

CODE OF CONDUCT PANEL DETERMINATION REPORT *

KINGBOROUGH COUNCIL CODE OF CONDUCT

Complaint made by Cr Paula Wriedt against Cr David Grace

Code of Conduct Panel:

Lynn Mason (Chairperson), Elizabeth Gillam (community member with experience in local government), Sam Thompson (legal member)

Date of Determination: 16 April 2021

Content Manager Reference : C21688

Summary of the Complaint

Cr Wriedt's complaint dated 9 December 2020 was referred to the Executive Officer of the Code of Conduct Panel (the Panel) on 15 December 2020, and referred to the Chairperson on 22 December 2020.

The complaint related to a Council workshop on risk management, held on 2 November 2020. Cr Wriedt said that the incident occurred when Cr Grace commented on the problems which had occurred previously with live streaming on Facebook the Council meeting of the 26 October 2020. Cr Wriedt alleged that Cr Grace's comment, on 2 November 2020, referred to the fact that the staff member responsible for live streaming at that meeting was a young woman, and that she 'therefore needed a male IT man there to help her'. Cr Wriedt considered Cr Grace's language to be inappropriate, and described it to Cr Grace as 'sexist' and 'outdated'. Cr Wriedt alleged that at that point Cr Grace became 'highly animated', and after some further words from Cr Grace, the Mayor, Cr Winter asked him to desist, or he would be asked to leave the workshop. At that point, it is alleged, Cr Grace looked towards Cr Wriedt and said, 'I will put you on your tail'. It is those words that are the subject of the complaint.

Cr Wriedt stated in her complaint that since this incident, she has felt uncomfortable in the presence of Cr Grace and unsafe within the Council chambers.

The Code in force at the time of the alleged breaches was approved by Council on 25 February 2019. The sections of the Code which Cr Wriedt alleged Cr Grace breached are:

PART 7 – RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

7.1. 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.

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.

Initial assessment

Following receipt of the complaint, the Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the Act. Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

* 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 complainant had made a reasonable effort to resolve the complaint;
- the complaint substantially related to a contravention of Kingborough Council's Code of Conduct, namely Parts 71(a), (b) and(c) and Part 7.2;
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial;
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under section 28ZB(2) or 28ZI of the Act that would apply to the complainant and the complaint.¹

Pursuant to section 28ZA(1)(e) of the *Local Government Act 1993* (the Act), the Chairperson determined on 18 January 2021 that the complaint should be referred to a Panel for investigation.

The complainant, respondent councillor and the General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 18 January 2021.

Procedure

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint.

On 12 January 2021 the Executive Officer requested that the General Manager, Kingborough Council, ask Cr Wriedt to provide further information in relation to her efforts made to resolve the matter of the complaint. The Chairperson needed further information to ensure that s28V(fb) of the *Local Government Act 1993* was met.

On 15 January 2021 the Panel received a further Statutory Declaration from Cr Wriedt in response to that request from the Chairperson. This Statutory Declaration was sent to Cr Grace.

On 15 January the Panel received a Statutory Declaration from the Mayor, Cr Winter.

The complaint, Cr Wriedt's statutory declaration of 15 January 2021 and Cr Winter's statutory declaration of 15 January 2021 were provided to Cr Grace on 20 January 2021. Cr Grace was asked to provide a response to the complaint to the Panel by 4 February 2021. The Panel received a response from Cr Grace on 3 February 2021, a copy of which was sent to Cr Wriedt. In addition to his response to the complaint, Cr Grace asked the Panel to allow Mrs Marjon Kolabinski to be his advocate, should a hearing be held. He also asked to call two witnesses, Mr Julian Punch and Mr Daniel Smee. Pursuant to section 28ZH(6), the Panel consented to Mrs Kolabinski representing Cr Grace.

On 10 February 2021 Cr Wriedt advised the Panel that she would also like to call two witnesses, Cr Amanda Midgley and Cr Christian Street.

Both parties were asked to provide the Panel with witness statements from their witnesses.

The Panel met on 16 February 2021 to consider the complaint and response.

On 16 February the parties were told that the Panel intended to proceed to a hearing in accordance with section 28ZG (1) of the Act.

The Panel received witness statements from Cr Amanda Midgley, Cr Christian Street, and the Mayor, Cr Winter, on behalf of Cr Wriedt. The Panel determined to call all three as witnesses at the hearing. The Panel received witness statements from Mr Daniel Smee and Mr Julian Punch on behalf of Cr Grace. The Panel determined to call Mr Daniel Smee to give evidence at the hearing. The Panel determined not to call Mr Punch as a witness as he was not in attendance at the council workshop on 2 November 2020, when the alleged incident occurred, and would therefore be unable to verify or challenge any of the disputed statements before the Panel. In addition, when asked, Cr Wriedt said that she did not wish to cross examine Mr Punch at hearing so there was therefore no reason for him to be called as a witness.

