

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in Clackmannan Town Hall, Main Street, Clackmannan on 16 and 17 February 2016, and in Council Chambers, Kilncraigs, Alloa on 7 March, 14 and 15 April 2016.**

**Panel Members:** Mr Ian Gordon, OBE, QPM, LL.B (Hons), Chair of the Hearing Panel  
Mr Kevin Dunion, 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 reference LA/C/1640, (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Archie Drummond (“the Respondent”).

The CESPLS was represented by Mrs Claire Gilmore, Investigating Officer. The Respondent was represented by Amer Amwar & Co, solicitors and Mr Niall McCluskey, Counsel.

### **COMPLAINT**

A complaint was received by the CESPLS about the alleged conduct of the Respondent. Following an investigation, the CESPLS referred the complaint to the Standards Commission for Scotland.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Councillors’ Code of Conduct and, in particular, that he had contravened paragraphs 3.3, 3.4 and 3.5, relating to Relationships with Council Employees, as well as paragraph 2 of Annex C, which deals with the protocol for relations between councillors and employees in Scottish councils.

The relevant provisions were:

*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.*

*Annex C Paragraph 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.*

The CESPLS submitted a report to the Standards Commission on 11 September 2015 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

### **Evidence Presented at the Hearing**

The CESPLS's representative outlined the facts as set out in the Report and the conclusions reached, which were that the Respondent had become involved in direct operational management and had been disrespectful of officers of the Council, in contravention of paragraphs 3.3, 3.4 and 3.5 and paragraph 2 of Annex C of the Councillors' Code of Conduct.

The CESPLS led four witnesses, being the Chief Executive and Chief Social Work Officer of Clackmannanshire Council, the Council Leader and the former Governance and Monitoring Officer. The Hearing Panel heard evidence from these witnesses to the effect that Clackmannanshire Council has a Guide to Performance Management for Elected Members, which makes it clear that while elected members have a role in managing performance, this relates to scrutiny and achieving results and not to the operational management of services. Operational management is a matter for officers. The Hearing Panel heard that the Respondent was involved in the development of this Guide and was Convener of the Resources and Audit Committee, which had responsibility for the development and implementation of the Council's governance framework.

The Hearing Panel heard that the Respondent had become involved in a complex childcare and housing case on behalf of a constituent. However, Council officers were concerned that criticisms he made, and language he used, in correspondence and discussions about the case were unwarranted and disrespectful. Officers considered that there was a constant questioning of their professional judgement and some of the language used by the Respondent has been threatening, accusatory and intimidating.

As examples, the Hearing Panel's attention was drawn, in particular, to two emails the Respondent had sent to officers on 3 June 2014. In the first email the Respondent had accused officers of a 'lack of alacrity' and had stated 'this ongoing inactivity, lack of or incomplete information from Clackmannanshire Council may amount to illegality, that is for others, but it certainly amounts to mental torture of my constituents'. The officers concerned had a duty to ensure the children's welfare was of paramount importance and to be accused of 'mental torture' while doing so was inappropriate. The reference to 'mental torture' in the context of the Respondent's complaint about 'ongoing inactivity' implied more than an effect on the constituent. It inferred it was the result of deliberate acts or omissions on behalf of officers.

The Respondent's second email had suggested the Council had 'no legal power to detain' one of his constituent's children. The Hearing Panel heard the use of the word 'detain' was an inappropriate word to use to officers who were dealing with the welfare and safety of a child in care.

The Hearing Panel heard evidence that the Respondent had sent his constituent's solicitor an email on 9 June 2014, which he had copied to the Chief Social Work Officer. In this, the Respondent had been openly critical of the Council's Social Work Service. Again, officers considered this to be disrespectful. The Respondent had also referred to the Council's Social Work Service having taken the action 'they threatened' in respect of seeking a Child Protection Order. The use of 'threatened' was inappropriate given the intention to seek such an Order was both a duty on, and right of, the Social Work Service to protect a child from risk.

Officers were of the view that the Respondent was not simply articulating his constituent's concerns but he was trying to use his role to influence officers in their decision-making and his actions in doing so had crossed into direct operational management. The Respondent had made suggestions and judgements about matters such as where his constituent should be housed, contact between the constituent and her children, and the rehabilitation of one child, which he was in no way qualified to do.

