

*Local Government Act 1993*  
**GEORGE TOWN COUNCIL CODE OF CONDUCT DETERMINATION REPORT \***  
**RELATING TO THE CONDUCT OF COUNCILLORS**

Complaint by Councillor Christopher Barraclough against Mayor Greg Kieser  
Reference : c19670

Determination made on 8 September 2020

**Code of Conduct Panel:**

Jill Taylor (Chairperson), Steven Bishop (Legal Member) and Liz Gillam (Member)

**I. Summary of the complaint**

On 25 November 2019, a Code of Conduct Complaint (the complaint) made by Councillor (Cr) Christopher Barraclough against Councillor (Cr) Greg Kieser was forwarded by Mr Shane Power, General Manager, George Town Council to the Executive Officer, Code of Conduct Panel. The General Manager confirmed that the complaint met the requirements of Section 28V (3) of the *Local Government Act 1993* (the Act). Cr Barraclough's complaint was dated 20 November 2019 and his statutory declaration was dated 25 November 2019.

The Executive Officer referred the complaint to the Chairperson of the Code of Conduct Panel for initial assessment.

The complaint alleged that Cr Kieser had breached Parts 3.1, 3.2 and 3.3, Parts 7.1 (a), (b) and (c) and 7.2, and Parts 8.5, 8.6 and 8.7 of the George Town Council's Code of Conduct (the Code), which was approved on 21 January 2019.

Specifically, the complaint alleged that Cr Kieser had made derogatory remarks about Cr Barraclough in a telephone conversation with Cr Justine Brooks in the lead up to the Mayoral elections in 2019.

The relevant Parts of the Code of Conduct are as follows: -

**PART 3 – Use of Office**

- 1     *The actions of a Councillor must not bring the Council or the office of Councillor into disrepute.*
- 2     *A Councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.*
- 3     *In his or her personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), a Councillor must not expect nor request expressly or implicitly, preferential treatment for himself or herself or any other person or body.*

\* 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.

## **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.
- 2 A Councillor must listen to, and respect, the views of other Councillors in Council and committee meetings and any other proceedings of the Council and endeavour to ensure that issues, not personalities, are the focus of debate.

## **PART 8 – Representation**

- 5 A Councillor's personal views 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 reputation of the Council.

The Chairperson undertook an initial assessment of the complaint and, on 12 December 2019, advised the complainant, the respondent and the General Manager that further investigation was warranted.

A Code of Conduct Panel was formed to investigate the complaint.

Cr Kieser was invited to provide a response to the complaint and subsequently submitted a statutory declaration dated 17 December 2019.

Following a preliminary meeting the Panel requested, on 13 January 2020, that Cr Kieser provide the following additional information -

- A copy of an article that appeared in the Examiner newspaper dated 23 July 2019
- A transcript of an interview with a local community radio station
- Names and contact details of the four councillors he called at the time he spoke with Cr Brooks.

Statutory declarations were subsequently received from Cr Brooks, Cr Dawson, Cr Mason, Cr Michieletto and Mr Daron Gumley, Vice-President, George Town Chamber of Commerce.

Cr Kieser also provided a copy of the Examiner newspaper article and a copy of the August 2019 edition of the George Town Council newsletter. He advised that he was unable to obtain a recording from the local radio station. The Panel determined that this recording was not essential in light of the other evidence provided by Cr Kieser.

By mid-March 2020, the Executive Officer was in the process of arranging a hearing when the Premier announced that the State of Tasmania was to go into lock-down due to the Corona virus pandemic.

Once the lock-down measures were lifted, the Executive Officer re-commenced making arrangements for the hearing to proceed.

## 2. Investigation

The hearing took place on 22 July 2020 at the George Town Council Chambers. The Chairperson, Jill Taylor attended in person with Panel members Steven Bishop and Liz Gillam attending via Zoom. Cr Kieser, Cr Barraclough and witness Cr Justine Brooks attended in person. Both Cr Barraclough and Cr Kieser made an affirmation prior to giving evidence.

At the commencement of the hearing, the Chairperson advised how the proceedings would be conducted and read out the options available to the Panel in relation to sanctions, should part or all of the complaint be upheld.

