

CODE OF CONDUCT PANEL

BRIGHTON COUNCIL CODE OF CONDUCT

Ms Janine Banks against Cr Keith Higgins

Determination made 23 June 2017

Local Government Act 1993

Code of Conduct Panel: Jill Taylor, (Chairperson), Richard Grueber, (Legal Member) and Christine Fraser (Member)

1. Summary of the complaint

On 10 March 2017, Ms Janine Banks, an employee of the Brighton Council (the Council) lodged a Code of Conduct Complaint (the Complaint), with the General Manager of the Brighton Council, against Councillor Keith Higgins. The General Manager referred the Complaint to the Code of Conduct Panel on 14 March 2017.

Ms Banks alleges that Cr Higgins breached Parts 7.1 (a) (b) & (c), 8.6 and 8.7 of the Brighton Council's Code of Conduct (the Code), dated 21 June 2016. Specifically, Ms Banks alleges that Cr Higgins admitted at the time of his Declaration of Office on 3 November 2017 that he had followed her home. At a closed Council meeting held on 17 January 2017, Ms Banks alleges that when she asked Cr Higgins why he (Cr Higgins) followed her home, he accused her (Ms Banks) of saying he had stalked her. Furthermore, Ms Banks alleges that Cr Higgins approached a temporary employee of the Brighton Council, Ms Anna Weymouth, telling her that Ms Banks had said that he (Cr Higgins) was a stalker.

The following are relevant extracts from the Code:

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; and*
- c. must not bully or harass any person.*

Part 8 – REPRESENTATION

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.

2. Investigation

The Chairperson of the Code of Conduct Panel (the Chairperson) conducted an initial assessment of the Complaint and determined on 23 March 2017 that part of the complaint will be investigated and determined by a Code of Conduct Panel (the Panel) in

accordance with section 28ZA(1)(e) of the *Local Government Act 1993* (the Act). The Chairperson stated that reference and related documentation to matters prior to Cr Higgins' formal investiture to Council on 3 November 2016, would not be considered by the Panel as it pre-dated his election.

The Panel determined that it would hold a hearing into the matter and received the following documents which were provided to both parties.

- The Local Government Code of Conduct Complaint lodged by Ms Banks dated 10 March 2017. (less any comments prior to 3 November 2016);
- Brighton Council Councillors' Code of Conduct – Part B adopted on 21 June 2106;
- Document signed by Cr Higgins and witnessed by Mr Sanderson confirming documents provided at the Declaration of Office on 3 November 2016;
- A Statutory Declaration by Cr Barbara Curran dated 9 March 2017
- An article from the Mercury newspaper dated 30 January 2017;
- A Statutory Declaration by Ms Anna Weymouth dated 17 February 2017; and
- A Statutory Declaration by Cr Higgins dated 17 May 2017

Following an adjournment of the Hearing on 8 June 2017, a tape recording of the relevant part of the Closed Council meeting held on 17 January 2017 was provided to the Panel and Cr Higgins.

In the period between the adjournment on 8 June 2017 and the resumption of the Hearing on 23 June 2017, Ms Banks provided Council documents attached to a letter from Brighton Council dated 30 July 2002, relating to an interaction with Mr Keith Higgins, 5 Racecourse Road, Brighton and the Brighton Council. The purpose of these documents was to dispute a claim by Cr Higgins that she was the persons involved in a matter between him and Council at that time.

3. Summary of Hearing

The Hearing was convened on 8 June 2017 at the LINC Centre in Bridgewater. All witnesses were required to take an oath or give an affirmation prior to their evidence. In attendance throughout the Hearing were Ms Janine Banks and Cr Keith Higgins. The Chairperson outlined the substance of the complaint and the procedure the Panel would follow and options available to the Panel if the complaint or part of the complaint was upheld.

The Panel requested Mr Ron Sanderson, Cr Barbara Curran and Ms Anna Weymouth to attend as witnesses. All these witnesses attended separately to give their evidence.

