

## CODE OF CONDUCT PANEL

### GLAMORGAN SPRING BAY COUNCIL CODE OF CONDUCT

#### Complaint by Mr Steve Mav against Deputy Mayor Cheryl Arnol

Determination made 18 July 2018

#### *Local Government Act 1993*

Code of Conduct Panel: Jill Taylor (Chairperson), Gretel Chen (Legal Member) and Penny Cocker (Member)

### 1. Summary of the complaint

Mr Steve Mav lodged a Code of Conduct Complaint dated 7 May 2018 (the Complaint) against Deputy Mayor (Councillor) Cheryl Arnol.

The Complaint alleges that Councillor (Cr) Arnol contravened Parts 7 and 8 of the Glamorgan Spring Bay Council's Model Code of Conduct, which was endorsed in May 2016. Specifically, Mr Mav alleges that on 3 May 2018, whilst he was driving his motor vehicle, he received a phone call from Cheryl Arnol during which he claims she spoke to him in a rude, threatening and aggressive manner.

The following are the relevant extracts from the Code of Conduct:

#### ***7. Relationships with community, councillors and council employees***

*A councillor is to be respectful in his or her conduct, communication and relationships with members of the community, fellow councillors and Council employees in a way that builds trust and confidence in the Council.*

#### ***8. Representation***

*A councillor is to represent himself or herself and the Council appropriately and within the ambit of his or her role, and clearly distinguish between his or her views as an individual and those 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 May 2018 that it was to 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 Panel subsequently determined that it would hold a hearing into the matter.

The Panel received and considered the following documents prior to the hearing:

- Code of Conduct Complaint dated 7 May 2018 including an attached copy of an email from Mr Mav to Mayor Kent dated 3 May 2018;
- Copy of Parts 7 and 8 of the Glamorgan Spring Bay Councillors Code of Conduct endorsed on 19 May 2016;
- Statutory declaration of Mr Imran Assi dated 2 July 2018;
- Documents provided by Cr Arnol in letter dated 6 June 2018 which included:

- Statutory declaration of Cr Arnol dated 7 June 2018
- Diary notes relating to a conversation with Mr Mav on 3 May 2018
- Email exchange between Cr Arnol and Mayor Kent dated 3 May 2018
- Copy of a record of telephone calls from Cr Arnol's phone on 3 May 2018
- Letter addressed "Dear neighbour" dated 23 April 2018 from Mayor Kent supporting Mr Mav's election to the Legislative Council; and
- Letter addressed to Chairperson of the Panel from Mr Mav dated 30 June 2018.

At the hearing Cr Arnol read from a prepared statement, at the conclusion of which, copies were given to the Panel and Mr Mav. Mr Mav was afforded time to consider Cr Arnol's written statement and was asked if he wanted to make any further comment. He did not.

### 3. Summary of Hearing

The hearing was convened on 18 July 2018 at the East Coaster Resort, 1 Louisville Road, Orford. Both Mr Mav and Cr Arnol attended and took an oath prior to giving evidence. Cr Jenny Woods attended the hearing as a support person for Cr Arnol.

The Chairperson outlined the substance of the complaint and the procedure the Panel would follow, including options available to the Panel if the Complaint was upheld.

The Panel asked Mr Mav whether he had forwarded his complaint through the General Manager of the Glamorgan Spring Bay Council and paid the relevant statutory fee. Mr Mav confirmed that this had been done.

Mr Mav was then asked to speak to his complaint.

Mr Mav commenced by reading from an email dated 3 May 2018 sent at 8.39pm from him to Mayor Michael Kent which was attached to the Complaint. He then read from a letter from the Chairperson of the Panel dated 12 June 2018, which sought the following additional information:

1. A copy of the "personal letter" signed by the Mayor which was referred to in the email to the Mayor dated 3 May 2018 .
2. A statement from witness, Mr Imran Assi in the form of a Statutory Declaration outlining exactly what Mr Assi recalled of the telephone conversation between Mr Mav and Cr Arnol on 3 May 2018
3. An account of what exactly was said by Cr Arnol during the telephone conversation of the 3 May 2018 which formed the basis of the complaint.

As a result of receiving this request, Mr Mav provided a statutory declaration of Mr Assi, and further details of his recollection of the telephone call of 3 May 2018. He did not provide a copy of the letter from the Mayor as, by that time, he had received copies of Cr Arnol's documents which included the copy of the Mayor's letter.

The Panel asked Mr Mav whether he advised Cr Arnol at the start of the telephone conversation on 3 May 2018 that he had someone in his motor vehicle at the time of her call. He replied that he did not as there was not any time to do so. He was asked whether Cr Arnol had identified herself as the Deputy Mayor or a Councillor during the telephone conversation to which he replied that he had assumed that Cr Arnol was calling him in her capacity as a councillor.

When questioned about the basis for his assumption Mr Mav indicated that it was his belief at the time, but he was not able to identify a basis for that belief.

