

Local Government Act 1993

CLARENCE CITY COUNCIL CODE OF CONDUCT DETERMINATION REPORT *

Complaint by Alderman (Ald) Brendan Blomeley against Alderman (Ald) Tony Mulder

(Ref : C19472)

Determination made on 13 December 2019

Code of Conduct Panel:

Jill Taylor (Chairperson), Rob Winter (Legal Member) and Penny Cocker (Member).

1. Summary of the complaint

Ald Brendan Blomeley lodged a Code of Conduct Complaint (the Complaint) dated 14 October 2019, against Ald Tony Mulder. The General Manager of the Clarence City Council, Mr Ian Nelson, confirmed that the Complaint met all requirements of Section 28V of the Local Government Act 1959.

Ald Blomeley alleged that Ald Mulder breached Part 3.1, Part 7 1 (a), (b) and (c) and Part 8.7 of the Clarence City Council Code of Conduct (the Code) which was updated on 15 February 2019.

Specifically, Ald Blomeley alleged that on 1 October 2019, Ald Mulder posted a statement on his social media platform, Facebook, which Ald Blomeley indicated was directed at him. The post at 3.58 am followed a Council meeting the previous evening where Ald Blomeley and others voted against a motion submitted by Ald Mulder. Furthermore, Ald Blomeley alleged that Ald Mulder sent an offensive private message on 10 October 2019 to one of his friends, Mr Harrison Grafanakis, which he claims was highly inappropriate and designed to bully him (Mr Grafanakis).

Relevant Parts of the Code are listed below:

PART 3 – Use of Office

3.1 *The actions of a councillor must not bring the Council or the office of a councillor into disrepute.*

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

8.7 *The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

An initial assessment was undertaken by the Chairperson who determined on 28 October 2019 that further investigation was warranted in relation to Ald Blomeley's complaint.

A Code of Conduct Panel was formed to investigate the complaint made by Ald Blomeley. On 29 October 2019 Ald Mulder was provided with a copy of the Complaint and invited to provide a response. Ald Mulder submitted a response by way of a statutory declaration dated 20 November 2019.

* 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.

2. Investigation

On 28 November 2019 the Panel met to consider the complaint and determined in accordance with Section 28ZG (2) (a) and (b) that the complaint could be investigated without a hearing as neither the complainant nor the respondent would be disadvantaged. Furthermore, having regard to the statutory declarations submitted by the complainant and the respondent, there was no dispute about the facts of the events which occurred on 1 October 2019 and 10 October 2019. Both Ald Blomeley and Ald Mulder submitted additional documentation that did not necessarily relate to the events that were alleged to have occurred on 1 and 10 October 2019. The Panel concluded that the presentation of this material pointed to a long history of antipathy between the two Aldermen.

In considering Ald Blomeley's complaint in relation to the message from Ald Mulder to Mr Harrison Grafanakis on 10 October 2019, 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 Ald Blomeley had the ability or standing to bring his complaint in relation to the private message from Ald Mulder to Mr Grafanakis.

The Panel first considered the complaint relating to the event of 1 October 2019. Ald Blomeley stated that Ald Mulder posted the following message on his Facebook page:

"Remind you of anyone???"

Narcistic Personality Disorder (NPD) What are the Key Symptoms of NPD?

A person with NPD often has an inflated sense of self-importance. This is combined with a lack of empathy, as they see things only from their perspective. It can be difficult for them to understand the importance of social norms, ethics and laws, rather interpreting them as limitations in their own lives. They expect life to work according to their understanding. Underneath, they can be quite fragile because of the confusion their misperceptions brings. The sense of being "wounded" can result in extreme rage in some people with NPD. Others may project problems in their lives onto others, especially spouses and children"

In his statutory declaration, Ald Mulder stated that the above post was made by him in his capacity as a private individual and that he did not use the term "councillor". Ald Mulder advised he has a business Facebook page on which he represents himself as a councillor. Ald Mulder also asserted that his Facebook post was a re-post of a widely circulating Facebook post relating to the behaviour of US President Donald Trump, and in relation to press reporting of a domestic incident concerning the behaviours of the UK Prime Minister at his London flat. He stated that he had in mind the behaviour of some Federal and State politicians. He said he did not name anyone, nor suggest he was acting in his role as a Councillor.

