

## **DECISION NOTICE: BREACH** **Reference COC144873**

### **Subject Member**

Cllr Gary Peacock, Redlynch Parish Council

### **Complainant**

Mr Nicholas Morgan

### **Investigating Officer**

Lisa Hayward

### **Representing the Monitoring Officer**

Jo Madeley, Head of Legal Services & Deputy Monitoring Officer

### **Independent Person**

John McAllister

### **Hearing Sub-Committee**

Cllr Derek Walters (Chairman)

Cllr Bill Parks

Cllr Trevor Carbin

Julie Phillips (non-voting)

### **Decision Date**

16 November 2023

### **Issue Date**

27 November 2023

### **Complaint**

1. It was alleged that on 7 March 2023, the Subject Member attended the Complainant's property to cut back a hedge and reposition a street name sign. This was after visiting the complainant two months previously and allegedly introducing himself as a parish councillor and asking permission to cut back the hedge for the purpose of exposing a drain cover to assist flood prevention on behalf of Redlynch Parish Council.
2. In doing so it was alleged that the Subject Member breached the following sections of the Redlynch Parish Council Code of Conduct:

Paragraph 5.1      I do not bring my role or local authority into disrepute.

## **Meeting**

1. The Hearing Sub-Committee (“The Sub-Committee”) met on 16 November 2023 at the Kennet Room, County Hall, Trowbridge, to hear the complaint.
2. A Chairman was elected for the meeting and there was opportunity for any declarations from the Sub-Committee members before the procedure for the meeting was noted and introductions were made for all those present. After deliberation the Sub-Committee did not exclude the press or public from the remainder of the Hearing. The Chairman then briefly detailed the process that would be followed for the hearing in accordance with Paragraph 8 of the Council’s Arrangements for dealing with Code of Conduct Complaints, Protocol 11 of the Constitution, which had been circulated with the agenda papers.
3. The Sub-Committee had received prior notification from both the Complainant and the Subject Member that they would not be attending the Hearing in person.
4. At the Hearing the Investigating Officer presented their Report and confirmed that no witnesses would be called. In accordance with the procedure the Sub-Committee were invited to ask questions of the Investigating Officer to assist with their assessment of the complaint.
5. In accordance with the procedure the Sub-Committee received a written statement from the Complainant in support of their complaint.
6. In accordance with the procedure the Sub-Committee received a written statement from the Subject Member as evidence and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.
7. The Sub-Committee then withdrew into private session, together with the Independent Person, the Deputy Monitoring Officer, and other supporting officers.
8. The Independent Person was consulted throughout the process and his contributions were taken into account by the Sub-Committee in reaching their decision.
9. The Hearing resumed at the conclusion of deliberations, and the decision of the Sub-Committee was announced to the parties and their representatives as follows:

## **Decision**

**Having considered all relevant matters and evidence, including the complaint, the Investigating Officer’s report, the submissions made by the parties as detailed in the agenda papers and in written statements prior to the Hearing, the Sub-Committee concluded on the balance of probabilities that Councillor Gary Peacock of Redlynch Parish Council breached the Parish Council’s Code of Conduct under the following provisions:**

**Paragraph 5.1 - I do not bring my role or the Parish Council into disrepute.**

## Reasons for Decision

### Background

1. The Subject Member is a Member of Redlynch Parish Council. The Subject Member and the Complainant are neighbours, living on the same road in Redlynch.
2. The Complaint relates to the Subject Member's actions to remove part of the Complainant's hedge, for drainage clearance purposes and to relocate a road name plate on to the Complainant's property.
3. There are differing accounts of the initial discussion between the Complainant and the Subject Member, with regards to the nature of the request and to which role the Subject Member was acting in at the time of the request and subsequently when the works were carried out.
4. The Complainant and his wife believed the Subject Member to have introduced himself as a Redlynch Parish Councillor and to have stated that the hedge removal was for drain clearance works and part of a programme which the Parish Council was undertaking. There was no mention of the intention to move the road sign from across the road and to fix it to their property. As the Complainant and his wife believed the hedge works to have been scheduled by the Parish Council permission was granted, with the proviso that prior notice be given by way of a note through the door, of the date of the works.
5. The Subject Member did not recall hearing the request for prior notification and believed that consent for the hedge to be trimmed back had been given. He also disputes that he introduced himself as a Parish Councillor.
6. Redlynch Parish Council's Code of Conduct includes the provisions which were alleged to have been breached as detailed above, as well as explanatory text to aid in the interpretation of whether a specific action or behaviour meets the requirements of those provisions, as well as generalised text on when the Code applies and in what situations.

