

CODE OF CONDUCT PANEL DETERMINATION REPORT *

DORSET COUNCIL COUNCILLOR CODE OF CONDUCT

(Ref : C19434)

Complaint against Mayor Greg Howard (the respondent) by Mr Karl Willrath (the complainant)

Date of Determination: 30 December 2019

Code of Conduct Panel:

David Sales (Chairperson), Ms Jill Taylor (Community Member) and Richard Grueber (Legal Member)

Background

The complaint was submitted by Mr Karl Willrath through the General Manager, Dorset Council, in accordance with s28Y of the *Local Government Act 1993* (the Act). The complaint was lodged on 18 June 2019. The complaint was forwarded to the Chairperson on 4 July 2019 and an initial assessment was undertaken in accordance with s28ZA of the Act.

The complaint alleges that Mayor Howard had breached the Code of Conduct at a Council meeting held on 21 January 2019 when he refused to allow a question being asked by Councillor (Cr) Edwina Powell on behalf of a “constituent”. Furthermore, Mayor Howard had named Mr Willrath without his permission.

The Chairperson determined on 10 July 2019 that further investigation should be undertaken, and a Panel was established to undertake the investigation.

Subsequent to the submission of the original complaint and before the Panel had commenced its investigation under s28ZE, the Panel received a request from the complainant asking whether he may submit an amendment to the complaint. This request was received on 14 July 2019.

The Panel met on 31 July 2019 and, as it had not commenced its investigation, agreed to accept the amendment from the complainant as provided by s28X of Act.

At this meeting the panel became aware that the complaint had not been properly assessed by the General Manager in accordance with s28Y in that it was not accompanied by a statutory declaration as required by s28V(3)(fa) and did not include information regarding any attempts to resolve the complaint as required by s28V(3)(fb). In advising the complainant that he could submit an amendment, the Panel also further advised that he should consider remedying those deficiencies

* 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.

The Amendment to the Complaint

In his complaint dated 18 June 2019 the complainant alleged that the respondent breached Part 7.1 (a), (b) and (c) of the Dorset Council Councillor Code of Conduct (the Code) adopted by Council on 16 May 2016.

On 20 August 2019 Mr Willrath submitted an amendment to his complaint stating that in addition to breaches against Part 7.1 (a), (b) and (c), Mayor Howard had breached Part 1.4 and Part 2 of the Code. This amendment was accompanied by a statutory declaration dated 20 August 2019.

Preliminary Procedure

The Chairperson of the Panel informed the complainant and the respondent on 10 July 2019 that he 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 the respondent that should he wish to respond to the complaint, he could do so in writing by noon on 20 July 2019. The respondent's response was received on 24 July 2019 and was sent to the complainant for his information.

The amendment to the complaint was received from the complainant on 20 August 2019 and was then sent to the respondent. The respondent submitted a response on 6 September 2019 which was sent to the complainant for his information.

Dorset Council Councillors Code of Conduct

The Parts of the Dorset Council Councillor Code of Conduct the complainant alleged the respondent had breached are as follows:

PART 1 – Decision Making

4. *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

PART 2 – Conflict of interest

1. *When carrying out his or her public duty, a councillor must not be unduly influenced nor be seen to be unduly influenced, by personal or private interests that he or she may have.*
2. *A councillor must act openly and honestly in the public interest.*
3. *A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the councillor has been appointed or nominated by the Council.*

4. *A councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived 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*
 - a. *Declare the conflict of interest before discussion on the matter begins.*

PART 7 – Relationships with community, councillors and Council employees

- I. *A councillor –*
 - a. *Must treat all people with courtesy, fairness, dignity and respect and*
 - b. *Must not cause any reasonable person offence or embarrassment and*
 - c. *Must not bully or harass any person.”*

Details of the Complaint

The complainant alleges that the respondent, in dealing with an attempt by (Cr) Edwina Powell to raise a question on his behalf during Councillor question time at the Council meeting held on 21 January 2019, committed the following breaches of the Code:

- o The complainant was not treated fairly;
- o Cr Powell was not treated fairly;
- o The respondent has caused the complainant offence or embarrassment;
- o The respondent has bullied or harassed the complainant;
- o The respondent has failed to make decisions solely on merit; and
- o The respondent has not declared a conflict of interest relating to his ownership of a vegetable farm in the Dorset Council area which may be subject to infection by Toxoplasmosis and Toxoplasma Gondii.

