

Local Government Act 1993

**CODE OF CONDUCT PANEL DETERMINATION REPORT
NORTHERN MIDLANDS COUNCIL CODE OF CONDUCT**

Complaint brought by Councillor Janet Lambert against Councillor Andrew McCullagh

Code of Conduct Panel

- Lynn Mason AM (Chairperson),
- Greg Preece (Local Government Member)
- Amber Cohen (Legal Member)

Date of Determination: 11 October 2024

Content Manager Reference: 31711

Summary of the complaint

A code of conduct complaint was submitted by Councillor (Cr) Janet Lambert on 4 December 2023.

The complaint alleged that Councillor (Cr) Andrew McCullagh breached several clauses of the Northern Midlands Council Code of Conduct for Councillors. These alleged breaches occurred in a series of text messages and Facebook posts on and following 23 November 2023. These messages and posts contained allegations of illegal behaviour by Cr Lambert, the Mayor, and the Council's General Manager, and included an exchange between Cr Lambert's husband, Mr Todd Lambert and Cr McCullagh. Reference was also made to a Facebook exchange between Cr McCullagh and a person called Rupert Pumkin, who Cr McCullagh alleged was in fact Mr Todd Lambert.

Initial assessment

The complaint alleged that Cr McCullagh had breached the following sections of the Code of Conduct (the Code):

Part 3 – Use of Office

3.2 A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

Part 7 – Relationships with Community, Councillors and Council Employees

7.1 A councillor –

- (a) must treat all persons fairly; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

Part 8 – Representation

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

8.6 A councillor must show respect when expressing personal views publicly.

8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

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:

- The alleged breaches of Part 3.2, Part 7.1 (a), (b), and (c), and Part 8.5, 8.6 and 8.7 of the Code should be further investigated, as they substantially related to possible contraventions of the Northern Midlands Council's Code of Conduct updated on 20 October 2023;
- If the allegations in relation to the above-named Parts were proven, they were capable of constituting a breach in relation to the Council's Code of Conduct;
- The complaint accepted for further investigation was not frivolous, vexatious or trivial. The complaint appeared to relate to matters of substance under the Council's Code of Conduct and did not appear to be trifling, insignificant or a misuse of the Panel's resources;
- The complainant stated that efforts had been made to resolve the issues of the complaint, but the respondent had refused to reconsider any of the public statements which constituted the essence of the complaint;
- The complaint had not been made in contravention of a determination of the chairperson of a Code of Conduct Panel under section 28ZB (2) of the Act or a determination of the Code of Conduct Panel under section 28ZI(3) of the Act.¹

The complainant and the respondent councillor were notified of the outcome of the initial assessment by letter dated 23 January 2024.

Procedure and Investigation

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

Cr McCullagh was invited in the initial assessment to respond to the complaint by 10 February 2024. As nothing had been received from Cr McCullagh by that date, the Executive Officer wrote to Cr McCullagh on 14 February 2024 and requested a response to the complaint by 16 February 2024. Cr McCullagh replied on 14 February, stating that he was receiving legal advice on another matter involving Cr Lambert, and would respond when he had received that advice. No date was set.

It is useful to note as background that, although not privy to the substance of the matter, the Panel understands that Cr McCullagh is separately pursuing a complaint against the Mayor and/or the General Manager of Northern Midlands Council in respect to the payment of legal fees from Council funds in respect to advice provided regarding a complaint by Council against Cr McCullagh. Cr Lambert was a party to the complaint against Cr McCullagh.

On 14 March 2024 the Chairperson wrote to Cr McCullagh asking if he intended to respond to the complaint, and if so, the response should be provided by 19 March 2024.

