

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Renfrewshire Council, Cotton Street, Paisley, on 23 October 2017.

Panel Members: Mr Michael McCormick, Chair of the Hearing Panel
Mr Kevin Dunion, OBE
Mrs Lindsey Gallanders

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 references LA/R/1946 & 1973 (the complaints) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Paul Mack (the Respondent).

COMPLAINT

Two complaints were received by the CESPLS about the alleged conduct of the Respondent at a meeting of Renfrewshire Council on 29 September 2016. Following an investigation, the CESPLS referred the complaints to the Standards Commission for Scotland on 30 August 2017 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

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 paragraph 3.2.

The relevant provision is:

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.

Preliminary Matters

The Respondent advised he wished to lodge late productions, being the notice of meeting, agenda and minutes of a meeting of Renfrewshire Council on 22 June 2016, and the minutes of its Regulatory Functions Board on 11 May and 22 September 2016. The CESPLS advised that he had no objection to the productions being lodged and the Hearing Panel accepted the documents.

The Respondent indicated that none of the four witnesses he wished to call had agreed to attend and give evidence. These individuals were the two complainers and two other elected members, all of whom were present at the Council meeting on 29 September 2016. The Chair of the Hearing Panel noted that one of the complainers, the former Provost, was to appear as a witness for the CESPLS and that the Respondent would, therefore, have the opportunity to question her under cross-examination. In response to a query from the Chair, the Respondent advised that he had not asked the other complainer to be a witness and that while he had contacted the secretaries of the other two elected members, he had not heard back from them. The Chair noted that, in terms of the Standards Commission's Hearing Rules, a copy of which had been sent to the Respondent, he was entitled to ask the Standards Commission to cite witnesses, but he had not done so. The

Chair further noted that the issue of what witnesses were to be called had been discussed at the pre-Hearing meeting. The Respondent had, however, failed to respond to the Standards Commission's invitation to attend the meeting.

The Respondent noted that the CESPLS intended to show extracts of a webcast of the meeting of Renfrewshire Council on 29 September 2016. The Respondent complained that this was contrary to natural justice as the recording had been 'selectively edited'. He argued that it should either be played in full, along with recordings of the further meetings referred to in the additional productions he had lodged, or not at all. The Hearing Panel determined, however, that the Respondent had been given the opportunity to lodge productions and had been advised of the parts of the webcast the CESPLS intended to show well in advance of the Hearing. It noted that, as such, the Respondent could have asked for other sections to be presented but that he had not availed himself of this opportunity. The Hearing Panel further determined that, as the complaints concerned the Respondent's conduct at certain times during the meeting, it was satisfied that any webcast allegedly recording this behaviour was relevant evidence and should be allowed, and that recording of other parts of the meeting or other meetings would not necessarily be relevant.

The Hearing Panel accepted the CESPLS's assurance that he was only showing extracts of the meeting he considered to be relevant to the complaint in an attempt to be proportionate and to ensure the Hearing was not prolonged unnecessarily. The Hearing Panel considered this was appropriate, given that the Council meeting in question had lasted in excess of four hours. The Hearing Panel further accepted the CESPLS's assurance that he had not, in any way, tampered with the webcast. The Hearing Panel noted that, any event, it was to be shown a webcast taken directly from Renfrewshire Council's website, as opposed to any recording supplied by the CESPLS.

The Respondent indicated he considered it was unfair that the Hearing Panel would only be considering a recording of the meeting on 29 September 2016 and not any other Council meetings he had attended. The Hearing Panel noted, however, that the complaints under consideration only concerned his conduct at the one specific meeting and determined that recordings of other meetings would not, therefore, be relevant.

The Respondent advised he did not intend to remain in the room while extracts of the webcast were being played. The Chair of the Hearing Panel acknowledged that the Respondent was entitled to leave if he wished but suggested he would be in a better position to challenge any submissions made by the CESPLS on the footage if he remained in the room.