The Hearing

The Panel advised that the following documents had been received in evidence. These documents had been circulated to all parties and the parties had acknowledged receipt thereof:

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- Original complaint by complainant dated 18 June 2019
- Statutory Declaration by respondent with attachments dated 24 July 2019
- Amendment to the complaint from the complainant dated 20 August 2019 and accompanying
- Statutory Declaration from the complainant dated 20 August 2019

- Statutory Declaration from the respondent relating to amended complaint received 6 September 2019
- Statutory Declaration from the respondent dated 4 October 2019
- Statutory Declaration from Mr Tim Watson, General Manager, Dorset Council dated 4 October 2019
- Extracts of Parts 1.4, 2 and 7.1 (a), (b) and (c) of the Dorset Council Councillor Code of Conduct

Both the respondent and the complainant had extraneous additional material, however, in accordance with s28ZE (2) (a) of the Act, the Panel determined that this additional information was not relevant to enabling the Panel to determine the complaint.

Because Mayor Howard raised various concerns and requested that security be provided at the hearing, the Panel determined that the hearing would take place by telephone. The Panel met in a central location and the complainant, respondent and any witnesses were to give evidence via telephone.

The Panel had called Cr Edwina Powell as a witness to give evidence in relation to her attempt to ask the question on behalf of the complainant at the Council meeting of 21 January 2019.

The hearing was scheduled for 9.00 am on 27th November 2019. Shortly after the commencement of the hearing the Panel became aware that the respondent was participating in the hearing while driving a motor vehicle. After a brief adjournment and Panel discussion the Chairperson advised that the hearing would not proceed because of road safety and technical issues. The matter was adjourned to a date to be determined.

The hearing resumed at 9.30 am on 13 December 2019.

Both Mayor Howard and Mr Willrath made an affirmation to the effect that the evidence they would submit would be the truth.

The complainant advised that he wished to principally rely on his written submissions, but added that he believed Mayor Howard had a conflict of interest in relation to domestic and feral cats spreading toxoplasmosis in the area. Mr Willrath claimed that Mayor Howard's conflict of interest arose out of his business of producing crops for sale. Mr Willrath added that he did not want his name mentioned at the meeting and that he was approached by Cr Powell to discuss the cat matter. He stressed to Cr Powell that he did not want his name mentioned.

Mayor Howard had no specific questions for Mr Willrath. The Panel asked Mr Willrath whether there had been a specific matter that had been discussed by Council where Mr Willrath considered Mayor Howard should have declared a conflict of interest. Mr Willrath was unable to provide an example.

Cr Powell was then added to the hearing conference call. Cr Powell made an affirmation stating that her evidence would be the truth.

All parties then listened to the part of the audio tape of the Council meeting of 21 January 2019 where Cr. Powell had attempted to raise a question on behalf of a constituent. The following is a transcript of that section of the Council Meeting:

“Transcription – 21 January 2019

Dorset Council – Council Meeting | Councillor Question Time Extract

Councillor Edwina Powell	<i>I've got a question on behalf of a constituent who wasn't able to come here today</i>
Mayor Greg Howard	<i>On behalf of who?</i>
Councillor Edwina Powell	<i>Sorry?</i>
Mayor Greg Howard	<i>On behalf of who?</i>
Councillor Edwina Powell	<i>Of, of one of the residents who is unable to come here</i>
Mayor Greg Howard	<i>So who is that?</i>
Councillor Edwina Powell	<i>He is not prepared to give his name and you know exactly who I am talking about</i>
Mayor Greg Howard	<i>So Karl Willrath, yeah</i>
Councillor Edwina Powell	<i>Well um ...</i>
Mayor Greg Howard	<i>I actually wrote back to Karl and said if he wants to ask a question in public question time he has the option. He can actually put the question in as a question on notice and an answer would be provided in the Agenda, otherwise he needs to come and ask the question himself, and its not that he can't get here, his reasons are different to that. So I am not going to allow the question.</i>
Councillor Edwina Powell	<i>You're not going to allow the question?</i>
Mayor Greg Howard	<i>No.”</i>

This was immediately followed by a general query by Cr Powell as to how she could raise important issues such as toxoplasmosis on behalf of ratepayers.

