

## DEVONPORT CITY COUNCIL CODE OF CONDUCT PANEL DETERMINATION REPORT \*

Complaint made by Mr Malcolm Gardam against the Mayor, Cr Annette Rockliff

Reference : c20349

**Date of Determination:** 7 August 2020

### **Code of Conduct Panel:**

Lynn Mason (Chairperson), Sue Smith (community member with experience in local government), Stephen Bishop (legal member)

### **Summary of the Complaint**

The complaint made by Mr Gardam was referred to the Executive Officer of the Code of Conduct Panel (the Panel) on 7 April 2020.

Pursuant to section 28ZA(1)(e) of the *Local Government Act 1993* (the Act), the Chairperson advised on 14 April 2020 that the complaint should be referred to a Panel for investigation. The complaint alleged that at the Devonport City Council Annual General Meeting (AGM) held on 9 December 2019 Cr Rockliff, in her role as Mayor and Chairperson of the AGM, arbitrarily closed the meeting in such a way that members of the public in attendance were prevented from bringing forward further business for the meeting. The complaint alleged that her actions at that time breached the Devonport City Council Code of Conduct (the Code).

The Code in force at the time of the alleged breaches was approved by Council in January 2019. The sections of the Code which Mr Gardam alleged Cr Rockliff breached are:

#### *PART 1 – Decision Making*

1. *A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.*
2. *A councillor must make decisions free from personal bias or prejudgement.*
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.*
4. *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

### **The Complaint**

Mr Gardam alleged that the Mayor had closed the AGM after approximately one and a half hours, without asking the meeting if there was any further business to be considered. At the time, a member of the public was addressing the Mayor as Chairperson of the meeting, and when the Mayor stated that she was closing the meeting, the member of the public clearly stated that he had a further motion he wished to put. The complaint also alleged that at this time a point of order was called but ignored by the Mayor, and that the Mayor had demonstrated bias against the Complainant and another community member.

\* 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 alleged that later questions asked of the Mayor during Public Question Time at subsequent ordinary meetings of the Council failed to provide evidence that the Mayor had handled the meeting correctly.

## Procedure

Cr Rockliff was requested to provide a response to the Panel by 29 April 2020. The Panel received a response on 29 April 2020, but that response not attached to or part of a Statutory Declaration. The Panel requested a Statutory Declaration to accompany the response, and this was received on 30 April 2020. The Panel accepted the response.

The Panel met on 30 April 2020 to consider the complaint and Cr Rockliff's response. On 4 May 2020, the Panel wrote to Cr Rockliff, requesting further response to the complaint, and in particular, asking her to detail if possible her reasons for considering that as Mayor and Chairperson she had:

- brought an open and unprejudiced mind to all matters upon which she had to decide at that meeting;
- made decisions free from personal bias and free from prejudgement;
- given genuine and impartial consideration to all relevant information known to her, or of which she should have been aware;
- made her decisions solely on merit; and
- not taken irrelevant matters into account when making her decisions.

Cr Rockliff was also asked to make submission on whether she would be disadvantaged if a hearing were not to be held, and submission on what sanction she considered would be appropriate in the event that the Panel determined to uphold part or all of the complaint.

On 5 May 2020 the Panel wrote to Mr Gardam to request his submission on whether he would be disadvantaged if a hearing were not to be held. Mr Gardam was provided with Cr Rockliff's response of 30 April 2020 and invited to make a further response by 11 May 2020.

On 11 May 2020 the Panel received Cr Rockliff's second response and her submission on sanction. On the same day the Panel received Mr Gardam's response to Cr Rockliff's statement of 30 April 2020 and his submission on hearing. These documents were exchanged between the parties on 14 May 2020. After considering both responses, the Panel determined at its meeting on 18 May 2020 that a hearing would be held.

