

**COUNCILLOR CONDUCT PANEL**

In the matter of an Application by Councillor Michael O'Reilly concerning  
Councillor Steve Toms of Frankston City Council

**HEARING PURSUANT TO DIVISION 1B OF PART 4 OF  
LOCAL GOVERNMENT ACT (1989)**

Applicant: Cr Michael O'Reilly  
Respondent: Cr Steve Toms  
Council: Frankston City Council  
Date of Hearing: 15 and 16 July 2019  
Date of Decision: 5 September 2019  
Panel Members: Mrs Jo-Anne Mazzeo (Chairperson)  
Mrs Helen Buckingham

**DETERMINATION**

**Allegation 1**

Pursuant to s 81J(1)(b) of the *Local Government Act 1989* (the Act) the Panel makes a finding of serious misconduct against Cr Steve Toms.

Pursuant to s 81J(2A)(b)(iv) of the Act the Panel suspends Cr Toms (effective from the date of this decision) for a period of four (4) months.

Pursuant to s 81J(2A)(b)(ii) of the Act the Panel directs Cr Toms to provide Cr Lillian O'Connor with a written apology in respect of his bullying behaviour, with the apology to be tabled at the first ordinary Council meeting after Cr Toms completes his suspension from office.

**Allegation 2**

Pursuant to s 81J(1)(a) of the Act the Panel makes a finding of misconduct against Cr Steve Toms.

Pursuant to s 81J(2)(c) of the Act the Panel directs Cr Toms to take leave of absence for a period of two (2) months (effective from the date of this decision) to be served concurrently with the first two (2) months of his period suspension.

Pursuant to s 81J(2)(b) of the Act the Panel directs Cr Toms to provide his fellow Councillors with a written apology for his repeated breaches of the Councillor conduct principles, the Council's *Councillor Code of Conduct*, the *Councillor and Staff Interaction Policy* and the *Councillor Expense Reimbursement Policy*. The apology is to be tabled at the first ordinary meeting after Cr Toms completes his suspension from office.

Pursuant to s 81J(1)(c) of the Act the Panel makes a finding that remedial action is required. Councillor Toms is to attend refresher Induction Training to ensure that moving forward he is aware of the responsibilities, obligations and expectations that come with the privilege of being a Councillor elected by the constituents of the Frankston City Council.

**Jo-Anne Mazzeo**  
Chairperson

**Helen Buckingham**  
Panel Member

## STATEMENT OF REASONS FOR DECISION

### The Application

1. The Application dated 1 April 2019 and revised on 5 June 2019 made by the Mayor, Cr Michael O'Reilly, contained two allegations relating to the respondent Cr Tom's conduct, which are summarised below.

#### *Allegation 1*

The first ground of the Application alleged that Cr Toms had repeatedly behaved in an intimidating, offensive and disrespectful manner toward a fellow Councillor, Cr Lillian O'Connor, which adversely affected Cr O'Connor's health, and that these actions constituted the bullying of another Councillor.

The applicant submitted that the Panel make a finding of serious misconduct and that Cr Toms be suspended for a period of six months pursuant to s 81J(2A)(b)(iv) of the *Local Government Act 1989* (the Act), and that Cr Toms be required to provide Cr O'Connor with a written apology pursuant to s 81J(2A)(b)(ii) of the Act.

#### *Allegation 2*

The second ground of the Application alleged that Cr Toms had by various actions and activities (set out below in these reasons) repeatedly contravened one or more of the following Councillor conduct principles:

- the following primary principles of Councillor conduct under s 76B of the Act:
  - (a) act with integrity;
  - (b) impartially exercise his or her responsibilities in the interests of the local community; and
- the following principles of Councillor conduct under s 76AB of the Act:
  - (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
  - (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;

- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest.

### **Evidence provided at hearing**

- 2. Written evidence was submitted by both the applicant and the respondent prior to the hearing, including witness statements made by witnesses who gave evidence at hearing.
- 3. Oral evidence was given at the hearing by both the applicant and respondent.
- 4. Oral evidence was also provided by the following Councillors:
  - Cr Lillian O'Connor
  - Cr Colin Hampton
  - Cr Brian Cunial
  - Cr Quinn McCormack
  - Cr Glenn Aitken.