Mr Mav told the Panel that during the phone call Cr Arnol spoke in a rude and aggressive manner, demanding to know where he was. He said he replied by asking "Who is this?". At

that point, he claimed that the caller said she was Cheryl Arnol and said words to the effect "Do you know you've committed fraud?". He said he was surprised by this and asked Cr Arnol why she was saying such a thing. He said that Cr Arnol referred to a letter signed by Mayor Michael Kent to which Mr Mav replied that he did not want to get involved in matters between Cr Arnol and the Mayor. He added that he responded that he had not committed "fraud" before the conversation was terminated.

In his letter to the Chairperson dated 30 June 2018 Mr Mav states that Cr Arnol identified herself as Cheryl Arnol at the start of the conversation. There is no other mention within that letter or the Complaint documentation of Cr Arnol identifying herself or holding herself out as a Councillor or the Deputy Mayor of Glamorgan Spring Bay Council.

Consideration was also given to the statutory declaration of Mr Imran Assi. Mr Mav noted that Mr Assi confirmed that Cr Arnol spoke in an angry tone and was speaking over Mr Mav during the telephone call. Mr Assi also states that Cr Arnol identified herself as "Cheryl Arnol". Throughout the statutory declaration Mr Assi refers to Cr Arnol as "Cheryl". Mr Assi makes no reference to Cr Arnol identifying herself as a Councillor or the Deputy Mayor of Glamorgan Spring Bay Council.

Cr Arnol was invited to ask questions of Mr Mav but declined to do so.

Cr Arnol was then invited to respond to the Complaint.

Cr Arnol told the Panel that she believed the Complaint was frivolous and vexatious. She said that she did not demand to see Mr Mav but rather was taking him up on his offer to meet with any elector. She said that she identified herself as Cheryl Arnol and not as the Deputy Mayor or Councillor. She said that she did ask where he was but only after she identified herself and did not get angry or aggressive.

Cr Arnol denied that she accused Mr Mav of fraud but did say that some of the content of the Mayor's letter could be construed as fraudulent. Cr Arnol said that she did not become angry and aggressive and that she was forced to end the telephone call as Mr Mav was getting angry.

According to telephone records provided by Cr Arnol the telephone conversation with Mr Mav lasted for 1 minute 6 seconds.

The Panel asked Cr Arnol what the purpose of her call to Mr Mav was. She replied that she wanted to ask him about what he was offering as a candidate for the Upper House seat of Prosser. Cr Arnol was asked whether she identified herself as an elector when she made the phone call. She said that she did not, but "certainly" did not say she was speaking on behalf of Council.

In her statutory declaration and her statement to the Panel Cr Arnol denied giving Mr Mav "the clear impression" she was speaking in her capacity as Deputy Mayor. She said that "at no time" did she introduce herself as Councillor or Deputy Mayor nor did she portray herself as speaking for Council.

Cr Arnol says in her statutory declaration that she hung up after about 60 seconds as Mr Mav was rude, threatening and aggressive towards her.

Cr Arnol told the Panel that Mr Mav was one of several candidates that she had contacted in her capacity as an elector in Prosser.

When questioned by the Panel as to the quality of the telephone reception during the call, both Mr Mav and Cr Arnol said that it was "not the best quality". Cr Arnol said that because of this she had to speak loudly to be heard but denied that she had shouted.

#### 4. Determination

The Panel determines the following in relation to the relevant parts of the Glamorgan Spring Bay Council's Code of Conduct:

##### **7. Relationships with community, councillors and council employees**

*A councillor is to be respectful in his or her conduct, communication and relationships with members of the community, fellow councillors and Council employees in a way that builds trust and confidence in the Council.*

The Panel dismisses the Complaint in relation to Part 7.

The Panel is not satisfied that Cr Arnol made and conducted the telephone call on 3 May 2018 in her capacity as a Councillor of the Glamorgan Spring Bay Council.

##### **8. Representation**

*A councillor is to represent himself or herself and the Council appropriately and within the ambit of his or her role, and clearly distinguish between his or her views as an individual and those of the Council.*

The Panel dismisses the Complaint in relation to Part 8.

Part 8 of the Code of Conduct requires a councillor to clearly distinguish between their individual views and those of Council. Whilst the Panel finds that Cr Arnol did not state that she was calling Mr Mav as an elector in the Prosser division of the Legislative Council, it also finds that she did not indicate that she was calling him as an elected member of the Glamorgan Spring Bay Council. In those circumstances and taking into account the very brief nature of the call and the fact that Mr Mav was conducting a political campaign for election to the seat of Prosser, the Panel is not satisfied that Cr Arnol was making and conducting the telephone call in her capacity as a Councillor of the Glamorgan Spring Bay Council.

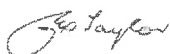
#### 5. Summary

Whilst Cr Arnol did not identify herself as a councillor during the telephone conversation, she did not state that she was calling as an elector in the upcoming Legislative Council elections. The Panel acknowledges that when a person who is an elected member of local government and well known in their community contacts others, it can be incorrectly assumed that they may be doing so in their local government capacity.

Therefore, given the potential for confusion, Councillors should consider making clear the capacity in which they are acting when communicating with others.

#### 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



**Gretel Chen**  
Legal Member



**Penny Cocker**  
Member