On 20 March 2024 the Executive Officer received notification from Cr McCullagh that he had not '*received the document*' (the Chairperson's letter of 14 March 2024) as he had not received the hard

¹ Sections 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.

copy posted to him. Cr McCullagh did not deny that the letter had been attached to an email to him of 14 March 2024 to which he was replying. In addition, Cr McCullagh referred to a different Code of Conduct investigation and a different legal proceeding, involving Cr Lambert. Cr McCullagh then stated that *until that matter has been fully investigated and dealt with, there is no case to answer here, as Deputy Mayor Lambert is likely guilty (sic), suggests any dealings after the date of her actions are ineffective. I will be submitting no further evidence, or engaging in any process until after this matter is dealt with in the appropriate manner, as such would be unjust given the likelihood of Deputy Mayor Lamberts (sic) guilt. Should you choose to take the matter further in my absence, and a determination made, such will be immediately appealed to the Magistrates Court for a further hearing given that Natural Justice and Fair Process have not been adopted.*

On 2 April 2024 the Panel received further communication from Cr McCullagh, sent also to the Premier, the Acting Director of Local Government, and all Northern Midlands Councillors, reiterating that he was awaiting legal advice on a different matter involving Cr Lambert, and stating that *I contend Ms Lambert (sic) matter holds no substance and is vexatious and will not be attending to further correspondence on this matter. If the Code of Conduct committee choose to take the matter further, such will be appealed accordingly in the Magistrates Court at the appropriate time.* This communication was sent to Cr Lambert for her information.

The Panel met on 4 March 2024, 26 March 2024, and 8 April 2024. On 26 March the Panel determined that it would conduct a hearing into the matter, in accordance with section 28ZG of the *Local Government Act 1993* (the Act). After receipt of Cr McCullagh's communication on 2 April 2024, the Chairperson advised both Cr Lambert and Cr McCullagh on 3 April 2024 that a hearing was to be held, and requested that each of them inform the Panel of their availability on a number of possible dates. Cr McCullagh did not provide any answer to that request, so on 26 April 2024 a further list of dates was sent to both parties. In the case of Cr McCullagh, he was again asked if he wished to respond to the complaint, and was given until 6 May 2024 to do so. A date in May 2024 was proposed for the hearing.

On 27 April 2024 the Panel was informed by Cr McCullagh that he was on leave from Council until 15 June 2024 and would be overseas for most of the month of May, and advising that if the matter was heard in his absence, it would be appealed. The Panel deferred the hearing until 17 June 2024 to ensure procedural fairness. Both parties were informed that the hearing would be set for 17 June 2024. On 8 May 2024 Cr McCullagh communicated that he would be available after 20 June 2024. The hearing was changed to 24 June 2024 and both parties were notified of this on 16 May 2024.

On 20 May 2024 Cr McCullagh informed the Panel that he was still waiting for legal advice, and also waiting for the outcome of an investigation by the Office of Local Government. He said that he had not read the complaint from Cr Lambert. He reiterated that to proceed with an investigation into this code of conduct would be a denial of natural justice to him, as he was confident that Cr Lambert would be dismissed when those other investigations were concluded. He stated *I will not be attending the June date set down, and will not be available anytime thereafter, until that matter is determined first and foremost.*

The Panel consulted by email and determined to conduct the hearing on 24 June, as planned. Both Cr Lambert and Cr McCullagh were informed of this on 22 May 2024, and Cr McCullagh was again invited to respond to the complaint by 19 June 2024.

On 24 May 2024 Cr McCullagh reiterated that he would not attend the hearing. On 27 May 2024 Cr McCullagh sent notice to the Panel that he had been called for jury duty from 17 June 2024 to 30 June 2024. The Panel was then told that Cr McCullagh would be out of the State during July. On 7 June 2024 the Chairperson wrote to Cr McCullagh to say that the hearing would be held on 16 August 2024, and that he could, if necessary, attend by video link.

On 24 July Cr McCullagh informed the Panel that he had leave of absence from Council from 1 August 2024 to 17 September 2024, and could not attend a hearing during that time.

On 6 September 2024 the parties were informed that the hearing would be held on 20 September 2024, in Launceston. On 11 September Cr McCullagh informed the Panel that he would not be attending the hearing, and stating that *the Complaint has been dealt with through Lambert(T) v McCullagh , and as such this would be a hearing the same matter. I will take the matter to the Magistrates Court for hearing should the COC panel enforce any penalty, as there is absolutely no doubt they will do as they please.*

On 13 September 2024 the Panel received a further statement from Cr Lambert regarding the investigation conducted by the Office of Local Government. This statutory declaration included two attached letters, both to Deputy Mayor Lambert from Mr Mike Mogridge, Acting Director of Local Government, dated 13 August 2024 and 19 August 2024. Amongst other things, the letters contained a summary of findings of an independent investigator in relation to a complaint lodged by Cr McCullagh against Deputy Mayor Lambert and a statement that Cr Lambert and the Mayor were *reasonably entitled to rely on qualified legal advice that the legal fees associated with preparing the Code of Conduct complaint should properly be paid by the Council.* This statutory declaration, with attached letters, was sent to Cr McCullagh for his information.

