

**CODE OF CONDUCT PANEL DETERMINATION REPORT
NORTHERN MIDLANDS COUNCIL CODE OF CONDUCT
FOR ELECTED MEMBERS**

Complaint brought by Councillor Paul Terrett against Councillor Mary Knowles

Code of Conduct Panel

- Liz Gillam (Chairperson)
- Matt Evans (Local Government Member)
- Don Jones (Legal Member)

Date of Determination: 18 September 2024

Content Manager Reference: C31842

Summary of the complaint

Councillor Paul Terrett (Cr Terrett) made a complaint against Councillor Mary Knowles (Cr Knowles) dated 14 December 2023 pursuant to section 28V of the *Local Government Act 1993* (the Act).

The complaint alleged that Cr Knowles breached a number of clauses of the Northern Midlands Council Code of Conduct for Elected Members (the Code) (updated October 2023) by her actions at the Ordinary Council Meeting on 11 December 2023, relating to Agenda Item 2, Agenda Item 5.3.1 and Agenda Item 5.5.

The complaint also alleged that Cr Knowles breached sections 28ZK (6) and 338A of the *Local Government Act 1993* and Clause 8 of the *Local Government (Meeting Procedures) Regulations 2015*.

The Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the Act. Those parts of the complaint relating to alleged breaches of the *Local Government Act 1993* and *Local Government (Meeting Procedures) Regulations 2015* were referred to the Director of Local Government (section 28ZC(1) of the Act) and this referral was accepted.

In respect to those parts of the complaint alleging breaches of the Code, the Chairperson determined that those parts of the complaint relating to the following parts of the Code were to be investigated and determined by the Code of Conduct Panel pursuant to section 28ZA(1)(f) of the Act:

Part 1 – Decision Making

- 1.1 - A councillor must bring an open and unprejudiced mind to all matters being decided upon.
- 1.2 - A councillor must make decisions free from personal bias.
- 1.3 - In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.

1.4 - A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.

Part 2 – Conflict of Interests that are not Pecuniary

- 2.1 When carrying out his or her duty a councillor must not be seen to be unduly influenced by personal or private interests that he or she may have.
- 2.3 A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting.
- 2.5 A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.
- 2.6 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 judgment to determine whether a reasonable person would consider 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 Council.

Part 7 – Relationships with Community, Councillors 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.

The remainder of the complaint was dismissed.

That determination was communicated to the parties and the General Manager of the Council by letter of 20 March 2024.

Investigation of the Complaint

On 20 March 2024, the Executive Officer of the Code of Conduct Panel (the Panel) selected Ms Elizabeth Gillam, Mr Matt Evans and Mr Don Jones to constitute the Panel to investigate and determine the complaint.

The following documents were taken into account in the investigation:

- Northern Midlands Council Code of Conduct for Elected Members (the Code) (updated October 2023)
- Complaint made by Cr Terrett against Cr Knowles dated 14 December 2023
- Mr Des Jennings' Statutory Declaration dated 25 March 2024
- Cr Knowles' response dated 4 April 2024
- Cr Terrett's submission dated 22 April 2024
- Cr Knowles' email to Panel Chair dated 30 April 2024
- Mr Des Jennings' Statutory Declaration dated 17 May 2024
- Executive Officer, Code of Conduct Panel email dated 29 May 2024
- Cr Knowles Statutory Declaration dated 30 May 2024
- Cr Knowles Statutory Declaration dated 24 June 2024
- Agenda Northern Midlands Council Meeting 11 December 2023
- Minutes Northern Midlands Council Meeting 11 December 2023
- Audio- recording Northern Midlands Council Meeting 11 December 2023

Determination

As per section 28ZI of the Act, the Panel determines that Cr Knowles has breached Parts 1.1, 1.2, 1.3 and 1.4; Parts 2.1, 2.3, 2.5 and 2.6; and Part 7 (1) (a) of the Code, and therefore the Panel upholds part of the complaint.

The Panel dismisses the allegation in the complaint that Cr Knowles breached Part 7 (1) (b) and (c) of the Code.

Reasons for Determination

Alleged Breaches of Part 2 – Conflicts of Interest that are not pecuniary

For ease of understanding the reasons for the Determination, the alleged breaches of Part 2 will be addressed first.