The following documents were before the Panel as evidence: -

- a statutory declaration dated 25.11.19 with Complaint dated 2.11.19 from Cr Barraclough
- an Email dated 10.6.19 from Cr Brooks to General Manager S Power (partly redacted) which was attached to Cr Barraclough's complaint
- The George Town Council's Code of Conduct, version approved on 21 January 2019
- a statutory declaration dated 17.12.19 from Cr Kieser
- a statutory declaration dated 28.1.20 from Cr Brooks
- a statutory declaration dated 28.1.20 from Cr Dawson
- a statutory declaration dated 30.1.20 from Cr Mason
- a statutory declaration dated 26.3.20 from Cr Michieletto
- a statutory declaration dated 20.3.20 from Mr Darren Gumley
- a copy of determination report, C19437, Lawrence against Howard
- an email from Cr Kieser to the Executive Officer dated 14 January 2020 with a link to the Examiner paper article and a copy of the George Town Council newsletter August 2019.

Cr Barraclough was invited to speak to his complaint. He commenced by stating that he was not looking for an outcome that would see Cr Kieser removed from office as he is doing a "good job as Mayor". However, he said he could not say the same thing about Cr Kieser during the Mayoral election period. Cr Barraclough said that Cr Kieser adopted a "win at all costs" approach, which he did not have problems with.

Cr Barraclough said however the main issue was that Cr Kieser did not comply with the rules contained in the Council's Code of Conduct in relation to remarks made about some other councillors and their respect for women.

Cr Barraclough went on to say that he was offended when he heard from Cr Brooks that Cr Kieser had made comments to her about his (and Cr Harris) suitability as a candidate for Mayor. Cr Barraclough said that he "was not bothered" about Cr Kieser saying he "was not polished", but to say that he "did not respect women" he found highly offensive.

Cr Barraclough said he has never singled out women as a subject to be disrespected, noting half the voters were women. He was concerned that Cr Kieser's views as expressed to Cr Brooks could become known in the community.

Cr Barraclough said his complaint was simple in that it related to a conversation between Cr Brooks and Cr Kieser. He added that he wanted the Panel “to disregard all the other statutory declarations” from people unless they were present during the conversation in question. He said that the media statements should also be disregarded as they did not relate to the phone call.

Cr Barraclough made the point that Cr Brooks had reported her conversation with Cr Kieser to the General Manager within 24 hours. He added that Cr Brooks had many qualities and that he does not believe that she is a liar. On the other hand, Cr Kieser had stated in his statutory declaration that his recollection of the conversation “was vague at best”.

Cr Barraclough described Cr Brooks as a “feminist” who is deeply passionate about equal rights for women.

There were no questions from the Panel or Cr Kieser of Cr Barraclough.

Cr Brooks then attended the hearing and took an oath prior to providing evidence.

Cr Brooks said she received a phone call from Cr Kieser during his campaign for the position of Mayor. She said that Cr Kieser started “with an elevated pitch which is not unusual”. She added that Cr Kieser was respectful in terms of his tone and the way he spoke to her, but it was some of the content that concerned her. This content was Cr Kieser’s reference to the other two contenders for the Mayoral position. Whilst Cr Kieser did not name the two people it was evident that it was Cr Harris and Cr Barraclough as they were the only other candidates for the position of Mayor. Cr Brooks said that Cr Kieser had made a comment that his two opponents were “not polished and did not respect women”.

Cr Brooks said the reason for the “robust” conversation related to a previous matter (a motion she had put to Council) that she and Cr Kieser had not seen “eye to eye” on. Cr Brooks told the Panel that she was a “copious” note taker and when she reflected on the conversation with Cr Kieser, she decided to send an email to the General Manager. Cr Brooks said the email was not only to advise the General Manager of Cr Kieser’s remarks about his opponents, but to put it on the records that she was “animated” in discussing the motion. At that stage Cr Brooks was not contemplating a code of conduct complaint.