Cr McCullagh responded by email of 16 September 2024 that legal advice he had received privately contradicted the Council's legal advice and the position taken by the Office of Local Government. He also made a number of comments about the veracity of the Code of Conduct Panel, stating, for example *it would be grossly negligent of any Code of Conduct Panel to ignore that fact, as in doing so shows categorically how archaic and out of touch with the reality (sic), the Code of Conduct nonsense is.* No response to the actual complaint was received from Cr McCullagh.

Material considered by the Panel

- The Northern Midlands Council Councillor Code of Conduct, updated 20 October 2023;
- The complaint from Councillor Janet Lambert, accompanied by a Statutory Declaration dated 4 December 2023, 41pp;
- Email from Cr McCullagh to the Executive Officer, Code of Conduct Panel, 2 April 2024, 7pp;
- Witness statement from Mr Todd Lambert, accompanied by a Statutory Declaration, 28 May 2024, 6pp;
- Statement from Cr Lambert, accompanied by a Statutory Declaration, 13 September 2024, 5pp.

Hearing

The hearing was held on 20 September 2024. Cr McCullagh failed to attend. Cr Lambert called Mr Todd Lambert as her witness. Mr Lambert took the Oath, and Cr Lambert read the Affirmation.

Cr Lambert spoke to her complaint, saying that in her 13 years on Council, she had never encountered behaviour of this kind by a fellow Councillor. Her concerns focused on Cr McCullagh's frequent reiterations of the allegation that Cr Lambert had wrongfully used Council funds for her own purposes, and that many of these allegations by Cr McCullagh had been widely disclosed to the community through his Facebook page, and through emails to the Premier, the Minister of Local Government, various members of Parliament, and other Councillors. She also referred to Cr McCullagh's media release of 23 November 2023.

Although it was not the role of this Panel to determine the appropriateness or otherwise of any person's actions in respect to the matter about which Cr McCullagh complains separately, for context, Cr Lambert told the Panel that she had known nothing of the legal advice which was sought by the Mayor and General Manager. This advice was relied upon by the Mayor and was particular to a Mayor's responsibility for the good governance of the Council. Hence, although the costs were paid by Council, Cr Lambert was not involved with arranging or approving the making of the payment. Cr Lambert said that the statements Cr McCullagh had been making were being spread far and wide. She said the statements were embarrassing and that she was tired of Cr McCullagh waging a war on her in the public arena with no evidence.

Mr Lambert appeared as a witness for Cr Lambert. He stated that in his view, Cr McCullagh had treated Cr Lambert unfairly, and that he had caused offence and embarrassment, including to Mr Lambert's children. He described Cr McCullagh's insistence on his Facebook page, that Rupert Pumpkin was an alias of Mr Lambert, as bizarre, and said he could not understand it.

Cr Lambert was asked if she wished to make a submission on sanction, in the event that the Panel determined to uphold any part or all of the complaint. Cr Lambert said that she considered that Cr McCullagh should make a public apology to her, and that he should be suspended from performing and exercising the functions and powers of his office as a councillor for a period to be determined by the Panel.

Determination

The Panel upholds the complaint that Cr McCullagh breached Part 3.2, Part 7.1 (a), (b) and (c), and Part 8.5, 8.6, and 8.7 of the Northern Midlands Council Code of Conduct.

Reasons for determination

Part 3 – Use of Office

3.2 A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

The Panel determines that Cr McCullagh sought to damage Cr Lambert's reputation and standing within the Northern Midlands community and Tasmanian local government, and with several leading members of State Parliament. That is, he sought to gain an improper and unfair detriment to Cr Lambert. This was done by publishing a press release on his official Councillor Facebook page that Cr Lambert (and another Councillor) had *helped themselves to tens of thousands of dollars of Ratepayers (sic) money , with no authority by Council, no authority from the Acting General Manager, and are of the view that they can do as they please*

And

This is a further example of (two other people named, and) the Deputy Mayor spending hundreds of thousands of dollars of Ratepayers (sic) monies against Mr McCullagh..... (Media release 23 November 2023)

Cr McCullagh also sent an email to Cr Lambert on 24 November 2023, copied to the Premier, the Minister for Local Government, the Integrity Commission, John Tucker MP, and all Councillors, in which he said *Let's not divert from the key point here. The Mayor and Deputy Mayor expending ratepayers monies for their own gain. (sic)*

No evidence was provided to support these statements by Cr McCullagh.

