

CODE OF CONDUCT PANEL REPORT
DORSET COUNCIL COUNCILLOR CODE OF CONDUCT

Complaint against Cr Lawrence Archer

Date of Determination: 24 July 2018

Code of Conduct Panel: Lynn Mason (Chairperson), Christine Fraser, Steve Bishop (legal member)

Summary of the Complaint

The complaint was submitted on 6 June 2018 by Mayor Greg Howard. The complaint relates to two declarations of interest by Cr Archer in a matter before council. The first of these was at a council workshop on 4 April 2018, when it is alleged that Cr Archer declared his interest in the item *Notice of Motion – Lease and Licence Fees*, and remained in the workshop and participated in discussion. The second event was at the council meeting on 16 April 2018, when Cr Archer declared his interest in item 61/18, did not leave the council chamber, and participated in debate and the vote on the motion. The section of the Code which the Complainant alleges Cr Archer breached is

Part 2 – Conflict of Interest

5. A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.

6. A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must -

(b) act in good faith and exercise reasonable judgement to determine whether the conflict of interest is so material that it requires removing himself or herself physically from any Council discussion and remaining out of the room until the matter is decided by the Council.

The Complaint

Mayor Howard moved a motion of which he had given notice at the council meeting on 16 April 2018, viz.,

That Council remove all licence and lease fees paid by sporting clubs and not for profit community groups (Dorset based) associated with the use of Council owned facilities.

Cr Archer declared an interest in the motion but remained in the room and participated in the debate and the vote. Cr Archer declared that he is the President of the Dorset Community Men's Shed Inc., one of the organisations which would be affected if the resolution passed. The motion was lost.

The complainant alleged that because of Cr Archer's position as President of the Men's Shed, his interest was so material that he should have removed himself from the room until the matter had been decided by Council.

The complainant also alleged that at the council workshop of 4 April 2018, Cr Archer said that *it was beneficial for the Dorset Community Men's Shed Inc. to pay a fee because by doing so it gave the Men's Shed exclusive use of the area they use under the licence agreement.*

The complainant provided the Panel with a copy of the relevant section of the agenda of the meeting of 16 April 2018, a statutory declaration from Cr Leonie Stein (who was also present at the relevant workshop and meeting), the briefing paper provided to councillors for the workshop of 4 April 2018, and excerpts from the *North Eastern Advertiser* newspapers of 25 April 2018, 2 May 2018, 9 May 2018, and 16 May 2018.

Preliminary Procedure

The complaint was referred to the Code of Conduct Panel (the Panel) on 4 June 2018. The Chairperson of the Panel informed Mayor Howard and Cr Archer on 7 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 19 June 2018. Cr Archer's response was sent to Mayor Howard for his information.

The Panel met on 20 June 2018 to consider the complaint, Cr Archer's response, and accompanying documentation. In his response to the complaint, Cr Archer said *I dispute Cr Howard's version of the 4 April workshop discussion. I did say that any group that had the benefit of exclusive use of Council facilities should be*

prepared to pay and that the Men's Shed was happy to pay the fee for the exclusive use of the building.

On 21 June the Panel's Executive Officer emailed Cr Archer at the behest of the Panel, to ask what he thought would be the outcome for the Dorset Men's shed if the motion put by Mayor Howard at the meeting on 16 April 2018 (Item 61/18) were to be passed by council. Cr Archer replied that his understanding was that *if the Mayor's motion was passed there would be no lease fee for the use of the Men's Shed building.*

The Panel also asked the General Manager of Dorset Council to provide a copy of the licence agreement between Council and the Dorset Men's Shed Inc. This was given to the Panel on 21 June 2018.

On 7 July the Panel wrote again to Cr Archer, asking for his views on the proposition that *a councillor may be in breach of the council's Code of Conduct if he participates in debate and then votes on an issue in which he has an interest. This rests on the proposition that the participation in the process is a breach of the Code, even if the outcome does not benefit the individual or his or her organisation.* This email was copied to Mayor Howard.

On 9 July the Panel received a letter from Cr Archer providing his response to the Panel's invitation to comment on 7 July. Cr Archer stated that

Any benefit or loss which may have flowed to the Men's Shed, as a result of the motion, was the same as 21 other user groups of Council facilities. These groups include Branxholm Netball Club, Bridport Football Club, Bridport Netball Club, Derby Netball Club, Ringarooma Netball Club, Ringwood Cricket Club, Scottsdale Football Club, Winnaleah Football Club and Winnaleah Netball Club.

While I do not know the actual membership number of these Clubs, they represent popular sports and would have a substantial proportion of the electors of Dorset municipality as their members.

On 13 July Mayor Howard responded to the Panel's invitation to comment on Cr Archer's statement of 9 July.

Determination of the Code of Conduct Panel

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

Reasons for the Determination

Cr Archer recognised that he had a conflict of interest in the matter before Council. He declared his interest both in the workshop held on 4 April, and in the council meeting on 16 April 2018. Cr Archer did not consider that the conflict of interest was so material that it required removing himself physically from any council discussion and remaining out of the room until the matter was decided by the Council.

The Code of Conduct refers to actual, potential, or perceived conflicts of interest. Cr Archer was obliged under the Code to consider whether he had an actual conflict of interest through his position as President of the Dorset Community Men's Shed, or whether he had a potential or perceived conflict of interest, and if so, whether these conflicts were sufficiently material to demand that he absent himself from any discussion and vote on the matter.

The Panel determines that Cr Archer had a potential conflict of interest, because the success of the resolution would benefit his organisation by removal of the fees. The Panel determines also that Cr Archer had a perceived conflict of interest, because even if the resolution failed and his organisation did not get the benefit of the removal of the annual fees, it was open to speculation that it might get some other benefit. It could be suggested that having sole occupation without interference from any other person is to the benefit to the organisation, so he could be perceived to have an interest if the resolution were to fail.

Cr Archer remained in the council meeting room during the debate on this matter and participated in the vote. He therefore did not avoid and remove himself from a position of conflict of interest as far as reasonably possible.

The Panel recognises that other organisations within the municipality would also be affected by council's decision, and that combined membership of those organisations is likely to be regarded as a significant proportion of the electors of Dorset under s 52 (1A) of the Act. However, the Panel considers that it is unlikely that knowledge of this provision within the Act was sufficiently widespread within the community to remove the perception of conflict of interest.

Cr Archer held the office of President of the Dorset Community Men's Shed. This position required him to exercise greater caution in determining whether he had an actual, potential, or perceived conflict of interest, and to act accordingly.

The Panel therefore determines that Cr Archer's potential and perceived conflicts of interest were sufficiently material to require him to remove himself from the meeting room during the debate and vote. This would have ensured the proper management of conflict of interests, and the preservation of the integrity and appearance of integrity of Council's decisions. It is the integrity of the process that is protected by the Code of Conduct.

Sanction

The Panel notes that Cr Archer acknowledged in his statutory declaration that he may have breached the Code (*I replied that I did not leave the meeting as I felt strongly on the matter, and that if I had done the wrong thing then I would take it on the chin*). Cr Archer's words suggest to the Panel that he did not care whether he breached the Code of Conduct or not. This is an exacerbating factor so far as penalty is concerned.

However, the Panel also notes that Cr Archer believed himself, albeit misguidedly, to be acting in the best interests of rate payers as a whole and voted against the sectional interest of his own organisation.

In the circumstances the Panel is content to issue a caution under S.28ZI (2) (a).

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)



Christine Fraser



Steve Bishop (legal member)