### Acting in a capacity as a Councillor

7. In order for there to be a finding that the Subject Member was in breach of the Parish Council Code of Conduct it was necessary to establish whether the Code applied during the discussions with the Complainant and the subsequent actions of the Subject Member.
8. The Sub-Committee noted the following from the Redlynch Parish Council's Code of Conduct:

*This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:*

- *You misuse your position as a councillor;*
- *Your actions would give the impression to a reasonable member of the*

*public with knowledge of all the facts that you are acting as a councillor;  
The Code applies to all forms of communication and interaction, including:*

- *at face-to-face meetings*
- *at online or telephone meetings*
- *in written communication*
- *in verbal communication*
- *in non-verbal communication*
- *in electronic and social media communication, posts, statements and comments.*

A member may be acting in one of three different roles:

- a) Acting in a private capacity – the code of conduct does not apply.
- b) Acting as a constituent elected member and therefore acting in a public role but not representing the body to which he or she has been elected - the code of conduct does apply.
- c) Acting in an official capacity on behalf of the body to which he or she is elected to - the code of conduct does apply.

The Subject Member is required in their role as a member of the Parish Council to abide by its Code of Conduct, which states at 5.1 that:

*“I do not bring my role or the Parish Council into disrepute.”*

The Code of Conduct refers:

*As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Parish Council and may lower the public’s confidence in your or the Parish Council’s ability to discharge your/it’s functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Parish Council into disrepute.*

9. Although some aspects of the conversation were disputed, such as whether the Subject Member had introduced himself as Parish Councillor during the meeting and whether he had stated the proposed hedge trimming work was on behalf of the Parish Council as part of a wider project, it was not in dispute that the Subject Member had discussed Parish Council relevant business during the initial visit as well as taking a copy of a printed document regarding associated council works. He had also not taken steps to clarify the role in which he was speaking.
10. The Sub-Committee noted that the line between personal and official business could at times be unclear (particularly in this case where the Subject Member also resided within close proximity of the Complainant) but that it was the responsibility of an elected member to ensure that clarity on which role they were acting in was provided to prevent a public perception being formed incorrectly.
11. Nonetheless, whatever the Subject Member’s intentions had been in relation to his actions, the requirement of the Code was whether his actions would give the impression to a reasonable member of the public with knowledge of all the facts that he was acting as a councillor, not whether he considered himself to be acting so.

12. In discussing Parish Council relevant business and in providing a Parish Council written document as evidence of other Parish Council similarly related works, the Sub-Committee determined that a reasonable person would have had the impression the Subject Member was acting as a councillor, as indeed the Complainant in their submissions had confirmed he had so considered.
13. Accordingly, the Sub-Committee was satisfied the Code was in effect and they needed to establish on the balance of probabilities whether the actions of the Subject Member amount to a breach of the provisions of the Code of Conduct referred to in the Complaint.