Cr McCullagh also allowed a post to remain on his Council Facebook page which accused Cr Lambert and two other people of stealing and lying about the purported wrongful use of Council money. He was asked by Mr Todd Lambert on 23 November 2023 to remove the post, with Mr Lambert's text message to Cr McCullagh stating *I strongly urge you to remove such references and lies immediately*. Cr McCullagh did not agree to do so. On 4 December 2023 when the complaint was submitted, Cr Lambert stated that the post was still on Cr McCullagh's Council Facebook page.

Cr McCullagh describes himself on his Council Facebook page as *Councillor of Action Councillor in Action*. The Panel determines that by announcement of his pursuit of Cr Lambert over the alleged misuse of Council funds on his Council Facebook page, he is attempting to gain an improper advantage for himself and promote his own political profile. It is reasonable to assume that it could appear to the general public that as a Councillor, he would be in a position to know the full facts, thereby giving credit to himself for exposing wrongdoing. However, no evidence is provided to support the statements Cr McCullagh has made against Cr Lambert, which are of a serious nature in that they allege illegal acts have occurred. The sums of money he alleges to have been

fraudulently used grossly exaggerate the actual sum in question, which is approximately \$11,000.00. The advantage he seeks to gain for himself is therefore unfair and improper.

The Panel upholds the complaint that Cr McCullagh breached Part 3.2 of the Code.

Part 7 – Relationships with Community, Councillors and Council Employees

7.1 A councillor –

a) must treat all persons fairly; and

The Panel determines that Cr McCullagh was unfair to Cr Lambert by his reckless allegation that she had wrongfully used Council funds for her own ends. Whilst this Panel does not make any determination on the separate complaint Cr McCullagh is pursuing, his citing of the sum involved was grossly exaggerated. No evidence was provided to support this accusation, which was made public through both Facebook and Cr McCullagh's media release of 23 November 2023.

The Panel upholds the complaint that Cr McCullagh breached Part 7.1(a) of the Code.

b) must not cause any reasonable person offence or embarrassment; and

The Panel determines that Cr McCullagh caused undue offence and embarrassment to Cr Lambert, and his behaviour was offensive to Mr Lambert. In the matter of Cr Lambert, the Panel considers that the accusations of wrongdoing levelled against her publicly were offensive, and embarrassing, given their grossly exaggerated nature, her consistent denial of any wrongdoing, her standing in the community, her position as Deputy Mayor, and the number of people to whom the accusations were exposed.

In the matter of Mr Lambert, the Panel determines that Cr McCullagh's public denouncement of his wife, Cr Lambert, was offensive to Mr Lambert. He stated that he was aware of the work his wife put into carrying out her role as a Councillor, and he was offended that another Councillor had accused her, without evidence, of at very least, a serious misdemeanour.

The Panel upholds the complaint that Cr McCullagh breached Part 7.1(b) of the Code.

c) must not bully or harass any person.

The Panel determines that Cr McCullagh's behaviour did not meet the standard of bullying or harassment in regard to the text message exchange with Mr Lambert. The complaint alleged that Cr McCullagh was bullying and harassing Mr Lambert during the text message exchange on 23 November 2023. The exchange was limited to that day, and ceased that day. The exchange was equal, in that there was not a stream of text messages sent to Mr Lambert by Cr McCullagh to which Mr Lambert did not reply, and in fact, Mr Lambert made the first contact. Both bullying and harassment generally require adverse behaviours, targeted at an individual (or individuals) extending for some time and can include spreading destructive or slanderous comments. The Panel determines that this exchange of text messages, occurring over a single day, is insufficient to qualify as bullying and harassment.