In his complaint Cr Terrett alleged that, at the Ordinary Council Meeting on 11 December 2023, Cr Knowles had a conflict of interest in relation to Agenda Item 2, Agenda Item 5.3.1 and Agenda Item 5.5.1 by reason of:

Being a witness at a Code of Conduct Panel hearing into a previous complaint to which Councillor Andrew McCullagh (Cr McCullagh) was a party,
Taking an action in defamation against Cr McCullagh, and
Having made a Code of Conduct complaint against Cr McCullagh.

Cr Knowles has confirmed:

that she appeared as a witness at a Code of Conduct hearing into a previous complaint to which Cr McCullagh was a party;

that she is taking action in defamation against Cr McCullagh:

'It is public knowledge that in 2020, the General Manager and I commenced defamation proceedings individually against Mr Andrew McCullagh, who was not a Councillor at the time, for public posts he made on his Facebook page, 'Northern Midlands Council Watch'. Those legal proceedings remain ongoing.'

Cr Knowles requested, that in the interests of maintaining confidentiality, information about other complaints be sought from the Executive Officer of the Code of Conduct Panel. The Executive Officer confirmed a number of Code of Conduct complaints, to which Cr Knowles and Cr McCullagh are parties, existed at 14 December 2023 (date of complaint being investigated) and are still open to determination. Although Cr Knowles argues these complaints are still confidential, it is noted that Cr Knowles refers to her complaint against Cr McCullagh in Ordinary Council Meeting 11 December 2023 agenda item 5.5.1. It is also noted that one complaint is in the public domain having been published on Cr McCullagh's Facebook page.

The minutes of the Ordinary Council Meeting 11 December 2023, indicate that:

At agenda item 2 'Table of Contents', Cr Knowles indicated that there were two additional items to be added to the Table of Contents and that she wished to step out of the Chair for one of these. Cr Knowles then vacated the chair and Cr Lambert took the Chair. Cr Knowles moved a motion for the inclusion of agenda item 5.5.1.

Cr Knowles did not declare any conflicts of interest at agenda item 4 'Declarations of Pecuniary Interest'.

Cr Knowles read a statement prepared by the General Manager relating to the removal of agenda item 5.3.1 'Code of Conduct Panels Determination Report'.

At agenda item 5.5.1 'Motions without Notice – Mayor's Correspondence to the Office of Local Government', Cr Knowles vacated the chair and read the agenda paper (the Background and Supporting Information to Motion 5.5.1 was written in the first person) to the meeting. In this statement Cr Knowles stated that she had made a Code of Conduct complaint against Cr McCullagh, although she did not elaborate on the nature of the complaint. Cr Knowles summed up to conclude debate on the item.

Motion 5.5.1 was as follows:

Moved Mayor Knowles, seconded Cr Adams

1. That Council note:

1. a the letter of the Acting Director of Local Government, Mr Mike Mogridge, dated 28 November 2023 which is Attachment 5.3.2.1 to the agenda:
 1. i) reminding the Council of its obligations to provide a safe work environment;
 2. ii) noting the ongoing nature of interactions, their apparent severity and potential adverse impacts on the wellbeing of staff; and
 3. iii) advising that he has referred the Council to WorkSafe Tasmania due to his concerns about allegations of bullying and harassment and other harmful behaviours;
2. b Council's duties under the Work Health and Safety Act 2012 (Tas); and
3. c Councillors' functions and duties under the Local Government Act 1993 (Tas) (the Act).

2. That:

1. a Council reaffirm its commitment to the principles of respectful behaviour, in accordance with our obligations under section 28T of the Act; and
2. b the Mayor write to the Acting Director of Local Government to request that he recommend to the Minister for Local Government that he issue a Performance Improvement Direction (PID) to Councillor Andrew McCullagh following him resuming his office as councillor, to protect the General Manager's, Mr Des Jennings, ("Mr Jennings") health and safety in the workplace and prevent behaviour and conduct toward Mr Jennings that either treats him unfairly, causes him offence or embarrassment, or comprises bullying or harassment.

Cr Knowles voted on agenda items 2, 5.3.1 and 5.5.1.