### **The jurisdiction of the Panel in relation to this Application**

- 5. Section 81B(1) of the Act provides that a Panel may hear an Application that alleges misconduct or serious misconduct by a Councillor.
- 6. Pursuant to s 81J of the Act a Panel may determine whether or not a Councillor has engaged in misconduct or serious misconduct.
- 7. "Misconduct" is defined in s 3 of the Act as:
  - (a) failure by a Councillor to comply with the Council's internal resolution procedure; or
  - (b) failure by a Councillor to comply with a written direction given by the Council under s 81AB; or
  - (c) repeated contravention of any of the Councillor Conduct Principles.

8. "Serious misconduct" is defined in s 3 of the Act as:
- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
  - (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
  - (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
  - (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
  - (e) bullying of another Councillor or member of Council staff by a Councillor; or
  - (f) conduct by a Councillor in respect of a member of Council staff in contravention of s 76E; or
  - (g) the release of confidential information by a Councillor in contravention of s 77.

9. "Bullying" is defined in s 3 of the Act:

"Bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff".

### **Background information provided in the Application**

10. The Application provided the following outline of events to provide context to the Panel as to why a decision was made to request the establishment of a Panel to deal with these matters:
11. The applicant and the respondent are both Councillors on the Frankston City Council. The applicant was elected to Council in 2012 and was re-elected in 2016 and is currently serving as Mayor. The respondent was elected to Council in 2016 and served as Deputy Mayor between 2016 and 2017.

12. In February 2017 a complaint was made regarding Cr Toms approaching a Council officer directly rather than through the appropriate manager. This matter was addressed by the then Mayor, who spoke with Cr Toms about the incident. As the *Councillor and Staff Interaction Policy* was in draft form at the time, no further action was taken.
13. In April 2017 Cr Toms was the subject of a complaint regarding his use of social media - namely Facebook. Councillor Toms' behaviour was not found to be in breach of the Council's *Councillor Code of Conduct* but fell well short of what the then Mayor felt was appropriate behaviour and Cr Toms was required to apologise to his fellow councillors for his behaviour.
14. In September 2017 the then Mayor Cr Cunial formally raised a number of issues with Cr Toms regarding his behaviour and unsavoury posts on social media. These issues were raised by a local Member of Parliament, four Council staff and a local trader. Various other staff had informally expressed concerns about alleged breaches of the *Councillor and Staff Interaction Policy* but chose not to pursue the matters formally. The Mayor met with Cr Toms to discuss his conduct and followed up with a letter formalising the concerns and outlining his expectations of Cr Toms regarding his behaviour moving forward.
15. In September 2017 the then Mayor Cr Cunial also addressed Cr Toms regarding:
  - (a) his behaviour relating to a parking infringement notice and whether Cr Toms had directed the responsible officer to withdraw the infringement notice; and
  - (b) a complaint from a local trader that Cr Toms had released commercially sensitive information to a rival trader.
16. Councillor Cunial met with Cr Toms and clarified Cr Toms' responsibilities as a Councillor and the requirements of the *Councillor and Staff Interaction Policy*.
17. In October 2017 further complaints were received regarding Cr Toms use of social media. In November 2017 the Mayor wrote to Cr Toms again addressing his continuing inappropriate use of social media.

