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Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT
SOUTHERN MIDLANDS CODE OF CONDUCT

Complaint brought by Mr Rick Wilton against Councillor Fraser Miller

Code of Conduct Panel

- Liz Gillam (Chairperson),
- Greg Preece (Local Government Member)
- Don Jones (Legal Member)

Date of Determination: 5 December 2024

Content Manager Reference: C34636

Summary of the complaint

A code of conduct complaint was submitted by Mr Rick Wilton to the General Manager – Southern Midlands Council on 16th July 2024.

The complaint alleges that Councillor (Cr) Fraser Miller breached the Southern Midlands Council Code of Conduct (Elected Members) (the Code) (approved 26 February 2019) at two separate locations on the 26th June 2024 and 28th June 2024.

The Complaint failed to set out which parts of the Code are alleged to have been breached, however it was alleged Cr Miller failed to act in the interests of the community and Cr Miller's behaviour failed to represent the behaviour of a Council representative.

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 Local Government Act 1993 (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- in accordance with section 28 ZA(1)(f), that part of the complaint against Cr Miller should be investigated i.e. in relation to Part 7 (1) and Part 8 (7);
- that the remaining clauses of Part 7 & 8 were not pertinent to the behaviour described and would not be investigated;
- the complaint [or the balance of the complaint] should not be dismissed on the grounds that it was frivolous, vexatious or trivial;
- the Chairperson accepted that due to the apparent attitudes of the parties it would have been of negligible effect to require the parties to make any effort to resolve the complaint;
- the complaint does not disclose that an offence may have been committed or that it should more appropriately be dealt with by another person or authority;

- 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.

On this basis, the Chairperson determined to investigate part of the complaint. A copy of the complaint was provided to the other members of the Panel appointed to investigate the complaint. The complainant, respondent councillor and the General Manager were notified of the outcome of the outcome of the initial assessment.

Investigation

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

Prior to embarking on a hearing of the matter issues arose as to the failure by the complainant to properly complete the complaint by not stating the provisions of the Code that the Cr Miller had allegedly contravened in accordance with Section 28V(d).

Section 28V of the Act sets out the requirements for making a complaint alleging breaches of the Code of Conduct of a Council. In particular sub-section (3) provides:

- (3) *A complaint is to –*
 - (a) *be in writing; and*
 - (b) *state the name and address of the complainant; and*
 - (c) *state the name of each councillor against whom the complaint is made; and*
 - (d) *state the provision of the relevant code of conduct that the councillor has allegedly contravened; and*
 - (e) *contain details of the behaviour of each councillor that constitutes the alleged contravention; and*
 - (f) *be lodged with the general manager of the relevant council within 6 months after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct; and*
 - (fa) *be accompanied by a statutory declaration, signed by the complainant or by each complainant, verifying the accuracy of the information contained in the complaint; and*
 - (fb) *contain details of all efforts made by the complainant to resolve the issue that is the subject of the complaint; and*
 - (g) *be accompanied by any prescribed fee.*

Section 28Y of the Act places an obligation on the general manager of a council on receiving a complaint to assess the complaint to determine whether it meets the requirements of Section 28V.

If the complaint does not meet the requirements of Section 28V the general manager is to return the complaint to the complainant and notify the complainant, in writing within 14 days, that the complaint does not meet the requirements for the reasons set out in the correspondence. Section 28Y(3)(b) provides that the complainant may lodge an amended or substituted complaint without payment of a further fee. Time limits are prescribed for the different actions.

The Panel has seen no evidence that the General Manager issued a notice to the complainant, nor that an amended or substituted complaint has been received.

Section 28X also provides that if a general manager receives a notice amending a code of complaint that has been referred to the Panel, the general manager is to notify the Executive Officer, in writing, of the amendment. In this instance, there is no evidence that the general manager received such a notice nor has the Panel received any information of a written amendment to the Complaint.

Section 28Z(1) provides that, having determined the complaint meets the requirements of Section 28V, the general manager is to refer the complaint to the Executive Officer (see S28Z(1)(a), who is to keep the original complaint or a copy and appoint an initial assessor in accordance with Section 28ZA.

The role of the Executive Officer is set out in Section 28N, which states in part, to provide administrative functions in relation to the Code of Conduct Panel. The Act does not place any responsibility on the Executive Office to check whether the complaint complies with Section 28V, that responsibility lying with the general manager. The role of the Executive Officer is to receive the complaint and to appoint an initial assessor.

Material considered by the Panel

The following documents have been presented to the Panel to consider as evidence in this matter:

- The original and unamended complaint by Mr Rick Wilton, dated 9 July 2024, together with Statutory Declaration
- Response by Cr Miller, dated 17 September 2024
- Statutory Declaration by Cr Miller, dated 25 September, attaching original response and a Statutory Declaration from Melina Nardi.
- Response from Mr Rick Wilton, received on or about 20 October 2024.

Having considered the Complaint as filed, the Panel has found that the complaint is defective.

Determination

For the reasons set out above and below, the Panel has determined that the complaint should be dismissed.

Reasons for determination

It is the view of the Panel that the complaint before it does not comply with Section 28V of the Act in that it does not state the provisions of the Code which the complainant considers have been breached. The complaint alleges that the Cr Miller 'was not acting in the interest of the community' and that Cr Miller's behaviour failed to represent the behaviour of a Council representative. However, these allegations do not relate to any of the provisions in the Code.

Although the complainant advised by email which provisions of the Code he considered had been breached, it is the view of the Panel that this does not amount to an amended or substituted complaint, as required under section 28Y (3) (b) or a notice of amendment under section 28X.

No determination has been made as to whether the conduct alleged breaches the Southern Midlands Code of Conduct.

No determination is made pursuant to S28ZI(3) of the Act, restricting the complainant from making a further complaint.

Timing of the Determination

In accordance with section 28ZD (1) of the Act, 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 was unable to determine the complaint within 90 days, owing to granting extensions of time for responses and commitments of Panel members.

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. In accordance with section 17 of the Magistrates Court (Administrative Appeals Division) Act 2001, an appeal must be lodged within 28 days of the date of notification of the determination



Liz Gillam
Chairperson



Greg Preece
Member



Don Jones
Legal Member

DATE :5 December 2024