¹ Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

In giving evidence in the hearing, the Mayor, Cr Winter, challenged the accuracy of some of the statements made by Mr Punch in relation to what happened at the workshop on 2 November 2020. The Panel confirmed that it was aware that Mr Punch was not actually at the workshop and would note his Statutory Declaration and give such weight to his statements as the Panel deemed appropriate.

Prior to the hearing, the Executive Officer informed the parties, by letter, that Mr Sam Thompson, legal representative on the Panel, was acquainted with Cr Christian Street. The letter outlined Mr Thompson's relationship with Cr Street. The Parties were asked to state any objections they had to Mr Thompson's remaining on the Panel. Neither party raised any objection.

Material considered by the Panel

- The Kingborough Council Model Code of Conduct Policy, 25 February 2019;
- The Complaint by Cr Wriedt, 9 December 2020;
- The audio recording of the Kingborough Council Ordinary Council Meeting, held on 12 October 2020;
- The audio recording of the Kingborough Council Ordinary Council Meeting, held on 23 November 2020;
- Statutory Declaration from Cr Winter, 14 January 2021;
- Statutory Declaration from Cr Wriedt, 15 January 2021;
- An email from Cr Winter to Cr Grace, 25 January 2021;
- A Statutory Declaration of a witness statement by Cr Amanda Midgley, 16 February 2021;
- A Statutory Declaration of a witness statement by Cr Christian Street, 24 February 2021;
- A Statutory Declaration of a witness statement by Mr Daniel Smee, 1 March 2021;
- A Statutory Declaration of a witness statement by Mr Julian Punch AM, 4 March 2021;
- Email from Cr Wriedt to the Panel, 23 March 2021.

The hearing was held in Hobart on 17 March 2021. Cr Wriedt appeared for herself. Cr Grace appeared and was represented by his advocate Mrs Kolabinski. The following witnesses gave evidence:

- Cr Wriedt, who was cross-examined by Mrs Kolabinski;
- Cr Grace, who was cross-examined by Cr Wriedt;
- Mayor Winter, who was cross-examined by Mrs Kolabinski;
- Cr Street, who was cross-examined by Mrs Kolabinski;
- Cr Midgley, who was cross-examined by Mrs Kolabinski;
- Mr Smee, who was cross-examined by Cr Wriedt.

Determination

Pursuant to section 28ZI (1)(a), the Code of Conduct Panel upholds the complaint against Cr Grace.

Reasons for the Determination

The background to the complaint was not the subject of any dispute and related to a Council meeting held on 26 October 2020. That meeting was to be live streamed (i.e., broadcast) on Facebook, in part so that residents on Bruny Island could observe items of relevance to them. A technical issue resulted in the live stream failing. Subsequently, at a risk management workshop on 2 November 2020, Cr Grace commented on the failure of the live stream as an identifiable risk, and in so doing used language to which Cr Wriedt took offence.

According to Cr Wriedt, Cr Grace then said to her, 'I will put you on your tail' or 'I will put you out on your tail', which Cr Wriedt understood to be a threat of physical violence. Cr Wriedt gave evidence that she was 'really unsettled' by the threat, and that it was the first time in 25 years of public life that she had been threatened by a colleague. According to Cr Wriedt, Cr Grace regularly disrupted Council proceedings but had not previously physically threatened her.

The Panel must first determine whether Cr Grace said the words alleged by Cr Wriedt. Cr Wriedt, Mayor Winter, Cr Street and Cr Midgley each gave evidence that they heard Cr Grace say 'I will put you on your tail' or words to that effect. Mr Smee gave evidence that he did not hear those words or words to that effect because he had 'switched off'.

In his evidence, Cr Grace said that he would not have used those words as he did not typically use that sort of language, but he did not deny that he may have said that or made a similar threat. He conceded that he would have used the words 'I will put you on your arse'. The Panel finds that Cr Grace said either 'I will put you on your tail' or 'I will put you on your arse'. It is not necessary for the Panel to make a finding as to which word was used. They were of the same effect.

No witnesses denied that the words had been said in the workshop, although as stated above, Mr Smee gave evidence that he did not hear those words or words to that effect.

The next issue is whether those words, taken in their context, breached the Code as alleged by Cr Wriedt. For the following reasons, the Panel finds that they did. It is convenient to make some general observations before turning to the relevant provisions of the Code.