18. In January 2018 the new Mayor Cr Hampton requested Cr Toms attend a meeting with both him and the Chief Executive Officer to discuss the *Councillor Expense Reimbursement Policy* and in particular Cr Toms' use of his Council issued Cabcharge card and his Council issued mobile telephone. There were three occasions where Cr Toms used the Cabcharge card for private travel not related to his role as a Councillor. The quarterly phone bill for the second quarter of 2017 was \$1,234, almost three times the phone bill incurred by other Councillors over the same period. This amount was due to excessive data usage of between 12 and 25Gb per month.
19. Councillor Toms was required to pay the costs associated with the private travel, which were deducted from his Councillor allowance, and was warned about his data usage.
20. In April 2018 the Mayor, Cr Hampton wrote to the Local Government Inspectorate regarding Cr Toms' repeated behaviour and his alleged continual breaches of the *Councillor Code of Conduct*. This resulted in Cr Toms being issued with a warning from the Local Government Inspectorate.
21. In May 2018 a complaint was made by a member of the public regarding Cr Toms' behaviour. This was raised with the Mayor and subsequently discussed with the Municipal Monitor.
22. In May 2018 Cr Toms was found to have breached the *Councillor Code of Conduct* by again using Council Cabcharges for personal use on three occasions totalling \$41.70. These issues were addressed with him by the Mayor and the relevant Council officer and Cr Toms was required to repay the money and apologise to Council. Councillor Toms provided the apology as required.
23. In September 2018 further allegations of misuse of social media were made against Cr Toms. These matters were deemed to be not substantiated and not at the threshold to constitute a breach of the relevant policy, but Cr Toms was again provided with clear information regarding the appropriate use of social media.

24. On 22 October 2018 at a Council Meeting as a direct result of Cr Toms' inappropriate use of Council Cabcharges for personal use, Council formally amended the Councillor Expense Reimbursement Policy. In summary, the changes included:
  - (a) the requirement that the shortest and most cost-effective means of transport be used wherever possible;
  - (b) Councillors would be reimbursed for any expenses incurred;
  - (c) Councillors who still had Cabcharge cards in their possession were no longer permitted to use them;
  - (d) Cabcharge vouchers would no longer be issued.
25. The changes to the Policy were unanimously endorsed by all Councillors present (including Cr Toms) and Cr Toms was asked to return his Cabcharge card.
26. On 23 October 2018 Cr Toms used his Cabcharge card for personal use in the amount of \$11.65.
27. On 2 November 2018 Cr Toms used his Cabcharge card to pay for personal travel in the amount of \$18.37.
28. On 5 November 2018 Cr Toms was reminded in writing to return his Cabcharge card and did so by mid November 2018.
29. On 19 November 2018 Cr O'Connor wrote to the Municipal Monitor making an official complaint against Cr Toms for alleged breaches of the Councillor Code of Conduct, in that he failed to treat all persons with respect and demonstrated bullying behaviour towards Cr O'Connor. Examples of such behaviour included:
  - giving nasty looks
  - repeatedly making negative remarks about Cr O'Connor to another Councillor
  - excluding or ignoring Cr O'Connor in group conversations.
30. Councillor O'Connor alleged Cr Toms' behaviour to be intimidating, offensive and disrespectful, having adversely affected her self-esteem, confidence and mental health. She felt unable to voice her opinions and views publicly and questioned whether she was able to effectively fulfil her role as a Councillor.
31. The Municipal Monitor referred the matter back to Council to manage, resulting in the Application for a Councillor Conduct Panel.



## **Evidence of the Applicant**

### *Allegation 1*

32. The applicant and Councillors O'Connor, Hampton and Cunial all gave consistent accounts of the alleged bullying towards Cr O'Connor and all presented as reliable and credible witnesses.
33. Councillor O'Connor told the Panel of the alleged bullying, which she says commenced in early 2017. Councillor O'Connor recounted numerous instances where Cr Toms embarrassed her or gave her angry looks when she spoke against notices of motion raised by him or voted differently to him, often smirking or laughing at her. Councillor O'Connor told of the impact of the alleged behaviour, saying it was a contributing factor in her significant decline in mental health which resulted in her taking a leave of absence from her role as Councillor to focus on her health and wellbeing.
34. In his evidence the applicant told the Panel of times where he directly observed Cr Toms' behaviour towards Cr O'Connor, telling the Panel Cr O'Connor was subjected to glaring, nasty looks and negative remarks both generally and aimed at Cr O'Connor's disability. Councillor O'Connor is profoundly deaf.
35. Councillors Hampton and Cunial gave evidence of the same direct observations, also stating that they themselves had been subject to the non-verbal forms of bullying by Cr Toms such as glaring and nasty looks. Councillor Hampton recalled that during his time as Mayor he had to warn Cr Toms to stop glaring at Cr O'Connor during Council meetings, telling him it was "a form of intimidation" and "it needed to stop" or Cr Toms would be ejected from Council meetings.
36. Councillor Hampton told the Panel that during his time as Mayor he was able to manage the conduct in Council chambers using his powers under the Act, but that the law did not permit him to warn and/or eject a Councillor from a briefing session. A large part of the bullying towards Cr O'Connor happened at briefings and without these powers was difficult to address.
37. Councillor Hampton (as Mayor) had several conversations with Cr Toms regarding his behaviour towards Cr O'Connor, saying there was absolutely no way Cr Toms could not have been aware of the impact of his behaviour towards Cr O'Connor.

