

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Angus House, Orchardbank, Forfar, DD8 1AN on 19 November 2018.

Panel Members: Mr Kevin Dunion, Chair of the Hearing Panel
Mrs Tricia Stewart
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 reference LA/An/2094 (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Richard Moore (the Respondent).

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 on 20 September 2018, 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 paragraphs 3.1, 3.2 and 3.3.

The relevant provisions are:

General Conduct

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.

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.

Preliminary Matters

The Hearing Panel noted that, before the Hearing, the CESPLS had submitted an application asking that the evidence of two witnesses be heard in private. The Respondent had been advised of the request and had been invited to make any representations on it. The Respondent had not submitted any representations on, or raised any objections to, the proposal. The Panel determined that it was

satisfied in the particular circumstances of the case, and in the absence of any submissions to the contrary, that hearing from the two witnesses in private would not cause any prejudice or unfairness. This was because both the Respondent and the Panel would still have the opportunity to put questions to them and would be able to test the veracity of their evidence. As such, any public and press present were asked to leave the room before the evidence of two individuals, identified as witness G and witness D was heard.

Evidence Presented at the Hearing

The CESPLS advised that the complaint concerned the Respondent's conduct towards two fellow elected members and two officers at a briefing event on 11 October 2017 in relation to the Angus Integrated Health & Social Care Partnership (Angus IJB) and the Angus Care Model. The CESPLS led evidence from the following four witnesses.

Councillor Bell: Councillor Bell advised that she had attended the event on 11 October 2017 in her capacity as an elected member who had been appointed to the Angus IJB. Councillor Bell advised that she was leaning forward reading a display panel on the proposed Angus Care Model when the Respondent put his hand down the back of her top and pulled her clothing. Councillor Bell stated that, in doing so, the Respondent made physical contact with her skin at the back of her neck. Councillor Bell advised that she had immediately stood up and turned around, at which point the Respondent had then taken a step back and addressed her by her first name. Councillor Bell advised that the contact made her feel disgusted, uncomfortable and angry. Councillor Bell advised that she did not challenge the Respondent immediately as she did not want to put officers present in an embarrassing situation, but that she had subsequently left the room and discussed the matter with an officer, witness D, who had witnessed the incident.

Councillor Bell stated that witness D had advised, when they left the room, that the Respondent had also touched her on the shoulder, back and hip at the event, which had left witness D feeling uncomfortable. Councillor Bell advised that she had then re-entered the room where the event was being held and had witnessed the Respondent place his arm around the shoulder of another officer, witness G. Councillor Bell contended that it was apparent that the Respondent's contact with witness G was unwelcome as witness G had immediately tensed her body.

Councillor Bell explained that she had sent the Respondent an email two days after the event outlining her concerns about his behaviour at the event and about verbal greetings he was in the habit of using. She had asked the Respondent to apologise to the officers he had touched. Councillor Bell confirmed that the Respondent had sent her a response email on 15 October 2017 in which he purported to apologise. Councillor Bell advised that the Respondent had also asked how he could contact the officers concerned to apologise to them and that she had directed him to a senior manager. Councillor Bell noted that the Respondent had stated in his email that he "wholeheartedly and unreservedly apologised for any upset and offence". She had felt, however, that the apology was not entirely unconditional as the Respondent had indicated that he was sorry "if" he had overstepped the mark or if someone had taken any remark he had made in a different way to that which was intended. Councillor Bell advised that despite her reservations, she had nevertheless accepted the apology. Councillor Bell indicated that she had been reluctant to pursue a formal complaint, but had felt compelled to support the one made by officers given the difference in the power dynamic between officers and elected members and also because she felt the incident involving her was evidence of a course of conduct.

Councillor Speed: Councillor Speed advised that she had attended the event on 11 October 2017 in her capacity as Chair of Angus IJB. Councillor Speed stated that she had been leaning over a table reading from an information panel, when the Respondent had made physical contact with her by approaching her from behind and leaning on her back. Councillor Speed advised she had not seen the Respondent approach and, as such, was startled and taken aback. Councillor Speed indicated she felt uncomfortable as the Respondent's behaviour was not indicative or reflective of the normal interactions between them. In addition, Councillor Speed advised that she had been concerned about how the incident would have looked to others present, particularly given the formality of the event and the fact that there were other politicians and senior officers present.

Witness G: Witness G, an officer, gave evidence to the effect that she had not met the Respondent before the event on 11 October 2017. Witness G advised that, at the event, the Respondent approached her display panel and had asked questions and made suggestions in respect of the content and layout of the information she was presenting. Witness G stated that that she had been leaning on a table making notes in respect of the Respondent's suggestions when he had proceeded to put one arm around her, at the top of her shoulder, and one arm around another female officer, and had stated in response to a question from another Council official that "these lovely ladies are taking care of me". Witness G indicated that she had been taken aback by the physical contact as she had not met the Respondent before and it was not the type of behaviour she would have expected from an elected member. She had subsequently raised her concerns regarding the incident at a meeting with a manager.

