

**Decision of the Hearing Panel of the Standards Commission for Scotland
following the Hearing held in the Municipal Buildings, Stirling Council, Stirling
on 24th March 2014**

Panel Members: **Mrs. Julie Ward, Chair of the Hearing Panel
Mrs. Lindsey Gallanders
Mr. Ian Gordon, OBE, QPM**

The hearing arose in respect of a Report by Mr. Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland (“the CESPLS”) further to complaint number LA/S/1509 (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Cormick McChord.

The CESPLS, Mr. Bill Thomson, was represented by Mr. David Sillars and Mr. Sillars was accompanied by Mr. Ian MacKay, the Investigating Officer in the case. The Respondent attended the Hearing and was represented by Mr. Alex McCluckie of the GMB Scotland.

The Complaint

The complaint was made by Mr. Andrew Szwebs. The substance of the allegation was that the respondent contravened the Councillors’ Code of Conduct and, in particular, Section 3 of the Code which deals with General Conduct.

The Complainant alleged that the Respondent, at a meeting of the Stirling Licensing Board on 17th April 2013, was disrespectful towards a fellow member of the Board by disclosing the fact that the Councillor was under investigation by the Standards Commission, a fact that was confidential and should not have been disclosed in a public meeting.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraph 3.15 of the Councillors’ Code of Conduct.

The relevant provision is:

3.15 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your individual use as a Councillor and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

The CESPLS submitted a report to the Standards Commission on 11th December 2014 in accordance with section 14.2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

Joint Statement of Facts

The CESPLS and the Respondent did not agree a Joint Statement of Facts.

Evidence Presented at the Hearing

The CESPLS outlined the facts and presented his case as set out in his Report. The District of Stirling Licensing Board had met on 17th April 2013 and the respondent was present at the meeting. The agenda for the board meeting recorded the first item of business as the appointment of the Chair. Councillor Houston was appointed as Chair and there then followed nominations for the Post of Vice Chair. After a vote Councillor Paterson was confirmed as Vice Chair. Following the vote the Respondent expressed disquiet over the appointment of Councillor Paterson as Vice Chair in light of the ongoing investigation by the Standards Commission.

The CESPLS led evidence from two witnesses – Mr. Farquhar, Principal Solicitor, Stirling Council and Mrs. Liz Duncan – Chief Governance Officer, Stirling Council.

Mr. Farquhar was present at the meeting on 17th April 2013 and stated that after Councillor Paterson was appointed Vice Chair Councillor McChord indicated he felt this was inappropriate and withdrew from the meeting. Mr. Farquhar said that Councillor Paterson was not happy. Mr. Farquhar confirmed this was a public meeting. He also confirmed that to his recollection Councillor McChord mentioned the investigation was being conducted by the Standards Commission and that he had included this in the minute of the meeting of 17th April 2013. He further stated that no amendment had been suggested when the draft minute was presented at the next meeting of the Licensing Board in June 2013.

Mrs. Duncan had not been present at the meeting on 17th April 2013, however, she advised the panel that she had been made aware by Councillor Paterson that there had been some difficulty in the meeting. She took steps to resolve the issue and spoke to Councillor McChord and officers who had been in attendance at the meeting. Councillor McChord advised her that he had spoken to Councillor Paterson. Councillor Paterson subsequently advised Mrs. Duncan that as far as he was concerned the matter was now closed and Mrs. Duncan therefore took no further action. In cross examination she said that when she had emailed Councillor Paterson she had confirmed that Councillor McChord had mentioned the investigation being undertaken by the Standards Commission. She had not kept a copy of the email.

The Respondent's representative led evidence from two witnesses: Councillor Danny Gibson and Mr Terry Barlow, Chairman Stirling Licensing Forum (at the time of the alleged incident). The Respondent also gave evidence.