Evidence Presented at the Hearing

The CESPLS submitted that paragraph 3.2 of the Code was designed to ensure elected members adhered to basic standards of behaviour in the conduct of Council business. He indicated that the public were entitled to have a high expectation that elected members would conduct themselves and undertake their duties in a manner that was beyond reproach. The CESPLS alleged that the Respondent had, however, failed to do so at the Council meeting on 29 September 2016 in that he:

- failed to show respect to the former Provost, Ms Hall, who was chairing the meeting by repeatedly ignoring her directions, challenging her decisions and speaking over her;
- failed to show respect to other elected members at the meeting in that he initially failed to leave the meeting despite a motion under the Council's Standing Orders to suspend him from the meeting being passed; and

- failed to show respect to other elected members at the meeting by repeatedly talking over them and by making offensive personal comments.

The CESPLS indicated that Respondent had advised, in correspondence of 14 August 2017 in response to the draft report, that he refused to read the Code for 'theological reasons'. The CESPLS noted, however, that the Code had been issued by Scottish Ministers in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 and, as such, it enjoyed the force of law. The CESPLS further advised that, when elected, the Respondent had signed a declaration of acceptance of office, which included confirming that he undertook to meet the requirements of the Code.

At the CESPLS's request, extracts of the webcast of the Council meeting on 29 September 2016 were shown. In particular, the CESPLS asked the Hearing Panel to note that, when agenda item one was being considered, the Respondent repeatedly talked and shouted over the Chair, despite being asked to desist.

The CESPLS highlighted that, when item four of the agenda was being discussed, the Respondent referred to another elected member present by name as "our local SS officer". The CESPLS argued that this was an offensive, personal insult. The Respondent confirmed he had used this comment, therefore the relevant extract of the recording was not played.

The CESPLS noted that, at item 13 of the agenda, the Respondent questioned who read the Paisley Daily Express and when the Chair attempted to interrupt him, aggressively talked over her and accused her of having a 'side deal' with the newspaper. The Chair subsequently tried to intervene again when the Respondent then started making an allegation about contaminated land, on the grounds that he was "scaremongering". Despite the Chair determining that the matter under consideration had been agreed, the Respondent continued to shout over her to the extent that the Chair had been required to adjourn the meeting. The relevant extract of the meeting's recording was shown.

The CESPLS asked the Hearing Panel to note that, after the meeting was reconvened and item 17 was being considered, the Respondent made a point and then stated "them up at the Celtic end" would not be capable of understanding it. The CESPLS noted the reference was directed towards members of the Labour Group and contended it was attempt to categorise them by religious belief and to cast doubt on their intelligence. It was, therefore, disrespectful and sectarian. The Respondent then referred to a female councillor as being "a cross between Hyacinth Bucket and Glenn Close just before she boiled the rabbit". The CESPLS contended that in making such a reference, which had nothing to do with the item under consideration, the Respondent was simply making a gratuitous and offensive comment. Again the relevant meeting extract was played.

The CESPLS noted that, at item 31 of the agenda, the Respondent accused another elected member and "his cronies" of "troussing" Council funds, "self-enrichment", "a kleptocracy" and being involved in the "misappropriation of funds to the tune of £400,000". Despite the Chair repeatedly intervening and asking him to stop making such accusations and references, the Respondent continued speaking and shouting over her. The CESPLS asked the Hearing Panel to note that the Chair then moved a motion under the Council's Standing Orders to suspend the Respondent from the meeting. After the motion was approved by a majority vote, the Respondent refused to leave and stated he would remain where he was but not speak again. It

was only when the Chair adjourned the meeting again that the Respondent moved to the public benches. The relevant sections of the meeting's recording were played.

The CESPLS noted that Article 10 of the European Convention on Human Rights (ECHR) affords local politicians enhanced protection in terms of their right to freedom of expression. He submitted, however, that the Respondent's conduct in making insulting, gratuitous and deeply personal comments about other elected members, as well as serious criminal allegations, fell outwith the latitude allowed. It was highlighted that the Respondent's remarks were based on historical personal grievances and were not relevant to matters being considered at the meeting. The CESPLS additionally argued that the Respondent's behaviour in repeatedly interrupting the meeting, in inhibiting others from speaking and in failing to comply with rulings of the Chair, prevented the Council from effectively conducting its business and also undermined public confidence in its ability to do so.