Sometime later when Cr Brooks was speaking with Cr Harris he told her he had heard information that Cr Kieser was making disparaging statements about him and asked Cr Brooks if she had heard anything. Cr Brooks replied that yes, when he was campaigning for position of Mayor Cr Kieser had made some inappropriate comments about him. Cr Brooks told Cr Harris that she would not reveal the content of the conversation, but advised him that she had sent an email about it to the General Manager. She suggested that Cr Harris talk to the General Manager about the matter. Cr Harris told Cr Brooks that he had told Cr Barraclough, which Cr Brooks had specifically advised him not to do.

The Panel asked Cr Brooks whether she had heard from any other source that Cr Kieser had made similar comments about his opponents. Cr Brooks said that Cr Barraclough told her that people were coming into his shop providing similar information. Cr Brooks said that she had not heard anything from any other sources.

In reply to a question from the Panel, Cr Brooks said that, from memory, she had received the phone call from Cr Kieser in the afternoon on her mobile phone. She added that Cr Kieser opened the conversation saying that he was approaching all councillors seeking their support for him as Mayor. Cr Brooks responded that she was surprised he was ringing her given her expressed position about him shutting down her motion without any debate. She added, she found his statement about his opponents “a bit rich” given she felt he had disrespected her in relation to the Council motion.

Cr Kieser questioned Cr Brooks by asking if she thought her email to the General Manager was “vague” and whether that was her intention. Cr Brooks replied that the main point of the email was to report on the discussion about the Council motion, but she felt so strongly about Cr Kieser’s comments about his opponents that she included that in the email. Cr Brooks reiterated that at that point she was not intending it to form a complaint but felt that the General Manager may have discussed it with Cr Kieser.

Cr Barraclough asked Cr Brooks if she was a person who would stand up for all people. She responded by saying she would speak up about equality at every opportunity. Cr Brooks described herself as a “social justice warrior”. Cr Barraclough asked if it would be in her nature to respond to the comments made by Cr Kieser about him. Cr Brooks said that she felt Cr Kieser had made the statement to her as a means of appealing to her to vote for him (on the basis that his opponents did not respect women). However, it had the opposite effect.

Cr Barraclough asked Cr Brooks if she thought he (Cr Barraclough) disrespected women. Cr Brooks said that there “was room in Council for improvement” but she did not have an opinion that he disrespected women.

Cr Barraclough asked Cr Brooks whether she was aware of Cr Kieser acting in a similar manner before and Cr Brooks referred to some confidential text messages from another person over a year ago that had “expressed concerns” about “the tactics” Cr Kieser had then used.

The Panel has declined to give any weight to the allegations, on the basis that they were too remote in time, too vague, the maker of the allegations had not been called as a witness, Cr Kieser had been given no notice of the allegations, and they went only to propensity and were not relevant to the facts in issue.

Cr Brooks was excused from the hearing.

Before Cr Kieser was invited to respond to the complaint, Cr Barraclough again requested that the statutory declarations submitted on behalf of Cr Kieser be removed. The Chairperson advised that Cr Barraclough did not have the right to make that request and it would be up to the Panel to determine what weight, if any, would be given to those documents. Mr Bishop said the Panel noted Cr Barraclough’s objection, but it would be up to the Panel to determine how the documents should be treated.

Cr Kieser told the Panel that he essentially had two lines of response to this complaint. In the first instance he referred to a Code of Conduct determination C19437 in the matter of Archer against Howard where he specifically referred to the determination in relation to Part 8.5 of the Dorset Council’s Code of Conduct deciding that that investigation found a communication between Mayor Howard and Ms Rebecca White, Leader of the Opposition, was a private matter. He said his conversation with Cr Brooks was between two people and he was not

acting in his capacity as a councillor. Cr Kieser said he was using determination C19437 as the circumstances were the same. That is, both were private communications between two people, albeit one in writing and one by telephone.

When asked by the Panel what Part 8.5 of the Dorset Council Code related to the complaint by Cr Barraclough, Cr Kieser was unable to articulate. The Panel advised that he needed to show how that provision related to the complaint currently under investigation. For example, the Panel referred to Part 7.1 (a) of the George Town Code, saying that the Panel needed to determine whether Cr Kieser had treated Cr Barraclough fairly. The Panel advised Cr Kieser that he needed to demonstrate precisely how the Dorset determination related to his response to Cr Barraclough's complaint.