38. All witnesses called by the applicant recalled snide remarks being made by Cr Toms about Cr O'Connor, with Cr Hampton recalling an instance where Cr Toms commented that Cr O'Connor "couldn't hear properly".
39. Councillor Cunial also told the Panel of his attempts at trying to manage the tension between Cr O'Connor and Cr Toms, having numerous informal discussions with Cr Toms regarding his inappropriate conduct. Councillor Cunial told the Panel that Cr Toms glared and stared at people when they disagreed with him and recalled instances during his own time as Mayor where he was subjected to this behaviour from Cr Toms.
40. Councillor Cunial sits next to Cr O'Connor at meetings and has often observed Cr Toms glaring at Cr O'Connor from across the room. He has observed Cr Toms sniggering and smirking at Cr O'Connor and had observed him belittle her when she was participating in Council meetings. Councillor Cunial said the atmosphere at briefings is "so toxic" he has elected not to attend these meetings in recent times.

#### *Allegation 2*

41. The applicant and the witnesses provided the Panel with written evidence of the attempts they made to manage the alleged breaches of the *Councillor Code of Conduct*, the *Councillor and Staff Interaction Policy*, the *Council's Communications Policy* and the *Councillor Expense Reimbursement Policy*. This included both informal and formal discussions with Cr Toms, letters to Cr Toms outlining the behaviours of concern and the expectations of him moving forward, and formal complaints being made by community members, local Members of Parliament, local traders and other Councillors.
42. The Applicant submitted that none of the internal procedures or mechanisms used to date had been successful and that as a result a finding of misconduct against Cr Toms by a Councillor Conduct Panel was the only remaining mechanism available to address the repeated breaches by Cr Toms.

## **Evidence of the Respondent**

### *Allegation 1*

43. Councillor Toms vehemently denied that he had bullied Cr O'Connor in any way, shape or form, submitting that he had not bullied Cr O'Connor and at no stage had anyone (including any Mayor, previous or current) approached him to discuss the alleged bullying by him of Cr O'Connor. Councillor Toms did concede that he may have "whispered and rolled his eyes when Cr O'Connor talked" but said the comment he made about her hearing was misinterpreted in a negative light.
44. Councillor Toms submitted that facial expressions do not amount to bullying, and that he does not make an effort to speak to Cr O'Connor outside of standard greetings because she has indicated to other councillors that she does not wish to speak with him.
45. Councillor Toms submitted that Cr O'Connor's leave of absence was for "personal reasons" that had nothing to do with him or his conduct, and that since her return to Council duties Cr O'Connor has shown no signs of distress or discomfort. Councillor Toms went on to deny making any comments during debate towards any Councillor and denied engaging in derogatory behaviour towards Cr O'Connor. In his evidence before the Panel, Cr Toms also sought to rely on the fact that he had not bullied Cr O'Connor via social media as further evidence to support his claim that he had not bullied Cr O'Connor, stating "if I was going to bully her, I would have done it on Facebook."
46. Councillor Toms told the Panel he was aware that Cr O'Connor did not want to sit next to him at meetings but did not enquire with anyone as to why this was the case.
47. Councillor Toms told the Panel that he himself felt targeted and bullied, treated aggressively and ridiculed and was the subject of countless unfounded complaints and investigative processes, all of which have come back with no findings against him. Cr Tom's stated that he felt that the bullying allegation was a form of political assassination. He stated that he felt like a sacrificial lamb for "a councillor's poor mental health condition", saying "Lillian O'Connor does not have a well position on mental health".

