

## South Hams District Council

### Decision Notice Formal Assessment

<b>Reference Number:</b>	SH14 21112020
<b>Complainant:</b>	Mrs M Cornhill
<b>Councillor(s):</b>	Cllr Ben Piper
<b>Council:</b>	Totnes Town Council
<b>Monitoring Officer:</b>	David Fairbairn
<b>Assessment carried out by:</b>	Becky Fowlds
<b>Independent Person:</b>	Peter Boreham
<b>Confidentiality requested?</b>	No

#### 1. Documents and information considered:

- Complaint from the Complainant received 18 November 2020 together with supporting documentation
- Response from Cllr Piper dated 5 May 2021
- Totnes Town Council Code of Conduct
- South Hams District Council's 'Dealing with Standards Complaints' procedure
- Views of the Independent Person

#### 2. Summary of complaint

The Complainant has alleged that Councillor Piper has broken the Totnes Town Council Code of Conduct by his behaviour and conduct in the meeting of the Town Council on the 2<sup>nd</sup> November and subsequent emails written on the 5 and 9 November to fellow Councillors.

In the complaint the breaches alleged by the Complainant are as follows:-

- 4.1(a) Failure to treat others with respect
- 4.1(b) Failure to have regard to professional advice
- 4.2(a) Improperly using position to confer an advantage
- 4.2(c) Bullying or intimidating any person
- 4.2 (d) Intimidating complainants or witnesses
- 4.2(e) Compromising the impartiality of Council officers
- 4.2(h) Brought the office of Council or Councillor into disrepute

The relevant provisions of the Totnes Town Council Code of Conduct are as follows:-

- 1.1 Failure to treat others with respect
- 2.1 Bullying or intimidating any person
- 3.1 Compromising the impartiality of Council officers - this includes a requirement not to seek an officer to change their advice so as to prejudice their professional integrity.
- 5.1 Brought the office of Council or Councillor into disrepute
- 6.1 Improperly using position to confer an advantage

Neither party is in my view prejudiced by the slight differences in the referencing.

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<b>3. <u>Outcomes:</u></b>  (Please refer to the Criteria in the 'Dealing with Complaints' Procedure):
<ul style="list-style-type: none"><li>• To take No Further Action (in accordance with the Criteria set out in the Dealing with Complaints procedure)</li></ul>
<ul style="list-style-type: none"><li>• To make no finding as to whether there has been a breach of the Code but seek to resolve the Complaint informally</li></ul>
<ul style="list-style-type: none"><li>• To make no finding as to whether there has (or may have) been a breach of the Code and that No further Action be taken as the public interest does not merit further investigation/consideration.</li></ul>
<ul style="list-style-type: none"><li>• To refer the Complaint for investigation to determine whether there has been a breach of the Code.</li></ul>
<ul style="list-style-type: none"><li>• A finding of a breach of the Code without an investigation.</li></ul>
<ul style="list-style-type: none"><li>• To refer the matter to the Police (or other relevant body) where the Complaint alleges that a criminal offence may have occurred under the Localism Act 2011.</li></ul>

<b>4. <u>Decision and reasons:</u></b>
<b>Decision:</b>  <b>A finding without an investigation that paragraph 1.1 (Failure to treat others with respect) of the Totnes Town Council Code has been breached.</b>
<b>Reasons for decision:</b>  Cllr Piper is currently a member of Totnes Town Council and was a member of the Council at the time of the alleged breaches, and engaged on the business of the Council at the relevant time; the Totnes Town Council Code therefore applies.  The complaint so far as it relates to failure to treat another with courtesy or respect is upheld. Questioning the complainant's right to attend the public meeting was unreasonable. The email was inflammatory and disrespectful and exceeded a reasonable response to the complaint  The other allegations are dismissed.  The reasons are set out below and it is recommended that there is an apology to the complainant in that it was wrong to question her right to attend the question time.  <u>Matters relating to the Assessment</u>  As with the assessment of all ethical standards matters this is considered on the balance of probabilities, that is; would a reasonable person in possession of all the facts and viewing them objectively, consider that it is more likely than not the Subject Member has breached the Code of Conduct.  <u>The Complaint</u>  The Complainant alleges that behaviour, questioning and body language of the Subject Member during the meeting he has sought to bully and intimidate the complainant and in doing so has breached the Totnes Town Council Code of Conduct and this is further demonstrated by the emails subsequently sent to Members of the Town Council.

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The Subject Member has responded to the complaint by setting out that;

- The complainant was neither a parishioner or business owner and it was his understanding that these were normal criteria for attendance of meetings unless invited.
- The Complainant was a leading member of a group intent on disrupting the work of the Town Council, party to a letter highly critical of the Council and intimidating Councillors on social media
- His response to a third party was not unreasonable given the attack on the Council
- Email communications were private and written in confidence and providing a private opinion and attract the benefit of privilege as per the decision of Court of Appeal in *Horrocks v Lowe*.

The initial complaint also related to matters relating to the use of mobile devices during meetings. This was rejected at the initial assessment stage for reasons previously provided.