Part 8.5 of the Dorset Council Code of Conduct reads:

*"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".*

In relation to the second line of response, Cr Kieser questioned the accuracy, reasonableness and consistency of remarks he was alleged to have made to Cr Brooks. Cr Kieser said that Cr Brooks' email was "vague". By using the word "indicated" in her email, Cr Brooks was not attributing the actual words to him. Cr Kieser emphatically denied that he used the words reported by Cr Brooks. He said that his pattern of behaviour was consistent as referenced in the statutory declarations submitted. He said that he had publicly commended his opponents and there was no evidence to the contrary.

The Panel noted that during her evidence, Cr Brooks was consistent in referring to the words she used in her email to the General Manager, when referring to Cr Kieser's comments.

The Panel asked Cr Kieser whether he could recall anything he said that would have given Cr Brooks the impression she concluded. Cr Kieser answered that a reasonable person would not have come to that conclusion.

When asked about his recollection of the "robust discussion" with Cr Brooks, Cr Kieser said she was clearly displeased about the incident regarding the motion and he did subsequently apologise to her at a Council meeting.

Cr Barraclough questioned Cr Kieser about his recollection of the telephone discussion with Cr Brooks. He pointed out that in his statutory declaration Cr Kieser stated he only had a "vague idea at best", yet had told the hearing that he had a "clear recollection" of the conversation. Cr Barraclough asked which of these statements was true. Cr Kieser said that he did not recall making the comment to Cr Brooks.

In summary, Cr Barraclough said that once elected, a councillor must "comply with the rules". He said this was different for a member of the public standing for office. Cr Barraclough disagreed with Cr Kieser's position that he was not acting as a councillor when he phoned Cr Brooks and other colleagues, adding that once a person becomes a councillor then they must comply with the Code of Conduct.

In his summary, Cr Kieser said he did not refer to Cr Brooks as not being a reasonable person. However, the Panel noted that Cr Kieser continually said that a “reasonable person” would not have construed his remarks in the manner Cr Brooks did. Cr Kieser said that the key piece of evidence was the phone call between him and Cr Brooks.

In relation to the statutory declarations provided by a number of Councillors and Mr Daron Gumley, the Panel accepts that they provide a character reference for Cr Kieser but do not have a large bearing on the final analysis of the complaint.

### 3. Determination

Cr Barraclough alleged that Cr Kieser had breached Parts 3.1, 3.2 and 3.3, Parts 7.1 (a), (b) and (c) and 7.2 and Parts 8.5, 8.6 and 8.7 of the George Town Council's Code of Conduct (the Code), which was approved on 21 January 2019.

#### The Facts

The essential facts alleged against Cr Kieser are that he claimed that the two other candidates for Mayor “did not respect women and were not polished”. Cr Kieser has denied that he said those words and the essential decision of the Panel is one of fact finding.

The primary evidence against Cr Kieser is the Statutory Declaration of Cr Brooks which states: *“Cr Kieser stated that he would make a better Mayor because the other candidates (Cr Harris and Cr Barraclough) did not respect women and were not ‘polished’”*.

Cr Brooks gave her evidence confidently and forthrightly. Her manner and demeanour exuded conviction and certainty. Notwithstanding this, she was willing to make concessions, including that in her email she was not quoting the actual language used, and that her email was sent after the conversation by phone with Cr Kieser. She did not deviate from her central contention when under cross examination. She was all in all a credible witness.

That credibility is also enhanced by the fact that the content of the conversation was significant to her. She was and is conscious of the gender bias still embedded in some parts of the community and so it was significant to her when she heard something from Cr Kieser involving the lack of respect for women. The allegation grated on her, and for this reason the Panel holds that it is more likely than not that the allegation was made.

Cr Brooks' credibility is enhanced by the fact that she sent an email the next day to the General Manager. While not immediately after the event, it is still within the time period when the incident would be reasonably fresh in her mind. Certainly, the bulk of the email concerned another dispute that she had had some time ago, but it is the phone call itself that prompted the email. Furthermore, it is clearly that conversation which disconcerted her sufficiently to motivate her communication with the General Manager to “put it on the record”.

