

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in the Glynhill Hotel, Renfrew, Glasgow on 11 March 2015

Complaint Reference LA/R/1525: Councillor Andy Doig, Renfrewshire Council

Panel Members: Mr Matt Smith, OBE, Chair of the Hearing Panel
Mr Ian Gordon, OBE, QPM
Mrs Julie Ward

The Hearing arises 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/R/1525 (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Andy Doig (“the Respondent”) of Renfrewshire Council.

Mr Thomson, the CESPLS, was accompanied by Mr Iain McLeod, the Investigating Officer. The Respondent attended the Hearing and was represented by Councillor Iain Nicolson. No witnesses were called by the CESPLS or the Respondent.

The Complaint

The Complainant submitted a complaint to the CESPLS identifying that the Respondent had potentially breached the Councillors’ Code of Conduct.

The CESPLS investigated the complaint and concluded that the Respondent made remarks whilst acting in his capacity as a councillor who was representing his local ward and was seeking to represent the views of his constituents. The CESPLS considered that whilst paragraph 3.2 of the code refers specifically to conduct at meetings, paragraph 3.1 indicates that Section 3 of the Code provides “the rules of good conduct in this section must be observed in all situations where you act as a councillor, including representing the Council on official business”. The CESPLS considered that as the Respondent was acting as a councillor when he made the remarks which gave rise to the complaint he had therefore contravened paragraph 3.2 of the Councillors’ Code of Conduct.

The relevant provision is:

With regard to general conduct paragraph 3.1 of the Code states:

3.1 The rules of good conduct in this section must be observed in all situations where you act as a councillor, including representing the Council on official business.

Conduct at Meetings

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its committees or sub-committees or of any public bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

The CESPLS submitted a report to the Standards Commission on 12 January 2015 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 (“the Commissioner”) and the Respondent provided a Joint Statement signed on 2 March 2015, in respect of facts that were agreed and facts that were in dispute.

Part 1 of the Commissioner’s report was agreed.

Part 2 of the Commissioner’s report was agreed

Part 3 of the Commissioner’s report was agreed.

Part 4 of the Commissioner’s report was agreed

Part 5 of the Commissioner’s report was agreed, except as follows.

The Respondent does not agree with;

- the finding in paragraph 5.4 of the report that his remarks were disrespectful towards the complainant and could not be justified by reference to previous remarks in support of regeneration of the area attributed to the Leader of the Council;
- the statement in paragraph 5.5 of the report that his remarks were inappropriate in relation to Council Officers; and
- the Commissioner’s opinion, expressed in paragraph 5.7 of the report, that the Respondent’s remarks were a personal attack on the complainant.

Appendices A-J in the Commissioner’s report contains true copies of the documents which they purport to be; which copies may be treated as equivalent to the oral evidence of their authors.

Evidence presented at the Hearing

The CESPLS outlined the facts and presented his case as set out in his report to the effect that Councillor Doig, in his comments, as reported in ‘The Gazette’ of 26 March 2014, had been disrespectful to the Chair of the Planning Board. The comments suggested that the Convener had made up his mind on a planning application in advance of due process having been completed. It was clear that the remarks referred to the complainant in his capacity as Convener of the Planning Board in contravention of the Councillors’ Code of Conduct.

The CESPLS asked the Hearing Panel to adopt the findings and conclusions contained in the report.

For the Respondent, Councillor Nicolson argued that the comments made by Councillor Doig in ‘The Gazette’ of 26 March 2014 had not been specifically addressed to the Convener of the Planning Board but were in fact addressed more widely to the planning process. It was suggested that the terms ‘chair’ and ‘convener’ were not necessarily interchangeable in the context of the case. It was further argued that the ‘Councillors’ Code of Conduct’ had been misinterpreted by the CESPLS in that paragraph 3.1, in referring to ‘all situations where you act as a councillor’ and the guidance note, could not be used to cover situations such as that being considered in this case.

The Respondent’s representative argued that under section 3.2 of the Code the role of the Chair was not the same as Convener. He further argued that paragraph 3.2 of the

Code was the only area of the Code that the CESPLS had determined breach and that this was not relevant to the circumstances and that paragraph 3.1 could not be used in conjunction with paragraph 3.2.

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 3.2 of the Councillors' Code of Conduct.

The reasons for the Hearing Panel decision include:

- 1 The CESPLS and the Respondent provided a Joint Statement of Facts, signed on 2 March 2015, in respect of facts that were agreed and facts that were not agreed.
- 2 The CESPLS in his Report alleged that the Respondent had been disrespectful towards the Complainant in respect of comments made by him and reported in 'The Gazette' on 26 March 2014. The Respondent accepted that he made the remarks. Councillor Doig accused the 'Convener' of having already made up his mind on a planning application that had not at that time come before the Planning Board.
- 3 It was submitted by the Respondent that there is a distinction between the terms 'Convener' and 'Chair', the latter terms being quoted in the Code. The Panel; does not believe this distinction is relevant. The Panel considers it is clear to whom the comments referred.
- 4 The Respondent when making these comments was acting in his capacity as a Councillor. The Panel understood that he was representing his local ward and the views of constituents. Nevertheless, the Code is clear in paragraph 3.2 that respect must be given to fellow councillors and others and that the remarks made by the Respondent were disrespectful.
- 5 The Panel does not accept the submission by the Respondent that the Code and its Guidance is limited in its application to Council meetings. The Code is clear that these provisions apply in all circumstances when acting as a Councillor:
 - Paragraph 1.5 of the Code states: "Councillors hold public office under the law and must observe the rules of conduct stemming from the law, the Code and any guidance from the Standards Commission and the rules, standing orders and regulations of the Council."
 - Paragraph 7 of the Guidance to the Councillors' Code of Conduct states: "Paragraph 3.2 provides that you must respect the Chair, your colleagues, Council employees and any members of the public present and provides examples of the type of meetings to which this provision applies. However, as stated above, paragraph 3.1 provides that the rules of good conduct set out in Section 3 must be observed in all situations where councillors are acting as councillors, including representing the Council in official business and the list of meetings to which this provision applies should be viewed as illustrative, rather than exhaustive. The effect of the provision is that councillor must respect the Chair, colleagues, Council employees and any members of the public in all situations where they act as councillors including - but not restricted to –

meetings of the Council, its committees and sub-committees or of any public bodies where they have been appointed by, and represent the Council.”

For these reasons the Hearing Panel concluded that the Respondent had breached Paragraph 3.2 of the Councillors’ Code of Conduct in writing and orally at the Hearing and found as follows:

Sanction

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

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

Reasons for Sanction

In reaching their decision, the Hearing Panel took into account the following considerations:

The Respondent had breached the Councillors’ Code of Conduct.

1. The Panel considered the background and in particular the statement of mitigation presented by Councillor Nicolson. The Panel acknowledged the complexity of the planning process and the fact that the Respondent was a relatively new councillor.
2. The Hearing Panel noted the apology offered.
3. It was clear to the Panel that the comments made by the Respondent were in breach of the Code. They were indicative of a lack of respect for another Councillor and related to issues where the Respondent accused that Councillor of having made up his mind on a planning application in advance of due process having been completed.
4. The purpose of the Code is to encourage and, where necessary, enforce ethical standards. Having found that there had been a breach of the Code and taking all circumstances into account the Hearing Panel consider the imposition of a censure is the appropriate sanction.

We would encourage Councillor Doig to undertake appropriate training on the Code and its Guidance.

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: 20 March 2015

Mr Matt Smith
Chair of the Hearing Panel