

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at The Royal Hotel on 12 May 2014

Panel Members: Mr Ian Gordon, OBE, QPM - Chair of the Hearing Panel
Ms Jan Polley
Mrs Lindsey Gallanders

The Hearing arises in respect of a Report by Mr D Stuart Allan, the former Commissioner for Ethical Standards in Public Life in Scotland ("the Commissioner"), further to complaint No. LA/S/1336 ("the Complaint") concerning an alleged contravention of the Councillors' Code of Conduct ("the Code") by Councillor Alasdair MacPherson of Stirling Council ("the Respondent").

The current Commissioner, Mr Bill Thompson, was represented by Mr Ranald Macpherson of Simpson and Marwick Solicitors and was accompanied by Mrs Anne Mahoney, the Investigating Officer. The Respondent attended the Hearing. No witnesses were called by either the Commissioner's Representative or the Respondent.

The Complaint

The Complainant was Mrs Elizabeth Duncan, Chief Governance Officer of Stirling Council, who made the complaint on behalf of Stirling Council ("the Complainant"). The Complainant alleged that the Respondent had contravened the Councillors' Code of Conduct on more than one occasion, in particular:

1. At a meeting of the District of Stirling Licensing Board on 10 September 2012, the Respondent pre-judged a licensing application and so failed to observe the key principle of Objectivity in paragraph 2.1 and the rules of fair and unbiased decision-making in paragraphs 7.1, 7.2, 7.3 and 7.4 of the Code which relate to taking decisions on quasi-judicial or regulatory applications.
2. The Respondent failed to respect members of the public who appeared as objectors at that meeting and therefore breached the provisions in paragraph 3.2 of the Code of Conduct relating to conduct at meetings.
3. At a meeting of the Beaully to Denny Legacy Steering Group on 21 November 2012 the Respondent behaved towards a Committee Officer in an aggressive manner in breach of paragraphs 3.2 to 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 2 KEY PRINCIPLES

Paragraph 2.1

Objectivity

You must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.





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.

3.4 Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

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.

Section 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

Introduction

7.1 The Code's provisions relate to the need to ensure a proper and fair hearing and to avoid any impression of bias in relation to statutory decision making processes. These provisions apply not only to those made under planning legislation but to a number of others of a quasi-judicial or regulatory nature which the local authority may also have to consider. These will include applications for taxi, betting and gaming, liquor, theatres, cinemas and street trader licences and a range of other similar applications where the issuing of a statutory approval or consent is involved. This also includes where the local authority is acting in an enforcement, disciplinary or adjudicatory role.

Fairness and Impartiality

7.2 On questions relating to such matters on which councillors have to make individual decisions, you may have to take account of different points of view or make decisions based on specified statutory criteria.

7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct. 2 and 20 of the Protocol for relations between Councillors and Employees.

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.

The former Commissioner submitted a report to the Standards Commission on 6 February 2014 in accordance with section 14.2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended. The Commissioner's findings were that the Respondent contravened the provisions of the Code and had breached the terms of paragraphs 2.1 (Objectivity), 3.2 - 3.5, 7.1 – 7.4 and paragraphs 2 and 20 of Annex C to the Councillors' Code of Conduct.

Joint Statement of Facts

The Commissioner's Representative lodged as a production an e-mailed statement by the Respondent confirming that he accepted the terms of the former Commissioner's report. The Respondent acknowledged at the Hearing that he had breached the sections of the Councillors' Code of Conduct as set out above.

Evidence presented at the Hearing

Mr Macpherson outlined the facts and presented the Commissioner's case as set out in his report to the effect that the Respondent had breached the provisions of the Code during two separate meetings. The first meeting was in his role as a member of the District of Stirling Licensing Board on 10 September 2012 when his behaviour towards persons present at the meeting, as objectors, caused them to make complaints that the Respondent:

- Stated that he was minded to support the application before the Board had heard all submissions, which indicated he had prejudged the matter.
- Was disrespectful of members of the public who were present when he questioned them in a confrontational and adversarial manner and was dismissive of their views.

Following the Licensing Board decision, a petition for Judicial Review was made seeking reduction of that decision. The petition, which included an account of the conduct of the Respondent, was based on grounds that objectors were not afforded a fair hearing. The petition was granted by the Court and legal costs awarded against



the Licensing Board. Mr Macpherson stated this behaviour by a member of the Licensing Board would impact on the reputation of Stirling Council.

The second meeting was in the Beaully to Denny Legacy Steering Group on 21 November 2012, when the Respondent questioned the Committee Officer, who was clerking that meeting, in an unacceptable manner impugning her competence and integrity. The Clerk had become distressed and left the meeting. Mr Macpherson acknowledged that the Respondent had made an immediate apology, in person, to the Clerk.

The Respondent had therefore breached paragraphs 2.1 (Objectivity), 3.2 - 3.5, 7.1 – 7.4 and paragraphs 2 and 20 of Annex C to the Councillors Code of Conduct.

Mr MacPherson asked the Hearing Panel to adopt the findings and conclusions contained in the report.

The Respondent repeated his acceptance that he had breached the Councillors' Code of Conduct, apologised for his actions and said he had been wrong to do so. In relation to the complaint that he had prejudged the issue: he said he had only been recently appointed to the Licensing Board and thought he had not received adequate training on that role - he would welcome further training. The Respondent considered that he had learned his lesson from these events, he had let down those persons who had elected him and he had resigned from all Council Committees.

Decision

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

1. The Councillors' Code of Conduct applied to the Respondent
2. The Respondent accepted that he had breached paragraphs 3.2 - 3.5, 7.1 – 7.4 and paragraphs 2 and 20 of Annex C to the Councillors' Code of Conduct.

Sanction

The Panel decided to suspend Councillor MacPherson from all Council, Committee and Sub Committee meetings of Stirling Council for a period of five months. This sanction was made under the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended section 19 (1)(b)(ii). The date on which the suspension was imposed was Monday 12 May 2014 and it commenced on Friday 16 May 2014.

Reasons for Sanction

In reaching their decision, the Panel took into account:

1. There had been three separate and serious breaches of the Code.
2. The Respondent was an experienced councillor who should understand and be seen to uphold the Ethical Standards Framework.
3. The impact of his conduct during the licensing meeting on the reputation of Stirling Council and the integrity of its licensing procedures.
4. It is vital that councillors understand the particular requirements of their quasi-judicial role, given to them by the law. When fulfilling that role, councillors must



ensure that they maintain the confidence of all sides that they will consider the issues fairly and without prejudging them.

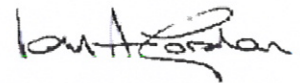
5. Whilst councillors have a clear duty to hold officers to account they must do so in a courteous and professional manner.
6. The Respondent immediately apologised to the Council Officer in person.
7. At the Hearing the Respondent acknowledged that his behaviour has 'let down' those persons who elected him to his role.
8. The Hearing noted a letter from his Group Leader that the Respondent is well respected by his constituents.

Notwithstanding the mitigation presented, these actions constituted serious breaches of the Councillors' Code of Conduct. The Hearing Panel considers that Councillor MacPherson would benefit from further training on that Code and the obligations and conduct which it demands from elected members of Councils.

Right of Appeal

The attention of the Respondent is 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: 15 May 2014



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

