

**Decision of the Hearing Panel of the Standards Commission for
Scotland following the Hearing held in the Beardmore Hotel,
Clydebank on 4 & 17 November 2014, 8 & 17 December 2014 and
17 & 18 February 2015**

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

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 LAWD/1493 ("the Complaint") concerning an alleged contravention of the Councillors' Code of Conduct ("the Code") by Councillor George Black ("the Respondent") of West Dunbartonshire Council.

Mr Thomson, the CESPLS, was represented by Mr David Sillars, the Senior Investigating Officer and was accompanied by Mr Jon Miller. The Respondent attended the Hearing and was unrepresented.

The Complaint

The Complaint was lodged by Mrs Joyce White, the Chief Executive of West Dunbartonshire Council. The substance of the allegations was that on two separate occasions the Respondent had contravened the Councillors' Code of Conduct, in particular paragraphs 3.2 & 3.5 of the Code, which deals with Conduct at Meetings and paragraph 20 of Annex C to the code, dealing with Relationships with Council Employees and in particular making public comment.

At the conclusion of an investigation into the complaints submitted by Mrs White, the CESPLS reported to the Standards Commission that he had determined that the matters complained about were contraventions of the Councillors' Code of Conduct and these were referred to the Standards Commission for Scotland ("the Standards Commission") for further consideration and decision.

These complaints were:

1. Public criticism of the Chief Executive of West Dunbartonshire Council which was contained in private correspondence between the Respondent and Complainant and which was thereafter posted by the Respondent on the West Dunbartonshire Opposition Councillors' Facebook pages. Within the e-mail to the Chief Executive, the Respondent had included an allegation that the actions of the Chief Executive in supplying information from a public consultation exercise to a Councillor before this was released to other Members of the Council, showed "clear political bias". The Respondent had stated that it was his intention to make this e-mail public. However, having sent the e-mail to the Chief Executive at 10:15 pm on 10 December 2013 the Respondent had thereafter posted the e-mail on the West Dunbartonshire Opposition Councillors' Facebook page by 10:30 pm, which did not provide the Chief Executive with time to provide a response.

The CESPLS investigated the complaint and concluded the Respondent failed to comply with requirements of the Councillors' Code of Conduct, Annex C to the Code, paragraph 20.

The relevant provision of the Code is:

**ANNEX C - PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND
EMPLOYEES IN SCOTTISH COUNCILS**

Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

2. Disrespect, discourtesy and public criticism of performance directed at the Executive Director of Educational Service at a special meeting of the Educational Services Committee on 8 January 2014 which had attracted some 350 members of the public and subsequently by means of postings on the West Dunbartonshire Opposition Councillors' Facebook page. The comments were not just critical about the content of the report before the Committee but were also critical about the Executive Director of Educational Services.

The CESPLS investigated the complaint and concluded the Respondent failed to comply with requirements of the Councillors' Code of Conduct and had breached paragraph 3.2 and 3.3 of the Code and paragraph 20 of Annex C to the Code.

The relevant provision is:

SECTION 3: GENERAL CONDUCT

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.

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

ANNEX C - PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

The CESPLS submitted a Report to the Standards Commission on 13 August 2014 in accordance with section 14.2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

Joint Statement of Facts

There was no submission by either party of a joint statement of facts.

Decision

The Hearing Panel considered all of the evidence, including submissions given in writing, orally and video evidence presented at the Hearing and found as follows:

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Panel determined that based on the balance of probabilities, the Respondent had breached paragraphs 3.2 & 3.3 of the Code and paragraph 20 of Annex C to the Code.

The reasons for the Hearing Panel's decision include:

Allegation 1.

The Respondent had publically criticised the Chief Executive of West Dunbartonshire Council by posting private correspondence between himself and the Chief Executive on the West Dunbartonshire Opposition Councillors' Facebook page.

- 1.1 The Respondent composed an e-mail to the Chief Executive on 10 December 2013. This included an allegation that the action of the Chief Executive in providing information from a public consultation exercise to a Councillor before the responses to the consultation exercise were released to other Councillors showed a "clear political bias". The Respondent also indicated it was his intention to make this e-mail public.
- 1.2 The allegation of political bias by a Council Officer is a serious matter and the Panel considered it was made against the Chief Executive.
- 1.3 The e-mail was sent to the Chief Executive at 10:15 pm on 10 December 2013. By 10:30 pm on 10 December 2013 the Respondent had posted his e-mail on the West Dunbartonshire Opposition Councillors' Facebook page which gave no opportunity for the Chief Executive to respond before it was published on the Facebook page.
- 1.4 The Facebook page enjoys a considerable level of public interest with high numbers of access hits.

The Panel took into account the Respondent's assertion that at the time he was very frustrated over the release of information relating to the outcome of the public consultation.

It further noted that the Chief Executive did not answer this e-mail until six weeks after its receipt and only after the Respondent had written again to the Chief Executive in relation to his query.