It is clear, from her actions at the meeting and her submissions to the Panel that Cr Knowles does not consider that she had a conflict of interest at that meeting. It appears that she vacated the Chair in order to lead debate on the inclusion, and then the consideration, of agenda item 5.5.1. Cr Knowles argues that if she has an interest (because she was a witness at a Code of Conduct hearing), 'then it would follow that I would need to declare an interest in each and every Council Agenda Item that determines actions that might be taken to sanction Councillor McCullagh'.

The Panel considers that having appeared as a witness at a hearing for an earlier Code of Conduct complaint to which Cr McCullagh was a party could in some circumstances amount a conflict of interest, eg if evidence given was of such a nature as it impugned the character of Cr McCullagh. The Panel did not have such evidence before it.

Cr Knowles does not address in her submissions the other alleged conflicts of interest ie defamation proceedings and other code of conduct complaints, except for requesting information as to the relevance of providing information about the defamation proceedings. The Panel notes, from Cr Knowles email of 30 April 2024, that the defamation action relates to public posts made by (then) Mr Andrew McCullagh on his Facebook page 'Northern Midlands Council Watch' and that it can therefore be reasonably assumed that the posts related to Council business.

The Panel considers that the action in defamation and the existence of code of conduct complaints between Cr Knowles and Cr McCullagh creates a conflict with the need for Cr Knowles to impartially perform her role as Councillor specifically in relation to the motion 5.5.1. It is untenable for Cr Knowles to make a decision in a meeting on a matter that involves Cr McCullagh's conduct, whilst pursuing separate defamation action and code of conduct complaints against Cr McCullagh. This is not passing any judgement on the merits of the defamation action or code of conduct complaints.

The Panel also considers that a reasonable person being aware of the subject matter of motion 5.5.1, aware of the on-going defamation proceedings and aware that Cr Knowles had lodged a Code of Conduct complaint against Cr McCullagh would form a perception that Cr Knowles had a conflict of interest.

The Panel considered the genesis of agenda item 5.5.1, acknowledging that the situation that existed in the Northern Midlands Council at the time was long-standing, complex, divisive and having significant impacts on the Council and its community.

In a Statutory Declaration, Mr Des Jennings, General Manager Northern, Midlands Council, states:

'Due to the ongoing bullying and harassment I receive, the failed past attempts and my concerns about lack of accountability or ability to effectively control Councillors behaviour, and after the Determination Report was received in which the Panel made positive findings of bullying and harassment by Cr McCullagh, on 7 December I had a conversation with the Mayor about my concerns and asked she take further action. I requested the Mayor consider further action pursuant to work health and safety requirements, including placing an item in the open section of the Council agenda for a Performance Improvement Directive to be sought as I feel that nothing has worked to date and it is the Mayor who is the appropriate person to take such action.'

In taking forward agenda item 5.5.1, it appears that Workplace, Health and Safety, and taking action to protect the General Manager, was paramount in the mind of Cr Knowles. It does not appear that the potential for any conflict of interest was considered.¹

Cr Knowles might have argued that, with her serious concerns about Mr Jennings' health and welfare, she acted in good faith to the exclusion of assessing other implications of her actions. However, her submissions to the Panel suggest that she does not consider that she was conflicted by her interests.

As reinforced by the Acting Director of Local Government in his letter to the Council dated 28 November 2023, which was read out at the 11 December 2023 meeting, workplace health and safety is a collective responsibility of the Council. In light of this, Cr Knowles could have requested another councillor to take these agenda items forward.

¹ The Panel notes that later at the 11 December 2023 meeting its response to a paper from the Minister for Local Government entitled 'Managing Conflicts of Interest of Councillors', in which there is extensive discussion of the types circumstances creating conflicts of interest.

The Panel determines that, in taking the actions she did at the Ordinary Meeting 11 December 2023 in relation to agenda items 2, 5.3.1 and 5.5.1, Cr Knowles breached the following parts of the Code:

Part 2.1 - When carrying out his or her duty a councillor must not be seen to be unduly influenced by personal or private interests that he or she may have.

Part 2.3 - A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting.

Part 2.5 - A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.

Part 2.6 - A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –

(c) Declare the conflict of interest and the nature of the interest before discussion of the matter begins; and

(d) Act in good faith and exercise reasonable judgment to determine whether a reasonable person would consider 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 Council.