Ald Mulder contended that by using his private Facebook page, he had not brought the office of councillor into disrepute, nor did it reflect adversely on the Council.

As indicated by Ald Mulder in his statutory declaration, the content of the post of 1 October 2019 did not identify any particular person or councillor, and no evidence was put forward by Ald Blomeley pointing to him being the subject of Ald Mulder's Facebook post.

The Panel next considered the alleged breach of 10 October 2019 where Ald Mulder sent a personal message by Facebook Messenger to Mr Harrison Grafanakis. Mr Grafanakis' statutory declaration dated 15 October 2019 was submitted as an attachment to Ald Blomeley's complaint.

Ald Blomeley submitted that the chain of events that occurred on 10 October 2019 was as follows:

5.33pm	Mr Harrison Grafanakis posted a photo of himself with Ald Blomeley on his Instagram page
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5.33pm Ald Blomeley posted the same photo with the following caption on his Aldermanic Facebook page: "It was great to spend some time on the hustings today with my friend Harrison Grafanakis. With guys like Harrison, the future is in good hands".

10.41pm Mr Grafanakis received a Facebook Messenger message from a "Tony Mulder"

11.46pm Mr Grafanakis sent a copy of the message from Ald Mulder to Ald Blomeley

The private Messenger post from Ald Mulder to Mr Grafanakis stated:

"Really Harri (sic). Google this narcissistic (sic), wife abusing, misogynist (sic) turkey b4 backing him".

Ald Blomeley stated in his complaint that Mr Grafanakis was a "friend and political supporter". In his statutory declaration, Mr Grafanakis stated that he "provides volunteer assistance to Ald Blomeley with management and strategic advice of his online and social media profile".

Ald Mulder, in his statutory declaration in response to this complaint, stated that he was using Messenger as a private citizen, and not a councillor and that he had "mistakenly" sent the message to Harrison instead of his father Mr Aris Grafanakis. The Panel finds this explanation difficult to accept as the photo of Alderman and Mr Harrison Grafanakis, which apparently prompted Ald Mulder's message, clearly showed Harrison as a young person, and Ald Mulder conceded he has received and accepted a Facebook friend request from Mr Harrison Grafanakis in September 2019.

The Panel took into account that Mr Harrison Grafanakis is a 16-year-old young man. Given his relative youth and inexperience, the Panel accepts that it would not be unreasonable for him have been upset and concerned for his friend, Ald Blomeley, when he received the message through Facebook Messenger from Ald Mulder. Whilst Ald Mulder states that he used his private Messenger service, the Panel accepts that it would be reasonable for someone of Mr Grafanakis' young age, to not distinguish between Mr Mulder, private citizen and Ald Mulder, Clarence City Councillor. In fact, in his statutory declaration Mr Grafanakis describes Ald Mulder as a colleague of Ald Blomeley and noted Ald Mulder's previous public service. Mr Grafanakis went on to say that he was deeply concerned that Ald Mulder would conduct himself in such a manner.

3. Determination

In relation to Ald Blomeley's complaint that Ald Mulder had breached Part 3.1, Part 7 1 (a), (b) and (c) and Part 8.7 in relation to the Facebook post of 1 October 2019, the Panel determined that the complaint be dismissed in relation to all nominated Parts of the Code.

In relation to Part 3.1, the Panel determined that there was no evidence put forward that Ald Mulder brought the Council or the office of councillor into disrepute. The Panel accepts Ald Mulder's statement that he uses two Facebook accounts, one for his official business as a Councillor and the other for his personal use. In relation to the post that was dated 1 October, Ald Mulder stated that the statement he posted was only "viewed by 11 people and it attracted 1 'comment' and 3 'shares'". From this the Panel concluded that the post was not widely viewed.

In relation to Part 7 1 (a), (b) and (c), the Panel determined that the Facebook post made by Ald Mulder did not identify any of his colleagues, specifically Ald Blomeley. Ald Blomeley did not provide any evidence to the Panel which clearly demonstrated that he was the subject of Ald Mulder's post. Therefore, the Panel is satisfied that Ald Mulder did not treat Ald Blomeley unfairly, nor could his actions reasonably cause offence or embarrassment to Ald Blomeley. Further, there was no evidence provided that this behaviour constituted bullying or harassment of Ald Blomeley. Whilst Ald Blomeley may have assumed that he was one of the targets of Ald Mulder's post there was no evidence to suggest this was the case.