48. Councillors Aitken and McCormack both stated that they had not seen any instances where Cr Toms bullied Cr O'Connor. Councillors Aitken and McCormack both acknowledged Cr Toms' overt facial expressions but said facial expressions do not amount to bullying. Councillor McCormack did concede that the way an individual interprets another Councillor's facial responses could be perceived as bullying but stated that she did not see it that way. Councillors Aitken and McCormack both gave evidence of Cr Toms' consistent approach towards all Councillors, further stating that they had not heard him make any derogatory remarks about Cr O'Connor.

#### *Allegation 2*

49. Councillor Toms was dismissive of these allegations and reluctantly spent minimal time during the hearing addressing them, choosing to focus on the bullying allegation, stating that these other matters had "already been dealt with" and "were historical".
50. In his witness statement filed with the Panel, Cr Toms submitted that at no time during his term on Council had there been any findings made against him relating to breaches of the *Councillor Code of Conduct* or the Act. He submitted that he is an active Councillor who always attempts to have a good working relationship with colleagues, and that he upholds all the principles contained in the *Councillor Code of Conduct*. Councillor Toms told the Panel of his relationship with Cr Aitken and of how he sees Cr Aitken as a mentor. Councillor Aitken confirmed this, telling the Panel that he offered Cr Toms guidance, particularly around process matters and that had he thought Cr Toms was acting inappropriately in any matter he would have no hesitation in pulling him up on it. Councillor Aitken suggested that Cr Toms was paying a heavy penalty because he is well connected and active in the community

#### *Use of social media*

51. Regarding the complaints around his use of social media, Cr Toms acknowledged his behaviour on Facebook and stated that he had rectified the way in which he used social media. Cr Toms told the Panel he had posted a comment on Facebook saying, "Good Riddance" to the Mayor, then apologised "as on reflection should not have said anything."

### Use of Council Cabcharges

52. Councillor Toms conceded that he had used Council Cabcharge card/vouchers for personal use on multiple occasions, saying that there had "been issues in the past" but that he "now understands the policy and the situation." He went on to explain that he had both acknowledged and apologised for using the Cabcharge for personal use and that as such the matter was resolved.
53. When asked why he continued to use his Cabcharge card (using it the day after Council unanimously agreed to change the policy and prohibiting use of Cabcharge cards), Cr Toms explained that at the time he did not realise the change had come into effect immediately and that he "didn't intentionally disregard the new policy."
54. Councillor Toms confirmed that as at the date of the Panel hearing, he had repaid to Council, all outstanding money owed, as a result of using his Council Cabcharge card/vouchers for personal use.
55. In his oral evidence before the Panel, Cr Aitken conceded that Cr Toms had used his Cabcharge card in "doubtful circumstances" but went on to justify Cr Toms actions given the dollar value in question, minimising the conduct by saying that "for a new Councillor it is understood that at some point you may slip over the edge".

### Councillor and Staff Interaction Policy

56. Councillor Toms conceded that he did make a phone call to a Council officer, who was on sick leave at the time, about a parking infringement that had been issued and acknowledged that he did not follow the proper process in doing this. At the time Cr Toms did not think he was doing the wrong thing, but on reflection at the Panel hearing, acknowledged that it was not an appropriate course of action.
57. When asked by the Panel, whether his induction to the role of Councillor covered issues regarding interaction with officers, Cr Toms conceded that it did, but said "it did not cover contacting an officer about a parking fine."

## **Findings of the Panel**

### *Allegation 1*

58. Pursuant to s 81J(1)(b) of the Act the Panel makes a finding of serious misconduct against Cr Toms in relation to Allegation 1.