However, the complaint further alleged that refusing to take down a post from a third party alleging that Cr Lambert (and others) had stolen money, and by leaving up the press release he had posted himself, also amounted to bullying and harassment. The Panel determines that Cr McCullagh's behaviour in repeatedly posting, and allowing others to post on a social media site he controls, comments that allege illegal behaviours and grossly exaggerate the nature of the behaviour, amounts to bullying and harassment. Even if Cr McCullagh believed there to be a real issue of concern, spreading the allegations as widely as possible whilst they were being independently investigated, and before there was any outcome through the proper channels, was reckless and designed only to cause harm to Cr Lambert.

The Panel upholds the complaint that Cr McCullagh breached Part 7.1(c) of the Code.

Part 8 – Representation

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

The Panel determines that in his media release of 23 November 2023, and in his Facebook posts, Cr McCullagh is expressing his personal views publicly. In the media release of 23 November, he states that the Mayor, the Deputy Mayor, and the General Manager of the Council have spent *hundreds of thousands of dollars of Ratepayers (sic) monies* without authorisation. This is tantamount to accusing three of the most senior members of the Council of corruption, theft, and fraud. Whether this is believed by community members or not, the Panel determines that such a statement is bound to bring the Council into disrepute, indicating as it does that either senior levels of Council have stolen from their own ratepayers, or that there is serious friction and animosity within the elected body of councillors. Either way, Council is brought into disrepute by Cr McCullagh's public statements. Again, Cr McCullagh offers no evidence to support his statements.

The Panel upholds the complaint that Cr McCullagh breached Part 8.5 of the Code.

8.6 A councillor must show respect when expressing personal views publicly.

Cr McCullagh stated in one of his texts to Mr Lambert on 23 November 2023 that Cr Lambert had stayed aligned *with the same toxic group that have created this situation*.

And, speaking of Cr Lambert, he said that she

would endanger her credibility to align with the two idiots is staggering.

The above text is part of an extract from the text exchange with Mr Lambert, which Cr McCullagh posted on his Facebook page. The Panel determines that his use of the words 'toxic group', and 'two idiots' to describe two readily identifiable senior members of the Council shows disrespect in the public expression of a personal view.

The Panel upholds the complaint that Cr McCullagh breached Part 8.6 of the Code.

8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

The Panel determines that Cr McCullagh's personal conduct, in his persistent use of his Council Facebook page, and media releases, to attack the Mayor, Cr Lambert, and the General Manager, does have the potential to reflect adversely on the reputation of the Council. His concerns could have been dealt with using other avenues, rather than making public and sometimes reckless allegations about others.

The Panel upholds the complaint that Cr McCullagh has breached Part 8.7 of the Code.

The Panel has arrived at this Determination without any input from Cr McCullagh pertinent to the matters of the complaint. The Panel offered numerous opportunities to Cr McCullagh to provide a response to the complaint, but his responses to these requests were almost entirely confined to statements to the effect that Cr Lambert would be dismissed when his personal investigations were concluded, and to further complaints about Cr Lambert herself.

Additionally, the Panel deferred the date of the hearing at least five times to accommodate Cr McCullagh. The Panel was told numerous times that Cr McCullagh would appeal the determination if a hearing were conducted when he was not available.

This was not relevant, as the Panel would not conduct its hearing when either party was unavailable. The reiteration of this statement did not alter the Panel's approach to setting a date for hearing.

The Panel ensured that Cr McCullagh had given no reason for being unable to appear on the relevant day, but he failed to appear. This was regrettable.

Sanction

Under section 28ZI(2) of the Act, the Panel may impose a sanction on a councillor where a complaint has been upheld. The Panel takes into account that Cr McCullagh has shown no remorse for his behaviour, and made no effort to resolve or respond to the issues of the complaint.

The Panel imposes on Cr McCullagh a suspension from performing and exercising the functions and powers of his office as a councillor for a period of eight weeks.

The Panel also imposes on Cr McCullagh the requirement to apologise to Cr Lambert for his persistent unsubstantiated public accusations that she had misappropriated Council moneys for her own use, and without authority from Council. This apology is to be made without reservation at the ordinary council meeting following the completion of the suspension period. In the event that Cr McCullagh is unable to attend that meeting, the apology is to be made by Cr McCullagh at the next council meeting Cr Lambert attends.

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 having to wait for responses, granting extensions for responses, and other commitments by the parties preventing the conduct of a hearing.

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



Greg Preece

Member



Amber Cohen

Legal Member

DATE: 11 October 2024