In relation to Part 8 which deals with representation, the Panel determined that Ald Mulder's behaviour did not reflect adversely on the Council. The Panel acknowledged that the Facebook post made by Ald Mulder on 1 October 2019 was sent from his private Facebook page and he did not make reference to his role as a councillor. As mentioned previously, the message itself was only accessed by a small number of people.

In relation to the allegation of a Code of Conduct breach which occurred on 10 October 2019, the Panel determined as follows:

Part 3.1 -	upheld
Part 7.1 (a)	dismissed
Part 7.1 (b)	upheld
Part 7.1. (c)	dismissed
Part 8.7	dismissed

Whilst the Panel acknowledges that Ald Mulder was using his private social media platforms, it also accepts that Mr Harrison Grafanakis, a sixteen-year-old, did not necessarily understand that Ald Mulder had disassociated himself from his public official role. Mr Grafanakis' statutory declaration conveys that he understood the private Messenger post as coming from Tony Mulder who he knows to be a councillor with the City of Clarence along with Ald Blomeley.

The purpose of the Code of Conduct for councillors is to set out expectations of how elected members should behave. The Panel acknowledges that in some instances, elected members may act differently to how they act in their official role. However, elected members are usually known by their communities as their representatives and any actions, unless specifically stated as acting in a private capacity, can be interpreted as those of an elected member. The Panel determined that this was the case with Mr Grafanakis when he received the Messenger posting from Tony Mulder.

The Panel considers that it is beholden of an elected member to maintain a high standard of behaviour as a representative of Council. To this extent, a councillor must understand that it is not only the intent of the communication they initiate but also how it can be interpreted by the recipient. In this case, Mr Grafanakis reacted to the message as being sent by Ald Mulder.

In relation to Part 3.1, the Panel determined that Ald Mulder's action did not bring the Council into disrepute, but it did bring the office of councillor into disrepute.

In relation to Part 7.1 (a), the Panel determined that Ald Mulder did not treat Mr Harrison Grafanakis unfairly in relation to the message he sent on his private Messenger service. However, in respect to Part 7.1 (b), having regard to the statutory declaration made by Mr Grafanakis, the message did cause him offence and he was embarrassed by the statement made by Ald Mulder about his friend, Ald Blomeley. The Panel determined that as there was no long-standing communication between Ald Mulder and Mr Grafanakis, it did not constitute bullying or harassment and therefore Ald Mulder did not breach Part 7.1 (c).

In relation to Part 8.7 no evidence was submitted to the Panel that supported Ald Blomeley's assertion that Ald Mulder had represented the Council in such a manner as to adversely impact on the reputation of Council.

4. Sanction

Subsequent to its determination, both Ald Mulder and Ald Blomeley were contacted by the Chair of the Panel and asked if they wished to make any submissions as to the imposition of any, or an appropriate sanction, in respect of parts of the complaint which the Panel found proven. A copy of the draft determination was also forwarded to them.

Ald Blomeley provided a response dated 6 December 2019 and Ald Mulder provided a response dated 7 December 2019. The Panel considered these responses in its determinations in relation to sanction.

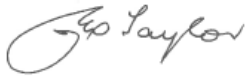
As a consequence of a consideration of the material before the Panel, the Panel determined that Ald Mulder be cautioned in respect of breaches of Part 3.1 and Part 7.1 (b) in relation to the matter of complaint, based on the events which occurred on 10 October 2019.

The Panel considered that although this was the first complaint against Ald Mulder, given his experience in public office over a number of years, a caution was the appropriate sanction.

During its consideration of matters relating to sanction, the Panel noted Ald Mulder's indicated intention to apologise in person to Mr Harrison Grafinakis. The panel, without ordering such action, commends Ald Mulder's indications in this regard and encourages him to follow through with that apology.

5. Right to Review

A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP 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.



Jill Taylor
Chairperson



Rob Winter
Legal Member



Penny Cocker
Member