

*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT  
NORTHERN MIDLANDS CODE OF CONDUCT**

**Complaint brought by Cr Matthew Brooks against Cr Dick Adams**

**Code of Conduct Panel**

- Lynn Mason (Chairperson)
- Sally Darke (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 16 November 2021

Content Manager Reference: C22683

**Summary of the complaint**

A code of conduct complaint was submitted by Cr Brooks to the General Manager – Northern Midlands Council on 23 July 2021.

The complaint alleges that Cr Adams breached the following parts of the Northern Midlands Council Code of Conduct, 18 February 2019, at a District Committee meeting on 7 April 2021, and during the closed session of the ordinary council meeting on 28 June 2021:

**PART 2 – CONFLICT OF INTEREST**

- 2.3 *A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflict 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.*
- 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 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 7 – RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS 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 ensure that issues, not personalities, are the focus of debate.*

## 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 that:

- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion because the complainant stated that he had thought another councillor intended to submit a complaint. As a result he did not approach the respondent;
- the complaint substantially related to a contravention of the Northern Midland Council's Code of Conduct, namely Part 2 (2.3 and 2.6) and Part 7 (1 and 2);
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if upheld on investigation, the language used towards the Chairman of a District Committee, and towards a fellow Councillor, was deemed to be very likely to cause offence;
- 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 complaint.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 20 August 2021.

## The Complaint

The complaint alleged that during a Longford District Committee meeting on 7 April 2021, attended by Cr Adams as a council representative, Cr Adams told the Chair of the Committee to 'fuck off'. It is alleged that this constituted a breach of Part 7 (1) of the Code.

The second part of the complaint alleged that during the closed council meeting on 28 June 2021, Cr Adams addressed Cr Lambert as 'you fucking bitch'. The complaint alleged that later in the meeting, at the request of the Mayor, Cr Adams apologised to Cr Lambert. It is alleged that his remark breached Part 7 (2) of the Code.

The second part of the complaint also alleged that by remaining in the meeting room for the commencement of the item on membership of the Longford District Committee, Cr Adams breached Part 2 (2.3) and Part 2 (2.6) of the Code, in that he had a conflict of interest because his partner was in contention for a place on the Committee.

## Procedure

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint.

The Panel met on 31 August 2021, and considered a copy of the closed minutes of the meeting of 28 June 2021. Subsequently the General Manager was asked to provide a statement regarding the process of the closed session of Council on 28 June 2021. This was received on 9 September 2021. The Panel also considered the response to the complaint from Cr Adams.

On 24 September 2021 the Panel met, and determined to send specific questions to Cr Adams regarding the words he was alleged to have used, and what he actually said at the Longford District Committee meeting and during the council meeting on 28 June 2021. Following receipt of this response,

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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 Panel determined to conduct a hearing to further its investigation, as it was the view of the Panel that Cr Adams had not given unequivocal answers to its questions.

### Material considered by the Panel

- Minutes of the closed session of Council, 28 June 2021;
- the complaint from Cr Brooks, attached to a Statutory Declaration, dated 23 July 2021;
- emailed screenshots from Cr Brooks, sent 1.24 pm, 21 August 2021;
- response to the complaint from Cr Adams, attached to a Statutory Declaration, dated 30 August 2021;
- Statutory Declaration from the General Manager, dated 9 September 2021;
- Email from Cr Brooks, sent 1.01 pm, 31 August 2021;
- Letter from Ms Joanne Clarke, attached to a Statutory Declaration, dated 9 September 2021;
- Letter from Mr Neil Tubb, attached to a Statutory Declaration, dated 10 September 2021;
- Response to questions from the Panel from Cr Adams, attached to a Statutory Declaration, dated 28 September 2021;
- Statutory Declaration with a witness statement from Cr Lambert, dated 13 October 2021;
- The Northern Midlands Council Code of Conduct adopted 18 February 2019.

Both parties to the complaint were provided with or had access to all of the above listed information.

### Hearing

As per section 28ZH of the Act the Code of Conduct Panel held a hearing in Launceston on 21 October 2021. Mr Neil Tubb and Cr Janet Lambert were called by the Panel as witnesses at the hearing. Cr Michael Polley attended as a support person for Cr Adams.

### Determination

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Adams has breached the Code of Conduct, and therefore the Panel upholds the complaint.

### Reasons for determination

The Code of Conduct Panel considered the information provided by Cr Brooks and the response by Cr Adams, along with supporting statutory declarations and evidence presented by witnesses.

Cr Adams admitted in the hearing that he was not aware that the matter of his swearing at the District Committee Chairperson would be investigated as part of the complaint, despite its being clearly numbered in the complaint as Part A. He again referred to his behaviour at the Longford District Committee meeting as a *robust conversation*.

