

Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**DORSET COUNCIL CODE OF CONDUCT**

**Complaint brought by Dr Vincent Teichmann against Mayor Greg Howard**

**Code of Conduct Panel**

- Lynn Mason AM (Chairperson),
- David Sales (Local Government Member)
- Steve Bishop (Legal Member)

Date of Determination: 22 April 2024

Content Manager Reference: C31199

**Summary of the complaint**

A code of conduct complaint was submitted by Dr Vincent Teichmann to the General Manager of the Dorset Council on 20 September 2023. The complaint was originally submitted on 17 August 2023, and was resubmitted within the period allowed by the *Local Government Act 1993* (the Act), and accepted by the General Manager on 20 September 2023.

The complaint related to comments made by the Mayor, Councillor (Cr) Greg Howard, when answering questions asked by Dr Teichmann and various members of the public during Public Question Time (PQT) at the ordinary meeting of Dorset Council held on 20 February 2023.

The complaint alleged that Cr Howard breached the following parts of the Dorset Council Code of Conduct, adopted on 20 February 2023:

**Part 1 – Decision Making**

- 1. A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.*
- 2. A councillor must make decisions free from personal bias or prejudgement.*
- 3. In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.*

**Part 7.1 – An elected member –**

- (a) –*
- (b) must not cause any reasonable person offence or embarrassment;*

**Part 8 – Representation**

- 4. A councillor must clearly indicate when they are putting forward their personal views.*
- 6. A councillor must show respect when expressing personal views publicly.*

The Chairperson of the Code of Conduct Panel (the Panel) determined in her assessment that the complaint disclosed possible breaches of the following additional clause of the Code:

### **Part 8 – Representation**

1. *When giving information to the community, a councillor must accurately represent the policies and decisions of the council.*
2. –
3. –
4. *A Councillor must clearly indicate when they are putting forward their personal views.*
5. –
6. -

### **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, and in accordance with section 28ZA(1)(b), the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the complaint. This relied on his having asked several questions at previous council meetings to try to correct what he saw as errors made by Cr Howard; additionally, he had observed that as the Council at the time the complaint was made was in administration, and Cr Howard was not attending Council meetings conducted by the Commissioner, he saw no point in pursuing his complaint by trying to question Cr Howard in a public forum;
- part of the complaint substantially related to a contravention of the Dorset Council’s Code of Conduct;
- part of the complaint could not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if upheld, Cr Howard would be shown to have breached a number of clauses of the Code of Conduct;
- 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>

In accordance with section 28ZA(1)(b) of the Act, the allegation that Parts 1.1, 1.2, 1.3, 7.1(b), and 8.6 had been breached were dismissed. These parts of the complaint were dismissed on the following grounds:

### **PART 1 - Decision making**

The grounds for dismissal were that during Public Question Time at the Ordinary Meeting of Dorset Council held on 20 February 2023, Cr Howard was not participating in the process whereby Council makes decisions on matters raised for discussion and decision, i.e., that part of the meeting where a council considers reports and recommendations, and makes decisions by vote. This part of the Code does not refer to statements made by a Mayor when answering questions in Public Question Time. Therefore, this part of the complaint does not substantially relate to a contravention of the Code.

### **PART 7 - Relationships with community, councillors and Council employees**

The complaint alleged that Cr Howard breached the Code in contradicting the questioner’s statement that mountain bike races had been held on the road on which she lives This, according to the complaint, may well have caused the questioner offence and/or embarrassment. The

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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.

complaint provided no evidence that the questioner was embarrassed or offended by Cr Howard's contradiction of her statement. This part of the complaint was therefore dismissed, on the basis that it was vexatious, i.e., without substance.

### ***PART 8 – Representation***

At the Council meeting of 20 February 2023, Cr Howard answered questions from at least six members of the public, and some Councillors. A number of clauses of the Code require a councillor to behave with respect to others, and to avoid bringing the council into disrepute by his or her actions or words. The Chairperson determined that Cr Howard was not disrespectful to the questioners in answering any of the questions included in the complaint. It was apparent that in some answers he did not agree with statements made by the questioner, but his expression of that disagreement was done without disrespect. The allegation that Cr Howard breached Part 8.6 was therefore dismissed, on the basis that it was vexatious, i.e., without substance.

