

Report

Preliminary investigation - *Ombudsman Act 1972*

Complainant	Anonymous
Council member	Cr Belinda Spooner
Council	District Council of Peterborough
Ombudsman reference	2020/03156
Date complaint received	17 July 2020
Issues	Whether Cr Spooner committed misconduct under Part 3 of the Code of Conduct for Council Members by failing to comply with a council resolution requiring her to make an apology

Jurisdiction

The complaint alleges a breach of Part 3 of the Code of Conduct for Council Members made pursuant to section 63 of the *Local Government Act 1999* (**the Code of Conduct**).¹ An act of a council member that may constitute grounds for complaint under the Local Government Act is taken to be an 'administrative act' for the purposes of the Ombudsman Act.²

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response from Cr Spooner, and providing her with an opportunity to comply with the relevant council resolution
- considering the Ombudsman Act, the Code of Conduct, and the Local Government Act
- providing a provisional report and seeking a response to that report from the interested parties
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be

¹ The Code of Conduct was gazetted on 29 August 2013.

² Section 263A(4) *Local Government Act*, section 3, *Ombudsman Act*.

upheld. That decision recognises that greater care is needed in considering the evidence in some cases.³ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...⁴

Response to provisional report

In response to my provisional report, Cr Spooner submitted the following, in an email dated 29 August 2020:

I have read all the documents and would like to thank you for your time and thoughts to compile a recommended outcome.

I can assure you I have come a long way in the last two years and have learnt now a better way to embrace my position and work more within the guidelines to achieve the same results.

Mr Colin Davies, Acting Chief Executive Officer of the council, also made the following submissions in response to my provisional report, by letter dated 3 September 2020:

I note that the provisional report has found Cr Spooner guilty of misconduct pursuant to Part 3 of the Code of Conduct. I further note that the provisional report recommends a public reprimand for Cr Spooner.

However, the provisional report does not require Cr Spooner to issue an apology consistent with the one drafted by the Panel and states that the refusal by Cr Spooner to apologise does not allow Council to lodge a complaint with SACAT.

This is both disappointing and concerning as this may encourage Elected Members who behave contrary to the Local Government Act 1999 to continue to ignore any findings against them. The cost of these matters to ratepayers (and the State) should require compliance by Elected Members to any report issued by the South Australian Governance Panel, ICAC or Ombudsman.

I would therefore request that your report be amended to require Cr Spooner to issue an apology consistent with the one drafted by the Panel.

I have addressed Mr Davies submission in my report below.

Background

1. On 20 March 2019, a dispute occurred at a local Foodland between Cr Spooner and Cr Cassandra Chambers.
2. The dispute concerned two motions that were moved by Cr Spooner at a council meeting held on 18 March 2019 regarding the regulation and management of cats.
3. I do not consider it is necessary to go into the details of the dispute, or the versions of events presented by Cr Spooner and Cr Chambers, other than to say that the Local Government Association of South Australia's Governance Panel (**the Panel**) prepared an independent report that found Cr Spooner had breached clauses 2.2, 2.3, 2.4, 2.9, and 2.10 of the Code of Conduct.

³ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁴ *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

4. The report also made the following recommendations:
1. That Cr Spooner should table a public apology motion to the Council. That apology should be unreserved and should be directed to the 20 March 2019 incident. It should constitute an apology to Cr Chambers, to anyone who witnessed her behaviour, and to the Council itself for her conduct in Council Meetings since March 2019. A proposed apology for Cr Spooner to read at a general Council Meeting is contained with Appendix B of this report.
 2. That, in the event that Cr Spooner provides this apology and subsequently continues to disrupt Council meetings or continues to bully or harass Cr Chambers, the Council should immediately consider a public censure motion against Cr Spooner and move to remove Cr Spooner from any committee activity or role.
 3. That, in the event that Cr Spooner declines to provide an apology consistent with the first recommendation, Council should consider recommending to Cr Chambers that she initiate a complaint pursuant to Part 3 of the Code of Conduct. Additionally, Council should consider initiating its own complaint pursuant to Part 3.17 of the Code. This section states:

At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.

5. The wording of the apology that was set out by the Panel is as follows:

Public Apology to be provided to a General Council Meeting

{Councillor Belinda Spooner}

On 20 March 2019, I initiated a heated altercation with Cr Chambers in, and later outside of the Peterborough Foodland store. I accept that I commenced this altercation and that in the course of it, I directed multiple obscenities at Cr Chambers. While I initiated the interactions because I was upset about a particular matter (cat microchipping), I accept that my actions were a breach of Part 2 of the Code of Conduct for Council Members.

I also accept that outside of the Foodland, I made multiple allegations that the Council was corrupt.

My statements were made whilst I was still anxious about a Council meeting some days earlier. Nevertheless, these statements were offensive and breached the Code of Conduct for Council Members.

I unreservedly apologise for my behaviour.

It has also been brought to my attention that some Councillors consider my behaviour subsequent to 20 March 2019 has been rude and offensive to Cr Chambers and various other Councillors and staff. To the extent that this is the case, I again apologise and advise that I undertake not to behave in this manner again.

Thank you for listening.

Belinda Spooner

Councillor

6. The recommendations in the Panel's report were adopted by the council at a council meeting held on 14 March 2020.

7. Cr Spooner declined to adopt the wording of the apology that was drafted by the Panel in its report, as she disputed the findings of the report.
8. Instead, Cr Spooner advised Mr Peter McGuinness, Chief Executive Officer of the council, by email dated 16 March 2020, that she was prepared to issue the following apology that does not make reference to her conduct at council meetings since March 2019:

To Peter

Please find my apology below.