#### Hedge cutting and movement of the Street Sign

14. On the 7 March 2023, the Subject Member had visited the location of the hedge from Chapel Lane, whilst no one was at home and significantly cut back the hedge. Whilst there he had also removed a street sign from across the road and installed it on the Complainants land.
15. Later the same day, a neighbour informed the Complainant of the works which had been carried out by the Subject Member. The Complainant's wife contacted the Parish Council to discuss the hedge cutting and the movement of the street sign. The Clerk confirmed that the Parish Council had not scheduled the work and was unaware of it. After receiving legal advice, the Complainant emailed the Parish Council to lodge a formal complaint.
16. On 9 March 2023 the Subject Member visited the Complainant's home to speak about the hedge and to apologise. When asked directly, the Subject Member is said to have stated that he was acting on Parish Council business. The Complainant's wife then challenged this stating that the Clerk had confirmed he was not acting on behalf of the Council and asked him to leave their property.
17. The Subject Member on 15 March 2023 submitted an offer of an apology and a replacement of shrubs, through the Complaint Team as a way of resolving the complaint. This was declined by the Complainant.
18. The Subject Member contends that his actions came about as the Parish Steward, who had previously been responsible for drain clearance maintenance, had left. As a resident of Chapel Lane, the Subject Member was concerned with the possibility of damage which recent heavy rain may have on the unadopted gravel lane. He contends that his actions were as a concerned resident of Chapel Lane and not in his role of a Parish Councillor.

#### Conclusions

19. The Subject Member, during his visit had made reference to Parish Council drain clearance works. In addition, a printed document produced by the Parish Council had been used by the Subject Member as evidence that similar works were being carried out within the community. Whether it was stated by the Subject Member or not, it would be reasonable for a member of the public with knowledge of all the facts to perceive that he was acting as a Parish Councillor, even if this had not been the intention.

20. The Sub-Committee felt that it was likely that the Subject Member was acting in what he considered to be the best interest of Chapel Lane, and that his intentions had been as a concerned resident in this case. The Sub-Committee noted that if the hedge had been in any other road, other than the one the Subject Member lived on, then there would be no reason for him to involve himself in maintenance and upkeep of shrubs, as the correct process would be for maintenance concerns to be lodged with the Parish Council to take action where appropriate.
21. The Sub-Committee also noted the attempts of the Subject Member to apologise and to purchase replacement shrubs to make good his actions, as part of a way forward in repairing any damage caused.
22. In considering whether the action amounted to a breach of Paragraph 5.1, the Sub-Committee considered the Code:

*“I do not bring my role or the Parish Council into disrepute.”*

The Code of Conduct refers:

*As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Parish Council and may lower the public's confidence in your or the Parish Council's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Parish Council into disrepute.*

23. The Sub-Committee therefore resolved that there had been a breach of Paragraph 5.1.
24. As the Code sets out holders of public office should be aware that their actions might have an adverse impact on themselves, other councillors, their authority or council, and may lower the public's confidence in their ability to discharge their function. In not being clear in the role in which he was requesting permission to cut back the hedge, it was left open to the Complainant to form his own judgement on the matter, leading to misunderstanding and subsequently resulting in a complaint against the Subject Member in his role as an elected member.
25. The Sub-Committee considered that the Subject Member believed he was acting as a local resident and in that his actions had not been of a malicious nature. In addition, the Sub-Committee commended the offered apology and the replacement of shrubs which had been made previously.
26. In considering sanctions the Sub-Committee had regard to the Local Government Sanctions Guide to ensure that when deciding on a sanction the Sub-Committee should ensure that it is reasonable, proportionate and relevant to the subject members behaviour. The Sub-Committee noted that mitigating factors may include a subject members co-operation in rectifying the effects of that failure (in this case noting the Subject Members offer to replace the shrubs and to discuss and agree the most appropriate site for the sign) and an apology to affected persons (again noting the Subject Members apology to the Complainants).

27. The Sub-Committee agreed that the Subject Member had brought his role as Parish Councillor or that of the Parish Council into disrepute therefore, it was resolved that there had been a breach of Paragraph 5.1.

### **Sanctions**

1. The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.
2. In advance of the Hearing the Subject Member was notified of the procedure for making representations on sanctions if the Sub-Committee found that a breach had taken place. The Subject Member was given the opportunity to be contacted by telephone on the day of the Hearing to make any such representations.
3. The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person and noting the mitigating factors in this case (as referred to in this Decision Notice) resolved to recommend that no sanctions be recommended to Redlynch Parish Council.