In particular, the Hearing Panel's attention was drawn to an email from the Respondent to officers on 28 June 2013 regarding his constituent's housing, in which he had used phrases that were directional such as 'I would ask that this is done'. Concern was expressed about an email from the Respondent to officers on 1 October 2013 in which it was alleged he directed a certain course of action regarding contact arrangements be pursued, without reference to the contents of an existing care plan for the child in question and without any accountability or responsibility.

The Hearing Panel heard that officers were also concerned about an email of 5 June 2015 from the Respondent to an officer in which he had urged that a multi-agency case conference be cancelled and replaced by an informal meeting. This was both directional and instructional. Officers argued that case conferences were arranged as part of a statutory process and therefore it was inappropriate for a councillor to have tried to intervene in such a manner.

Evidence was led to the effect that the manner and level of the Respondent's involvement was inappropriate in that he had not recognised that there may be a conflict between the interests of the constituent and those of her children. Officers considered that in his representations, the Respondent had pursued the interests of his constituent without any objective consideration of the children's interests or the paramount duty the Council had under the Children (Scotland) Act 1995 to ensure their safety and welfare.

The Hearing Panel heard that the Chief Social Work Officer had written to the Respondent on 18 July 2014 expressing concerns about the extent of his involvement in the childcare case. The Chief Executive had also advised the Respondent of her concerns about his actions at meetings on 15 October 2013 and 12 June 2014 and in an email of 14 July 2014.

The Respondent's representative argued that the Respondent was simply acting in the interests of his constituent and at her request, as he was entitled to do, in order to ensure that her views were identified and taken into account.

The Respondent's representative led three witnesses; being another councillor who was previously the Leader of Clackmannanshire Council, the solicitor of the constituent involved and the Respondent himself. The Hearing Panel heard evidence from these witnesses to the effect that the Respondent was simply acting in the interests of his constituent.

The Hearing Panel heard evidence that a note issued by a Sheriff in 2011 had identified and highlighted problems with the Council's Social Work Service and, in particular, with their handling of the specific childcare case in question. In making enquiries, the Respondent was merely questioning whether similar issues were again arising. He felt he was undertaking a scrutiny and information gathering role. The constituent's solicitor confirmed that she had not always been able to obtain the information she required from the Council on behalf of her client, but the Respondent had been able to do so. The Respondent was not doing her bidding; instead she viewed his role as complementary to her own.

The Respondent accepted that his style in correspondence had been somewhat managerial but he argued it was not directional. He had not been seeking to instruct officers and indeed never did so. In any event, his actions had not had any impact or effect on the decisions officers took in respect of the case. The Respondent stated that in making enquiries about housing options and in seeking an informal meeting instead of the statutory case conference, he was not offering simplistic solutions but was instead checking that all options available to the Council were being explored.

The Respondent indicated that officers may have been defensive and sensitive about the childcare case given that it had been the subject of legal proceedings, during which the actions of the Council had been publicly criticised. He considered this had made them uncomfortable about his enquiries.

The Respondent denied the suggestion that the fact he had implemented a mandate from his constituent, to access all social work files in respect of the case, was indicative of him trying to become involved in operational management. He considered he required access to information in order to be able to provide his constituent with evidence based reassurances that the Council was acting lawfully.

## **DECISION**

Paragraph 3.4 of the Councillors' Code of Conduct makes it clear that whilst both councillors and officers are servants of the public, they have different roles and responsibilities. The role of councillors is to determine policy and to participate in decisions on matters placed before them, not to engage in direct operational management of council services; that is the responsibility of council officers. Councillors must respect these different roles.

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing on behalf of the CESPLS and Respondent. The Respondent made it clear his overwhelming priority was to represent the interest of his constituent. While the Hearing Panel acknowledged the Respondent had a responsibility to represent his constituent, it considered in so doing, he lost sight of his other responsibilities as a councillor and his obligation under the Code to respect the different roles of councillors and officers. This occurred to such an extent it appeared that the Respondent aligned himself

with his constituent and her solicitor in their engagement with the Council and so acted as an advocate. This contributed to a lack of trust and respect between the Respondent and senior officers of the Council. The situation was exacerbated by his use of language, which was inappropriate and perceived as inflammatory by council officers.