### Findings of fact

The Town Council Standing Orders set out that the meetings are open to the public unless the presence is prejudicial. Paragraph 1(e) states that members of the public may make representations, raise questions, give evidence during a 30 minute open and informal session prior to Full Council.

At the meeting on the 2nd November the complainant was given the opportunity to speak without interruption.

When the complainant had spoken at the Committee the Subject Member asked her whether she was a resident or business owner in Totnes, the complainant was willing to answer but the Chair concluded it was not necessary and the question was not answered.

It was known to the Subject Member the interest of the Complainant in running the Christmas market and that she was a member of a group which had successfully campaigned against road closures previously imposed by the County Council.

The Complainant was a member of the public and entitled to speak during public question time and attend the meeting of the Town Council.

The Complainant sent an email dated 4 November to the Clerk answering the question and made a complaint against the Subject Member and requested that her email be sent to all Members.

The Subject Member responded by virtue of his email dated 5 November to the Clerk and Councillors.

At all times the Subject Member was acting in their capacity as an elected councillor of Totnes Town Council and was bound by the provisions of the Totnes Town Council Code of Conduct.

### Conduct of the Subject Member towards the Complainant during the meeting

The conduct complained of occurred primarily at the public question time at the beginning of the meeting and thereafter in the subsequent emails.

The purpose of these sessions are undoubtedly to encourage engagement with the Town Council and to provide a mechanism by which the public can raise matters of concern and hold their elected members to account. It should increase understanding of local issues for both Councillors and the public with the aim of greater transparency and better decision making.

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The standard expected of Councillors has not changed since the introduction of virtual meetings during the pandemic but it has brought a greater public awareness of such meetings and greater scrutiny because of the accessibility of recordings.

It is reasonably clear from the meeting that the complainant was already well known to all the Councillors and that the relationship with the Subject Member was probably poor. It was also readily apparent that the issue of road closures in Totnes was one that generated a lot of debate and passionately held views on all sides. It was a topic that had a long running history and this had re-ignited as a result of the pandemic, the Government's policies and response both in respect of public safety and economic impact.

### 1.1 Failure to treat others with courtesy and respect

Public question time is often that part of the meeting where there is the highest attendance and conduct at this time will often determine whether members of the public determine whether or not the Council and its Members should themselves be respected. The ability to hold virtual meetings was introduced as a result of the Covid-19 Pandemic. There is some evidence that it is facilitated participation and attendance by the public and in doing so raised public awareness of local government.

As has been seen by the media coverage of the behaviour of individual councillors in Handforth PC, poor behaviour can severely damage a council's reputation. Virtual meetings are currently no longer possible but recordings of meetings during the time it was permissible remain accessible. It is likely that further legislation will enable meetings to be viewed remotely in future.

In any event, the requirement to treat others with courtesy and respect is paramount, particularly during those parts of the meeting in which the public are specifically invited to raise questions if council objective is to encourage participation.

It is clear that when there is a poor relationship between a member of the public and a Councillor this is likely to manifest itself on a topic which is of concern to both and where views are diametrically opposed. Public questioning is an important element of the democratic process and an opportunity to hold elected members to account, however on matters which have a long history the time afforded can only touch on the matter in brief.

Expectations and perception are likely to be pre-determined by both parties, however the general public will be scrutinising the conduct of the Councillor as it is the Councillor's conduct which is bound by the Code.

The Subject Member asked whether the Complainant was either a resident or a trader within the town. Whilst it may have been relevant to the topic in discussion, the interest of the complainant appears to have already been known to the Subject Member. The complainant had also introduced herself and her business interest when she spoke. Her right to attend was in accordance with the Town Council Standing Orders.

There was a clear inference in putting the question that the complainant or her opinion was not welcomed by the Subject Member. It was perhaps for this reason the Chair sought to move the meeting along but unfortunately this left a question mark over the Complainant's right to attend or be heard. The Subject Member put on record that the complainant was neither a resident nor town trader.

The Subject Member should have known that her interest was not relevant to her right to participate. It is accepted that the "status" of a speaker may assist a member deciding what weight to give to their views when making a decision. However this part of the meeting was a public question time. The complainant was known to the Subject Member and as was her status and by putting the question, the Subject Member appeared to be questioning the complainant's right to

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speak and/or the legitimacy of her opinion and this was not an issue relevant during this part of proceedings.

It is likely that the reaction was in part as a result of the events that had already occurred during the question time. The Subject Member had already objected to the statements made by another member of the public who was known to him and the complainant. A reasonable person would in making such an assessment have regard to the behaviour of the member of the public but they will not necessarily be aware of the history, should one exist.

The Subject Member has suggested that he should not be criticised for his body language. His body language in respect of the events which relate to the complainant does not amount to a breach of the Code but the recording of the meeting does clearly demonstrate that the Subject Member is expressive and likely to react to the opinions that are being given either positively or negatively. Whilst a reaction may be natural there is a stark contrast between that of the Subject Member during the meeting and his fellow councillors.

Given the events occurred during a public question time at which time all public should be welcomed this behaviour was inappropriate and may discourage others from attending a council meeting which would be detrimental to the work of the Council and public accountability.