Alleged Breaches of Part 1 – Decision Making

Having determined that Cr Knowles had a non-pecuniary conflict of interest, by virtue of the defamation proceedings and code of conduct complaints, the Panel considered the alleged breaches of Part 1 of the Code:

Part 1.1 - A councillor must bring an open and unprejudiced mind to all matters being decided upon.

Part 1.2 - A councillor must make decisions free from personal bias.

Part 1.3 - In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.

Part 1.4 - A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.

The Background and Supporting Information to Motion 5.5.1 is written in the first person (Cr Knowles) and includes reference to Mr McCullagh's recent actions:

'Since suspension from office, Mr McCullagh has emailed me to advise that he has applied to the Magistrates Court for a review of the Code of Conduct Panel's Determination on the ground that the Panel has failed to comply with the rules of natural justice (not on grounds of an error of law or fact).

In that email, it is my opinion that Mr McCullagh continued his conduct towards Mr Jennings unabated, by insulting and threatening him.

In Comments made in a Facebook post on 6 December 2023, Mr McCullagh demonstrated disregard for the Code of Conduct Panel process, and a lack of remorse and any reflection on his behaviour. Mr McCullagh has made similar public comments on radio and as quoted in the media which cause me significant concern that his behaviour towards Jennings will continue when he resumes office.'

.....

I apprehend that Mr McCullagh's behaviour will continue unless the Minister regulates his behaviour by issuing a PID, given that:

- *Mr McCullagh has been warned by me and the Director of Local Government that we consider his conduct towards Mr Jennings unacceptable;*
- *He is aware of my Code of Conduct complaint against him, and yet his behaviour has continued; and*

- *Despite his suspension, his behaviour has continued.*

Cr Terret alleges that in expressing an opinion on McCullagh's conduct, Cr Knowles demonstrated her inability to act openly and with an unprejudiced mind.

It is not the remit of this Panel to consider Cr McCullagh's behaviour, other than to note that having reviewed his email to Cr Knowles of 6 December 2023, it is not of the view that it is of such an insulting or threatening nature to justify Cr Knowles comment.

In the Background and Supporting Information to Motion 5.5.1, Cr Knowles clearly expresses her view as to Cr McCullagh's past, continuing and future behaviour. It is noted that her Code of Conduct complaint is still open to determination and that his behaviour during suspension is not open to consideration. The Panel is unable to consider matters that arise after the filing of the complaint and can only consider those matters complained of in the document.

The Panel considers that it would have been most unlikely that Cr Knowles would have been persuaded at the meeting to come to a contrary view at the 11 December meeting.

Applying the test for apprehended bias ie whether a fair-minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the exercise of power, the Panel has determined, in light of her defamation action, other code of conduct complaints and her sponsorship of motion 5.5.1, that Cr Knowles is in breach of

Part 1.1 - A councillor must bring an open and unprejudiced mind to all matters being decided upon.

Part 1.2 - A councillor must make decisions free from personal bias.

Part 1.3 - In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.

Part 1.4 - A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.

Alleged Breaches of Part 7 – Relationships with Community, Councillors and Council Employees

Part 7.1 - a councillor

- (a) Must treat all persons fairly

Currently, Section 28ZK (4) of the Act provides that if the general manager receives a determination report but no addendum, the general manager is to ensure that a copy of the determination report is included within an item on the agenda for the first meeting of the relevant council at which it is practicable to do so and which is open to the public.

Section 28ZP of the Act provides that 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 to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.

Section 17 of the *Magistrates Court (Administrative Appeals Division) Act 2001* provides that an application for review must be made within 28 days. Section 23 of that Act provides that making an application to the court for a review of a reviewable decision does not affect the operation of the decision.

The Panel notes that the Determination Report was received by the Council on Tuesday 5 December 2023. It was included as agenda item 5.3.1 for the 11 December meeting, being 'the first meeting of the relevant council at which it is practicable to do so and which is open to the public' (as per section 28ZK (4) of the Act). It appears to be normal practice for the Council to publish the agenda for Ordinary Meetings on the Wednesday preceding the following Monday meeting, as was the case in December 2023 with the agenda being published on Wednesday 6 December. Acknowledging that these actions were within the provisions of the Act, the Panel notes that this timing was unfortunate because it did not give any flexibility to see what might transpire over the coming days following receipt of the Determination Report.

