

CODE OF CONDUCT PANEL

**BRIGHTON COUNCIL CODE OF CONDUCT**

Determination made 22 February 2017

*Local Government Act 1993*

Code of Conduct Panel: Jill Taylor, (Chairperson), Phillip Zeeman, (Legal Representative) and David Sales

**1. Summary of the complaint**

On 11 November 2016, Mr Ron Sanderson, General Manager of the Brighton Council (the Council) lodged a Code of Conduct Complaint (the Complaint), against Councillor Keith Higgins.

Mr Sanderson alleges that Cr Higgins breached Parts 3.1, 7.1 (a) (b) & (c) 8.5, 8.6 and 8.7 of the Brighton Council's Code of Conduct, dated 21 June 2016, (the Code) in that Cr Higgins, because of his actions on 7 November 2016, brought the Council into disrepute. Mr Sanderson further alleges that Cr Higgins' comments about a staff member, (Ms Janine Banks) were offensive and embarrassing and lacked courtesy, fairness, dignity and respect. Furthermore, because of Cr Higgins' alleged behavior, he did not appropriately represent the Council.

The following are relevant extracts from the Code:

**Part 3 – USE OF OFFICE**

*1 The actions of a councillor must not bring the Council or the office of councillor into disrepute.*

**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**

*5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

*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 28 November 2016 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 determined that it would hold a hearing on the matter. The Panel received and considered the following documents prior to the Hearing:

- The Local Government Code of Conduct Complaint lodged by Mr Sanderson dated 11 November 2016;
- Brighton Council Councillors' Code of Conduct – Part B adopted on 21 June 2016;
- Letter to Chairperson, Code of Conduct Panel dated 9 January 2017 from Mr Fabiano Cangelosi of Simmons Wolfhagen;
- A Statutory Declaration by Cr Higgins dated 7 February 2017 with an attached document being the letter from Mr Cangelosi containing Cr Higgins notations;
- A Statutory Declaration by Cr Higgins dated 10 February 2017 advising his intention to have Mr Tony Benson attending as a support person, and
- Written statement from Mr Brian and Mrs Shirley Mack dated 20 February 2017.

Following the Hearing on 22 February 2017, the following documents were provided by Mr Sanderson:

- A floor plan of the public contact area at the Brighton Council Offices, and
- An information document that accompanied the Brighton Council Code of Conduct.

The Chairperson advised that the written statement by Mr and Mrs Mack, although completed on a Statutory Declaration form, had not been properly witnessed and as such could not be given the same weight as a Statutory Declaration. Both parties were given a copy of the document and provided an opportunity to comment during the Hearing.

## **3. Summary of Hearing**

The Hearing was convened on 22 February 2017 at the LINC Centre in Bridgewater. All witnesses were required to take an Oath or give an affirmation prior to giving evidence. In attendance throughout the Hearing were Mr Ron Sanderson and Cr Keith Higgins, accompanied by Mr Tony Benson. 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 Chairperson also indicated that, as a support person, Mr Benson, would not be permitted to talk. At this point, Mr Benson indicated he was there as an advocate for Cr Higgins, although this was contrary to the information previously provided by Cr Higgins. It was agreed that the Hearing would proceed with Mr Benson being an advocate for Cr Higgins. Mr Sanderson agreed to this.

The Panel had requested Council employees Ms Sarah Telega and Ms Georgina Hughes, to attend as witnesses, as their statements had been incorporated into Mr Sanderson's complaint. Ms Telega and Ms Hughes attended separately to give their individual evidence.

Mr Sanderson was asked to speak to his Complaint without interruption. He stated that there were two main points to his Complaint and these were:

1. In his discussion with Mr and Mrs Mack, Cr Higgins gave his personal view rather than one as a representative of Council; and
2. Cr Higgins spoke disparagingly about a staff member in a public area.

Mr Sanderson told the Hearing that Cr Higgins was elected to fill a vacancy on Council on 27 October 2016 following the death of Cr Geoff Taylor. Prior to his formal induction as a Councillor, Mr Sanderson said that Cr Higgins had gone to the Council depot on two occasions upsetting the Depot Clerk. Mr Sanderson said he was not able to lodge a complaint about this as it was prior to Cr Higgin's election. However, Council has taken steps to secure the area from members of the public. At the declaration of his office, Mr Sanderson alleged that Cr Higgins was quite open in his criticism of the Council, saying it was corrupt and he "would bring Council down".