The Panel determines that it was appropriate for Cr Wriedt to draw Cr Grace's attention to the fact that many people would consider his remark to have been sexist, and that in her view, it was no longer acceptable to assume that a woman would need a man to help her with IT issues. Cr Grace maintained in the hearing that he did not understand the correct meaning of the word 'sexist', and thought that he was being accused of 'groping women' or other predatory sexual behaviour. He also stated that the head of the Council's IT section was a man, hence his use of the gender specific pronoun.

Cr Grace's case was that he had little formal education and used 'working man's language'. He said that he was offended by Cr Wriedt describing his remark (regarding the female Council employee requiring assistance from a male) as 'sexist'. Under cross-examination by Cr Wriedt, Cr Grace gave two explanations for his language. He said that he understood Cr Wriedt to have accused him of 'being anti-women'. He also understood that Cr Wriedt accused him of sexually harassing women. While it may be accepted that Cr Grace honestly believed Cr Wriedt to have accused him of harassing women, that does not excuse his conduct. First, Cr Wriedt did not, in fact, accuse Cr Grace of harassing women. The Macquarie Dictionary relevantly defines 'sexist' as 'of an attitude which stereotypes a person according to gender, or sexual preference, rather than judging on individual merits'. Second, Cr Grace's threat of violence was not justified or excused even if Cr Wriedt had accused Cr Grace of harassing women. That Cr Grace did not intend to follow through with violence did not justify or excuse his threat.

It is with these observations in mind that the provisions of the Code are to be considered:

7.1. A councillor -

(a) must treat all persons fairly;

The Panel accepts that Cr Grace may have misunderstood what Cr Wriedt said, and that he may have used the word 'man' referring only to the head of the IT section, but the Panel does not accept that his subsequent verbal attack on Cr Wriedt was justified. Moreover, the Panel determines that the word 'sexist' is in common usage and it is reasonable to expect an experienced elected representative to understand the meaning of the word, and to understand its connotations.

The Panel determines that threatening Cr Wriedt with physical violence because she criticised his choice of language was unfair, in that Cr Wriedt had both the right and a responsibility to draw the issue to Cr Grace's attention.

Therefore pursuant to section 28ZI (1)(a), the Code of Conduct Panel upholds this part of the complaint against Cr Grace.

7.1. A councillor -

(b) must not cause any reasonable person offence or embarrassment;

The Panel determines that a reasonable person would be both offended and embarrassed by Cr Grace's verbal threat to Cr Wriedt. A Councillor has the right to be able to speak up in

opposition to another Councillor's views, as was done by Cr Wriedt in this instance. The Panel heard no suggestion that Cr Wriedt spoke in a way intended to offend or inflame Cr Grace. The Panel determines that the tone of Cr Grace's response was offensive to Cr Wriedt, and that the threat of physical violence to her person was embarrassing for her and potentially embarrassing for other Councillors, as the threat was made in an independently facilitated council workshop.

Pursuant to section 28ZI (1)(a), the Panel upholds the complaint that Cr Grace breached Part 7.1 (b) of the Code of Conduct.

7.1. A councillor -

(c) must not bully or harass any person.

Most frequently bullying is considered to be a pattern of recurring behaviour in which one party behaves unreasonably towards another, usually involving behaviour which is intimidating, humiliating, degrading, or ridiculing another person. Frequently there is an imbalance of power in the relationship. In this matter, there is not an imbalance of power, and the incident was not repeated. However, the Panel determines that the threat of physical violence against a fellow Councillor was sufficiently intimidating to satisfy the Panel that Cr Grace bullied Cr Wriedt in the council workshop held on 2 November 2020.

Cr Wriedt was aware that the Mayor had spoken to Cr Grace about his behaviour at the workshop, and particularly his threat against her. Cr Wriedt hoped that an apology might be offered by Cr Grace, but this was not forthcoming. The matter was not resolved through the whole month of November, during which time Cr Wriedt continued to be concerned for her safety at the Council Chambers and uncomfortable in the presence of Cr Grace, a situation which was unavoidable given their roles as Councillors. The Panel determines that by his refusal to acknowledge that his behaviour had been in breach of the standards of proper behaviour expected of elected representatives, Cr Grace harassed Cr Wriedt, in that he caused her upset and disturbed her peace of mind over a period of time.

Pursuant to section 28ZI (1)(a), the Code of Conduct Panel upholds the complaint that Cr Grace breached Part 7.1 (c) of the Code of Conduct.

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.