On 20 May 2020, pursuant to section 28ZG (1) of the Act, both parties were advised that a hearing was to be held. In addition, Mr Gardam was invited to make a final submission to the Panel. Mr Gardam responded on 2 June 2020, and this response was sent to Cr Rockliff with an invitation to respond. On 21 June 2020 Cr Rockliff informed the Panel that she had no further submissions to make.

The hearing was conducted on 13 July 2020, using a web-based meeting platform. No witnesses were called. Mr Graeme Nevin attended as a support person for Mr Gardam, and Mr Kim Steven attended as a support person for Cr Rockliff. Both parties took the Oath or Affirmation before giving evidence, as did Mr Nevin and Mr Steven. Mr Gardam, Mr Nevin, Cr Rockliff and Mr Steven swore that they were not recording the hearing.

During the hearing Cr Rockliff said that she did not dispute the transcripts from the audio recording of the AGM provided by Mr Gardam in the complaint, nor did she dispute the accuracy of the audio recording on the Council's website.

## Material considered by the Panel

- The Devonport City Council Model Code of Conduct Policy, January 2019;
- The Complaint by Mr Gardam, 6 April 2020;
- The Devonport City Council Public Question Time Policy, 22 July 2019;
- The audio recording of the Devonport City Council Annual General Meeting, held on 9 December 2019;
- The response to the Complaint provided by Cr Rockliff to the Panel on 30 April 2020;
- Second response from Cr Rockliff, 11 May 2020, including submission on sanction;
- Submission on hearing and further response from Mr Gardam, 11 May 2020;
- Letter from Mr Gardam to the Panel Chairperson, 19 May 2020;
- Letter from Mr Gardam to the Panel Chairperson, 22 May 2020;
- Letter from Mr Gardam to the Panel Chairperson, 27 May 2020;
- Statutory Declaration from Mr Gardam, 2 June 2020
- Email from Cr Rockliff to the Executive Officer, declining to provide further information, 21 June 2020.

## Determination

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

## Reasons for the Determination

### 1. Alleged Breach of Part 1.1 of the Code

- 1. A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.*

The Panel finds that the Mayor's admission that she decided to close the meeting because she considered that the AGM was being used as an opportunity to embarrass her personally indicates that her mind was not open to ensuring that all community members were given a reasonable opportunity to speak to the meeting. This finding is supported by the Mayor's audible sighs when inviting a particular member of the public to ask a question, and by her assertion in answering a later question about the abrupt closure of the meeting that an AGM should not take an hour and a half. No time limit was placed on the Devonport City Council AGM agenda, and the Mayor had several options available to her as Chairperson of the meeting if she wished to finish after an hour and a half; but at no point did she allude to the possibility of adjourning the meeting, or continuing to a fixed time and then adjourning if the business of the meeting was unfinished. Her mind was closed to these options.

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

- 2. A councillor must make decisions free from personal bias or prejudgement.*

The Mayor stated in her response to the complaint that she had made the decision to close the meeting at that time because there was 'no new business being raised'. The Panel finds that the Mayor could not have known the wording or intent of the motion the member of the public wished to move, as it was a Motion without Notice. Her judgement that there was no new business was based on a false premise. In addition, the Mayor failed to ask the meeting in broad terms whether

there was any further business to be discussed at the meeting, thus denying other members of the community (other than the person trying to move a resolution at the time the Mayor closed the meeting) the opportunity to raise new business. This is contrary to the Mayor's statement in response to the complaint that she had ensured that every person who wished to speak was given the opportunity.

The Panel considered whether the Mayor had made decisions affected by any personal bias, but finds that no evidence was presented to indicate that this had occurred.

The Panel finds that the Mayor prejudged the matters still to be raised in the meeting and therefore, pursuant to section 28ZI (1)(a), the Panel upholds the complaint that Cr Rockliff breached Part 1.2 of the Code of Conduct.

*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.*

The Panel finds that Cr Rockliff should have been reasonably aware that as the AGM is not defined as a council meeting in the relevant legislation, she had no power to advise the meeting that its Public Question Time would be conducted in accordance with the policy governing the conduct of Public Question Time in ordinary council meetings.

