

## Decision of the Panel of the Standards Commission for Scotland following the Hearing held at The Beardmore Hotel, Clydebank on 3 June 2014

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

The Hearing arises in respect of Reports by Mr D Stuart Allan, the former Commissioner for Ethical Standards in Public Life in Scotland ("the Commissioner"), further to complaints numbers LA/WD/1418 and LA/WD/1419 ("the Complaints") concerning alleged contraventions of the Councillors' Code of Conduct ("the Code") by Councillors George Black and James Bollan of West Dunbartonshire Council.

The current Commissioner, Mr Bill Thomson, attended the Hearing and he was accompanied and represented by Mr David Sillars, Senior Investigating Officer. Councillor Black attended the Hearing and represented himself. Councillor Bollan elected not to attend or be represented at the Hearing. No witnesses were called by either the Commissioner's Representative or the Respondents.

### The Complaints

Mrs Joyce White, Chief Executive of West Dunbartonshire Council, submitted a complaint to the Commissioner stating that, in her opinion, the Respondents had each contravened the Councillors' Code of Conduct on more than one occasion.

At the conclusion of an investigation into the complaints submitted by Mrs White, the Commissioner reported to the Standards Commission that he had determined that some of 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 matters were:

#### Councillor Black (LA/WL/1418)

1. Questioning the impartiality and objectivity of the Council's Monitoring Officer at the Council meeting of 26 September 2012 contrary to Section 3: paragraphs 3.2 and 3.5 of the Code; and paragraphs 2 and 20 of Annex C of the Code relating to the Protocol for relations between councillors and employees.
2. The publication of an article in the Dumbarton and Vale of Leven Recorder on 13 November 2012 critical of the capability of the appointed Council Business Support Manager, contrary to Section 3: paragraph 3.5 of the Code; and paragraphs 2 and 20 of Annex C of the Code relating to the Protocol for relations between councillors and employees.

The relevant provisions of the Code are:

### **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)**

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

**Annex C: Protocol for relations between councillors and employees in Scottish Councils**

**Principles**

2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

**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.

Councillor Bollan (LA/WL/1419)

1. Whilst making comments intended for publication in the Lennox Herald on 9 November 2012, Councillor Bollan acted with disrespect and discourtesy towards the appointed Council Business Support Manager and this action was contrary to Section 3: paragraph 3.5 of the Code; and paragraphs 2 and 20 of Annex C of the Code relating to the Protocol for relations between councillors and employees.

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2. Despite a long standing membership of the Bellsmyre Digital Community, being a previous office-holder and making regular contributions to Council debates about the organisation which included support for funding applications; Councillor Bollan failed to register a non-financial interest in respect of Bellsmyre Digital Community prior to the requirement to register such an interest being drawn to his attention on 20 December 2012. This was contrary to Section 4: paragraph 4.22 of the Councillors' Code of Conduct.



3. At a meeting of the Council's Corporate Services Committee, held on 15 August 2012, Councillor Bollan failed to declare his non-financial interest in the Bellsmyre Digital Community, contrary to Section 5: paragraphs 5.3, 5.5 and 5.7 of the Councillors' Code of Conduct.

**Section 4: Registration of Interests**

**Category Eight: Non-financial interests**

4.22 Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to committees or membership of other organisations.

**Section 5: Declaration of Interests**

5.3 You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or
- (ii) that interest would fall within the terms of the objective test.

There is no need to declare:-

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a general exclusion or a specific exclusion; or

- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

### **Joint Statement of Facts**

#### Councillor Black

The Commissioner's Representative and the Respondent lodged as a production, at the commencement of the Hearing, a Joint Statement of Facts dated 3 June 2014, in respect of facts that were agreed and facts that were in dispute.

#### Councillor Bollan

The Commissioner and the Respondent lodged as a production a Joint Statement of Facts dated 23 May 2014, in respect of facts that were agreed and facts that were in dispute.

### **Hearing process**

One of the complaints against each Councillor contained similar facts and subject matter. The Panel considered this matter as a conjoined allegation in the Hearing, as allowed by Section 7.1 and 7.2 of the Commission's Hearing Rules.

