

CODE OF CONDUCT PANEL DETERMINATION REPORT

GLAMORGAN SPRING BAY COUNCIL CODE OF CONDUCT

Complaint brought by Yon Kikkert against Councillor (Cr) Rob Churchill

Code of Conduct Panel

- Jill Taylor (Chairperson),
- Katherine Schaefer (Local Government Member)
- Phillip Zeeman (Legal Member)

Date of Determination: 18 February 2021

Content Manager Reference: c21480

Summary of the complaint

A code of conduct complaint was submitted by Mr Yon Kikkert to the General Manager of the Glamorgan Spring Bay Council on 4 November 2020.

On 10 November 2021 the Chairperson was appointed to undertake initial assessment of the complaint.

The complaint alleges that at a Special Council Meeting held on 15 May 2020 Cr Churchill breached parts of the Glamorgan Spring Bay Council's Model Code of Conduct adopted by Council on 26 February 2019. Mr Kikkert alleged that Cr Churchill had breached Part 2 Sections 1-6 of the Code.

PART 2 – Conflicts of Interest that are not pecuniary

1. When carrying out his or her public duty, a councillor must not be unduly influenced, not be seen to be unduly influenced or personal or private interest 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.

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 *Local Government Act 1993* (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that the complaint should be investigated.

The Chairperson arrived at this conclusion for the following reasons;

- The complainant had made a reasonable effort to resolve the complaint. On 24 September 2020, Mr Kikkert raised a "question on notice request" addressed to Cr Churchill in relation to the matter discussed at the Special General Council Meeting held on 15 May 2020. Cr Churchill did not respond to that question.
- The complaint substantially related to a contravention of Glamorgan Spring Bay Council's Code of Conduct, namely Model Code of Conduct Minute dated 26 February 2019. Mr Kikkert alleged that Cr Churchill should have declared a conflict of interest in the subject matter of the Special Council Meeting because there was a perception, he could have been influenced by his wife's involvement in three organisations that had opposed the draft legislation.
- 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.¹

The complainant, respondent councillor and the General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 25 November 2020.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint. The Panel met on 11 January 2021 to consider the complaint and Cr Churchill's response, which included a letter dated 8 December 2020 from his legal representative, Mr R Browne. Essentially Mr Kikkert's allegation was that Cr Churchill had a perceived conflict of interest in relation to a debate at the Special Council meeting held on 15 May 2020. The matter being debated related to Council's response to the draft LUPAA Major Projects Bill 2020 which had been circulated by the Government for comment. Mr Kikkert based his allegation of perceived conflict of interest on the fact that Cr Churchill's wife was a member of three organisations who had opposed the proposed legislation. Mr Kikkert supported his complaint by referring to the Department of Premier and Cabinet's "Good Governance Guide June 2018" which stated that a conflict of interest may arise if "other emotional or social ties might influence your decision". Mr Kikkert stated that Cr Churchill should have exercised "reasonable judgement and declared the conflict of interest".

Cr Churchill provided a statutory declaration dated 23 December 2020, together with a statement from his legal representative Mr Browne, , rejecting the allegation that he had breached Part 2 (Conflict of Interest) of Council's Code of Conduct.

¹ 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.

In accordance with section 28ZG(2)(b) of the Act, the Code of Conduct Panel considered that a hearing would be unnecessary in the circumstances because the investigation could be determined based on the written material provided and, in the Panel's view, neither party would be disadvantaged.

By letters dated 13 January 2021, the complainant and respondent councillor were notified of the Panel's intention to proceed to determine the complaint without a hearing. Both parties were invited to submit, in writing, any final information in relation to the complaint or objection to the proposed process. This information was required within 10 working days. On 18 January 2021 Mr Browne emailed on behalf of Cr Churchill saying the Cr Churchill did not object to the Panel not holding a hearing.

By email on 27 January 2021 Mr Kikkert submitted a seven (7) page statement. He did not state any objection to the Panel not holding a hearing.

Determination

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Churchill 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 Mr Kikkert and the response by Cr Churchill, along with supporting statements by Cr Churchill's legal representative as detailed below.