Ms Banks was asked to speak to her Complaint without interruption. Ms Banks told the Panel that she is the Governance Manager at the Brighton Council, responsible for regulatory and HR matters, community governance and policy and liaison with elected members. Ms Banks has worked for local government for 36 years, the last 31 at the Brighton Council. Ms Bank told the Hearing that Cr Higgins has refused to deal with her from the last local government election (October 2014) to the present. In fact, Ms Banks said that the only time she recalled having any personal contact with Cr Higgins was when he came into the Council Office to nominate for that election.

She stated that Cr Higgins has on several occasions accused her of saying 'he was stalking her'. Ms Banks said that this is not true and she has never used words of that nature about Cr Higgins. Additionally, at his election to office on 3 November 2017, Cr

Higgins told Ms Banks that he knew where she lived and what she paid for her house and said that he had followed her home. Ms Banks asked Cr Higgins why he had followed her home and he said he wanted to know where she lived. Ms Banks said that Cr Higgins' continual statements to various people that she had said "Cr Higgins has stalked her" has caused stress to her and her family.

At a Closed Council meeting held on 17 January 2017, Ms Banks said that the Mayor was talking generally about discrimination. Ms Banks said she used this opportunity to again ask Cr Higgins why he had followed her home. At this point she said that Cr Higgins became angry and left the meeting saying that he was going to take the matter to his lawyer.

A month later, on 17 February 2017, a temporary employee of the Council, Ms Anna Weymouth, advised Ms Banks that she had been approached by someone in the car park when arriving at work and that person said that "Janine Banks has been saying I have been stalking her".

The Panel were invited to ask follow-up questions of Ms Banks as was Cr Higgins. Cr Higgins stated that he did not know where Ms Banks lived and denied following her home. He said that he had seen her house on the Internet but did not know the address only that it was in Glenorchy. When asked by the Panel how he accessed this information on the Internet he said that his cousin, Todd, had assisted him and did not know what programs/sites Todd used. When asked why he wanted to find out where Ms Banks (and other senior Council staff) lived, Cr Higgins said that he wanted to know which staff lived outside of the Brighton municipality. Cr Higgins said that he sought this information a couple of years ago, before he had become a Councillor.

Cr Higgins claimed that at the Closed Council meeting on 17 January 2017, Ms Banks had stood up and pointed to him saying he was stalking her. Ms Banks said that she did not stand up and point at Cr Higgins, but had remained seated and asked him a question.

Mr Sanderson attended the Hearing and confirmed Ms Banks' description of what took place at Cr Higgins' Declaration of Office and the Closed Council meeting held on 17 January 2017. Mr Sanderson said that Cr Higgins had said to him "I will deal with you but not her" (meaning Ms Banks) on 3 November 2016. When asked by the Panel why he would not deal with Ms Banks, Cr Higgins said that he had an unpleasant experience with her several years ago in relation to disposal of rubbish. Ms Banks said she was not the Council person dealing with this matter.

At the Closed Council meeting held on 17 January 2017, during a discussion being led by the Mayor on discrimination Mr Sanderson recalled hearing Ms Banks ask Cr Higgins why he had followed her home. When questioned by the Panel why she had raised this matter again (after the discussion on 3 November 2016), Ms Banks said that she had not been given a satisfactory explanation. Mr Sanderson told the Panel that Ms Banks did not stand up and point to Cr Higgins as he alleged. Mr Sanderson said that there were 8 other Councillors and 4 staff members who could verify exactly what happened.

Cr Curran, who had provided a Statutory Declaration, then appeared at the Hearing give evidence. In her Statutory Declaration Cr Curran said the Cr Higgins had come to see her at her place of work. Cr Curran alleges that Cr Higgins had made allegations about another Brighton Councillor and Council staff. She further alleged that Cr Higgins had said that he did not know where Janine Banks lived so he had followed her home. Cr Higgins said that he had visited Cr Curran two days prior to his formal election. Cr Curran

admitted that she wasn't sure of the date and conceded that it might have been prior to his election.