As a preliminary matter, Councillor Black brought to the Hearing Panel's attention reports, both on the Commissioner website and in the press, relating to the complaints against him, which indicated that some issues, not the subject of this Hearing, had been reported as potential breaches. Following an adjournment, the Panel Chair confirmed that this had been considered; he explained the different and quite separate roles of the Commissioner for Ethical Standards and the Standards Commission, and then advised this was a matter that Councillor Black may wish to pursue with the Commissioner.

### **The Decisions**

The Hearing Panel considered all of the evidence, the submissions given in writing and orally at the Hearing. The reasons for the Hearing Panel decision are based on the balance of probabilities arising from the evidence heard:

#### **In relation to the conjoined Hearing:**

1. The Councillors' Code of Conduct applied to the Respondents.
2. The Panel determined that the Respondents had both breached Section 3: paragraph 3.5 of the Code and paragraphs 2 and 20 of Annex C of the Code relating to the Protocol for relations between councillors and employees.

#### Councillor Black

By making public comment in an article published in the Dumbarton and Vale of Leven Reporter on 13 November 2012 that was critical of the capability of the Council's appointed Business Support Manager.

#### Councillor Bollan

By making public comment in an article published in the Lennox Herald on 9 November 2012 that was disrespectful and discourteous to the Council's appointed Business Support Manager.

In reaching their decision, the Panel took into account:





- The submission by both parties of separate agreed Joint Statements of Facts at the Hearing;
- Following a job offer and acceptance of the offer, the appointment of the Business Support Manager was announced by intranet within the Council prior to both newspaper articles being published;
- Councillor Black enquired with senior officers in West Dunbartonshire Council to discover the procedure adopted by the Council; nevertheless he made the public comment but did not name the individual in his quotes to the newspaper;
- There is no evidence that Councillor Bollan made any attempt to discover the procedure adopted by the Council and he named the individual in his quotes to the newspaper;
- Both Councillors were aware of the appointment of the Business Support Manager when approached by the respective newspapers;
- Despite Councillor Black having received detailed confirmation of the procedure followed by the Council for the appointment of the Business Support Manager, he nevertheless made comment critical of both the Council's procedure for the appointment and of the individual;
- Councillor Bollan's comments were also critical of both the Council's procedure for the appointment and of the individual appointed;
- The comments by both Councillors were disrespectful of the individual appointed to the post;
- The Panel took submissions from the Commissioner's Representative in relation to Annex C of the Code and the relationship between councillors and employees. The Panel determined it was reasonable to conclude that the individual was an 'employee' for the purposes of paragraph 3.5 and Annex C paragraphs 2 and 20 of the Councillors' Code of Conduct;
- The Hearing Panel was aware that information relating to the former employment of the appointee had been the subject of previous press comment; however, the Code at Annex C paragraph 20 requires that Councillors do not make public comment on matters relating to the conduct or capability of employees in public. As such we find a breach has taken place.

**In relation to the separate allegations:**

Councillor Black:

1. The Councillors' Code of Conduct applied to the Respondent;
2. The Panel determined the Respondent had breached Section 3: paragraphs 3.2 and 3.5 of the Councillors' Code of Conduct and paragraphs 2 and 20 of Annex C of the Code relating to the Protocol for relations between councillors and employees by questioning the impartiality and objectivity of the Council's former Monitoring Officer at the Council meeting of 26 September 2012.

The reasons are:

- The submission by Councillor Black of an agreed Joint Statement of Facts;
- Councillor Black had accused the former Monitoring Officer of collusion with the Council's Administration;
- This was disrespectful to the Monitoring Officer, challenged his integrity and undermined his authority and reputation.

Councillor Bollan:

1. The Councillors' Code of Conduct applied to the Respondent;
2. The admission by Councillor Bollan of the breach of the Code;
3. The Panel determined that the Respondent had breached Section 4 paragraph 4.22 of the Councillors' Code of Conduct, by his failure to register a non-financial

interest arising from his association with and membership of Bellsmyre Digital Community prior to 20 December 2012;

4. The Panel determined that the Respondent had breached Section 5 paragraphs 5.3, 5.5 and 5.7 of the Councillors' Code of Conduct, by his failure to declare that non-financial interest at the meeting of the Corporate Services Committee on 15 August 2012.