On 7 November 2017, Mr Sanderson said that Mr and Mrs Mack came into the Council about a dog related issue and in order to meet with the General Manager. Mr Sanderson was tied up momentarily but once he was free met with Mr and Mrs Mack. He said that they did not seem upset or angry and he was able to resolve their issue. At the conclusion of this meeting with Mr and Mrs Mack, the General Manager was advised by staff that during the period that Mr and Mrs Mack had been waiting in the public space to meet with the General Manager, there had been a verbal exchange between Mr and Mrs Mack and Cr Higgins. The staff indicated that they were 'concerned and apprehensive' about Cr Higgins behaviour. It was indicated that Mr and Mrs Mack were somewhat upset and that it was at this point that Cr Higgins began his discussion with Mr and Mrs Mack and made the comments which were the subject of the Complaint.

Mr Sanderson told the Hearing that Cr Higgins was provided with an induction package once he had been elected to Council. When asked if this included the Code of Conduct policy, Mr Sanderson said that there was certainly information about the Code of Conduct. The Panel asked Cr Higgins if he had read all the induction information given to him, including the Code of Conduct. Cr Higgins replied that it was a large volume of material and he was still working through it. At this point, the Panel and Cr Higgins were invited to ask any questions of Mr Sanderson. There were no questions from the Panel but through a comment made by Mr Benson, it was alleged that Cr Higgins did not receive a copy of the Brighton Council Code of Conduct in the package of information he received on induction. Cr Higgins said that there was an information sheet about the Code, but not the Code itself.

The Panel next heard from Ms Georgina Elizabeth Hughes, a Cashier/Receptionist at the Brighton Council. Ms Hughes was read the statement attributed to her in Mr Sanderson's Code of Conduct complaint and she agreed that the statement reflected her evidence of the alleged incident that occurred on 7 November 2016. Ms Hughes claimed that Cr Higgins said that Ms Janine Banks "...is the nastiest person I've ever come across" or words to that effect. She went on to say in her statement, referring to Cr Higgins, that she felt uncomfortable by the "unprofessional behaviour from a new councillor" and felt he did nothing to help the situation, rather he made it "more inflammatory".

When questioned by the Panel, Ms Hughes indicated that she would have been up to 5 metres away from Mr and Mrs Mack and Cr Higgins; she said the tone of the conversation was aggressive, but not yelling or screaming. Cr Higgins said that he agreed with the statement made by Ms Hughes.

Ms Sarah Lee Telega, the Records Management Officer, Brighton Council, was the next witness called to give evidence. The statement made by Ms Telega, included in Mr Sanderson's Complaint was read out to her. She agreed that she had made this statement. Ms Telega said in her statement that on the morning of 7 November 2016 she noticed two customers (Mr and Mrs Mack) in the hall and noticed that Cr Higgins was also present. At first, she had earphones on but took them off to hear "the new councillor".

She claims that Cr Higgins told Mr and Mrs Mack that they "shouldn't waste time at Council, but go to a politician". Ms Telega then said Cr Higgins spoke to Council employee Ms Jill Percey, telling her he did not like Ms Banks and "will not be listening to or dealing with her".

In response to a question from the Panel, Ms Telega said that she was "4 seats away" agreeing, when put to her, that it was approximately 4-5 metres. Cr Higgins refuted Ms Telega's assessment of where he stood during this interchange, saying he was outside Ms Bank's office and not at the counter. On being questioned by the Panel, Ms Telega confirmed her evidence that the exchange took place adjacent to the public counter.

In response to this evidence, Cr Higgins denied that he had suggested that Mr and Mrs Mack should go to a politician but he had told them it was an option for them. He also refuted that he had said he would not listen or deal with Janine Banks because as a councillor there would be times when he would have to deal with her.

Cr Higgins was then called on to make his response to the Complaint. Cr Higgins told the Panel that on the day in question he had gone into the Council Chambers, (although couldn't recall the exact reason(s)) and came across two people who he described as "ropable" about the way they had been treated by the Governance Officer (Ms Banks). He did not identify himself as a councillor but entered into a conversation with them. Cr Higgins said that he couldn't remember exactly what he said but the comment about Ms Banks being the "nastiest person he had met" might be accurate. He did acknowledge that he has made similar statements to Ms Jill Percey (another Council employee located adjacent to the front counter), who is a family friend.

Cr Higgins said that he disputed the statement made by Ms Sarah Telega, although again admitted that he did not have a clear recollection of exactly what he said.

The Panel asked Cr Higgins whether he understood that, as a Councillor, he may need to modify his behaviour. Cr Higgins said that he didn't want to be a Councillor but agreed to stand for election because it was the residents wish. He told the Hearing that there were some who did not want him on Council and he felt that there was no one he could seek out for assistance in settling into the role. Cr Higgins said that he had a meeting with Mr Sanderson and Ms Banks following his induction where he was given a package of information pertaining to his role as a Councillor. However, when questioned further about whether he had read the information relating to the Code of Conduct, he said that he is still working his way through the information. Cr Higgins said, however, that he did not have a copy of the actual Brighton Council Code of Conduct in the package and had to request a copy ahead of the Hearing.