On 6 January 2019 Mr Willrath had emailed Mayor Howard (and copied in all Councillors) with a question he wished to have answered at the next Council Meeting but indicated that he did not wish his name or address to be disclosed. Mayor Howard, by return email, advised Mr Willrath that the question could not be tabled unless his name and address were disclosed.

Cr Powell indicated that she had been first elected to Council in November 2018 and this was only the second or third meeting she had attended, and she was still coming to terms with Council meeting procedures.

Cr Powell confirmed that she had spoken with Mr Willrath and that Mr Willrath made it clear to her that he did not want his name mentioned at the meeting. Given her limited experience, Cr Powell decided to ask her question commencing with the words “*I've got a question on behalf of a constituent*”. Cr Powell said now with some experience behind her she would simply have put the question on her own behalf and thereby would not be put in a position where the Mayor kept asking her to reveal the identity of the person.

Mayor Howard advised there were two ways for the public to raise questions with Council: (1) written notice may be given seven days prior to Council Meeting or (2) members of the public

could attend a Council meeting and pose a question. Regardless of the method, the name and address of the person asking the question had to be provided

Mayor Howard advised that "councillor question time" had been included in meeting procedures in addition to question time by members of the public. Council policy has not been updated to include this feature of Council meetings. Mayor Howard told the hearing that it was the intention of the policy for councillors to name a person when asking questions on their behalf.

Cr Powell confirmed that there was a provision for questions to be raised at Council meetings, by members of the public and councillors. Mayor Howard was asked during his time in Council whether other councillors had raised questions on behalf of constituents. Mayor Howard responded that he wouldn't know unless the councillor had stated it. The Panel concluded that had Cr Powell asked her question without stating that it was being put on behalf of another person, it may have been accepted.

The Panel asked Cr Powell whether she felt she was treated unfairly. She told the hearing that she did feel unfairly treated and that there was no consideration or assistance given to her as a newly elected member. She said she was surprised that when trying to ask a question she was "mocked" by other councillors.

Councillor Powell then left the hearing.

The respondent then spoke to his submissions stating that he did not believe he had a conflict of interest to declare and that aspect of the complaint was frivolous. He indicated that he did grow vegetables for human consumption but those he grew were not subject to toxoplasmosis. He submitted that he treated all questions raised by members of the public fairly. He indicated that he had complied with Council's policy, and therefore could not see how Mr Willrath could have been bullied, harassed or embarrassed.

When asked by the Panel about his treatment of Mr Willrath, Mayor Howard he said he had treated Mr Willrath fairly and in the same manner as he would any other person in the same situation.

Mr Willrath summarised by stating, in mentioning his name in open Council, Mayor Howard had embarrassed him, as Mayor Howard was aware that he did not wish to be named. He also considered this behaviour to be bullying or harassment. He further indicated that the Mayor had a conflict of interest in that owned land producing crops which could be affected by toxoplasmosis

Mayor Howard summarised by stating he had acted at all times within Council's Policy on "Public Question Time and Deputations". He said he had only mentioned Mr Willrath's name to confirm with Cr Powell that Mr Willrath was the person she was endeavouring to ask a question for. At all times he had treated the attempt in the same manner that he had treated similar requests in the past and he could not see how this was unfair or constituted bullying and harassment. He also did not see that mentioning Mr Willrath's name should embarrass him.

In respect of the alleged conflict of interest, Mayor Howard indicated that there was at no time any matter being discussed by Council and consequently no need for him to consider if he had a conflict of interest.

