

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in the Town House, Inverness on 17 May 2016.

Panel Members: Mrs Julie Ward, Chair of the Hearing Panel
Mr Kevin Dunion, OBE
Mr Matt Smith, OBE

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/H/1693, (“the complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Roderick Balfour (“the Respondent”).

The CESPLS presented his case in person. The Respondent also represented himself.

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 allegation was that the Respondent had contravened the Councillors’ Code of Conduct and, in particular, the provisions relating to the rules of good conduct which require that councillors respect members of the public in all situations where they are acting as councillors. Essentially the complaint alleged that the Respondent behaved in a disrespectful manner towards a member of the public (“the Complainant”) in a situation where he was acting as a councillor.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 3.1 and 3.2 of the Councillors’ Code of Conduct.

The relevant provisions were:

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.

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 19 February 2016 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

Evidence Presented at the Hearing

No witnesses were called by either party.

The CESPLS outlined the facts as set out in his Report. In particular, the CESPLS explained that the allegations concerned an incident that had occurred on 29 March 2015 when the Respondent had been investigating a potential breach of a Tree Preservation Order, at the request of a constituent who had telephoned him that morning. The CESPLS advised that the Respondent had assumed that he would be unable to contact Council officers as it was a Sunday. Instead, he had stopped his car on a road adjacent to the Complainant's property and had appeared to take photographs of tree felling work that was in progress. The Respondent had then made a verbal comment towards the Complainant, which was of an offensive nature. The verbal comment made during this incident was to ask the Complainant "what are you up to now you stupid old bastard?".

The CESPLS argued that the Respondent was acting in his capacity as a councillor at the time. He contended the Respondent's intervention on the occasion was peremptory and lacked any prior assessment of the situation. The CESPLS argued the use of photography without giving notice or seeking consent was intrusive. He advised that the offensive comment had been made in front of the Complainant's family, a friend and a tree felling contractor. The CESPLS contended that the conduct of the Respondent, taken as a whole, was disrespectful and amounted to a contravention of paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

The Respondent accepted that during an incident on the 29 March 2015 he had made the comment attributed to him and that he was acting in the capacity of a councillor when he had done so. However, the Respondent argued that his intervention was not peremptory given he had been asked to investigate the matter by a constituent and was representing the interests of the community. The Respondent further contended that his actions were not intrusive as he was simply recording what was happening; namely that the Complainant, in felling a tree near a road, was breaching a Tree Preservation Order and health and safety regulations.

The Respondent explained that he had suffered at the hands of the Complainant for a long period of time as a result of him trying to ensure the complainant complied with Tree Preservation Orders. The Complainant had made a number of false, vindictive and malicious allegations about him. The Respondent advised he did not consider it was appropriate, in the circumstances, to offer an apology.

DECISION

The Hearing Panel considered all of the submissions, including the presentations made during the Hearing by the CESPLS and Respondent, and found as follows:-

1. The Councillor's Code of Conduct applied to the Respondent.

2. The Hearing Panel found the Respondent had breached paragraph 3.1 of the Code, which obliges councillors to observe the rules of good conduct in all situations where they are acting as a councillor, including representing the Council.

The Hearing Panel determined:

3. That the Respondent was acting in the capacity of a councillor at the time of the incident in question and was acting on behalf of a constituent when investigating the potential breach of the Tree Preservation Order.
4. While the Respondent was entitled to investigate the possibility of a breach of the Tree Preservation Order, the manner in which he had done so, by seeking to take photographs without indicating his intention to do so and by directing an offensive comment towards the Complainant, was disrespectful.
5. It was the Respondent's personal responsibility to be aware of and comply with the provisions in the Councillors' Code of Conduct. He had failed to do so.

The Hearing Panel therefore concluded that the Respondent had breached paragraph 3.1 of the Code, as expanded upon in guidance note 6 of the Standards Commission's Guidance in place at the time.

The Hearing Panel did not consider paragraph 3.2 of the Code applied in this particular situation.

Evidence in Mitigation

The Respondent advised that his previously good relationship with the Complainant had broken down in 2012. The Complainant was an individual who would stop at nothing to fell trees at the site, regardless of whether such actions were contrary to instructions from the Council and planning permissions. The Respondent argued that the Complainant was committing an environmental offence on the day in question and was breaching a Tree Preservation Order with reckless indifference and without regard to health and safety regulations.

The Respondent advised that he was experiencing personal difficulties at the time and was under considerable strain due to a heavy workload. The Respondent indicated that perhaps he should not have used the words he did, but argued they were not obscene and instead were commonly used language. The Respondent accepted that he had lost his temper but argued this was in the face of extreme provocation from an individual who had previously made a number of false and hurtful allegations against him, which were entirely without foundation.

SANCTION

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

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

Reason for Sanction

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

1. The Respondent's statement in mitigation including his description of the breakdown in his relationship with the Complainant, his allegation of extreme provocation and the events which gave rise to his belief that the Complainant was breaching a Tree Preservation Order and health and safety requirements.
2. Took cognisance of the Respondent's personal circumstances.
3. Noted the contribution the Respondent has made to public life and that, on the occasion in question, he was acting on behalf of a constituent.

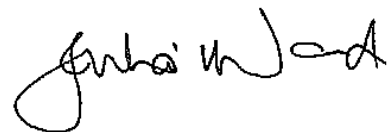
However the Hearing Panel:

4. Noted the Respondent accepted he had lost his temper when acting as a councillor and dealing with a member of the public. He had not proffered an apology and had indicated to the Panel he did not consider one was appropriate in the circumstances.
5. Emphasised that councillors must comply with the Councillors' Code of Conduct and must treat members of the public with respect when acting in the capacity as councillors.

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 May 2016



**Julie Ward
Chair of the Hearing Panel**