The written document submitted by Mr and Mrs Mack was read out by the Chairperson and both Mr Sanderson and Cr Higgins were asked if they wanted to make any comment. Cr Higgins said he agreed with what Mr and Mrs Mack had written saying he probably shouldn't have said that "Janine Banks was a nasty woman". Mr Sanderson said that he did meet with Mr and Mrs Mack following the interchange with Cr Higgins. He said that he was unaware at the time what had been said by Cr Higgins, and that Mr and Mrs Mack did not appear angry but had told him they were fed up with the matter about the dog. The Panel did not give any weight to the written statement from Mr and Mrs Mack in its final determination.

In his final submission, Mr Sanderson reiterated his Complaint was made on the basis of Cr Higgins providing a personal view to Mr and Mrs Mack as opposed to taking the position of a Councillor and attempting to resolve the matter. Secondly, it was totally unacceptable for a Councillor to speak publicly in a negative way about a staff member.

Mr Benson, advocate for Cr Higgins, drew the Panel's attention to the Code of Conduct, citing half way down page 3. However, it was established the document he was referring to was an information preamble to the actual Code. This was subsequently provided to the Panel by Mr Sanderson. In referencing this information document, Mr Benson stated that due process had not occurred and Cr Higgins had been denied natural justice and procedural fairness as the document indicated that the complaints were to be made by Councillors against other Councillors not Officers against Councillors.

#### **4. Determination**

The Panel determines the following:

##### **Part 3 – USE OF OFFICE**

*1 The actions of a councillor must not bring the Council or the office of councillor into disrepute.*

The Panel upholds the Complaint in respect of Part 3 Item 1. It is reasonable to expect that a Councillor who became aware that ratepayers/residents were dissatisfied with the Council, should, firstly identify themselves as such and attempt to resolve the matter at hand. Cr Higgins did not do this, but rather suggested that Mr and Mrs Mack seek assistance of an external person/body. His actions have brought the Council and office of Councillor into disrepute. The Panel accepts that whilst Cr Higgins was new to his role, he should have sought advice from the General Manager or other senior staff in attempting to resolve Mr and Mrs Mack's problem.

##### **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) but dismisses Part 1 (c). In making derogatory comments about a Council employee (Janine Banks), Cr Higgins failed to afford her the appropriate level of courtesy and respect. Furthermore, by making such statements, he undermined her dignity and did not afford her an opportunity to respond to comments regarding her manner and persona. Whilst Cr Higgins did dispute saying that he would not "deal with her", he did admit to saying words to the effect that "she was the nastiest person" he had known.

The Panel did not receive evidence that Cr Higgins bullied or harassed any Council employee.

## **Part 8 – REPRESENTATION**

*5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

*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.*

The Panel upholds the Complaint under Part 8 – Clauses 5, 6 and 7. Cr Higgins assessment of Ms Janine Banks was his personal view. However, when holding the office of Councillor only the views of Council should be expressed publicly by Councillors, unless it is made clear that they are expressing a personal view. By making the comments about Ms Banks and suggesting that they go to a "politician" he portrayed a situation whereby, Cr Higgins undermined the Council's ability to resolve matters of conflict.

Cr Higgins' remarks about Ms Banks were insulting and derogatory and caused concern to other staff members present at the time. Cr Higgins admitted that he had said words similar to those mentioned in the statement attributed to Ms Hughes and that he had also expressed those sentiments to Ms Jill Percey, a family friend, who works at the Brighton Council.

The Panel concluded that Cr Higgins' behavior on the morning of 7 November 2016 when talking to Mr and Mrs Mack was unacceptable as a Councillor and such behavior reflects badly on the Brighton Council.

### **5. Sanction**

The Panel upholds the Complaint in relation to subsections 3.1, 7.1 (a) and (b), 8.5, 8.6 and 8.7 of the Code, it otherwise dismisses the Complaint in relation to subsection 7.1 (c).

In deciding an appropriate sanction, the Panel has taken into account that Cr Higgins was a newly appointed Councillor at the time of the incidents. The Panel acknowledges that whilst Cr Higgins had undergone a brief induction and been provided with an information package, by his own admission he was still working through this information.

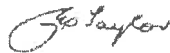
Accordingly, the Panel has decided to issue the following caution to Cr Higgins:

1. He must act in accordance with the Code of Conduct; and
2. He must show respect and courtesy in dealing with and referring to Council employees.

The Panel recommends that Cr Higgins undertakes training in respect of his role as a Councillor and consideration, by the Council, be given to providing Cr Higgins with a mentor to assist him in this role.

**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**



**Phillip Zeeman  
Member**



**David Sales  
Member**