The email speaks for itself. She says:

*“Hi Shane*

*I wanted to notify you of a conversation that occurred yesterday with Cr Kieser. At this stage I am not asking you to do anything but giving you a heads up.*

*Cr Kieser called me drumming up support for his nomination as Mayor. In doing so, he indicated the other two candidates, Cr Harris and Cr Barraclough would not make good Mayors as neither of them are 'polished' nor do they respect women. Apparently, all we are heading for dark times and a polished leader out the front will be what we need."*

These words have the ring of truth about them. The other facts in them are consistent with uncontentious certainties. There was in fact a conversation the previous day; Cr Kieser was engaged in "drumming up support for his nomination". Certainly she does not cite the exact words that gave her the impression that Cr Kieser was communicating a view that the other Councillors do not respect women, but that is common with all witnesses except those who routinely write down exact words.

The credibility of her allegation is further enhanced by the fact that she has not brought the complaint. While she was clearly taken aback by the claim and annoyed enough to want to put it on the record, she herself has not made a complaint. She is brought here by the Complainant Cr Barraclough, and while not an independent witness in the strict sense of the word, her evidence is in a different category because she is not "pushing her own barrow" or riding the high horse of self-righteousness. She came across as matter of fact, down to earth, and seemed to be relating the incident more in sorrow than in anger. She did not go and tell Crs Harris and Barraclough what had been said, but only responded to the questions directed to her by Cr Barraclough who had heard from other sources that his name had been besmirched in some way by Cr Kieser.

Cr Brooks also said in evidence that, in effect, one of the reasons that Cr Kieser's allegation stuck in her mind was that it was ironic. She felt that in dealing with a prior matter in Council he had not been respectful to her. She thought, in her own words "that's a bit rich considering what had happened". This provides another reason for thinking that it is unlikely that she would be wrong about what she heard, and her credibility is accordingly quite significant.

Cr Kieser gave his evidence quite firmly. As indicated above he challenged the accuracy of Cr Brooks recall because she had used the word "indicated" in respect of the allegations. One of his contentions was that that word was not clear enough to be convincing and was "*ambiguous at best*".

However, there was no ambiguity in the Statutory Declaration. The word used was "*stated*". The email simply uses a **synonym**, and it does not to our mind matter whether "*stated*" or "*indicated*" are used. But as we say "*stated*" was used and is forthright enough to indicate an accurate recollection whether or not actual words are quoted. It is enough that the substance of what was said is given in evidence, because that is within the bounds of credibility for most people. In any event, Cr Brooks said that she had referred to her notes when preparing her statutory declaration which strengthens the weight of her evidence.

Cr Kieser went to particular trouble to establish that his pattern of behaviour was consistent in that he publicly commended his opponents and that showed that he does not act in the manner alleged.

This evidence falls into the same category as other propensity evidence mentioned above. The primary focus is on locating the facts in issue – i.e. what was actually said on the phone at the time. What was said to other people at other times is of much less weight, almost to the point of being of no relevance. The focus is always on who said what to whom at this time.



Whilst there is no suggestion that Cr Keiser said anything of this nature to anyone else at any time, the fact remains that Cr Brooks was quite agitated by something that Cr Kieser had said. In response to the Panel's question "*Why would that have happened if you hadn't pressed her buttons?*" Cr Kieser's answered that it was because there had been a robust dispute about a prior motion moved by Cr Brooks. The Panel does not believe that explanation is plausible. That dispute was an ongoing one, but clearly Cr Kieser said something that got under her skin enough to motivate her to send the email.

Cr Brooks explained that she believed Cr Kieser was trying to pander to her proclivities as a feminist, and his comments had the opposite effect - that is to say, she took umbrage at the fact he would seek to do that.

Cr Brooks' contention was that Cr Kieser's talk of others not respecting women, when (in her mind) he had disrespected her on a prior occasion, upset her and as a result she is quite sure it happened.

While being concerned to ensure that Cr Brooks was not looking for positive reinforcement of a pre-existing view, what she claims Cr Kieser said ("*the other two don't respect women*") is so novel that it is hard to fathom how it could be the result of a misinterpretation of something else that Cr Keiser said. Indeed Cr Kieser, given the opportunity, could not suggest anything else that could possibly be misconstrued in this way.

