

*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**GLENORCHY CODE OF CONDUCT**

**Complaint brought by Alderman Kelly Sims against Alderman Angela Ryan**

**Code of Conduct Panel**

- Jill Taylor (Chairperson),
- Penny Cocker (Local Government Member)
- Rob Winter (Legal Member)

Date of Determination: 19 October 2021

Content Manager Reference: C22430

**Summary of the complaint**

A code of conduct complaint was submitted by Alderman (Ald) Kelly Sims to the General Manager, Glenorchy City Council on 3 June 2021.

The complaint alleged that Ald Ryan breached the following parts of the Glenorchy City Council Code of Conduct, entitled Aldermanic Code of Conduct approved on 29 January 2019, in relation to the content of a series of emails sent to Ald Sims on 17 and 18 March 2021.

Ald Sims alleged that Ald Ryan breached the following Parts of the Code:

**PART 2 - Conflict of interests that are not pecuniary**

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 is 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 and the nature of the interest before discussion of the matter begins; and
  - (b) act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the councillor to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.

**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.

#### **PART 4 - Use of resources**

1. A councillor must use Council resources appropriately in the course of his or her public duties.
2. A councillor must not use Council resources for private purposes except as provided by Council policies and procedures.
3. A councillor must not allow the misuse of Council resources by any other person or body.

#### **PART 5 - Use of information**

2. A councillor must only access or use Council information needed to perform his or her role and not for personal reasons or non-official purposes.

#### **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**

4. A councillor must clearly indicate when he or she is putting forward his or her personal views.
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.

#### **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 the following in relation to Part 7.1 of the complaint:

- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion as the complainant advised that she had raised the issue with all stakeholders and had received "consistent abuse – including profanities and derogatory statements by Ald Angela Ryan".
- this part of the complaint substantially related to a contravention of Glenorchy City Council's Code of Conduct, namely Part 7.1.
- this part of the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if proven, the allegations concerning text messages sent by Ald Ryan to Ald Sims, may constitute a breach of Part 7.1 of the Code.
- 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.<sup>1</sup>

On this basis, the Chairperson determined to investigate the part of the complaint relating to Part 7.1 of the Code.

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<sup>1</sup> 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.

The Chairperson dismissed the remaining parts of the complaint in relation to alleged breaches of the Code, viz., Parts 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.1, 3.2, 4.1, 4.2, 4.3, 5.2, 7.2, 8.4, 8.5, 8.6 and 8.7. The reason for dismissing these parts of the complaint were that whilst the complaint made statements alleging breaches, no evidence was provided to support these allegations.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 30 June 2021. On receipt of this advice Ald Ryan advised that she was due to enter hospital and would be on sick leave for a period of six weeks. Ald Ryan produced a medical certificate covering the period 5 July 2021 to 10 August 2021. The Panel agreed to extend the timeframe for Ald Ryan to respond to the complaint until 24 August 2021.

Ald Ryan subsequently provided a statement in response to Ald Sims' complaint under cover of a statutory declaration dated 23 August 2021. Following receipt of Ald Ryan's response, the Panel met to discuss the complaint and, at that point, based on the material then before it, was inclined to determine the matter on the written evidence, as provided by Section 28ZG (2) of the Act. However, prior to the Panel advising the complainant and respondent of its intention to proceed in accordance with Section 28ZG (2), Ald Sims sent an email dated 30 August 2021 asking "when is the hearing taking place". The Panel interpreted this as a request by Ald Sims to hold a hearing into the matter and consequently agreed to proceed on that basis.

The Panel contacted Ald Ryan to ascertain her views on whether a hearing should be scheduled, and on 14 September 2021 she advised that she was ambivalent. On the one hand Ald Ryan said that she felt aggrieved, and a hearing would give her the opportunity to respond in full, but she acknowledged that it may be possible to determine the matter based on the papers alone.

Ald Ryan also submitted a letter to the Panel which summarise the submissions made in her response to the complaint dated 23 August 2021. Apart from ascertaining Ald Ryan's position in relation to the hearing, the Panel has not used this document in considering the complaint.

Given responses from both parties the Panel requested that a hearing be scheduled.