At the Closed Council meeting held on 17 January 2017, Cr Curran said that she did hear Ms Banks ask Cr Higgins why he had followed her home. She said that Ms Banks was very calm and did not stand up and point. She said that Cr Higgins accused Ms Banks of calling him a stalker and walked out of the meeting. Cr Curran said that she has never heard Ms Banks calling Cr Higgins a stalker or use words to that effect.

Witness Ms Anna Weymouth provided a Statutory Declaration in relation to an alleged incident which occurred on 17 February 2017 gave evidence at the Hearing. She told the Hearing that when she arrived in the Council carpark someone came up to her asking if she was a lawyer and told her that Janine Banks was accusing him of being a stalker. At the Hearing, Ms Weymouth identified the man in the car park as Cr Higgins. Ms Weymouth was only a temporary employee at Brighton Council for a short period of time and was not aware of all "that was going on". She did say however that she had never heard Ms Banks saying Cr Higgins was a stalker.

In responding to the complaint, Cr Higgins told the Panel that there has been a cover up going on in the Brighton Council led by the Mayor. He said he has been forced to take legal action in relation to several matters. He told the Hearing that the people "outside the door" at the Closed Council meeting were going to be called as witnesses for this legal action. He did not deny saying that Ms Banks had accused him of stalking because that is what he alleges she did.

Cr Higgins was adamant that Ms Banks had claimed he was a stalker and alleged that Ms Banks and other witnesses were not telling the truth. When questioned by the Panel about his working relationship with Ms Banks, Cr Higgins said that he had formed his opinion of her based on what other people had told him and his prior experience with her some years prior regarding the rubbish issue.

At this point, the Chairperson called a short adjournment. It had become evident that a tape of the Closed Council meeting was in existence and given that Cr Higgins and Ms Banks were giving very different accounts of what happened at that meeting, the Panel asked that the tape be provided to members of the Panel and Cr Higgins.

When the Hearing reconvened, the Chairperson asked Ms Banks if she could send the tape to the Executive Officer of the Code of Conduct Panel for distribution to all parties. Ms Banks agreed and subsequently provided the tape.

The Hearing again reconvened on 23 June 2017 with both Ms Banks and Cr Higgins attending. The first matter was to discuss documentation provided by Ms Banks, between Mr Paul Gamsey, Environmental Health Officer, Brighton Council and Mr Keith Higgins relating to a matter of littering in July 2002. Ms Banks presented this evidence saying that Cr Higgins reasons for not dealing directly with her was her involvement (on behalf of Council) in the littering matter several years prior. Cr Higgins was asked to comment on this evidence. Cr Higgins acknowledged that these documents were the ones he was referring to and that he offered Ms Banks an apology as he was mistaken that she was involved, but now concedes that she was not.

The taped segment of the Closed Council meeting held on 17 January 2017, provided by Ms Banks, relating to the verbal interchange between Ms Banks and Mr Higgins was played for the Panel and the claimant and respondent to hear. The Panel had requested

the tape be heard in evidence as there was a contradiction between Ms Banks and Cr Higgins as to what was said, which went to the heart of the complaint.

The tape confirmed that Ms Banks had politely asked Cr Higgins why he had followed her home to which Cr Higgins responded by saying he didn't know where she lived and left the Council meeting threatening to go to the police and saying as he left the room "she has accused me of stalking her". It was clear from the tape that Ms Banks never used the words Cr Higgins had alleged. When questioned further Cr Higgins remained of the view that although Ms Banks had not used the word "stalked" that is what she meant. He added he "didn't care what terminology she used" she was accusing him of stalking. Ms Banks re-affirmed that she had never used that term "stalked".

Cr Higgins was asked by the Panel why his version of events should be afforded more weight, when he claimed that he had an unpleasant exchange with Ms Banks relating to littering several years ago which was found to be untrue; and it was clear from the tape of the Closed Council meeting on 17 January 2017, Ms Banks did not accuse Cr Higgins of stalking but rather Cr Higgins himself made that statement. Cr Higgins' response was "because I am honest".

The Panel advised Cr Higgins that it had no jurisdiction over whether he had followed Ms Banks home; if this did occur, it was prior to his election as a Councillor. The issue for the Panel is to consider whether Cr Higgins' behaviour and conduct since being sworn in as a Councillor.