The Panel acknowledges that the conversation that took place was not witnessed by any other person. As the Panel is not bound by the rules of evidence it had to consider the circumstances and the probability of those circumstances. On the one hand Cr Kieser stated that he followed a script of matters he wanted to cover when talking to all his fellow councillors and the Panel accepts this. Even with a script, however, a response from a person being called can lead the caller into other matters not necessarily part of the script. This was evidenced when both Cr Brooks and Cr Kieser admitted that during that conversation they had a robust discussion about a motion previously put by Cr Brooks to a Council meeting.

The Panel gave weight to the fact that within 24 hours of the phone call from Cr Kieser, Cr Brooks described the events in an email to the General Manager. The Panel also had regard to Cr Brooks' contention that she is a "copious note taker" and that, even with the passage of time, her notes significantly assisted her recall of the contents of the telephone conversation with Cr Kieser. On the other hand, when Cr Kieser completed his statutory declaration on 19 December 2019, he had only a "*vague recollection at best*".

The Panel determined that the precise words used by Cr Kieser could not be proved, but accepted that Cr Brooks had taken them to mean the other candidates were "not polished and did not respect women". The Panel concluded that in making such a statement about his opponents, Cr Kieser was not treating them fairly.

For all of these reasons, we feel affirmatively convinced on the balance of probability that Cr Kieser did say words to the affect that "he would make a better Mayor because the other candidates did not respect women and were not polished".

## The Law

### *Part 3 – Use of Office*

- 3.1 *The actions of a Councillor must not bring the Council or the Office of Councillor into disrepute.*

This was a private conversation between two Councillors. It does not involve use of office at all, and of itself does not bring the Office of Councillor or the Council into disrepute. It may reflect adversely on Cr Kieser but is unrelated to his office. This part of the complaint is dismissed.

- 3.2 *A Councillor must not take advantage or seek to take advantage of his office or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.*

This part of the complaint is dismissed because all Cr Kieser did was allege a negative attribute about persons who were competing with him for nomination as Mayor.

- 3.3 *In his or her personal dealing with the Council (for example as a rate payer, recipient of a Council service or planning applicant), a Councillor must not expect to nor request, expressly or implicitly, preferential treatment, for himself or herself or any other person or body.*

This part of the complaint is dismissed because none of the elements mentioned in this were present in the short statement made in the telephone conversation. While Cr Kieser was seeking a vote by saying something negative about other competitors, he was not using his office to get it.

### *Part 7 – Relationships with Community, Councillors and Council Employees*

- 7.1 *A Councillor –*

- (a) *must treat all persons fairly;*

Cr Kieser was not fair to Cr Barraclough when saying, whilst soliciting favourable treatment from a fellow Councillor who is acutely conscious of the importance of having respect for women, that Cr Barraclough does not respect women. It is not right or proper or just, and inappropriately undermines his competitors.

Accordingly, the Panel upholds the complaint in relation to Part 7.1(a).

- (b) *must not cause any reasonable person offence or embarrassment.*

Cr Barraclough claimed that he did respect women and when he asked questions of Cr Brooks, she did not assert him to disrespect women. Accordingly, accusing him of that, in a political environment in particular, is offensive. Any reasonable person would have been offended and embarrassed, and in fact Cr Barraclough demonstrates the fact that he took offence by taking these proceedings.

However, there is an issue of causation that arises here because the comment was made to Cr Brooks and not to Cr Barraclough. Cr Brooks clearly has not passed it on to anybody else except the General Manager, and the embarrassment that Cr Barraclough has felt primarily

stems from comments made by others to him which are outside the consideration of this complaint. So far as this comment to Cr Brooks is concerned, Cr Barraclough only found out because he asked her himself if she had heard anything of that nature being said about him by Cr Kieser.

We do not regard that as breaking the chain of causation.

Cr Kieser was disparaging Cr Barraclough on the issue of feminism as a means of currying favour with a person who has been described as a feminist (Cr Brooks). When Cr Kieser made this allegation to Cr Brooks, he must have known that there was at least a possibility - if not a probability - that it would be passed on to Cr Barraclough.

