

*Local Government Act 1993*

**CODE OF CONDUCT PANEL REPORT**  
**DORSET COUNCIL COUNCILLOR CODE OF CONDUCT**

Complaint against Cr Lawrence Archer

Date of Determination: 24 September 2018

Code of Conduct Panel: Lynn Mason (Chairperson), David Sales, Richard Grueber (legal member)

**Summary of the Complaint**

The complaint was submitted by the General Manager, Mr Tim Watson, and received on 5 June 2018. The complaint related to Cr Archer's request for a meeting with the Director of Corporate Services without seeking authorisation from the General Manager. The section of the Code which the Complainant alleged Cr Archer breached is

*Part 7, clause 5: A Councillor must not contact an employee of the Council in relation to council matters unless authorized by the General Manager of the Council.*

**The Complaint**

The General Manager told the Panel that in August 2017, he had informed Cr Archer that he must always seek the General Manager's express permission before he contacted any member of Dorset Council's staff. On 4 April 2018 the General Manager started annual leave, to return on 10 May 2018. During this time he was taking a trip to the USA with his family.

Neither the Mayor nor the Council had appointed an Acting General Manager in accordance with s61B of the *Local Government Act 1993* (the Act) for the duration of the General Manager's absence, but the General Manager stated in an email dated 19 March 2018 to staff and Councillors that he had *put in place specific delegations to deal with any decisions that would ordinarily require my approval.*

*Whilst I don't want to get involved in the day to day minutiae whilst I am away I will of course be staying in contact with the guys.*

On 4 April the Director of Corporate Services conducted a workshop for Councillors, during which he presented Councillors with the draft capital works budget for the forthcoming financial year, and a power point presentation on Council's long-term financial planning.

On 5 April Cr Archer emailed the Director of Corporate Services to say he had some questions arising from the workshop which he wanted to discuss with the Director. The Director agreed to meet Cr Archer on 6 April 2018. The meeting took place that afternoon.

On 20 April Cr Archer emailed the Director of Corporate Services to request another meeting to discuss the agenda for an upcoming workshop. The Director agreed to the meeting, but it was cancelled by Cr Archer who deemed it unnecessary once he had received his agenda papers for the next Council meeting.

### **Preliminary Procedure**

The complaint was referred to the Code of Conduct Panel (the Panel) on 6 June 2018. The Chairperson of the Panel informed Mr Watson and Cr Archer on 8 June 2018 that she had assessed the complaint as a whole, and in accordance with s28ZA (1) (e) of the Act, determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to an alleged contravention of the Dorset Council's Code of Conduct; and
2. The complaint did not appear to be frivolous or vexatious in nature.

The Panel advised Cr Archer that should he wish to respond to the complaint, he could do so in writing by noon on 20 June 2018. Cr Archer's response was received on 15 June and was sent to Mr Watson for his information.

On 22 June 2018 the Panel received a second complaint about Cr Archer from Mr Watson. The Panel met on 27 June 2018 to consider both complaints, Cr Archer's response to the first complaint, and accompanying documentation. The Panel decided that the complaints would be treated separately, but that it would conduct a hearing into both complaints on the 6 September 2018. This was changed to 7 September to accommodate a request by Cr Archer.

Neither party chose to call witnesses. Mr Watson requested that he be represented at the hearing by an advocate, the Mayor of Dorset Council, Cr Greg Howard. The Panel agreed to this.

On 4 September 2018 the Panel was notified that Cr Archer was hospitalised in Canberra and would be unavailable to attend the hearing on 7 September. A medical certificate was provided to the Panel confirming Cr Archer's illness. The hearing was subsequently deferred to 24 September 2018. The time allowed under s28ZD(1)(a) to determine a Code of Conduct complaint was exceeded due to these unavoidable circumstances.

### **Determination**

The Code of Conduct Panel upholds the complaint against Cr Archer.

### **Reasons for the Determination**

Neither the complainant nor the respondent disputed the facts as presented.

Cr Archer stated that the Director of Corporate Services had presented the relevant items at the workshop on 4 April *as if he was in full control of the workshop*. Cr Archer said that because of this circumstance, it *did not enter my head* to contact the General Manager, who was on annual leave, to ask permission to talk to the Director. He said that he was at fault for not seeking permission.

The Panel considers that this admission by Cr Archer establishes that he breached the Code of Conduct.

The Panel also considers that there are mitigating circumstances which it has taken into account. These include:

- The unusual situation wherein the General Manager took five weeks annual leave, during which he travelled overseas, without an Acting General Manager being appointed. The General Manager told the Panel that this did not remove Cr Archer's obligation to ask his permission by telephone or email before contacting the Director to ask questions about the material the Director had presented at the workshop the day before. While this is correct, the Panel considers that, had Cr Archer turned his mind to the restriction on contact with Council employees, it would not have been clear to him from the General Manager's email to Councillors advising of his

impending absence that he intended to continue to exercise the full range of his normal functions while away, nor did it expressly make clear to Councillors that he was available to be contacted while away.

- The Panel considers that it is reasonable for a councillor to seek to approach the Director who presented material at a workshop to ask questions about issues raised at the workshop.
- The approach to the Director was made in the context of the presentation by the Director the previous day and not entirely out of the blue.
- The Director is a senior employee of the Council and so more likely to understand the respective functions of councillors and employees and to engage with a councillor in a resilient manner than might a more junior employee.
- The Panel notes that the General Manager's email of 19 March 2018 regarding his forthcoming leave refers to his desire not to be involved in the *day to day minutiae* of the organisation. The Panel considers that a reasonable person would consider that Cr Archer's requirement to seek permission to talk to a staff member could constitute such a minor matter, particularly given that the staff member did not hesitate to agree to meet Cr Archer.
- The evidence established that Cr Archer had scrupulously obeyed the General Manager's directive since its inception in August 2017 up to the time of the General Manager's going on leave, despite his belief that the reason for its imposition was unjustified.
- The General Manager stated that he never refused Cr Archer permission to approach a staff member. Further, he said that in this instance he would have given Cr Archer permission to do so.
- The Director of Corporate Services did not ask Cr Archer whether he had permission from the General Manager. Had he done so, this may have reminded Cr Archer that the Director had not been appointed as the Acting General Manager.

Cr Archer told the Tribunal that he had not nominated as a candidate for the elections to be held in October 2018, nominations having closed at noon on 24 September.

## Sanction

The Panel considers that Cr Archer's behaviour in approaching the Director of Corporate Services without the General Manager's permission was understandable in the context of the delivery of the workshop and the General Manager's absence on leave. The breach of the Code may be regarded as technical only and posed no threat to the good governance of the Council.

Section 28ZI (2) of the Act says *If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of several listed sanctions* (emphasis inserted by the Panel).

It has previously been determined by the Panel, differently constituted, that having regard to s10A (1)(a) and (c) of the *Acts Interpretation Act*, the use of "may" in s28ZI (2) gives the Panel the discretion to either impose a sanction or not impose a sanction, an interpretation given weight by the use of the directory "is to" in s28ZI (1) of the Act while the discretionary "may" is used in s28ZI (2) of the Act.

The least sanction that is available to the Panel is to impose a caution. The Panel considers that Cr Archer's breach is so minor that it does not merit even a caution, which would be largely pointless in any event given his choice not to stand for re-election. Therefore, although the Panel has upheld the complaint in relation to Part 7 clause 5, in all the circumstances the breach is such that the Panel has determined that none of the sanctions set out in Section 28ZI (2) will be imposed on Cr Archer.

## Right to Review

Under s28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



Lynn Mason (chairperson)



Richard Grueber (legal)



David Sales