

**CODE OF CONDUCT PANEL REPORT**  
**DORSET COUNCIL COUNCILLOR CODE OF CONDUCT**

Complaint against Cr Max Hall

Date of Determination: 25 February 2019

Code of Conduct Panel: Lynn Mason (Chairperson), David Sales (community member with local government experience), Steven Bishop (legal member)

**Summary of the Complaint**

The complaint was submitted by the General Manager, Mr Tim Watson, on 21 November 2018. The complaint related to an email sent by the Deputy Mayor, Cr Max Hall, to the Director, Community and Development, Dorset Council, on 10 October 2018. The email was simultaneously copied to the complainant, Mr Terry Smith, to the general manager, to other senior managers of the council, and to all Dorset councillors.

The section of the Code which Mr Smith alleged Cr Hall breached is

*PART 7 - Relationships with community, councillors and Council employees*

*1. A councillor –*

- (a) must treat all persons with courtesy, fairness, dignity and respect;*
- and*
- (b) must not cause any reasonable person offence or embarrassment;*

**The Complaint**

At 1.00 am on 10 October 2018 Mr Smith sent an email to Dorset Council, for the attention of the Dorset Council Management and the Dorset Councillors, alleging that the bike trail named 'Return to Sender' was located on the boundaries of two of his properties and the boundary of one of his neighbours. Mr Smith asked:

- 1. Was/is there a defined buffer distance between the bike trail construction and nearby private property boundaries?*

2. *Was/is there a contractual obligation by any parties involved in the planning/construction/management of the bike trails to contact/inform/negotiate with affected property owners?*
3. *Who were/are the responsible authorities or agencies with oversight of the construction of the bike trails?*
4. *Who were/are the responsible authorities or agencies with oversight of the present day to day management of the trails?*
5. *Who were/are the responsible authorities or agencies with oversight of the present day to day management of the trails in the Derby area?*
6. *Who were/are the responsible authorities or agencies with oversight of the present day to day management of the trails in the Weldborough area?*
7. *What recourse do private property owners have in relation to these underhanded and questionable encroachments by the powerful against the powerless?*

The email was answered at 9.13 am on 10 October 2018 by Mr Rohan Willis, the Director, Community and Development at Dorset Council. Mr Willis courteously informed Mr Smith that the bike trail did not impinge on any of his properties.

At 9.24 am on 10 October 2018, the Deputy Mayor, Cr Max Hall, replied to Mr Willis's email and copied in other senior Dorset Council managers, all Dorset councillors, and Mr Smith. Cr Hall's email stated:

*It is good to know that the Dorset council is in such good hands. If Mr Smith wants to go back to the good old days of what are we going to do now? The house prices in Derby are worthless no one wants to visit our little town only 10 people moving around the whole weekend! He is definitely heading in that direction with his mentality of nick [sic] picking at everything that is done to progress the blue Derby bike trail.*

*Your quick and honest answer to all his questions will of course not stop his next line of how can I hold the progress of the trail up now. Must be a hard life sitting at home writing Emails of absolute bull shit.*

*Max*

On 30 November 2018 Cr Hall was Provided with a copy of the complaint against him. On 13 December 2018 Cr Hall was invited to respond to the complaint, which he did by email on the same day. His response stated, verbatim:

*I believe in my opinion. I have not breached the code of conduct. Over the 14 years I have been a councillor I definitely do my up most [sic] to keep within the bounds of the code.*

*I find it very amusing that if I pass comment on a statement that has been sent.*

*The complaint by Mr Smith was to his natural behaviour of criticism to everything council does in his area.*

*I look in hindsight that I would of been better to not of commented on his first statement sent to council*

*I definitely believe I have done nothing wrong and will not be commenting any further on this subject*

In response to a request from the Panel that he confirm or deny that he had sent the email which is the subject matter of the complaint to the named recipients, Cr Hall confirmed that he had sent the email to all parties named, and that he would accept the decision of the Panel in relation to the matter.

On 23 January 2019 the Panel asked Mr Smith and Cr Hall to give their views as to whether they wanted an oral hearing to be held, or whether they were content for the Panel to make its decision on the papers it had received. Mr Smith replied that he did not consider a hearing to be necessary. Cr Hall replied that *I will except [sic] what the panel brings down*. The Panel considered that Cr Hall therefore was content for the Panel to make its determination on the basis of the papers it held, without the necessity for a hearing. In accordance with s 28ZG(2)(a) of the *Local Government Act 1993* (the Act), the Panel proceeded to make its determination without holding a hearing.

Mr Smith and Cr Hall were also asked to make submission on any penalty which might be imposed, if all or part of the complaint were to be upheld. The Panel considered that the statement from Cr Hall (*I will except [sic] what the panel brings down*) also constituted his submission on penalty, should one be imposed.

Mr Smith requested that any sanctions imposed should include a written apology and a suspension from office.

On 20 February 2019 the Panel was informed by the Executive Assistant, Dorset Council, that Cr Hall had tendered his resignation as a councillor on 6 February 2019, effective on that date. The Panel considered that it was required by Sections 28ZI, 28ZJ and 28ZK of the Act to determine the complaint and provide a

copy of its determination report to the relevant parties. The Panel therefore proceeded to conclude its Report.

The time allowed for the Panel to make its determination and to provide its Report to the parties has been exceeded in this matter. The resignation of Cr Hall required the Panel to take additional legal advice as the resignation of a councillor against whom a complaint has been made is not specifically covered by the *Local Government Act 1993*.

### **Documents considered by the Panel**

- Code of Complaint from Mr Terry Smith, received by the Executive Officer on 21 November 2018
- Email from Cr Max Hall to the Local Government code of Conduct Executive Officer (the Executive Officer) at 6.27 pm on 13 December 2018
- Email from Cr Hall to the Executive Officer at 9.33 am on 16 January 2019
- Email from Cr Hall to the Executive Officer at 4.51 pm on 23 January 2019
- Email from Mr Smith to the Executive Officer at 11.11 am on 10 February 2019
- Email to the Executive Officer from the Executive Assistant, Dorset Council, sent at 4.38 pm on 19 February 2019.

### **Determination**

The Code of Conduct Panel upholds the complaint against Cr Hall.

### **Reasons for the Determination**

Neither the complainant nor the respondent disputed the facts as presented.

#### *PART 7 - Relationships with community, councillors and Council employees*

##### *1. A councillor –*

- (a) must treat all persons with courtesy, fairness, dignity and respect;*  
*and*
- (b) must not cause any reasonable person offence or embarrassment;*

The Panel finds that a reasonable person in the circumstances would consider that the email is discourteous in its aspersions and in its language, unfair to Mr Smith because it went to so many parties, did not accord a community member appropriate dignity, and was disrespectful of that community member.

Mr Smith stated that he was offended and embarrassed, and the Panel accepted that this had occurred.

The Panel is of the view that an offence of this nature by a councillor holding the position of Deputy Mayor, and with length of service similar to that of Cr Hall, would merit a reprimand and a written apology to Mr Smith, as sanctions. However, in accordance with the Act, the Panel may only impose sanctions on sitting councillors.

### **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)



**Steven Bishop**  
(legal member)



**David Sales**  
(community member with  
local government experience)