

Local Government Act 1993
DORSET COUNCIL CODE OF CONDUCT
DETERMINATION REPORT*

(Ref: C19437)

Complaint by Mr Lawrence Archer against Mayor Greg Howard

Determination made on 11 December 2019

Code of Conduct Panel:

Rob Winter (Chairperson), Anthony Mihal (Legal Member), and Liz Gillam (Member).

I. Summary of the Complaint

Mr Lawrence Archer initially lodged a Code of Conduct complaint against Mayor Greg Howard on 26 July 2019.

Having been advised by the General Manager of the Dorset Council, Mr Tim Watson, that this complaint did not meet the requirements of s28ZB (1) (ab) of the Local Government Act 1993 ("The Act"), on 11 September 2019, Mr Archer lodged a further complaint.

The General Manager of the Dorset Council, although expressing his own opinions as to the complainant's efforts to resolve the complaint, nonetheless confirmed that the complaint met all requirements of s28V of the Act.

In his complaint Mr Archer alleged that Mayor Howard had breached Part 7 Clause 1(b) and Part 8 Clauses 1, 4, 5, 6, 7 of the Dorset Council's Code of Conduct ("the Code"), which was amended and updated on 15 April 2019.

Specifically, Mr Archer alleged that parts of Mayor Howard's letter of 28 May 2019 to the Hon Rebecca White MP, which was published in its entirety at the Council meeting held on 24 June 2019, breached the Code as alleged.

Relevant parts of the Code are listed below:

PART 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

1. A councillor –
 - a) must treat all persons fairly; and
 - b) must not cause any reasonable person offence or embarrassment, and
 - c) must not bully or harass any person.

PART 8 – REPRESENTATION

1. When giving information to the community, a councillor must accurately represent the policies and decisions of the council.
2. A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duty.

* Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

3. *A councillor must not speak on behalf of the council unless specifically authorised or delegated by the Mayor or Lord Mayor.*
4. *A councillor must clearly indicate when he or she is putting forward his or her personal view.*
5. *A councillor's personal view must not be expressed publicly in such a way as to undermine the decisions of the council, or bring the council into disrepute.*
6. *A councillor must show respect when expressing personal views publicly.*
7. *The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the representation of the council.*

An initial assessment undertaken by the Chairperson on 22 October 2019 determined that the alleged breach of Part 7 Clause 1(b) be dismissed in accordance with s28ZB (1) (b) of the Act, on the grounds that this part of the complaint does not substantially relate to a contravention of the Code, as no evidence was provided by Mr Archer that Mayor Howard had caused any reasonable person offence or embarrassment.

The materials before the Chairperson at initial assessment did not indicate that the complaint should be dismissed per s28ZB (ab), on the basis that in the circumstances, the complainant had not made a reasonable effort to resolve the issue that is the subject of the complaint.

The Chairperson further determined that further investigation was warranted in relation to Mr Archer's complaints of Mayor Howard breaching Part 8, Clauses 1, 4, 5, 6 and 7.

The Code of Conduct panel was constituted in accordance with s28L of the Act to investigate and determine the complaint made by Mr Archer. On 22 October 2019, Mayor Howard was provided with a copy of the complaint and invited to provide a response.

Mayor Howard responded to Mr Archer's complaint by a statutory declaration dated 5 November 2019.

Via email on 8 November 2019 Mayor Howard expressed views regarding the Panel's determination of Mr Archer's complaint.

Mr Archer provided a further statutory declaration and other documentation on 11 November 2019. By statutory declaration dated 20 November 2019 Mayor Howard provided his response to the information contained in Mr Archer's statutory declaration of 11 November 2019.

The Panel considered each of the documents referred to above in its investigation and each document was made available to the parties.

2. Investigation

On 25 November the Panel met to consider the complaint and determined in accordance with s28ZG (2) (a) and (b) that the complaint should be investigated without a hearing as neither the complainant nor the respondent would be disadvantaged, it was appropriate in the circumstances not to hold a hearing, and a hearing was unnecessary because the investigation could be adequately conducted by means of written submissions or examination of documentary evidence. This was because there was no dispute about the facts and events which are the subject of the

complaint, and the investigation was limited to a consideration as to whether those facts and events could be properly characterised as breaches of the relevant code.

The Panel then turned to consider the material before it.

In his submissions, Mayor Howard raised a preliminary issue as to Mr Archer's standing to make a complaint as a person unaffected by the behaviour about which he complained. In considering that matter, the Panel referred to s28V (1) of the Act which states –

“A person, may make a complaint against one councillor in relation to the contravention by the councillor of the relevant council's Code of Conduct.”