The Hearing Panel found as follows: -

1. The Councillors' Code of Conduct applied to the Respondent.
2. Paragraph 3.3 of the Code requires respect for Council officers and the role they play. The Hearing Panel found some of the language and tone used by the Respondent in correspondence to officers was disrespectful and discourteous and amounted to a contravention of paragraph 3.3 of the Councillors' Code of Conduct. Examples included:
  - A reference to the Council inflicting mental torture on his constituent;
  - Condemnatory language such as referring to the Council threatening to take action on a statutory child protection matter; and
  - Expressing a view that the Council was acting unlawfully by detaining a child.
3. The Respondent failed to respect the responsibilities of the Chief Executive and Chief Social Work Officer to ensure policies were implemented and the Council fulfilled its statutory duties. The Hearing Panel considered the Respondent demonstrated no cognisance of the advice offered by both officers.
4. Turning to paragraph 3.4 of the Code, the Hearing Panel found the Respondent sought to engage in, and exert influence over, direct operational management. He had an expectation that actions should be taken in response to his engagement. This was evidenced by him seeking to influence an offer of housing; to secure rehabilitation of a child; and endeavouring to have a statutory multi-agency case conference cancelled and replaced by an informal meeting. Whilst the Respondent's involvement may not have had any effect on the outcome of decisions, the Hearing Panel considered this had clearly been his intention.
5. The Respondent failed to accept that he had an inherent influence in his role as a councillor. The Hearing Panel considered it was disingenuous to suggest it was open to council officers to simply ignore the Respondent's enquiries and requirements. The Hearing Panel further considered that the inappropriate level of involvement, enquiries and correspondence from the Respondent could have had an adverse impact on resources, given that officers felt obliged to respond. This involvement in direct operational management amounted to a contravention of paragraph 3.4 of the Councillors' Code of Conduct.
6. Paragraph 3.5 of the Code introduces the Protocol for Relations between Councillors and Employees. Annex C paragraph 2 of the Protocol requires councillors and employees to work in an atmosphere of mutual trust and respect, with neither party taking advantage of their position.

7. The Hearing Panel considered that, by his actions, the Respondent undermined mutual trust and respect between himself and senior officers of the Council. Indicative of this was:
- The language used in correspondence as described above in respect of paragraph 3.3 of the Code;
  - That he exercised a mandate on behalf of his constituent to give him access to sensitive personal data in case files held by the Council as opposed to relying on assurances provided by officers; and
  - That he sent an email to his constituent's solicitor, copied to the Chief Social Work Officer, which was openly critical about the actions of the Council.
8. The Hearing Panel therefore concluded that the Respondent had breached paragraph 3.3, 3.4, 3.5 and paragraph 2 of Annex C of the Councillors' Code of Conduct.

### **Evidence in Mitigation**

The Hearing Panel heard that the Respondent was known as someone who actively engaged with his constituents and was committed to representing their interests. He took his responsibilities as a councillor very seriously.

The Respondent's representative reiterated that the Respondent's sole aim and sincere motive had been to act in the interests of his constituent. He had worked as a local government officer for some ten years and in public service for nearly 30 years, before becoming a councillor.

### **SANCTION**

The decision of the Hearing Panel is to suspend, for a period of six months with effect from 25 April 2016, the Respondent's entitlement to attend all meetings of Clackmannanshire Council and of any committee or sub-committee thereof, and of any other body on which the councillor is a representative or nominee of the council or body.

The decision is made in terms section 19(1)(c) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

### **Reason for Sanction**

The Respondent had breached the Councillors' Code of Conduct. In reaching their decision as to the sanction, the Hearing Panel:

1. Noted the evidence given on behalf of the Respondent in mitigation.
2. Noted the contribution the Respondent has made to public life, including almost 30 years in public service.
3. Recognised the Respondent's commitment to representing the interests of his constituents.

However, the Hearing Panel:

4. Considered the contraventions of the Code were serious in nature. A key aim of the Code is to ensure there is mutual trust and respect in relationships between Councillors and officers, and a mutual understanding of their roles, to enable a Council to function effectively.
5. Was concerned that despite his background as an officer in a local authority and extensive experience in the public sector, the Respondent failed to demonstrate sufficient understanding of the Code and insight into how his actions had a negative impact on Council officers.
6. Was concerned that the Respondent was seeking to influence operational decision-making.
7. Was not persuaded that the Respondent had reflected on his conduct and was concerned he had continued to adhere to his position. The Respondent had not shown an understanding of his duty to represent the Council as a whole.

#### **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:** 20 April 2016



**Ian A. Gordon OBE, QPM, LL.B (Hons)  
Chair of the Hearing Panel**