- Mr Kikkert's complaint dated 2 November 2020 together with Attachments A-G
- Mr Kikkert's statutory declaration signed on 2 November 2020;
- Letter dated 8 December 2020 from Cr Churchill's legal representative, Mr Roland Browne to the Chairperson, Code of Conduct Panel;
- Response dated 10 December 2020 from Chairperson to Mr Roland Browne;
- Statutory declaration made by Cr Churchill on 23 December 2020;
- Submission by Mr Roland Browne on behalf of Cr Churchill which was attached to Cr Churchill's statutory declaration;
- Glamorgan Sprig Bay Council's Model Code of Conduct dated 26 February 2019, and
- Statement by Mr Kikkert emailed on 27 January 2021.

The Panel had regard to the context of the matter being debated by Council. It was not a development application which could conceivably have negative and positive results for various constituents, but rather a discussion/debate for Council to determine a position on proposed Government legislation.

Mr Kikkert's complaint alleges that because of Cr Churchill's relationship with his wife, who is a member of three organisations opposing the proposed legislation, the councillor should have declared a conflict of interest at the meeting held on 15 May 2020. Mr Churchill responded to this allegation saying that he "had no personal or private interest in any of these matters" and therefore, did not consider that he had any interest to declare.

Following an invitation by the Panel to submit any final information, Mr Kikkert provided a further statement on 27 January 2021 re-stating similar views he expressed previously and providing a response to Cr Churchill's statutory declaration and the statement provided by Mr Browne. In essence Mr Kikkert asserted that a "reasonable and informed person would have drawn the conclusion that Cr Churchill's wife's interests could have influenced his decision..." The Panel does not accept this assertion.

Reasons for dismissal of the complaint against relevant Parts of the Code follows:

Part 2.1

This Part of the Code requires that a councillor not be unduly influenced by personal and private interests. Mr Kikkert alleges that Cr Churchill “could have” been influenced because of his wife’s involvement in three organisations opposing the draft legislation. However, no evidence was produced that showed Cr Churchill was influenced by his wife’s views on this matter. In fact, Cr Churchill denied this was the case.

Part 2.2

The matter being discussed at the Special Council Meeting took place in an open forum. Cr Churchill and his colleagues were able to present their respective views in an open and transparent manner. There was no evidence produced to suggest that Cr Churchill did not act openly and honestly in his contribution to the debate.

Part 2.3

This Part requires councillors to declare actual, potential or perceived conflicts of interest when they believe one exists. Mr Kikkert claimed that Cr Churchill should have declared an interest because of his (Cr Churchill’s) wife’s involvement in organisations opposing the draft legislation. However, in his statutory declaration dated 23 December 2020, Cr Churchill noted that the purpose of the meeting was to consider the Planning Consultant’s recommendations outlining the impact on Council should the Bill be legislated in its current draft form. Cr Churchill stated that he did not have a conflict and pointed to the fact that the motion was passed by all six councillors. It is the Panel’s view that the onus is on the councillor to determine if a conflict exists and, in this case, Cr Churchill said that he did not have a conflict. As no evidence to the contrary was provided, the Panel accepts Cr Churchill’s assessment that he did not have a conflict in relation to this matter.

Part 2.4

This Part goes to a requirement that a councillor must act in good faith and exercise reasonable judgement to determine whether they have a conflict. As mentioned previously, Cr Churchill did not consider he had such a conflict, and no evidence was presented to suggest otherwise. The Panel accepts that Cr Churchill arrived at what he considered to be the right decision.

Part 2.5

This Part requires a councillor to remove themselves from positions of conflict. The Panel accepts, based on the information before it, that Cr Churchill did not have a conflict of interest in relation to the matter before Council on 15 May 2020 and as a consequence there was no need for him to remove himself from participating in Council discussion regarding the draft legislation.

Part 2.6

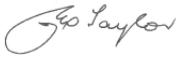
When a councillor determines that they have a conflict, they must declare the conflict and, possibly, remove themselves from discussion/debate on the matter. As indicated previously, the Panel determined that as Cr Churchill did not have a conflict, he did not need to remove himself from the discussion and resolution of a motion at the meeting on 15 May 2020.

Direction regarding further complaints

Under Section 28ZI (3) of the Act the Code of Conduct Panel instructs Mr Yon Kikkert not to make a further complaint in relation to the same matter for a period not exceeding 12 months unless Mr Kikkert provides substantive new information in the further complaint.

Right to review


A person aggrieved by the determination of the Code of Conduct Panel on the basis that the Panel has failed to comply with the rules of natural justice may apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination, Section 28ZP.



Jill Taylor
Chairperson



Phillip Zeeman
Member



Katherine Schaefer
Member