The Act does not define “complainant”, nor does it say that there has to be a specific impact or effect on the complainant. The Panel therefore was satisfied that Mr Archer had the ability or standing, to bring his complaint in relation to Mayor Howard's behaviour, notwithstanding that he apparently was not personally affected by it.

As to consideration of the substantive complaint, based on a review of the material before it, the Panel found the following facts:

- 1 At 4.30 pm on Friday 24 May 2019 The Hon Rebecca White MP, leader of the Tasmanian Labor Party and Labor Member for Lyons (Ms White), sent an email entitled “Hodgman and Gutwein plunge Tasmania deep into debt” to Mayor Howard via his email address Mayorhoward@dorset.tas.gov.au.
- 2 At 3.58 pm on Tuesday 28 May 2019 Ms White sent an email entitled “Labor's priorities for Tasmania” to Mayor Howard via his email address “Mayorhoward@dorset.tas.gov.au “. A copy of that email was also sent to Mr Tim Watson, General Manager Dorset Council at 3.58pm.
- 3 On 28 May 2019 Mayor Howard responded to Ms White's email correspondence of 24 May using Dorset Council letterhead bearing “Our Reference Doc/19/5602” with a heading “Office of the Mayor”, signing off “Yours sincerely, Greg Howard – Mayor”.
- 4 Mayor Howard's letter to Ms White came into the public domain on 4 June 2019 when Labor MHR Anita Dow released details of the letter in a House of Assembly Estimates Committee.
- 5 On 13 June 2019 Dorset Council received a question on notice from a Mr Karl Willrath posing a series of questions in relation to Mayor Howard's letter of 28 May 2019 to Ms White. Mr Willrath's queries were listed in, and dealt with in the public question time – item 90/19, in the Dorset Council agenda and meeting of 24 June 2019.

(The Minutes of the relevant section of the council agenda and minutes for the meeting of 24 June 2019 were attached to the complainant's complaint.)

3. Determination

In relation to the allegation of a breach of the Code of Conduct occurring by Mayor Howard's authoring of his letter of 28 May 2019 – specifically the section highlighted by the complainant:

“while no targeted loss of jobs was expected there is clearly massive scope within the middle and upper management levels of the Public Service to reduce the number of staff as many of the public servants in these roles, in all honesty, do not have a real job. Their only contribution is to slow down process and put barriers to progress in order to justify their jobs.”

the Panel determined as follows:

Part 8 ,1 – dismissed;

Part 8 ,4 – dismissed;

Part 8, 5 – dismissed;

Part 8, 6 – dismissed;

Part 8, 7 – dismissed.

With regard to the alleged breach of Part 8, clause 1, it is clear that the relevant section of Mayor Howard's letter of 28 May 2019 is not information representing the policies and decisions of the Council and therefore the Mayor could not have breached this provision of the Code.

With regard to the alleged breach of Part 8, Clause 4, although Mayor Howard's letter of 28 May 2019 is written on Dorset Council letterhead, references the office of Mayor, and is signed off by Mayor Howard in that capacity, on a fair reading of the relevant contents of his letter of 28 May, what Mayor Howard has stated could not be anything other than a personal view as it is clearly not a matter council would consider in its usual operations.

With regard to the alleged breach of Part 8 Clause 5, there is no evidence that the relevant section of Mayor Howard's letter of 28 May relates in any way to decisions of the council. The Panel cannot identify any particular decision of the Council that could potentially be undermined by the Mayor's personal views therein expressed. Further, Mayor Howard's letter of 28 May, was clearly private correspondence to The Hon Rebecca White, and only became public by virtue of matters outside of his control. Therefore the Mayor could not have breached that provision of the Code because he was not publically expressing his personal views.

With regard to the alleged breach of Part 8 Clause 6, the Panel re-states its views regarding the alleged breach of Clause 8 Part 5 above, in particular that the Mayor was not expressing personal views publically for those reasons, and therefore could not be in breach of this provision of the Code.

With regard to the alleged breach of Clause 8, Part 7, although Mayor Howard's words could be viewed as ill-conceived and somewhat flippant, it is not open to a reasonable reader to form a view that the Dorset Council could be implicated in such conduct or suffer reputational damage because of it.

4. Determination of Complaint

S28ZD (1) (of the Act) requires the Panel to investigate and determine the complaint within 90 days of the initial assessment. This provision has been complied with regarding this complaint.

5. Right to Review

A person aggrieved by the determination of the Code of Conduct Panel is entitled under s28ZP of the Act to apply to the Magistrates' Court (Administrative Appeals Division), for a review of that determination on the grounds that the Code of Conduct Panel has failed to comply with the rules of natural justice.



Rob Winter
(Chairperson)



Anthony Mihal
(Legal Member)



Liz Gillam
(Member):