On this basis, the Chairperson determined to investigate the complaint that Cr Howard may have breached Part 8.1 and Part 8.4.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 27 October 2023.

### **Investigation**

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

The Panel met on 18 December 2023 to consider the complaint. Further meetings of the Panel were held on 8 March 2024 and 21 March 2024.

Cr Howard was invited in the initial assessment to provide a response to the complaint by 10 November 2023; his response was received on 25 January 2024. Cr Howard's response was sent to Dr Teichmann, who responded on 27 February 2024. This was sent to Cr Howard. On 12 March 2024 the Panel received a further submission from Cr Howard. This was sent to Dr Teichmann for his information.

On 28 February 2024 both Dr Teichmann and Cr Howard were informed by letter that the Panel was of the view that the matter could be determined on the basis of the information and submissions available to the Panel. Both parties were invited to make submission to the Panel by 12 March 2024 if either party considered that he would be disadvantaged if a hearing were not held. Both parties submitted that a hearing would not be necessary. The Panel proceeded to make its determination.

The Panel based its investigations on the following documentation:

- The complaint from Dr Teichmann, submitted under cover of Statutory Declaration, dated 17 August 2023, resubmitted 19 September 2023, 33 pp;
- The response from Cr Howard, submitted under cover of Statutory Declaration, 25 January 2024, 66 pp;
- Reply from Dr Teichmann, submitted under cover of Statutory Declaration, 27 February 2024, 4 pp;
- Response from Cr Howard, submitted on 12 March 2024, with covering Statutory Declaration, 6pp;
- The Dorset Council Code of Conduct adopted 20 February 2023.

The Panel noted in its investigation and consideration of the material, that the complainant appeared to have relied on the Panel to validate the complaint by searching the transcripts provided by the complainant to support his allegations of breaches of the Code. Section 28V(3)(e) of the Act requires that the complaint must contain details of the behaviour of the councillor that constitutes the alleged contraventions of the Code. The Panel takes seriously its responsibility to read thoroughly the material sent to it.

However, it is a basic requisite both under the Act and for the purpose of procedural fairness for the complainant to specify with precision and particularity exactly what conduct is impugned by the complainant. The Panel is not required to undertake the task of sorting through a wealth of material seeking out behaviour which may conceivably amount to a breach of the Code. That is for the Complainant, who needs to not only specify with clarity the conduct complained of, but also to provide a clear link between the actions of the councillor and the specific clause or clauses of the Code which are alleged to have been breached by those actions.

### **Determination**

As per section 28ZI(1)(b) of the Act, the Code of Conduct Panel dismisses the complaint.

### **Reasons for determination**

1. The allegation that Cr Howard breached Part 8.1 of the Code is dismissed, on the grounds that there is no evidence that Cr Howard misrepresented any policies or decisions which had been made by the Council in a Council meeting. No clear indication was given by the complainant of the statements or conduct that he regarded as amounting to breaches of this part. Certainly, some statements by Cr Howard appeared controversial and likely to be personal to him, such as the intensity of fires within the municipality, but no one could have reasonably considered that he was putting forward official council positions on these matters. By their nature, and in their context, they were expressing personal views and were not representations of Council policies or decisions.
2. The allegation that Cr Howard breached Part 8.4 of the Code is dismissed, on the grounds that the Mayor was answering questions without notice as best he could in a public meeting. Part 8.4 comes into effect when the councillor puts forward a personal viewpoint which is in opposition to a decision or policy which has been decided by the Council. In this case, Cr Howard did not falsely represent a policy or decision of the Council, but rather, stated his views on various questions put to him; the context, the manner of expression and the content of the answers inferred that these were personal views, without the necessity to expressly say so. Therefore, this part of the complaint is dismissed.

### **Timing of the Determination**

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's determination that the complaint is to be investigated.

The Panel has been unable to determine the complaint within 90 days, owing to significant delays in receiving responses from the parties.

### **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 AM  
**Chairperson**



Steve Bishop  
**Legal Member**



David Sales  
**Member**

DATE: 22 April 2024