

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),
- Roseanne Heyward (Local Government Member)
- Sam Thompson (Legal Member)

Date of Determination: 24 April 2024

Content Manager Reference: C30037

Summary of the complaint

A code of conduct complaint was submitted by Dr Vincent Teichmann to the General Manager of the Dorset Council on 14 July 2023. The complaint was deemed to not be compliant with the requirements under section 28Y of the *Local Government Act 1993* (the Act) and referred back to the complainant by the General Manager. The complaint was resubmitted on 10 August which is within the period allowed by the Act. The subsequent amended complaint was deemed to be compliant by the General Manager on 10 August 2023.

The complaint related to comments made by the Mayor, Councillor Greg Howard, when answering questions asked by Dr Teichmann during Public Question Time at the ordinary Dorset Council meetings held on 16 January 2023 and 20 February 2023.

The complaint alleged that Cr Howard breached the following parts of the Dorset Council Code of Conduct, adopted on 20 February 2023¹:

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.*

¹ On 15 April 2019 Dorset Council amended its Code of Conduct. On 20 February 2023 Dorset Council reviewed its Code of Conduct and resolved unanimously to accept the version tabled at that meeting. The Panel notes that the wording of the clauses relevant to this complaint is unchanged from the 2019 version of the Code to the version of the Code adopted at the meeting of 20 February 2023.

4. *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

Part 2 - Conflict of interests that are not pecuniary

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 elected member is appointed or nominated by the Council.*

Part 7 – Relationships with Community, Councillors and Council Employees

1. *A Councillor –
(a) must treat all persons fairly; and
(b) must not cause any reasonable person offence or embarrassment; and*

Part 8 – Representation

2. *A councillor must clearly indicate when they are putting forward their personal views.*
3. ...
4. *A councillor must show respect when expressing personal views publicly.*

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 for some of the allegations made in the complaint:

- the complainant had made a reasonable effort to resolve the complaint. This relied on his having asked several questions about a process he was undertaking with the Council, where he attempted to ascertain Council's reasons for decisions taken about an application he had made;
- the complaint substantially related to a contravention of the Dorset Council's Code of Conduct;
- 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 as having 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.²

In the initial assessment the Chairperson determined that the allegations that Councillor Howard had breached Part 2.2 and Part 2.3 were dismissed, on the grounds that no evidence was provided to substantiate the allegation that Councillor Howard had a conflict of interest in his answers to the questions.

² 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.

On this basis, the Chairperson determined to investigate the complaint that Councillor Howard may have breached Part 1 (1-4), Part 7.1(a) and (b), and Part 8.4 and Part 8.6.

The Complainant, The Respondent Councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 22 September 2023.

Investigation

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

The Panel met on 8 September 2023 to consider the complaint. Dr Teichmann was requested to provide copies of original emails referred to in the complaint, under cover of Statutory Declaration. These were sent to the Panel on 13 October 2023, and were forwarded to Cr Howard. Further meetings of the Panel were held on 16 November 2023, 20 December 2023, and 7 March 2024.

Councillor Howard was invited in the initial assessment to provide a response to the complaint by 16 October 2023, and this was received on 25 January 2024. Councillor Howard's response was sent to Dr Teichmann, who responded on 27 February 2024. On 12 March 2024 the Panel received a further submission from Councillor Howard. This was sent to Dr Teichmann for his information.

On 28 February 2024 both Dr Teichmann and Councillor 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. Neither party sought a hearing. The Panel conferred by email and 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 10 August 2023, 15 pp;
- Six emails forwarded by Dr Teichmann to the Panel, 13 October 2023, with covering Statutory Declaration, 24 October 2023;
- Response from Cr Howard, submitted 25 January 2024, with Statutory Declaration, 66 pp;
- Submission in response from Dr Teichmann, submitted 27 February 2024, with covering Statutory Declaration, 4 pp;
- Submission from Cr Howard, submitted on 12 March 2024, with covering Statutory Declaration, 6pp;
- The Dorset Council Code of Conduct adopted 20 February 2023.

Determination

Pursuant to section 28ZI(1)(c) of the Act the Panel determines that Councillor Howard breached Part 7.1(a) and Part 7.1(b) of the Code of Conduct, and therefore the Panel upholds those parts of the complaint and dismisses the remainder. The Panel determines that the alleged breaches of Part 1.1, Part 1.2, Part 1.3, Part 1.4, Part 8.4, and Part 8.6 are not substantiated and should be dismissed.

Reasons for determination

1. The allegations with respect to Part 1(1-4) are dismissed, on the grounds that during Public Question Time (PQT) at the Ordinary Meetings of Dorset Council held on 16 February 2023 and 20 March 2023, Councillor 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. While Councillor Howard was obviously deciding what to say in response to

questions, he was not making decisions which would have a binding effect on the Council as a whole.

2. The allegation that Councillor Howard breached of Part 7.1(a) and 7.1(b) is upheld. A decision by the previous General Manager concerned an application by Dr Teichmann for non-monetary support for his business, an application which had been refused early in 2022. This refusal had had an adverse effect on Dr Teichmann, and he sought to understand the reasons for the refusal.

Both Dr Teichmann and Councillor Howard were aware by late 2022 that the refusal to approve support was based on adverse allegations made against Dr Teichmann by persons unknown, which had not been investigated by the Council at the time. In addition, Dr Teichmann had never been given an opportunity to respond to those allegations. Despite this, in answering questions from Dr Teichmann and from Councillor Chilcott and Councillor Coxen on 16 January 2023, the Mayor inferred that in 2022, Dr Teichmann was an unsuitable person to be given the support from Council that he sought. Further, Councillor Howard said that he doubted even after several years that Dr Teichmann had *modified his behaviour* in a way which would allow him now to get the support from Council that he needed.

The Panel determines that the inferences about his unsuitability for Council support, which could be drawn from Councillor Howard's remarks, were unfair to Dr Teichmann, and would cause a reasonable person both offence and embarrassment. The Panel therefore upholds the complaint that Councillor Howard breached Part 7.1(a) and Part 7.1(b).

3. The allegation that Councillor 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 viewpoint which is in opposition to a decision or policy which has been decided by the Council. In this case, Councillor Howard was relying on information provided by the previous General Manager, as he was entitled to do. In his responses he did not falsely represent a policy or decision of the Council, but rather, stated the decision and the reasons for the decision which had been taken by the previous General Manager.
4. The allegation that Councillor Howard breached Part 8.6 of the Code is dismissed, on the grounds that no evidence was presented to show that Councillor Howard was not respectful when answering questions.

Sanction

Section 28ZI(2) of the Act allows the Panel to impose a sanction on Councillor Howard. The provision provides a hierarchy of sanctions. We are satisfied that some sanction is appropriate to recognise that Councillor Howard's breach was more than technical or accidental. We take into account Councillor Howard's written submissions. A sanction at the lower end of the scale is appropriate. Pursuant to s 28ZI(2)(a) of the Act, Councillor Howard is reprimanded.

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 and a series of extensions granted to them to provide material.

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



Sam Thompson
Legal Member



Roseanne Heyward
Member

DATE: 24 April 2024