The reasons are:

- The submission by Councillor Bollan of an agreed Joint Statement of Facts;
- The acceptance by the Commissioner of the admission to the breach;
- From the period 2007 until 2012 Councillor Bollan consistently took part in Council debates and moved motions to award a greater grant than was recommended by officers;
- The non-financial interest of Councillor Bollan was such that a member of the public, with knowledge of the relevant facts, would reasonably have regarded his interest as so significant that it would have been likely to prejudice his discussion at the Corporate Services Committee on 20 December 2012.

### Sanctions

The Panel noted that the actions by the respective Respondents, from which these allegations arose, took place at the latest <sup>November</sup> October 2012, eight months before the complaint was made on 24 June 2013 by the Chief Executive of West Dunbartonshire Council to the former Commissioner. During the Hearing, the serious nature of these allegations was properly emphasised by the Representative of the Commissioner. The Panel, however, was of the view that such a delay in reporting known serious allegations was disproportionate and inappropriate, and it took account of that view in determining the sanction imposed on each Respondent.

#### Councillor Black:

The decision of the Panel is to suspend Councillor Black from all Council, Committee and Sub Committee meetings of West Dunbartonshire Council effective from 6 June 2014 for a period of 2 months. This sanction is made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 Section 19 (1) (b) (i) and (ii).

#### Councillor Bollan:

The decision of the Panel is to suspend Councillor Bollan from all Council, Committee and Sub Committee meetings of West Dunbartonshire Council effective from 6 June 2014 for a period of 9 months. This sanction is made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 Section 19 (1) (b) (i) and (ii).

### Reasons for Sanction

#### Councillor Black

In relation to Councillor Black there were two breaches of the Code, and in reaching their decision the Panel had taken into account:

1. Councillor Black is an experienced councillor who should understand and be seen to uphold the Ethical Standards Framework.
2. In relation to the allegation concerning the Business Support Manager:
  - Councillor Black's comments were disrespectful of the procedure and the individual;
  - Councillors should not raise matters relating to conduct or capability of employees in public;
  - Employees of the Council are entitled to respect and courtesy from councillors;





- Despite seeking and getting information on the appointment process he made public comment on the appointment.
3. In relation to the allegation concerning the former Monitoring Officer:
- The requirement for councillors and officers to work in an atmosphere of mutual trust and respect;
  - It was an unjustified attack on the Monitoring Officer's integrity;
  - Councillor Black expressed regret that his choice of word was seen to challenge the integrity of the former Monitoring Officer and stated that he had every respect for that individual;
  - The Panel considered the length of time between the event and it being reported as a complaint, which did not appear to equate with the claimed seriousness of this allegation.

Councillor Bollan

In relation to Councillor Bollan there were three breaches of the Code, and in reaching their decision the Panel had taken into account:

1. Councillor Bollan is an experienced councillor who should understand and be seen to uphold the Ethical Standards Framework.
2. In relation to the allegation concerning the Business Support Manager:
  - His comments were disrespectful of the procedure and the appointee, and were made without any prior discussion of the matter with senior Council officers;
  - Councillors should not raise matters relating to conduct or capability of employees in public;
  - Employees of the council are entitled to respect and courtesy from councillors;
  - Councillor Bolan is a very experienced Councillor who is well aware of the expected standards of behaviour when dealing with employees of the Council.
3. In relation to the failure to register and declare a non-financial interest:
  - We note Councillor Bollan's acceptance of this breach;
  - The failure to register his interest was over an extended period from June 2007 to August 2012;
  - During this period he failed to declare this interest;
  - On several occasions he took an active part in supporting bids and moving motions to award greater grant than was recommended for the organisation by Council officers;
  - The matter had to be brought to his attention by the Monitoring Officer;
  - This is a serious matter which is likely to undermine the confidence of the public in the transparency of decision making.

**Right of Appeal**

The Respondents' attention is drawn to section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which details the right of appeal in respect of this Decision.

Date: 13 June 2014

Mr Ian A. Gordon OBE, QPM  
Chair of the Hearing Panel