In accordance with usual protocols, the Executive Officer proceeded to arrange a hearing at a mutually convenient time to all the parties. Parallel to ongoing email/telephone exchanges, formal advice was sent to Ald Sims and Ald Ryan that the hearing would be held on 5 October 2021. In response to contact by the Executive Officer, Ald Sims advised in emails dated 22 September 2021: "*So no I won't be attending and there is no need for me to be there when all evidence has already been provided and considered*". In these emails Ald Sims also stated that she "*couldn't guarantee that I won't be ill*" and that she "*could provide a medical certificate*". The Panel followed up with a request to Ald Sims accepting her offer to provide a medical certificate. Ald Sims responded that if the Panel required her to produce a medical certificate, then it (the Panel) would have to pay for it.

Given the situation that had developed, the Panel met again and acknowledged that despite Ald Sims request for a hearing she was not intending to attend the hearing. The Panel vacated the hearing date and advised Ald Sims and Ald Ryan that it would determine the matter on the papers before it.

## Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint by Ald Sims that Ald Ryan has breached Part 7.1 of the Glenorchy Code of Conduct.

The following documents were considered by the Panel as evidence in this matter:

- Ald Sims' complaint dated 26 May 2021 under cover of a statutory declaration;
- Ald Ryan's response to the complaint dated 23 August 2021 under cover of a statutory declaration with attachments.

The Panel met on 5 October 2021 to determine the complaint. The evidence before the Panel in relation to this part of the complaint was an email exchange between Ald Sims and Ald Ryan (some of which were copied to other recipients) as outlined below; -

- 17 March 2021 – 1.31pm from Kelly Sims to all aldermen, Sam Fox and Tony McMullen;
- 17 March 2021 – 6.27pm from Angela Ryan to Kelly Sims;
- 17 March 2021 – 8.53pm from Kelly Sims to Angela Ryan;

- 18 March 2021 – 6.03pm from Angela Ryan to Kelly Sims cc all aldermen and Tony McMullen;
- 18 March 2021 – 6.05pm from Angela Ryan to Kelly Sims cc all aldermen and Tony McMullen;
- 18 March 2021 – 6.11pm from Angela Ryan to Kelly Sims cc all aldermen and Tony McMullen;
- 18 March 2021 – 6.19pm from Angela Ryan to Kelly Sims cc all aldermen and Tony McMullen.

There is no dispute by either party as to the authenticity of these emails. In response to the complaint, Ald Ryan asserted that her actions were taken to defend a valued and respected Council employee and were proportionate and appropriate in the circumstances.

In her complaint, in which the complainant is required to state what efforts have been made to resolve the matter, Ald Sims stated that “for her own safety it was unreasonable to approach Ald Ryan”. Ald Ryan’s response to this statement was that it was disingenuous for Ald Sims to make this assertion as there had been “no history between them”. Ald Ryan contends that the content of the email sent by Ald Sims at 1.31pm on 17 March 2021, was not factual and contained likely allegations made by third parties.

### **Part 7.1. – A Councillor (a) must treat all persons fairly**

To establish context for what transpired over 17 and 18 March 2021, the Panel took note of the Glenorchy Planning Authority (GPA) meeting held on 15 March 2021. Ald Sims did not attend this meeting in person but participated via an audio link.

Ald Sims in her email at 1.31pm on 17 March 2021 expressed concern as she understood that Glenorchy staff member, Director Sam Fox, was pulling faces and shaking her head when Ald Sims was speaking at that meeting. Ald Ryan’s response at 6.27pm was to challenge the authenticity of Ald Sims’ assertion regarding Sam Fox.

In undertaking the initial assessment, the Chairperson viewed the YouTube video of the GPA meeting and noted that at no stage of proceedings did Ms Fox appear at all, let alone pulling faces and shaking her head.

This was corroborated by General Manager, Tony McMullen and then Mayor Kristie Johnston, who found that there was no evidentiary support to the claim by Ald Sims. (These emails being attachments to Ald Ryan’s Statutory Declaration of 23 August 2021). Mayor Johnston in her email to Ald Sims dated 17 March 2021, stated that despite genuine efforts to engage with her through mediation, Ald Sims has refused.