Later on the 6 December (after the agenda had been published), Cr Knowles was informed by Cr McCullagh that he was appealing the Panel's decision. Late on the 7 December, the Council received official notification of this appeal. On 8 December, Councillors were advised by email from the General Manager of this appeal but that Cr McCullagh's suspension continued. The Determination Report was removed from the agenda later on 8 December.

Between the publication of the agenda and the meeting, discussions took place between Cr Knowles and Mr Jennings about agenda item 5.5.1., with an agenda paper being prepared for tabling at the meeting on 11 December.

The Panel notes the following in relation to the 11 December 2023 meeting, in terms of the fair treatment of Cr McCullagh:

- Agenda Item 5.3.1 - Code of Conduct Panels Determination Report: Local Government Act 1993 (Section 28ZJ) Withdrawn.'

The Minutes for this meeting indicate that Cr Knowles read a document to the meeting, which replicated an email that had been sent by the General Manager to all councillors on 8 December 2023. During the reading of this document, Cr Terrett moved a motion of dissent, but this was lost and the reading continued.

In his complaint, Cr Terret alleges:

- That this email was confidential
- Contained extracts from the Determination Report.

Cr Knowles Statutory Declaration 4 April 2024 states:

- 19. Prior to the start of the Council Meeting on Monday 11 December the General Manager gave me a document to be read out at Item 5.3.1 on the Agenda.*
- 20. This document explained to the Councillors and the general public, including those watching Mr McCullagh's Councillor in Action FACEBOOK page, why the Agenda had needed to be changed, and outlined the conditions of the suspension.*
- 21. I did not read anything from the Code of Conduct Determination Report as asserted by Cllr Terrett.*
- 22. In reading this document I was not discussing a matter not on the Agenda as asserted by Cllr Terrett; I was explaining why the Agenda needed to be changed.*

Further, in his email to Cr Knowles and Mr Jennings of 6 December 2023, Cr McCullagh requested that there be a written explanation about the removal of the determination Report from the agenda.

The Panel accepts Cr Knowles' explanation for reading the statement made at 5.3.1, particularly given Cr McCullagh's request.

The Panel is not required to consider the matter of any potential breach of confidentiality as this was referred to the Director.

- Agenda Item 5.5.1.

At agenda item 5.3.2, Cr Knowles read a letter from the Acting Director of Local Government in which he stated, inter alia, that he had referred the ongoing workplace issues at the Northern Midlands Council to WorkSafe Tasmania. 'as the appropriate body for further independent inquiry'. When Cr Terrett, in response to the reading of this letter, proposed a motion that Northern Midlands Council appoint an independent arbitrator to arbitrate councillor behaviour in 2024, Cr Knowles commented to the effect that this would be being undertaken by WorkSafe Tasmania. Cr Terrett's motion lapsed for want of a seconder.

Despite having acknowledged the forthcoming involvement of WorkSafe Tasmania, Cr Knowles went on to move agenda item 5.5.1, one of the reasons given, in the Background and Supporting Information paper, and in its presentation to the meeting, being the urgency of taking this matter forward with the proposed correspondence to the Minister seeking a Performance Improvement Directive:

'Mr McCullagh has been suspended as a councillor for 21 Days, effective 5 December 2023, and will resume his office on 27 December 2023. The next Council meeting is scheduled for Monday 29 January 2024. It is not reasonably practicable to schedule a Special Council meeting upon Mr McCullagh resuming his office, due to the Christmas break and associated Council office closures.'

This comment would suggest that some thought had been given to Cr McCullagh's ability to attend a meeting at which this matter was discussed. However, in the next paragraph:

'Even if it were possible for the Council to convene a Special Council meeting over the Christmas break, office closures at the Office of Local Government and the Minister's office would mean that any consideration of this matter would be unlikely to occur until the New Year, after Mr McCullagh resumes his office as a councillor'.

This comment strongly indicates that it was intended to deal with this matter in Cr McCullagh's absence.

Further, the Panel notes that agenda item 5.5.1 was considered in open council. The *Local Government (Meeting Procedures) Regulations 2015* provide at Regulation 15 the circumstances in which councils can go into closed council, including for personnel matters. The health and welfare of the General Manager would appear to fall into this category.