Reasons for the Determination

The Panel's determination was based on the evidence put before it in writing and at the hearing as it relates to the relevant Parts of the Dorset Council Code of Conduct.

Part 1.4 of the Code of Conduct relating to decision making, specifically that a councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions

In relation to this Part, the Panel determined that there was no question posed, discussed or decided in relation to the question attempted to be put by Cr Powell at the Council meeting. There was no evidence that there had been a breach by Mayor Howard in relation to this Part of the Code.

Part 2 of the Code of Conduct relating to Conflict of Interest

In relation to Part 2, the Panel determined that as the subject of cats and toxoplasmosis was not a matter listed for discussion at the Council meeting of 21 January 2019, there was no requirement for Mayor Howard to declare an interest.

Part 7.1 (a) relating to Relationships with community, councillors and Council employees, specifically that a councillor must treat all people with courtesy, fairness, dignity and respect.

In relation to Part 7.1 (a), the evidence from Mayor Howard made it clear that he did not treat Mr Willrath or Cr Powell in any way differently to any other person who might make a similar request and therefore they were not treated in an unfair manner.

Part 7.1 (b), specifically that a councillor must not cause any reasonable person offence or embarrassment.

In relation to Part 7.1 (b), the Panel determined that mentioning Mr Willrath by name at the Council meeting of 21 January 2019 in the context of refusing to permit Cr Powell to put a question on his behalf was not sufficient to cause a reasonable person embarrassment or offence. Mr Willrath's concern was having his name linked to the issue of cats and toxoplasmosis. Mayor Howard's mention of Mr Willrath's name in response to Cr Powell's attempt to ask the question was made before the question was put and followed by a ruling that the question would not be allowed. The only reference to cats and toxoplasmosis was made by Cr Powell after the question was disallowed and occurred in the context of Cr Powell asking for direction on the method of raising questions by constituents.

Part 7.1 (c) specifically that a councillor must not bully or harass any person

In relation to Part 7.1 (c) the Panel determined that Mr Willrath had not been subjected to repeated, prolonged and unwarranted behaviour against him which would normally constitute bullying and harassment. Mere mention of his name in the exchange with Cr Powell could not reasonably constitute bullying or harassment. Therefore, the Panel determined that Mayor Howard did not bully or harass Mr Willrath.

Determination

For the reasons set out above the complaint is dismissed.

Delay in issuing the determination report

s28ZD of the Act requires a panel to make every endeavour to issue a determination within 90 days of the Chairperson of the Panel determining under s28ZA to investigate and determine the complaint.

The Chairperson completed the initial assessment on 10 July 2019. the determination therefore exceeded 90 days. The delay in reaching and issuing a determination was caused by:

- The initial complaint was lodged on 18 June 2019, but the complainant sought and was granted approval for an amendment which was lodged on 20 August 2019.
- After being advised that an amendment would be accepted, the respondent questioned the legality of the complaint and raised concerns about security arrangements. This required the Panel to seek both legal and administrative advice. The timeframe for obtaining that advice resulted in a hearing which had been scheduled for 11 October 2019 being deferred until 27 November 2019.
- Further delay was caused by the difficulty in identifying a mutually convenient hearing date.
- It was necessary to adjourn the hearing on 27 November 2019 as Mayor Howard was attending the hearing by phone whilst driving his motor vehicle and this was considered unsafe and inappropriate by the Panel. The hearing was unable to resume until 13 December 2019 due to Panel members' other commitments.

General Comments

The Panel makes the following observations:

1. In assessing the complaint, the General Manager failed to observe all of the requirements of s28Y. This occurred because the Council had not updated its procedures following changes to the legislation in December 2018. The Council should ensure it complies with legislative requirements.
2. The Council's Policy #41 (Public Question Time and Deputations) should be updated to include that part of the meeting that enables Councillor Question Time and to cover the situation where a councillor asks a question on behalf of a constituent.
3. If giving evidence at a hearing via telephone, all parties should show respect to the process by ensuring that they are in a safe and secure environment which complies with occupational health and safety requirements.

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.



David Sales
Chair



Jill Taylor
Community Member



Richard Grueber
Legal Member