### *Allegation 2*

59. Pursuant to s 81J(1)(a) of the Act the Panel made a finding of misconduct against Cr Toms in relation to Allegation 2.

## **Penalty**

### *Allegation 1*

60. Pursuant to s 81J(2A)(b)(iv) of the Act the Panel suspends Cr Toms from office for a period of four months.

61. Pursuant to s 81J(2A)(b)(ii) of the Act the Panel directs, Cr Toms to provide Cr O'Connor with a written apology for his bullying behaviour with the apology to be tabled at the first ordinary meeting after Cr Toms completes his suspension from office.

### *Allegation 2*

62. Pursuant to s 81J(2)(c) of the Act the Panel directs Cr Toms to take a leave of absence for a period of two months to be served concurrently with the first two months of his period of suspension.

63. Pursuant to s 81J(2)(b) of the Act the Panel directs Cr Toms to provide his fellow Councillors with a written apology for his repeated breaches of the Councillor conduct principles, the Council's *Councillor Code of Conduct*, the *Councillor and Staff Interaction Policy* and the *Councillor Expense Reimbursement Policy*. The apology is to be tabled at the first ordinary meeting after Cr Toms completes his suspension from office.

### *Remedial action*

64. Pursuant to s 81J(1)(c) of the Act the Panel has made a finding that remedial action is required. Councillor Toms is to attend refresher Induction Training to ensure that moving forward he is aware of the responsibilities, obligations and expectations that come with the privilege of being a Councillor elected by the constituents of the Frankston City Council.

65. In addition, the Panel recommends all Councillors undergo training to help them recognise the signs of bullying and how to prevent and address bullying behaviour.

## **Reasons for the Panel's Decision**

### *Allegation 1*

66. In considering whether Cr Toms' behaviour towards Cr O'Connor amounted to bullying, the Panel notes that unreasonable behaviour is behaviour that a reasonable person, having regard to the circumstances, may see as unreasonable<sup>1</sup>. There is no specific number of incidents required for the behaviour to be 'repeated' provided there is more than one occurrence, nor does the same specific behaviour have to be repeated.<sup>2</sup> In determining whether there has been a risk to health and safety, this means the possibility of danger to health and safety, and is not confined to actual danger to health and safety<sup>3</sup>.
67. The Panel is satisfied that the alleged behaviour occurred and was unreasonable in the context that it occurred and had negatively impacted on Cr O'Connor's health, thus falling within the scope of bullying behaviour.
68. The Panel is satisfied that the degree of unreasonable behaviour by Cr Toms was such that it created a risk to health and safety of Cr O'Connor. The Panel does not consider that the conduct of Cr Toms alone led to Cr O'Connor's mental health issues, rather that in addition to other external contributing factors, Cr Toms' behaviour exacerbated her level of unwellness.
69. The Panel is persuaded by the evidence of the applicant and his witnesses that Cr Toms had bullied Cr O'Connor in the form of non-verbal intimidatory gestures, facial expressions and actions. Two previous Mayors both gave oral evidence of meetings they had with Cr Toms where his conduct towards Cr O'Connor was raised. Cr Hampton spoke of his need to manage Cr Toms during Council meetings and threatened to eject him because of his behaviour towards Cr O'Connor.

---

<sup>1</sup> Re Ms SB [2014] FWC2104 at para 43

<sup>2</sup> Ibid at para 41

<sup>3</sup> Thiess Pty Limited v Industrial Court of New South Wales [2010] NSWCA 252 (30 September 2010) at paras 65-67, 78 NSWLR 94

