlling Poundstock Parish Council who are destroying the credibility of the Council"*

Further, the Complainant has raised in the complaint the comments by the Subject Member in that he has said,

*"In spite of requesting sight of the claimed legal advice on several occasions, none was ever shared. I don't believe any ever existed."*

The Complainant has said he was told on numerous occasions that the advice was provided verbally in conversation. Therefore, Cllr. O'Sullivan is being untruthful.

In summary, the Complainant is of the opinion that the Subject Member has impugned the reputation of all Councillors and Poundstock Parish Council in a very public and damaging way.

### The Response from the Subject Member

The Subject Member has responded to the complaint by providing the full thread of emails, which includes the decision from the Information Commissioner with regards to the information request made to the Council by the member of the public, and these have been noted.

In his reply the Subject Member considers that the thread arose from the Complainant's, *'obstinate persistence with the indefensible position that the resolutions of the 29 December 2022 & 26 January 2023 meetings were "sub-judice."*

Further, the Subject Member has said he believes that the Complainant's belligerent, aggressive and indefensible handling of the Information Request, including his communication with the ICO, is symptomatic of his bullying approach and is damaging the credibility of Poundstock Parish Council.

### Previous Decision

Within his response, the Subject Member has correctly stated that the matter of the legal advice, and whether it could be disclosed or not, was considered in complaint CCN039/23/24.

As a result this, and the points around it mentioned by both the Complainant and the Subject Member, are not considered further.

However, the terminology used by the Subject Member in the email dated 11 July 2023 to the member of the public with regards to the Information Commissioner's decision was not considered as part of the assessment at the time. Therefore, this is further considered below.

### Application of the Code of Conduct

In considering the complaint as made, I am satisfied that the Subject Member was acting in their official capacity at the time of the alleged conduct and therefore was bound by the Code of Conduct.

As with all ethical standards complaints, this is assessed against the Code of Conduct adopted by the Council and the procedures for assessing complaints adopted by Cornwall Council. The information provided is assessed on the balance of probabilities; this is, would a reasonable person objectively considering of all the facts be of the view it is more likely than not that the actions of the Subject Member amount to a breach of the Code of Conduct.

The Subject Member, in responding to this complaint, has chosen to further attack the integrity of the Complainant whilst fully failing to consider the facts behind the complaint and why this complaint was made.

As a background, it is a fact that a Freedom of Information request was made to the Council by a member of the public, and the request was refused by the Parish Council. However, after the matter was taken to the Information Commissioner, the decision not to disclose the requested information was overturned.

With regards to this set of circumstances, this is something which happens daily across all Councils, at all levels. Requests are made, they are refused for a variety of different reasons, but when considered by the Information Commissioner a different view is reached.

It is a fact that people get it wrong with regards to requests, and the Information Commissioner, as the regulator in these matters, seeks to ensure that the right decision is reached. However, were each one of these instances to be met with the barrage of criticism which has been levelled at the Complainant/Parish Council members and the Council by the Subject Member, the system would soon become untenable. Further, it does not mean those refusing the request are 'bullying' and there is nothing provided by the Subject Member to support this allegation.

In the email the Subject Member has set out to the member of the public:

*'Thank you also for having the courage to stand up to the bullying culture being pursued by the unelected & unelectable Councillors currently controlling Poundstock Parish Council who are destroying the credibility of the council.'*

Further, the Subject Member has said:

*'The current shambles cannot continue with controlling councillors who are way out of their depth.'*

In undertaking this assessment, it should be stated that the Subject Member's view may not always align with his peers, and not agreeing on a wide variety of matters is a perfectly reasonable position for him to take.

However, no reasonable person expects to be accused of bullying for refusing a Freedom of Information request, and when viewed objectively no reasonable person would expect these comments to be made.

There are no facts provided to support the comments in the email from the Subject Member. He may not agree with other members, and he may have strong feelings about the local refusal of the request, but this does not mean that the culture at the Council is a bullying one. It is a fact, differences exist, and it is often the case that one side or another may not agree with something, but this does not mean bullying has taken place, or because of it people are suddenly unelectable.

By sending the email to the member of the public, the Subject Member has shown a lack of respect for the Parish Council as a whole and has breached paragraph 2.1 of the Code. The fact is there are people, like himself, who are willing to give their time free of charge to support the local community does not mean they are unelected and unelectable. A large number of Councillors in Cornwall are not elected, either being returned unopposed or co-opted onto the Parish Council, and this does not make any of them not able to undertake their roles.

It is also considered that, by opting to attack his peers on the Parish Council in such a personal manner, the Subject Member has brought his office but not his authority into disrepute breaching paragraph 2.10. It is difficult for Councils at all levels to find members to serve on them, and if a member of the public thought they may be subject to personal rebukes from the Subject Member, as has been demonstrated in this complaint, this has the potential to deter people from serving.

Given that the Subject Member has breached paragraphs 2.1 and 2.10, it also follows that he has failed to uphold the high standards of conduct that are required by paragraph 2.5 of the Code.

There are no further breaches of the Code found in this complaint.

#### Views of the Independent Person

I consider that the accusations submitted by the Complainant are a repeat of those noted in the previous complaint which has been assessed in the Decision Notice CN039/23/24 dated 12 July 2023 that there was no breach of the Code of Conduct and no action was taken. For that reason, I find no breaches of the Code.

#### Summary and Actions

It is noted that the comments in the email from the Subject Member are directed at those currently controlling the Parish Council, which it is presumed are those appointed by their peers.

Within this, the role of a Councillor is one to be challenging and to be critical, but within this Standards for England were implicit in stating that this had to be done in an orderly way which was not personal. As such the Subject Member can, within certain constraints, challenge those in control of the Parish Council, but he also needs to accept that at times some views may not accord with his.

I am completely satisfied that an objective person would consider that the response to the matter by the Subject Member has breached the Code, and in reading this, was a deliberate attack on his peers in the Council. This conduct cannot be supported in any way whatsoever.

In considering a suitable action to remedy the breach, the Subject Member is requested to apologise to the Parish Council in an unqualified manner within 28 days of the date of this Notice. Should this not be done it is recommended that the Parish Council censure the Subject Member and a copy of this Notice, and the censure is placed on the Parish Council web site.

### **What happens now?**

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to Poundstock Parish Council and a copy placed on Cornwall Council's web site.

### **Right of review**

At the written request of the Subject Member the Monitoring Officer can consider a request for a review and, if the review is successful this may result in a change to the finding made in the original assessment.

The written request from the Subject Member to review this decision must be received within 14 days from the date of this Notice, explaining in detail on what grounds the decision should be reviewed.

The grounds for requesting a review must be substantive, and a re-submission of the original complaint will not be classed as substantive, and neither will a request that sets out the findings are disagreed with. There must be fresh information in the request which was not considered at assessment which is such that this may result in a different outcome.

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.