Councillor Gibson had been in attendance at the meeting on 17th April 2013. He stated that he genuinely had no recollection if the Respondent mentioned the Standards Commission but did confirm that the Respondent referred to an investigation. He confirmed that the draft minute of the 17th April 2013 meeting was presented at the next meeting of the Licensing Board in June 2013 and was

approved. In relation to the matter of the disclosure of information contained within Council papers exempt from publication under para 1 schedule 7a of the Local Government (Scotland) Act 1973, and thus containing information which should not be in the public domain (identified as 'pink' papers by the Council) Councillor Gibson considered that the timing was of relevance to whether the matter continued to be covered by the requirement for confidentiality at the time of the meeting of the Licensing Board on 17th April 2013.

Mr. Barlow had been in attendance, as an observer, at the meeting on 17th April 2013. Mr. Barlow could recall the meeting clearly. He stated that Councillor McChord had asked if it was appropriate that a board member under investigation should be nominated as Vice Chair. He was asked if any mention had been made of the Standards Commission and he said not to his recollection. He also confirmed that there were a number of people present in the public gallery.

Councillor McChord confirmed that during the meeting of 17th April 2013 he did say that Councillor Paterson was under investigation and should stand down but he did not recall saying by the Standards Commission. He also stated that he could recall the discussion with Mrs. Duncan following the meeting but that he had not been advised that Councillor Paterson was satisfied (and did not wish to take the matter further). In terms of para 1 Schedule 7A of the Local Government (Scotland) Act 1973 Councillor McChord confirmed that 'pink' papers issued to Councillors by the Council were confidential but added that there was 'silence' on when the matters referred to in 'pink' papers could be discussed in the public domain.

Decision

The Hearing Panel considered in detail all of the evidence, the submissions given in writing and orally at the hearing and found as follows:-

1. The Councillors' Code of Conduct applied to the Respondent.
2. Based on the test of balance of probabilities, the Respondent had breached paragraph 3.15 of the Councillors Code of Conduct.
3. The Respondent accepted that he had referred to an investigation involving Councillor Paterson and for this reason he challenged the appointment to the position of Vice Chair for the Licensing Board.
4. The matter divulged at the meeting of the Stirling Council Licensing Board on 17th April 2013 was restricted under paragraph 1 of schedule 7A to the Local Government (Scotland) Act 1973.
5. Based on the evidence presented the Hearing Panel determined that the restriction in disclosure of the matter divulged was still in place at the date of the meeting on 17th April 2013.
6. The Hearing Panel heard conflicting evidence about what was said at the meeting on 17th April 2013. The Hearing Panel considered that the fact a referral for investigation had been made should have remained confidential as this fact was contained in council papers that were exempt from publication. The Hearing Panel did not consider that the reference to 'Standards Commission' made a material difference to the disclosure.

For these reasons the Hearing Panel concluded that the Respondent had breached Paragraphs 3.15 of the Councillors' Code of Conduct.

SANCTION

The decision of the Hearing Panel was to censure Councillor McChord.

The sanction was made under the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 section 19(1)(a).

Reason for Sanction

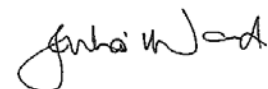
The Respondent had breached the Councillors' Code of Conduct, and in reaching their decision the Hearing Panel had taken into account the following considerations:-

1. The Hearing Panel considered that the breach was at the lower end of the scale.
2. The Hearing Panel accepted that the breach was not intentional.
3. The Hearing Panel considered that the Respondent may have believed the question raised was appropriate and necessary, however, it should have been asked outside of the public arena.
4. The Hearing Panel noted that the issue had been resolved to the satisfaction of Councillor Paterson by an informal internal process. No evidence was given of any adverse impact on Councillor Paterson.
5. The Hearing Panel noted the length of time between the disclosure by the Respondent and the complaint being submitted was a period of 10 months.
6. The Hearing Panel recognised the very significant contribution that Councillor McChord had made to public life over a period of almost 30 years.

RIGHT OF APPEAL

The attention of the Respondent was drawn to Section 22 of the Ethical Standards in Public Life etc (Scotland) Act 2000 as amended which detailed the right of appeal in respect of this decision.

Date: 27 March 2015



Mrs. Julie Ward
Chair of the Hearing Panel