The Panel also finds that Cr Rockliff should have been aware that she could not arbitrarily impose a time limit on the conduct of the AGM, and that she should have been aware of alternative courses of action for the Chairperson to take if the meeting needed to adjourn and reconvene at a later time.

The Panel finds that Cr Rockliff was aware of the correct procedure for dealing with a procedural motion, such as was called as the meeting was being closed, and as a consequence finds that she did not give impartial consideration to the procedural motion legitimately before the Chair when the meeting was terminated.

The Panel also finds on the evidence that the Mayor was aware that a member of the public was on his feet saying that he had a further motion, as the audio recording reveals that the Mayor addressed the speaker by name when announcing that she would not take his motion, but that she was closing the meeting. The Panel determines that the decision to refuse the motion, unheard, was not made impartially.

Pursuant to section 28ZI (1)(a), the Code of Conduct Panel upholds the complaint that Cr Rockliff breached Part 1.3 of the Code of Conduct.

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

The Panel finds that the Mayor took irrelevant matters into account in her decision to close the meeting when there was still business to discuss. These irrelevant matters included her belief that the meeting had lasted for a sufficiently long time, and that there had been sufficient opportunity for members of the public to ask questions and to move resolutions.

The Panel finds that the Mayor's admission that she decided to close the meeting because she considered that the AGM was being used as an opportunity to embarrass her personally indicates that she was not making her decision on merit.

The Panel heard that the Mayor considered that the meeting was 'getting a bit out of control', and that was one of her reasons for closing it quickly. The audio of the meeting does not indicate any aspect of disorderliness in the meeting, and finds that it is likely that the Mayor was uncomfortable with the questions being put to her, and took this into account when deciding that she had the authority to close the meeting. The Panel finds that on this count the decision to refuse any more motions was not made by objectively considering the merit of the way in which the members of the public were conducting themselves at the meeting.

## Conclusion

The Panel considers that the conduct of the AGM may have been badly planned from the outset, and that in conducting the meeting, the Mayor made a number of false assumptions about her authority in running the meeting. This had the effect of depriving members of the public of their opportunity to question their council and to bring forward their views of the Council's annual report. However, the Mayor acknowledged freely in hearing that she had not run the meeting well, that she would now do it differently if she could, and that she had made some errors of judgement in her decisions. She undertook to accept whatever sanction the Panel imposed if the complaint was upheld in any part, including undertaking additional training.

The Panel notes that training for Mayors is available in a number of ways, including mentoring and guidance provided by the Local Government Association. Cr Rockliff may wish to avail herself of some or all of these opportunities.

## Sanction

In accordance with section 28ZI (2) of the Act, if the Panel decides to impose a sanction after upholding a complaint, it may impose one or more of a number of sanctions on a councillor.

In determining an appropriate sanction, the Panel took into account that Cr Rockliff has had no previous Code of Conduct complaints against her, and that she has shown that she is willing to improve her performance in managing meetings such as the AGM.

The Panel therefore imposes a caution on Cr Rockliff and requires her to apologise to the persons present at the Devonport City Council AGM held on 9 December 2019 for prematurely closing the meeting and preventing other business from being dealt with. The apology is to be made at the ordinary council meeting at which this Report is tabled.

## Timing of Determination

In accordance with section 28ZD (1) (a), the Panel is required to investigate and determine a complaint within 90 days of the Chairperson's decision to investigate the complaint. The 90 day period for this complaint expired on 29 July 2020. Investigation of this complaint has been slightly delayed by the need to ensure that both parties were given adequate time to respond to the matters being investigated.

## Right to Review

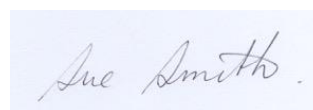
Under s28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



Lynn Mason  
(Chairperson)



Steven Bishop  
(Legal Member)



Sue Smith  
(Community Member with  
experience in local government)