The incident occurred at a Council workshop on risk management. Although not a Council meeting, this was a proceeding of the Council and therefore fell within the ambit of this Part of the Code.

The Panel determines that Cr Grace did not respect Cr Wriedt's views and made a personal attack on her, including making a physical threat against her.

Pursuant to section 28ZI (1)(a), the Code of Conduct Panel upholds the complaint that Cr Grace breached Part 7.2 of the Code of Conduct.

Conclusion

Cr Grace's behaviour at the workshop on 2 November 2020 was described variously as 'aggressive', 'disorderly', 'highly animated', and 'disruptive'. Witnesses, including Cr Wriedt, testified that Cr Grace was from time to time disruptive in council meetings and workshops. Witnesses said that they were wary of provoking this behaviour, occurring as it usually did without warning; their responses described 'having to walk on eggshells'.

The Panel asked Cr Grace what steps he had taken to remedy his behaviour since the workshop on 2 November 2020, given that he said in hearing that he was now prepared to apologise to Cr Wriedt for the distress he had caused her. Cr Grace responded that while he was always ready to undertake training to improve his performance as a Councillor, he insisted that it was up to other Councillors, including Cr Wriedt, to avoid saying anything which could provoke him into such unguarded speech. He said, 'If I'm not provoked I behave'.

The Panel determines that while Cr Grace has shown some regret that the incident occurred, he has not shown any remorse, nor has he exhibited any understanding of his own responsibility for his behaviour. Despite advice from the Mayor that a public apology to Cr Wriedt would be

appropriate, Cr Grace did not consider the possibility until after the complaint was lodged. He presented himself as a victim, with the right to give way to outbursts of anger if other Councillors disagree with him. The Panel is of the belief that this behaviour is not beneficial for Council, and needs to be moderated for the benefit of all.

Everyone has the right to feel safe in their workplace. The Panel accepts that Cr Grace's conduct made Cr Wriedt feel unsafe, even if Cr Grace had not intended to carry out his threat. Cr Grace's conduct was completely unjustified. He displayed a lack of insight into his conduct and the effect that it had on Cr Wriedt and others. The Panel was told that other councillors considered that they 'shouldn't have to worry about setting off or someone exploding' and 'Cr Grace's behaviour would not be tolerated in any other workplace.' The Panel agrees.

Sanction

In accordance with section 28ZI (2) of the Act, the Panel may impose one or more sanctions on Cr Grace. At the hearing on 17 March 2021, Cr Grace was invited to make submissions about sanction. Cr Grace relied on his long-standing work for the Council, his lack of formal education and a powerful character reference from Mr Punch. The Panel accepts that Cr Grace was used to using common language, that he did not intend to follow through on his threat to Cr Wriedt, and that he has made large and commendable contributions to Council and to his community. However, these do not excuse his behaviour on 2 November 2020. To threaten a colleague is appalling and requires denunciation. Cr Grace's lack of insight reinforces the need for corrective action.

Section 28ZI(2) prescribes a descending hierarchy in terms of the severity of sanction. The starting point is whether any sanction should be imposed. The Panel is satisfied that it should.

In determining sanction, the Panel took into account that Cr Grace has served as a Councillor for 21 years. The Panel considers that this length of experience should have assisted Cr Grace to moderate his behaviour to suit changing circumstances. Councillors should not need to 'walk on eggshells' for fear of provoking an unseemly outburst from one of their number. Cr Grace's behaviour was unjustified and must be denounced strongly. Mrs Kolabinski submitted that Cr Grace was remorseful. For the reasons given above, the Panel cannot make such a finding. While Cr Grace may regret what happened, the Panel is not satisfied that he is remorseful.

Pursuant to section 28ZL(2)(b), the Panel reprimands Cr Grace.

Pursuant to section 28ZL(2)(c), the Panel requires Cr Grace to apologise to Cr Wriedt for the threat he made against her, and to the Council for causing embarrassment at the workshop on 2 November 2020. This apology is to be made without reservation at the ordinary Council meeting at which this report is tabled. In the event that either Cr Wriedt or Cr Grace is unable to attend that meeting, the apology is to be made by Cr Grace at the next council meeting attended by Cr Wriedt.

Pursuant to section 28ZI(2)(d), the Panel requires Cr Grace to undertake at least six hours' training and/or counselling in anger management and appropriate workplace behaviour as determined by the Chief Executive Officer of the Local Government Association of Tasmania. The counselling and/or training is to be completed within six months of the tabling of this report.

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)



Sam Thompson
(Legal Member)



Elizabeth Gillam
(Community Member with
experience in local government)