In considering this conduct against the Code; in adopting the reasonable person approach viewing this part of the complaint objectively, such a person may come to the view that there was a level of animosity between the Complainant and the Subject Member. The Subject Member failed to show a level of respect or courtesy in questioning the attendance of the complainant. The Complainant was perceived as a “political” opponent of the Subject Member and was not afforded the same courtesy as would have been given to a member of the public.

### 2.1 Bullying and intimidating any person

There is no fixed way by which bullying can be judged and in considering this against the Code, whilst guidance is drawn from employment law this requires an objective consideration of the facts.

Bullying can be one act but it is more likely to be a pattern of behaviour that can occur face to face or virtually, it can be verbal or can be done in writing but it is conduct that makes someone feel frightened and upset.

Intimidation can often be tied into bullying but it can be more subtle as it is designed to send a message that the person who is conducting the intimidation can control matters and can disrupt another person’s life which can result in a person feeling powerless to stop the actions of another. Intimidation can often be used to impose one persons will on either one or several people through a relentless approach of seeking to undermine the sense of security one may have in undertaking their role, whatever that role is.

Whilst the Subject Member clearly distrusts and is highly critical of the complainant the behaviour during the meeting appears to be a reaction to their different opinions and politics over a period of time and does not amount to bullying.

The complainant wrote to the Clerk and Mayor on the 4 November and asked the Clerk to share the email with all Councillors. In that email the Subject Member was accused of bullying and advised a complaint would be made.

The email by the Subject Member was written in response to that of the Complainant’s.

The tone of the email is one of anger and frustration. It contains a number of serious accusations, not only against the complainant but other named individuals. The response is excessive and is

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not supported with evidence. It is highly critical and seeks to undermine the reputation of the complainant.

The content of the Subject Member's email may be considered to be defamatory. It was certainly poorly judged as appears to have been recognised by the Member.

The Subject Member relies on the case of Horrocks and Lowe in which the Court found that privilege applies to the opinions expressed by councillors during meetings of the council, as they are elected to speak their mind on matters that affect the local electorate. The opinions expressed in the email were not therefore during a meeting of the council. They were to the councillors (and the clerk) in response to the complainants email.

Qualified privilege can occur on other occasions, where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it."

It appears to be the personal view of the Subject Member and demonstrates a clear animosity to the complainant. However its audience is the same as the complainant's namely the Councillors and clerk and a reasonable person would note that it is a response to the complainant's email.

An essential feature of qualified privilege is the absence of malice. So long as a person believes in the truth of what he says malice cannot normally be inferred. It is not the role of this assessment to adjudicate on a case of defamation or indeed whether the comments were malicious.

I have concluded that on balance it was not written for the purpose of bullying or to intimidate the complainant and was a reaction to the complainant's email.

This element of the complaint is not upheld.

### 3.1 Compromising the impartiality of Council officers

There is no evidence to suggest that the Subject Member has breached this part of the Code or that the Subject Member failed to have regard to professional advice.

### 5.1 Bringing the office of Councillor or Council into disrepute

In considering disrepute this is something that objectively can be considered to damage the reputation of the Subject Member within the community so as to undermine the perception of a councillor and therefore it is necessary to consider all the facts.

It is a fact that the complainant disagrees with the Council decision to close roads to traffic. The complainant's disapproval is aimed at specific councillors rather than the Council as a collective. The Subject Member similarly has a contrary opinion and is frustrated by the criticism or challenge to the actions of the Council.

This is evident in the exchange both at the meeting and demonstrated in the emails. The Complainant was not interrupted and able to put her questions. The fact that she could not respond to the question was not a decision of the Subject Member. The email was not intended as a public document and a reasonable person is unlikely to conclude that the behaviour of the Councillor at the meeting brought the office into disrepute.

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### 6.1 Improperly using position to confer an advantage

There is no evidence to suggest that the Subject Member has breached this part of the Code

#### Summary and Sanctions

I acknowledge the frustration the Subject Member feels with regards to the criticism levelled at the Council and himself by the complainant. I am satisfied that this has been an ongoing disagreement and the issue of road closures will continue to divide opinion. I think it unlikely that opinion on either side will readily change even if the topic becomes less of an issue as restrictions and guidance on social distancing diminish. Road closures particularly of high streets, are always controversial as the benefits and disadvantages are hotly disputed. These divisions have been exacerbated more recently when trying to balance protection of health and harm to the economy. I am confident that the members of the Council have done their best in the interests of their community.

However, when responding to a member of the public a Councillor has to adhere to the provisions of the Code and a review of the meeting does demonstrate that the Subject Member found it difficult to behave in a courteous manner to the complainant. Whilst there may have been some history which made it difficult not to react and the Subject Member may have felt provoked, the Subject Member's behaviour was markedly different to that of his fellow councillors and fell short of that which the public are entitled to expect particularly during a public question time.

I would recommend that a record is made that the complainant was entitled to speak and participate during public question time. Her right to do so should not have been called into question and an apology should be provided by the Subject Member.

Approved by Peter Boreham the Independent Person for South Hams District Council

Date: 5 July 2021



Date: 6 July 2021

Signed by Becky Fowlds, Deputy Monitoring Officer for South Hams District Council