On the 20th of March 2019 I was involved in a heated conversation with Cr Chambers, first inside and then outside of Peterborough Foodland.

I accept that I commenced the conversation about the cat scanner matter, and in the course of it I breached Pt 2 of the Code of Conduct for Council members.

I also accept that outside foodland I shouted twice "the Councils Corrupt". My statements were made whilst I was still very anxious about the ordinary Council meeting on the Monday 18th of March two evenings earlier.

Nevertheless these statements were offensive to Cr Chambers the Council and the public.

I unreservedly apologise to Cr Chambers the Council and the public for my conduct, and undertake not to behave like this again.

Thankyou

Cr Belinda Spooner

9. On 28 July 2020, I wrote a letter to Cr Spooner stating the following:

...Failure to comply with the resolution may constitute misconduct under Part 3 of the Code of Conduct for Council Members.

As noted above, the council has resolved to adopt the recommendation that you issue a formal apology, that includes specific reference to your conduct in council meetings since March 2019. As a council member, you have a responsibility to comply with council resolutions, regardless of your personal views.

In light of the above, to help me assess this complaint under the Code and the *Ombudsman Act 1972*, and decide whether I should conduct an investigation, I request that you:

- confirm whether you have since made an apology that is consistent with the council's resolution to adopt the Panel's recommendation
- if not, confirm whether you are willing to make an apology that is consistent with the council's resolution
- provide an estimated timeframe for making an apology that is consistent with the council's resolution.

10. Cr Spooner replied to my letter by email dated 3 August 2020, as follows:

To Wayne Lines

I have thought very carefully about my decision, part of me does not want to cause more unnecessary money expenditure, but the other part of me needs to stand up for the truth and fairness, so I have made a decision not to say the recommended apology, however I am still prepared to say the apology I forwarded to Peter McGuinness, I hope you will understand my decision.

Kind Regards

Cr Belinda Spooner

Relevant law

11. Local Government Act provides:

63—Code of conduct for members

- (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the members of all councils.
- (2) Council members must observe the code of conduct.

263—Grounds of complaint

- (1) There are grounds for complaint under this Part against a member of a council if the member has contravened or failed to comply with Chapter 5 Part 4.

263B—Outcome of Ombudsman investigation

- (1) The recommendations that may be made by the Ombudsman under the *Ombudsman Act 1972* on the completion of an investigation of the complaint include that the council—
 - (a) reprimand the member (including by means of a public statement); or
 - (b) require the member to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps; or
 - (c) require the member to reimburse the council a specified amount; or
 - (d) ensure that a complaint is lodged against the member with SACAT.
- (2) If a member of a council fails to comply with a requirement of the council of a kind referred to in subsection (1) made in accordance with the recommendation of the Ombudsman, the member will be taken to have failed to comply with Chapter 5 Part 4 and the council is to ensure that a complaint is lodged against the member with SACAT.
- (3) A council is taken to have the power to act according to the Ombudsman's recommendations.

12. Clause 3.18 of Part 3 of the Code of Code of Conduct provides:

A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

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13. As I have stated in other reports, it is essential that council members comply with council resolutions, regardless of whether they agree with the outcome of a particular investigation. It is part of a council member's role to uphold the principles underpinning the Code of Conduct and to comply with council resolutions, regardless of their personal views. A failure to do so may undermine community trust and confidence in the council.
14. In light of the events set out above, I am of the view that Cr Spooner has failed to comply with the Panel's findings of inappropriate behaviour and subsequent recommendations, which were adopted by the council on 14 March 2020, in breach of Clause 3.18 of the Code of Conduct.
15. I do not consider that Cr Spooner's proposed apology complies with the Panel's recommendations.
16. I am therefore of the view that Cr Spooner has committed misconduct for the purposes of Part 3 of the Code of Conduct.

Opinion and recommendation

In light of the above, my view is that Cr Spooner has breached the provisions of section 63 of the Local Government Act and clause 3.18 of Part 3 of the Code of Conduct. In this way, Cr Spooner appears to have acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the council reprimand Cr Spooner at a public meeting.

I have not included a recommendation that Cr Spooner issue an apology that is consistent with the one drafted by the Panel, as the council would be required to lodge a complaint with the South Australian Civil and Administrative Tribunal (**SACAT**) in the event that Cr Spooner continues to refuse to apologise.⁵

Whilst I acknowledge the seriousness of the incident that led to the complaint that is the subject of the Panel's report, I note that Cr Spooner has agreed to apologise in part for her conduct, and I do not believe that her failure to apologise warrants the potential to trigger a complaint to SACAT, which, in my view, would not be an appropriate use of public resources in this particular instance.

I note the council's request that I reconsider my recommendations, and its concern that not including a recommendation that Cr Spooner apologise in a manner that is consistent with the Panel's report may encourage other council members to disregard the Code of Conduct in future. While I note the council's concerns, I consider that each matter needs to be considered on a case by case basis. This does not mean I would not consider making a recommendation of the kind requested by the council in future, should the circumstances warrant that action.

I now report Cr Spooner's misconduct to the principal officer of the council, as required by section 18(5) of the Ombudsman Act.

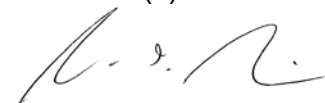
In accordance with Part 3 of the Code of Conduct for Council Members, this report must be provided to a public meeting of the council within two ordinary meetings of the council receiving my report.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **10 December 2020** on what steps have been taken to give effect to my recommendation/s above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Local Government as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

10 September 2020

⁵ *Local Government Act 1999*, section 263B(2).