The Panel is satisfied that the allegation by the Respondent was directed at the Chief Executive, it showed a lack of both respect and courtesy to a Council employee and was made in public.

The Hearing Panel concluded that the Respondent had criticised the conduct of the Chief Executive in public.

Allegation 2.

The Respondent had been disrespectful, discourteous and had publically criticised the performance of the Executive Director of Education both at a public meeting of the West Dunbartonshire Council's Educational Services Committee on 8 January 2014 and subsequently by means of postings on the West Dunbartonshire Opposition Councillors' Facebook page.

- 2.1 The public meeting of the Educational Services Committee had attracted some 350 attendees to consider a report provided by the Executive Director of Educational Services on proposals to relocate a local school to a site at Postie's Park or to rebuild the new school at its existing location.
- 2.2 A motion was submitted to and agreed by the Committee, which withdrew both proposals from consideration.
- 2.3 The Respondent is a member of that Committee and spoke at the meeting on the Executive Director's report and moved an amendment.

2.4 The meeting was video recorded and an extract of the video depicting the input from the Respondent was shown to the Hearing Panel.

2.5 The recording showed the Respondent expressing his dissatisfaction with what he described as a flawed report. The Respondent had stated:

- "At a previous public meeting the Executive Director's performance " was described as akin to a time share salesman";
- That the "dodgy dossier was sexed up at every opportunity. To stop the professional advice that maximised difficulties that they were thought were no problem and overcome on other projects."
- In other public meetings the Respondent had seen the Executive Director performing much better.
- The performance (of the Executive Director) in relation to St. Pat's (the report) led to the production of a dodgy dossier which was achieved, which was written to a pre-determined outcome".

2.6 The Respondent, on two occasions, then held up a copy of the report and stated "Dodgy Dossier".

The Panel noted the Respondent's position that he had carefully scrutinised the Report and was dissatisfied with much of its content. However, the Respondent asserted that his criticism was directed at the report and not the author. He had stated that he had "expressed my democratic right to criticise a report which is in the public domain. I find it very, very difficult to believe that, in what way, I can be critical of a report which is in the public domain which is not perceived to be a criticism of the author".

The Panel heard contrasting evidence concerning the quality and accuracy of the report prepared for the Committee by the Executive Director of Education. It noted that in evidence the Executive Director had indicated that he wanted to present the findings of the report as a matter of "professional pride" and that he had a legal responsibility to do so.

The Panel agreed it was not the task of the Panel to determine the content or quality of the report. The Panel's task was to consider the conduct of the Respondent in how he publicly reacted to it. The Panel concluded that the Respondent's comments, as depicted in the video and their impact as described by witnesses, were a personal criticism of the performance and integrity of a Council employee.

The Panel is satisfied that the comments of the Respondent were addressed to the Executive Director personally, that they showed a lack of both respect and courtesy to a Council employee and they were made in public.

For these reasons the Hearing Panel concluded that the Respondent had breached Paragraph 3.2, 3.3 and Paragraph 20 of Annex C to the Councillors' Code of Conduct.

Sanction

The decision of the Hearing Panel was to censure the Respondent.

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

There were two breaches of the Councillors' Code of Conduct, and in reaching their decision, the Hearing Panel had taken into account the following considerations:

1. The Respondent had breached the Councillors' Code of Conduct.
2. Two separate breaches of the Code had been found by the Hearing Panel. Both matters involved public criticism of Council Officers.

3. The Respondent had previously appeared before a Standards Commission Hearing Panel on 3 June 2014 where similar allegations were considered on that occasion. At the conclusion of that Hearing the Panel had imposed a two month suspension on the Respondent.
4. Ordinarily, in the circumstances of this Hearing, the Panel would have been minded to impose a penalty of no less than suspension and for a longer period than previously imposed.
5. However, the Panel gave careful consideration to the time lines between this case and the matters considered at the previous Hearing and noted that the breaches of the Code considered at this Hearing had occurred prior to the imposition of the sanction in June 2014.
6. Since the Committee Meeting in January 2014 and the imposition of sanction in June 2014, the Respondent had not come to the attention of the Standards Commission.
7. After careful deliberation and in these particular circumstances, the Panel considered that censure was a fair and proportionate outcome and was in the public interest.
8. The Hearing Panel repeated its assertion that Councillors and Officers were required to work in an atmosphere of mutual trust and respect.

The Respondent commented that his Local Authority had provided no training to him on the Councillors' Code of Conduct and that he felt he did not need training. The Panel strongly encouraged the Local Authority to engage with the Standards Commission programme to raise awareness on the Code.

The Panel urged the Respondent to undertake training on the Councillors' Code of Conduct and 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 details the right of appeal in respect of this Decision.

Date: 05 March 2015



Ian A Gordon
Chair of the Hearing Panel