The fact that Cr Barraclough found out about those comments was rather fortuitous, but in the Panel's view, can still be described as having caused Cr Barraclough offence or embarrassment. Cr Kieser was reckless as to whether it would cause offence or embarrassment. Any reasonable person would be so offended or embarrassed and that offence and embarrassment really only arose because of what Cr Kieser said to Cr Brooks, therefore it can be said that he caused that offence and embarrassment.

The complaint under 7.1(b) is therefore upheld.

(c) *must not bully or harass any person*

Running down Crs Harris and Barraclough does not amount to bullying or harassing them, no matter how unfair it otherwise is. Accordingly, the complaint in this regard is dismissed.

7.2 *A Councillor must listen to, and respect, the views of other Councillors in Council and Committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.*

This is irrelevant and the complaint is dismissed in respect of this part.

#### *Part 8 – Representation*

8.5 *A Councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

The comments made to Cr Brooks are clearly a personal view of Cr Kieser, but this was never expressed publicly. It was expressed in a private conversation with Cr Brooks. It certainly does not undermine decisions of the Council or bring the Council into disrepute.

We note that Cr Kieser cited the determination report of *Archer v Howard* (CI 9437) which holds, correctly, that a view expressed in private correspondence to another person is not "expressed publicly". Cr Kieser claimed that his expression of view in a private phone call is not "expressed publicly".

Cr Kieser seemed at the time to be seeking to use the *Archer v Howard* decision as relevant to any or some of the other parts of the complaint. That it is not.

The panel finds that the complaint under 8.5 must be dismissed because nothing was expressed publicly.

8.6 *A Councillor must show respect when expressing personal views publicly*

It flows naturally from the above that no view was expressed publicly, and this part of the complaint must be dismissed.

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

Cr Kieser's actions reflected only on himself and not on the Council. As a result, the complaint in this respect must be dismissed.

#### **4. Sanction**

On 12 August 2020 the Panel wrote to Cr Kieser advising that it had determined that part of the complaint lodged by Cr Barraclough was upheld and inviting him to provide a submission regarding what, if any, sanction should be applied. On 18 August 2020, Mr David Morris wrote to the Panel on behalf of Cr Kieser requesting further information regarding the reasons why part of the complaint was upheld and asking for an extension of time to respond. On 21 August 2020 the Panel provided the additional information requested by Mr Morris and agreed to a further seven days to respond.

On 27 August 2020 Mr Morris responded on behalf of Cr Kieser, indicating that Cr Kieser did not believe any sanction should be applied. The reason for this was that Cr Kieser, whilst not wanting to trivialise the issues, indicated that the experience of the complaint processes has given him a deeper understanding of the Code of Conduct.

Mr Morris, on Cr Kieser's behalf, said that if the Panel determined that a sanction should apply, then a caution would be appropriate. Mr Morris pointed out that whilst Cr Kieser had recently received a caution in relation to another complaint that was subsequent in time to the facts of the complaint made by Cr Barraclough.

The Panel accepts that Cr Kieser has "learnt a lesson" from the experience of the complaint and the accompanying process. The Panel also acknowledged that because of the concurrent nature of the two complaints, Cr Kieser did not have the benefit of "learning" from the outcome of the other matter. However, elected representatives must always be aware of their role and their relationships with fellow councillors and constituents and avoid making any comments that treat people unfairly and/or could be offensive to individuals.

Therefore, the Panel determines that Cr Kieser be cautioned as a consequence of breaching Parts 7.1 (a) and (b).

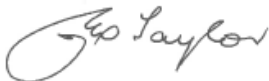
#### **5. Delay in determining complaint**

Section 28ZD (1)(a) of the *Local Government Act 1993* (the Act) requires the determination to be made within 90 days after the initial determination by the Chairperson to investigate and determine the complaint or reasons be provided as to why this requirement could not be met.

In this instance the 90-day period concluded on 16 April 2020. A hearing in relation to this complaint was being arranged when, in early March 2020, when the Government announced a strict “lock down” due to the covid-19 pandemic, resulting in a postponement of some four months.

## 6. 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



Steven Bishop  
Legal Member



Liz Gillam  
Member