The chain of emails on 18 March 2021 by Ald Ryan to Ald Sims (copied to others) called for Ald Sims’ resignation. It is on this matter that the Panel turned its mind to whether Ald Sims was treated fairly. The intent of a Code of Conduct for elected members is to ensure that they comply with a high level of compliance as expected by the community. However, on the issue of fairness – the question is whether it was fair vis à vis another alderman.

It is the Panel’s opinion that during the cut and thrust of debate of local government matters some heated exchanges occur. Whilst Ald Ryan used an emoji and intemperate language in her communication with Ald Sims, the Panel assessed that a reasonable person would not think this was unfair in the circumstances, particularly given that Ald Ryan was seeking to defend a respected Council employee from what she considered to be an unfounded personal attack.

The Panel dismissed the complaint in relation to Part 7.1 (a).

### **Part 7.1. – A councillor (b) must not cause any reasonable person offence or embarrassment**

In her complaint, Ald Sims alleges that Ald Ryan “should not have caused any reasonable person offence or embarrassment”. This is made as a generic statement, and Ald Sims has not provided any evidence as to how she, personally, has been offended or embarrassed by Ald Ryan’s behaviour.

Ald Ryan in her submission indicated that she was willing to participate in a conciliation or mediation forum to resolve the substance of the complaint with Ald Sims, which was declined by Ald Sims. Ald Ryan states that Ald Sims has displayed unprovoked “hostility to all (fellow councillors)”. In her response to the complaint, Ald Ryan submits that despite offers by the former and current Mayor, Ald Sims has refused all invitations and “appears to have no intention to ever meet with anyone in a spirit of reconciliation”.

There is corroboration of Ald Sims' behaviours in this regard in the emails from the General Manager and Mayor to Ald Sims on the 17 and 18 March 2021 respectively. (These emails being attachments to Ald Ryan's Statutory Declaration of 23 August 2021).

Given the content of the email of 17 March 2021 initiated by Ald Sims, the Panel concluded that Ald Ryan's response was reasonable and that Ald Sims should have expected a reaction and should not have been offended or embarrassed.

The Panel dismisses the complaint in relation to Part 7.1 (b).

#### **Part 7.1. – (c) 1. A councillor – (c) must not bully or harass any person.**

Ald Sims alleges that Ald Ryan's conduct constituted bullying or harassment. However, whilst she made broad allegations about Ald Ryan's behaviour, she did not provide any evidence that Ald Ryan displayed any unreasonable and sustained unwarranted behaviour towards her. Ald Ryan stated that until this episode over the period 17 and 18 March 2021 she had no "history" with the complainant and that as Ald Sims "rarely attended GPA meetings and aldermanic workshops", she hardly had the opportunity to have a conversation with her.

The Panel noted that no specific evidence was submitted by Ald Sims that demonstrated Ald Ryan had breached this part of the code. Therefore, the Panel concluded that Ald Ryan did not bully or harass Ald Sims.

The Panel dismisses the complaint in relation to Part 7.1(c).

#### **Determination**

As per section 28Z1 of the Act the Code of Conduct Panel determines that Ald Angela Ryan has not breached the Code of Conduct, and therefore the Code of Conduct Panel dismisses the complaint.

#### **Reasons for determination**

The Code of Conduct Panel considered the information provided by Ald Kelly Sims and the response by Ald Angela Ryan, along with accompanying statutory declarations. The Code of Conduct Panel noted the lack of supportive evidence from Ald Sims and concluded that Ald Ryan did not breach Part 7.1(a), (b) and (c) of the Code of Conduct, which was current at the time of the alleged contravention on 18 March 2021.

#### **Timing of the Determination**

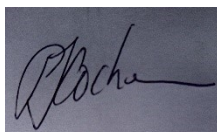
The Panel has been unable to determine the complaint within 90 days, owing to a delay of six weeks covered by the respondent's medical certificate, Panel members' periodic unavailability and delays in attempting to establish a hearing date which was not ultimately required.

#### **Right to review**

A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.



Jill Taylor  
Chairperson



Penny Cocker  
Member



Rob Winter  
Member

DATE : 19 October 2021