70. The Panel is also persuaded by the evidence of Cr O'Connor, who despite being visibly distressed, anxious and shaking during her evidence before the Panel, spoke at length of the instances of bullying and the impact the bullying had on her personally, in her role as a Councillor and also on her family.
71. Furthermore, the Panel saw firsthand some of the features of Cr Toms' behaviour. During the Panel proceedings Cr Toms was often overtly exasperated, aggressive and dramatic in gesture and tone when evidence was given that he did not agree with, and repeatedly interrupted others whilst they were talking. Councillor Toms was quick to become enraged when challenged or questioned and did not appear to demonstrate empathy or an ability to understand or interpret the impact that his behaviour has on others.
72. The Panel is unable to accept Cr Toms' submission that the allegations were a form of political assassination against him. Councillor Toms was unable to provide any evidence in support of this submission. The Panel also rejects the submission of Cr Toms that people simply misinterpret his facial expressions. Councillor Toms does not acknowledge or take responsibility for his actions or the impact they have on others.
73. Whilst Cr Toms called witnesses who gave evidence to the effect that they had not seen him bully Cr O'Connor in any way, this does not mean that the bullying did not occur. The Panel accepts that Cr McCormack and Cr Aitken had not themselves witnessed the bullying but is persuaded by the firsthand observations of the applicant and his witnesses that the conduct did occur.

#### *Allegation 2*

74. Whilst the Panel noted various instances where Council had attempted to resolve the matters at a local level (see paragraphs 12-23 above), it did not rely on these matters and the conclusions drawn by Council as determinative of Cr Toms' conduct. The Panel does not afford any weight to evidence presented by Cr O'Reilly where the claims were "not substantiated", or where "no further action was taken".



75. In his own evidence, Cr Toms conceded that he had used his Council issued Cabcharge card for personal travel. In doing so, Cr Toms did not act with integrity (s 76B(a)), was not honest (s 76BA(b)) and was not using public resources prudently and solely in the public interest (s 76BA(e)). Furthermore, repeated misuse of Council resources does not preserve public confidence in the office of a Councillor (s 76BA(g)). The continued use of his Council Cabcharge card for personal travel despite being educated on the *Councillor Expense Reimbursement Policy* and supporting the changes to that policy, demonstrates a blatant disregard for Council policy and process and an inability or unwillingness to follow directions.
76. Again, in his own evidence Cr Toms conceded that he had approached a Council officer contrary to the *Councillor and Staff Interaction Policy*. In doing this, Cr Toms has failed to avoid conflicts between his public duties as a Councillor and his personal interests and obligations (s 76BA(a)). The Panel does not accept Cr Toms justification for his actions, namely that he misunderstood and/or did not think what he was doing was inappropriate at the time. Councillor Toms was involved in an induction process upon being appointed to Council which specifically addressed Councillor and staff interaction. Councillor Toms gave evidence as to his engagement of Cr Aitken (a more experienced Councillor) as an informal mentor, was both orally and in written form communicated with regarding his conduct and yet still continued to make decisions that are not consistent with the principles and expectations of an individual holding the office of Councillor.
77. Regarding his use of social media and despite having modified his behaviour at the time of the Panel hearing, Cr Toms conceded that he had previously made inappropriate comments/posts on social media. In doing so, Cr Toms failed to avoid conflicts between his public duties as a Councillor and his personal interests (s76BA(a)) and failed to treat all persons with respect (s76BA(c)).
78. The behaviour of Cr Toms in relation to both allegations was recalcitrant, repetitive and occurred over an extended period of time despite both the informal and formal approaches taken by Council to address these issues. None of the mechanisms utilised by Council to modify Cr Toms' behaviour had any sustainable impact. Councillor Toms has been required to apologise to Council on two separate occasions, he was warned by the Local Government Inspectorate about his use of Council Cabcharges, yet he continued to partake in the very behaviour that he was previously investigated for.

79. Even at the Panel Hearing Cr Toms attempted to minimise the impact of his actions, he failed to take responsibility for his decisions and attempted to justify his behaviour, approach and style of interaction. It is for this reason the Panel has imposed a significant penalty which reflects the gravity and seriousness of his conduct and sends a clear message to him to modify his conduct, to comply with the Act, the Council's *Councillor Code of Conduct* and Council policies and procedures.
80. The Panel strongly encourages the Cr Toms to work towards establishing a professional working relationship with all Councillors for the remainder of his term as a Councillor, and to seek appropriate clarification or information if he is unsure of the expectations or obligations attached to his role as a Councillor.