The CESPLS called the former Provost, Ms Hall, to give evidence. Ms Hall confirmed that she had chaired the Council meeting on 29 September 2016. She gave evidence to the effect that it was the first and only time in her five year tenure as Provost that she had sought to have an elected member removed from a meeting and that she had only done so as a last resort when she had been unable to bring the meeting to order. Ms Hall advised that she had thought long and hard before submitting a complaint to the CESPLS about the Respondent's behaviour but had finally decided to do so because she considered his conduct was so serious and disruptive. Ms Hall advised that she accepted elected members had a right to speak at Council meetings but that she considered the Respondent's behaviour at the meeting in question was such that it had become difficult for other councillors to speak. As a result of his conduct, she had felt like she was losing control of the meeting.

Under cross-examination, Ms Hall confirmed that the Respondent's suspension from the meeting was not pre-planned and had only happened because he had become increasingly volatile and was not listening to her. Ms Hall indicated that she considered the Respondent to be a gifted politician and that she had no axe to grind with him, but that she had been concerned about the impact of his behaviour on the public's overall perception of the Council. Ms Hall accepted that, under item one, the Respondent was attempting to identify a member of the public who he alleged had engaged in criminal conduct towards him. Ms Hall indicated she had prevented him from doing so, in accordance with her normal practice, as she considered it was unfair to make derogatory remarks or criminal allegations regarding an individual who was not present at the meeting and could not, therefore, respond to the allegation. Ms Hall confirmed that she had no 'side deal' with the Paisley Daily Express.

The Respondent gave evidence on his own behalf to the effect that, despite having previously complained about the lack of proper notice, he had only received the minute of the Council's Regulatory Functions Board of 22 September 2016 (which was to be considered under item one), immediately before the Council meeting on 29 September 2016. The Respondent indicated he was exasperated by this given it prevented him from being unable to effectively perform the scrutiny role he was expected to undertake. The Respondent advised that he was trying to confirm the identity of an individual who had been granted taxi operators' licences at the Regulatory Functions Board as he considered the individual was someone who had previously made an attempt on his life and threats towards him. The Respondent indicated that the Chair's refusal to confirm the identity of the individual had "set the tone for the day".

The Respondent stated that he had been advised, by two members who were present, that the Labour Group had, at a meeting on 27 September 2016, decided on the tactics they would employ towards him at the Council meeting on 29 September 2016. He reported that the strategy adopted had been to set him up by ensuring the Chair gave him much more leeway than normal to speak, in the expectation he would exceed the acceptable boundaries of debating conduct.

The Respondent indicated that a number of other elected members continually made derogatory remarks about him at Council meetings, including alleging that he was a misogynist and referring to a previous “minor peccadillo”. He advised that he was, by nature, a “counter puncher” and while he usually tried to rise above such comments, he felt he could not miss the opportunity when it arose at the meeting on 29 September 2016 to “hit back” and remind the other councillors of their own shortcomings. The Respondent advised he had been the subject of a 30 year hate campaign and argued, therefore, the comments he made were relevant and not gratuitous. The Respondent advised that the Paisley Daily Express had a vendetta against him and failed to cover his contributions to debates, meaning the only way he could obtain publicity was to behave in the manner in which he had.

In response to questions from the Hearing Panel, the Respondent confirmed he accepted he made the comments as alleged by the CESPLS in his report. The Respondent indicated it had not been his intention to offend anyone and that he would have apologised if he thought anyone had been genuinely hurt by what he said; noting that, in his view, people should be more thick-skinned. The Respondent contended that the comments he had made were intended to be humorous and, at worst, could be considered infantile. The Respondent advised he was simply trying to expose the hypocrisy of other elected members. He considered any attempt to control what words he could and could not use and to suppress his right to freedom of expression was ‘Orwellian’ and an affront to democracy.