In response to the Panel's question whether consideration was given to including this in closed council agenda, Cr Knowles responded:

'Yes.....but I was advised by the General Manager that I could raise the matter in Open Council'.

Mr Jennings has stated that he *'requested the Mayor consider further action pursuant to work health and safety requirements, including placing an item in the open section of the Council agenda for a Performance Improvement Directive to be sought'*

Cr Terrett argues that motion 5.5.1 failed to provide any procedural fairness to Cr McCullagh as he was not able to defend himself or make comment.

In the Background and Supporting Information to agenda item 5.5.1 a number of comments are made about Cr McCullagh's past, continuing and future behaviour, as discussed previously. The motion was put in open council by Cr Knowles as a matter of urgency at a meeting which Cr McCullagh was unable to attend.

The Panel notes the following definitions of 'Fair' treatment:

Cambridge Dictionary – ‘fair’- treating someone in a way that is right or reasonable, or treating a group of people equally and not allowing personal opinions to influence
Collins Dictionary – something that is fair is reasonable, right and just.

The Panel acknowledges Cr Knowles’ concerns for the welfare of Mr Jennings and her desire to address these. However, given that the matter had been referred to WorkSafe Tasmania, the Panel finds that, the consideration of motion 5.5.1 at the 11 December 2023 Council Meeting, as matter of urgency, in the open part of the meeting that Cr McCullagh was unable to attend due to suspension, was at the expense of due process for Cr McCullagh.

The Panel considers that this amounts to unfair treatment of Cr McCullagh and is in breach of Part 7(1)(a) of the Code.

Part 7.1 - a councillor

- (b) Must not cause any reasonable person offence or embarrassment
- (c) Must not bully or harass any person.

In his original complaint, Cr Terret did not specifically address a breach of Part 7 (1) (b) and (c), although they were listed as a provisions of the Code he believed to have been breached.

However, in his Statutory Declaration of 22 April 2024 he states:

I would allege that the motivation behind Des Jennings in providing Cr Knowles a statement to be read at the meeting (3.2.1), was to cause embarrassment to Cr McCullagh; and I allege that the motion (5.5.1) was drafted to cause Cr McCullagh person (sic) offence, embarrassment and an attempt to bully and harass him in contravention of Part 7.1 of the Code.

Cr Terrett did not provide any supporting evidence to suggest that Cr McCullagh was offended or embarrassed. In relation to agenda item 3.2.1, Cr McCullagh had requested that an explanation be provided to meeting, as discussed previously.

The Panel does not consider that Cr Knowles behaviour at the 11 December 2023 meeting, the subject of the complaint, meets the accepted tests of bullying and harassment.

Accordingly, the Panel determines that these parts of the Complaint are dismissed.

Sanction

Section 28ZI (2) of the Local Government Act 1993 provides for the Panel to impose one or more of the following sanctions if it upholds the complaint or part of it-

- a. a caution;
- b. a reprimand;
- c. a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;
- d. a requirement to attend counselling or a training course; or
- e. a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.

On 15 August 2024, Cr Knowles was advised that a number of the allegations made in the complaint were likely to be upheld and provided with an overview of how each part of the complaint might be determined by the Panel. Cr Knowles was invited to make a submission as to what, if any, sanction should be applied in the event that parts of the complaint were

upheld. Cr Knowles' submission was received on 26 August 2024. The Panel considers that this Determination Report addresses the points raised by Cr Knowles in her submission.

Giving full consideration to Cr Knowles' submissions and her preparedness to participate in training, the Panel has determined that a caution is the appropriate sanction.

Whilst not imposing this as a sanction, the Panel strongly recommends that Cr Knowles undertakes training in relation to the declaration of interests and unbiased decision-making, at the earliest opportunity with the costs borne by the Council in accordance with Section 28ZNA of the Act.

The Council might consider this an opportunity to provide refresher training to all Councillors as to the roles and responsibilities of Councillors to each other and to Council Staff, and the application of the Code to declarations of interest and unbiased decision-making.

Timing of the Determination

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the Chairperson's determination that the complaint is to be investigated.

The Panel was unable to determine the complaint within 90 days, primarily due to the delay in constituting the Panel and the work and other commitments of Panel members and parties to the complaint.

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.



Liz Gillam
Chairperson



Matt Evans
Member



Don Jones
Legal Member

DATE – 18 September 2024