Cr Higgins was then provided with the opportunity to sum up which had not occurred prior to the adjournment on 8 June 2017. Cr Higgins started by relating to another matter being run concurrently but was asked to keep his summing up to the Complaint lodged by Ms Banks and any evidence that has been put before the Hearing, both written and verbal. Cr Higgins admitted that he had said to people both inside of and outside Council that Ms Banks had accused him of being a stalker.

When asked if he was familiar with the Code of Conduct, Cr Higgins responded that he was still working through it. He was then asked whether he thought he had treated her fairly and with respect and had not caused her embarrassment in accordance with the requirements of the Code of Conduct, he responded by saying "the only way I can get anywhere is to breach the Code".

Ms Banks and Cr Higgins were thanked for attending the Hearing and advised of the process going forward.

4. Determination

The Panel determines the following:

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; and*
- c. must not bully or harass any person.*

The Panel upholds Parts 1 (a) and 1 (b). The Panel found that despite Cr Higgins' continual insistence that Ms Banks had accused him of stalking her, the evidence did

not support this. In fact, the evidence, especially that taped at the Closed Council meeting held on 17 January 2017, showed that it was Cr Higgins who used those words. Ms Banks could be heard asking why Cr Higgins had followed her home and then Cr Higgins was heard alleging publicly that Ms Banks had accused him of stalking her. Ms Banks' comments to Cr Higgins were framed as a question and not an allegation as claimed by Cr Higgins. The Panel accepts that by continually making these statements, Cr Higgins has not treated Ms Banks with courtesy, fairness, dignity and respect, and his behavior has caused Ms Banks offence and embarrassment.

The Panel upholds Part (1) (c). Ms Banks is Governance Manager at the Brighton Council, and her role includes liaison between elected members and the Council. The Panel concludes that, given Cr Higgins' aggressive demeanour towards Ms Banks and his refusal "to have anything to do with her", this is a form of bullying, especially as there was no evidence to support that Ms Banks has not been courteous and respectful to Cr Higgins.

Part 8 – REPRESENTATION

6 A councillor must show respect when expressing personal views publicly. The Panel dismisses this complaint. This Part of the Brighton Council's Code of Conduct essentially deals with situations whereby the Councillor is commenting publicly on matters of Council business. The Panel, therefore does not consider that Cr Higgins has breached this Part of the Code.

7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council. The Panel upholds this complaint. Cr Higgins' behavior towards Ms Banks has reflected adversely on the reputation of the Brighton Council. The Council has identified Ms Banks' role as having responsibility for primary liaison with elected members. It is expected that all Councillors must behave in a civil fashion in their interactions with other Councillors, the community and council staff, and that Cr Higgins has continued to ignore this requirement. By his own admission, Cr Higgins admits to breaching the Code of Conduct, saying it is the only way to get things done. His actions, therefore reflect adversely on the reputation of Council.

5. Sanction

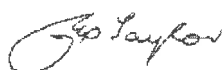
Cr Higgins was invited to provide a submission to the Panel regarding a sanction to be imposed by 12 July 2017. Cr Higgins did not avail himself of this option, therefore the Panel has determined the following sanction in accordance with Section 28Z1 (2).

1. Cr Higgins be reprimanded for his actions in alleging Ms Janine Banks had called him a stalker when in fact Ms Banks had asked him a direct question.
2. Cr Higgins is required to apologise to Ms Banks in writing by 4 September 2017 retracting his allegation that she had called him a stalker.

Section 28ZM of the Local Government Act 1995 requires Cr Higgins to comply with (2) within the period specified in this report and to notify the General Manager within 7 days of doing so. Failure to comply may result in a fine not exceeding 50 penalty units and give rise to a complaint under s339E. Cr Higgins is also reminded that the obligations in Part 7 of the Code of Conduct will apply to the manner and substance of his compliance with (2).

6. Right to Review

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



Jill Taylor
Chairperson



Richard Grueber
Legal Member



Christine Fraser
Member