DECISION

The Hearing Panel considered all of the evidence including the submissions made at the Hearing.

The Hearing Panel found that, during the early part of the Council meeting on 29 September 2016, the Respondent talked or shouted over the Provost, who was chairing the meeting, on several occasions. The Hearing Panel found that the Respondent had done so in an aggressive manner, despite the Provost making it clear she wished him to stop, to the extent that she had been required to adjourn the meeting to restore order.

The Hearing Panel noted that, by his own admission, the Respondent used the meeting to indulge in the opportunity to air long held personal grievances and to obtain publicity.

The Hearing Panel further found that the Respondent also directed a number of offensive and personal remarks towards individuals during the course of the meeting. It noted, in particular, that it was not in dispute that:

- During a discussion on item four of the agenda, the Respondent referred to another elected member as “our local SS Officer”.
- During a discussion on item 17 of the agenda, the Respondent made a reference to “them up the Celtic end” not being intellectually able to understand an issue and to another elected member as being “a cross between Hyacinth Bucket and Glenn Close when she was about to boil a bunny”.

The Hearing Panel found that the Respondent had also used the meeting to make a number of serious allegations. This included:

- Making repeated accusations, during a discussion on item 31 of the agenda, that a named fellow councillor and his “cronies” were involved in the “misappropriation of funds to the tune of £400,000”. The Hearing Panel found that when the Chair had asked the Respondent to cease making such accusation, he had continued to do so and had continued talking and shouting.

The Hearing Panel determined that the Respondent further refused to comply with a number of requests made by the Chair to desist in his disruptive behaviour. The Hearing Panel considered these requests were reasonable as the Respondent’s conduct was clearly having an adverse impact on the progress of the meeting and was preventing others from speaking. The Hearing Panel noted that, ultimately, the Chair had to resort to seeking a motion to have the Respondent removed from the meeting. The Hearing Panel noted that as the Respondent initially failed to comply with the ruling, the Chair was forced to call a further adjournment and that this was the only occasion that the former Provost, during the five years of her tenure, had sought such a motion.

The Hearing Panel concluded that the Respondent had failed to show respect to the Chair at the meeting of the Council on 29 September 2016 by repeatedly ignoring her directions, by challenging her decisions and by speaking over her. The Respondent had also failed to comply with a ruling she had made and, as such, had contravened paragraph 3.2 of the Code.

The Hearing Panel proceeded to consider whether the Respondent had also breached paragraph 3.2 of the Code in respect of the remarks and accusations he had directed at other elected members during the course of the meeting. The Hearing Panel noted that issues concerning the Respondent’s right to freedom of expression arose in respect of its determination and, therefore, in reaching its decision, the Hearing Panel followed the approach outlined in the Standards Commission’s Advice Note on the Application of Article 10 of the ECHR. The Hearing Panel concluded that the Respondent’s remarks, as highlighted above, amounted to personal attacks and were offensive and abusive. The Hearing Panel concluded that, in making comments of this nature the Respondent had, on the face of it, failed to comply with the obligation as outlined in paragraph 3.2 of the Code, to treat his colleagues with respect.

The Hearing Panel proceeded to consider whether a finding that the Respondent had failed to comply with the provisions of the Code was a breach of his right to freedom of expression under Article 10 of the ECHR. In coming to a view, the Hearing Panel firstly considered whether the comments the Respondent made amounted to political expression. It noted that the Courts had interpreted the term ‘political expression’ widely and had found that there was no distinction between political discussion and discussion on matters of public concern.

In this particular case the Hearing Panel determined, however, that while the Respondent had made his comments and accusations in a Council meeting, (a clearly political context), they did not directly relate to the agenda items being considered and were instead gratuitous personal asides. Indeed, the Hearing Panel noted that the Respondent acknowledged that he had made his remarks in furtherance of personal grievances and to seek publicity. The Hearing Panel concluded, therefore, that his comments did not attract the enhanced protection of freedom of expression afforded to political expression under Article 10 of the ECHR.