Cr Adams later admitted that at the Longford District Committee meeting on 7 April 2021, he had spoken *very badly*, but despite that, no-one from the committee had asked him to apologise to the committee chairperson, Mr Tubb. Questioning from the Panel elicited the admission from Cr Adams that he had told the Chairperson to 'fuck off', or words to that effect.

Cr Adams admitted that at the council meeting on 28 June 2021 he had spoken *very very badly* to Cr Lambert. Questioning from the Panel elicited the admission from Cr Adams that he had called Cr Lambert a 'fucking bitch'. He attributed his behaviour to his frustration and anger at having lost his position on a council committee earlier in the meeting, and he therefore *lashed out* at Cr Lambert. He did not admit to having seen the recommendation for membership of the Longford District Committee before he left the meeting room.

When asked why he did not leave the meeting as soon as the item on the Longford Committee came up, Cr Adams said that it was a *very confused process*, and that he was angry and frustrated because Cr Lambert had supported changes to the membership of a council committee which had resulted in his removal from that committee. However, the Panel found that membership of the Longford District Committee was the fifth committee to be considered in a series of seven committees. The Panel finds that Cr Adams should have been aware that consideration of membership of the Longford Committee would follow from consideration of the Evandale Committee, and accordingly left the room immediately following the vote on the Evandale Committee. The Panel also noted that the item on membership of the property committee was Item 213/21; the item on membership of district committees was Item 242/21. The Panel concludes that a lengthy period of time had elapsed between the taking of the two items.

The hearing was told by both Cr Brooks and Cr Adams that Cr Adams had not declared an interest in Item CON 11 (membership of district committees). This is not correct. The minutes of the meeting of 28 June 2021 show that Cr Adams declared his interest in the item early in the open section of the meeting, at Item 204/21.

Cr Adams stated in hearing that he regretted the language he had used. He had apologised to Cr Lambert at the council meeting, and on the following day at her workplace, but the Panel heard that neither Cr Brooks nor Cr Lambert considered that the apology expressed genuine remorse for his actions. Cr Adams also met the Mayor and the General Manager the following day, and again apologised for his outburst at the meeting. Cr Adams considered that this constituted an apology to the Council.

Cr Adams denied that he had seen the names of the people recommended for positions on the Longford District Committee before he left the room. Nevertheless, the Panel determines that Cr Adams should have declared his interest and left the meeting room as soon as the vote on the Evandale Committee had been taken.

The Panel is of the view that the conduct of a hearing could have been avoided had Cr Adams, in the two Statutory Declarations he provided to the Panel, admitted having used the words as alleged, an admission he later made freely during the hearing. Had this admission occurred earlier, considerable time and expense could have been saved.

The Code of Conduct Panel concludes that by swearing at the Chairperson in the District Committee meeting on 7 April 2021, and by swearing at Cr Lambert in the closed session of the ordinary council meeting on 28 June 2021, and by failing to leave the meeting room as soon as the item taken immediately before consideration of the membership of the Longford District Committee was concluded, Cr Adams did breach Part 2 (2.3 and 2.6) and Part 7 (1 and 2) of the Code of Conduct which was current at the time of the alleged contraventions on 7 April 2021 and 28 June 2021.

## Sanctions

As per section 28Z1(2) of the Act the Code of Conduct Panel imposes a requirement on Cr Adams to apologise to the attendees at the Longford District Committee meeting held on 7 April 2021, and to those present during the closed session of Council on 28 June 2021. These apologies are to be made during the open section of the ordinary council meeting at which this Report is tabled, or, if Cr Adams is not present at that meeting, the apologies are to be made at the first open meeting of Council attended by Cr Adams following the tabling of the Report.

The Panel also imposes on Cr Adams a suspension from performing and exercising the functions and powers of his office as a councillor for one month. The Panel determines that this sanction is warranted for several reasons. Cr Adams is an experienced holder of public office and has been on Council for many years. Cr Adams failed to remove himself from the meeting room at the commencement of an item in which he had an interest at the June 2021 council meeting. In January 2019 a Code of Conduct complaint against Cr Adams was partially upheld; that determination was made on the basis that Cr Adams had breached sections 2.3 and 2.6(a) of the Code by failing to declare a conflict of interest in a

planning matter. This is the second time a conflict of interest breach of the Code has been upheld against Cr Adams in less than three years.

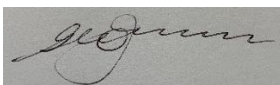
Added weight is given to this recurrent breach of the Code, because of Cr Adams' failure to treat Mr Tubb and Cr Lambert fairly, and causing Mr Tubb, Cr Lambert and other witnesses offence and embarrassment by the use of strong and unacceptable language, directed in front of other persons at Mr Tubb and Cr Lambert. In addition, he failed to ensure that issues, not personalities, were the subject of discourse in the council meeting on 28 June 2021.

### 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



Lynn Mason  
Chairperson



Graeme Jones  
Member



Sally Darke  
Member