



Standards Decision Notice

Case: 2021/C07

Subject Member:	Cllr Phil Twiss
Authority:	East Devon District Council
Complainant:	Cllr Paul Arnott
Brief statement of facts:	<p>Following an incident at the joint Overview and Scrutiny meeting of 14th January Cllr Arnott sent an email to the Council membership and senior officers in relation to that incident. Cllr Twiss replied by way of email to the Council membership on 19th January 2021 (timed at 16.52). It is the content of this email which Cllr Arnott considers to be unacceptable and which amounts to a breach of the Code of Conduct.</p> <p>It is alleged that the email was a grotesque and arguably defamatory attack on Cllr Arnott and by implication his Leadership and the administration of the Council. The following comments are particularly referenced in the complaint;</p> <p>“A pity you couldn't have come up with this idea some months ago when the problems were obvious rather than reacting with fake outrage when forced to do so. Please don't waste the MO's time....”</p> <p>“...for long standing and continued undermining of Officers simply trying to do their jobs; this is orchestrated and has taken place over a long period of time and your agenda is hardly a secret. Be careful what you wish for as when answers are sought as to the reasons for widespread low morale or prolonged absences from work on mental health grounds, I'm pretty sure your name will feature often and not for good reasons.”</p>
Relevant paragraphs of the Code of Conduct:	4.1 You <u>must</u>

	<p>(a) treat others with courtesy and respect;</p> <p>5.1 You <u>must not</u></p> <p>(c) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; and abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);</p> <p>(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.</p> <p>While the complaint alleges breaches of paragraphs 5.1(a) (conferring an advantage / disadvantage), 5.1(b) (causing the Council to breach a statutory duty or any of equality enactments), 5.1(d) (intimidation) and 5.1(e) (compromising the impartiality of those working for the Council) these are not considered to be engaged and are therefore not relevant.</p>
Reasoning:	<p>What is written by Cllr Twiss is in essence criticisms of Cllr Arnott in relation to his actions as Leader and those of his Administration. The email from Cllr Twiss is restricted to the membership of the Council (senior officers having not been copied in to this reply) and it is not in the public domain.</p> <p>Politicians are expected to have thicker skins than most and are expected to be able to tolerate criticism and close scrutiny. This flows from the right to freedom of expression which is an enhanced right where it relates to 'political expression'. This enhanced right generally permits people to say things that '<i>offend, shock or disturb</i>' and it can also permit comments about the inadequate performance of councillors in their public duties (public in this context meaning role of a councillor rather than actually being in public). There are also cases confirming that the enhanced right can permit criticisms which may be personal attacks or offensive, although this is more limited to comments to other politicians rather than to members of the public.</p> <p>In my view there is nothing in the email from Cllr Twiss that is of itself a breach of the Code of Conduct in that it is not directly (and solely) personal criticism or overly offensive. In my view the comments were made in the context of political debate, which was invoked by Cllr Arnott's email to all members about the incident at the Joint Overview and Scrutiny meeting and because of the wider background that existed at the time within the Council. It therefore constitutes political expression to which the enhanced protection applies.</p>

	<p>That protection is not absolute, the interference with the enhanced right (which would be a finding of breach and / or any sanction) could be justified where it is necessary in a democratic society in pursuit of a legitimate aim - this would be on the basis of the legitimate aim of protecting the reputation and rights of Cllr Arnott. However it needs to be remembered that the criticisms here have only been seen by the Council membership, which serves to moderate any impact.</p> <p>In a recent High Court case (which considered a parish councillor making comments in a public meeting about other councillors) the Judge concluded '<i>the fact that other councillors disagreed with, and were offended by, the [councillor's] assessment of their views and conduct, or that the [councillor's] assessment was found to be inaccurate, mistaken or even untruthful, was not a sufficient basis for interfering with his right to express his opinions.</i>'.</p> <p>I accept that it is probably not very pleasant to receive an email such as Cllr Twiss sent. However the fundamental premise is that politicians, when engaged in political debate, have an enhanced protection to express their views and other politicians are expected to tolerate criticism and close scrutiny in relation to their roles. Cllr Arnott instigated, or at least was likely to be aware that he would instigate or run the risk of instigating, a political debate on the topic by sending his email to who he did and Cllr Twiss accordingly engaged in response. He challenges the approach of Cllr Arnott and is critical of what has been happening under his leadership. This is his opinion and is made under his right to freedom of expression and it is my view that the enhanced right outweighs the rights of Cllr Arnott in this case particularly given the email being contained to within the Council membership.</p> <p>Accordingly, it is my view that the email from Cllr Twiss does not result in a breach of the Code of Conduct on any of the grounds alleged.</p> <p>I therefore conclude that Cllr Twiss did not fail to treat Cllr Arnott with courtesy and respect, bully Cllr Arnott or bring his office or the Council into disrepute.</p>
Independent Person's view:	<p><i>I have looked at the complaint and all of the information that you provided.</i></p> <p><i>I recognise the sensitivities of the initial issues, as well as the wider context for Cllr's Arnott's email of 19 January and Cllr Twiss' response. There are lessons here about taking counsel first and working together to deal with sensitive matters in a measured way.</i></p>

	<i>After due consideration, I agree with your finding that Cllr Twiss did not breach the Code of Conduct in respect of any of the alleged breaches.</i>
Outcome / Sanction applied:	No breach found.

Issued by Monitoring Officer on: 27th August 2021