The Hearing Panel noted that it was also required to consider whether there were relevant and sufficient reasons to justify the interference to the Respondent's right to freedom of expression and whether the restriction was proportionate to the legitimate aim being pursued. As such, the Hearing Panel was required to undertake a balancing exercise; weighing the right to freedom of expression enjoyed by the Respondent against any restriction imposed by a finding of a breach of the Code and application of a sanction.

In this case, the Hearing Panel concluded that the Respondent's comments and accusations were offensive, insulting and amounted to personal attacks. The Hearing Panel was of the view, therefore, that the Respondent's conduct was egregious. It concluded that the Respondent's remarks adversely affected the rights and reputations of the individual councillors to which they had been directed. The Hearing Panel found that the Respondent's conduct had the potential to undermine the public's confidence in local government and was a threat to both reputation of the council and the role of an elected member. The Hearing Panel determined, therefore, that the imposition of a restriction in the circumstances was relevant, sufficient and proportionate. The Hearing Panel found that the Respondent's conduct was unacceptable and concluded that, as such, it was satisfied that a finding of breach, and subsequent application of a sanction, was justified and would not amount to a contravention of Article 10 of the ECHR.

The Hearing Panel, having given careful consideration to the particular facts and specific circumstances of the case, determined that the Respondent, Councillor Mack, had breached paragraph 3.2 of the Councillors' Code of Conduct.

Evidence in Mitigation

The Respondent indicated that he did not recognise the Standards Commission and considered it to be a "kangaroo court", which had turned natural justice and fairness on its head. The Respondent advised he considered the whole complaint and Hearing process to be a scandalous waste of public money and that it was "nonsense on stilts". The Respondent confirmed that he did not intend to make any submission or lead any witnesses in respect of mitigation or the sanction to be applied.

SANCTION

The decision of the Hearing Panel was to suspend, the Respondent's entitlement to attend all meetings of Renfrewshire Council, and of any committee or sub-committee thereof, for a period of seven months with effect from 1 November 2017.

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

Reason for Sanction

In reaching their decision, the Hearing Panel noted that the Respondent declined to offer any submissions in mitigation.

1. The Hearing Panel considered it had been the Respondent's personal responsibility to comply with the Code at the time. The Hearing Panel noted that the Respondent had failed to do so, despite having signed a declaration confirming he would comply with its

requirements, and despite being aware at the time of the meeting in question that a complaint had been made against him in respect of a different meeting for a breach of the same paragraph of the Code.

2. The Hearing Panel noted that the Standards Commission, at a Hearing on 17 October 2016, had suspended the Respondent for three months from a Committee of the Council for a breach of the same provision of the Code in respect of the previous complaint. The Hearing Panel was aware, however, that a previous Hearing had taken place, and the suspension had been imposed, after the events in respect of this complaint had occurred.
3. The Hearing Panel noted that the Respondent had indicated that he refused, for 'theological reasons', to read the Code. The Hearing Panel found that the Respondent was entirely dismissive of the ethical standards framework, including the Code, the Commissioner for Ethical Standards and the Standards Commission.
4. The Hearing Panel was of the view that councillors should undertake a scrutiny role, represent the public and any constituents; and make political points in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and, or, unduly disruptive.
5. The Hearing Panel determined that the Respondent's behaviour was deliberate and serious in nature and was in furtherance of his own personal grievances. The Hearing Panel considered that the manner in which the Respondent had raised his views was unacceptable and, further, that his comments amounted to personal attacks on fellow councillors. As such, his behaviour could have undermined public confidence in local government.
6. The Hearing Panel found that the Respondent had been disrespectful towards the Provost, as chair of the meeting on 29 September 2016 and had, on numerous occasions, failed to comply with her rulings and had disrupted the meeting. As such, his sustained conduct at the meeting inhibited the Council from functioning effectively and was a threat to reputation of the council and the role of an elected member.

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: 25 October 2017



**Mr Michael McCormick
Chair of the Hearing Panel**