Witness D: Witness D, another officer, advised that she had worked with elected members for the best part of 20 years. Witness D stated that she had followed the Respondent into the room at the event on 11 October 2017 and had seen him reach out and grab Councillor Bell's clothing and pull her towards him. Witness D advised she had subsequently been speaking to the Respondent about the information being presented and why there was a need for a change to the way services were delivered, when he had put his hand on her shoulder. Witness D stated she had taken a half step back, whereupon the Respondent had touched her again at the top of her back. She had again taken a half step backwards when the Respondent then placed his hand on the middle of her back. Witness D advised that she had never experienced anything like it from other elected members and that she felt the physical contact was inappropriate. She had been left feeling uncomfortable. Witness D advised she had also felt disrespected and was sufficiently concerned to have felt compelled to review the Councillors' Code of Conduct later that evening, which was something she had never had cause to do previously during her career.

Witness D noted that when she had called the Respondent by his first name at the event he had reminded her to address him as Councillor Moore. Witness D accepted that the Respondent had been correct to do so as the use of elected members' first names, as encouraged by a previous administration, was no longer considered acceptable.

Witness D advised that a copy of an email the Respondent subsequently sent to a senior manager had been forwarded to her. Witness D advised, however, that she did not feel the email constituted an apology as the Respondent had referred in it to those he might have offended. Witness D stated that she considered this implied that the Respondent did not have insight into his conduct and its effect on others. In addition, the Respondent had indicated that if he offended officers in future, they should let him know, which suggested to her that he might repeat his conduct and, further,

that it was an officer's responsibility to remind an elected member about how to behave appropriately. Witness D stated that she did not consider that officers should be responsible for the conduct of elected members.

The Respondent: The Respondent gave evidence to the effect that he disputed Councillor Bell's version of events. The Respondent advised that he had simply flicked Councillor Bell's top in an effort to greet her and get her attention at the event on 11 October 2017. The Respondent contended that he had not, in any way, placed his hand inside Councillor Bell's clothing. The Respondent indicated that Councillor Bell had not seemed upset at the time and instead had introduced him to some officers who were present. The Respondent accepted that Councillor Bell had provided a clear description of the incident in her email to him of 13 October 2017 and that this differed to his recollection. The Respondent contended, however, that he had not disputed Councillor Bell's version of events at the time as he had only skim read her description and had instead focused on the part of the email where she had requested an apology.

The Respondent confirmed he had leaned over Councillor Speed at the event, but advised that he had not touched her and that contact had only been made as a result of her then standing up. The Respondent advised that he was a tactile person and had only been trying to be friendly. He was sorry his actions had been misinterpreted. The Respondent further advised that when he became aware of Councillor Speed's concerns he had, on a number of occasions, invited her to meet with him so that he could explain his actions and apologise, but that she had not agreed to do so.

The Respondent accepted he may have touched officers at the event on 11 October 2017, albeit it had no recollection of who and how. The Respondent advised that if he had made physical contact with officers, he would only have touched them on their shoulders or top of the back to steer or guide them towards something he wanted to draw to their attention. The Respondent indicated that his intention at the event was to be informal and friendly and to demonstrate that councillors and officers were all working as one team. The Respondent argued, nonetheless, that there was no way that Councillor Bell could have witnessed him touching officers when she returned to the room, as she had contended, given her alleged position and the height of the display boards.

The Respondent further accepted he probably had referred to officers as "lovely ladies" or "dears" but advised the use of such terms was complimentary and that he had, in no way, intended to be derogatory or to denigrate the officer concerned. The Respondent confirmed that he had offered to apologise to any officers affected by letter or face to face, but had been advised to send an email to a senior manager instead. The Respondent indicated that had been unable to provide a direct apology in this email as, at that stage, he had not been provided with any specifics in respect of the concerns about his behaviour.

Submissions made by the CESPLS

The CESPLS noted the event on 11 October 2017 had been a formal one, where the Respondent would be expected to behave in the manner expected of an elected member. The CESPLS argued that he had failed to do so and had instead behaved inappropriately. While the CESPLS noted that the Respondent's version of events at the meeting differed to that of the other witnesses, it was nevertheless apparent that he had initiated physical contact with all four, which was unwanted, unexpected and had caused them to feel uncomfortable. The CESPLS argued that such unwanted physical contact and violations of personal space was entirely inappropriate in a workplace. The

CESPLS further argued that the use of language and terminology such as “lovely ladies” and “dears” towards female officers was patronising, sexist and unacceptable in a formal setting. The CESPLS indicated that if the Respondent had intended his conduct to be friendly then he was seriously misguided as it had clearly caused offence.

The CESPLS noted that the Standards Commission’s Advice Note for Councillors on Bullying and Harassment made it clear that elected members were responsible for their own behaviour and, further, that harassment was any unwelcome conduct which had no legitimate workplace purpose and which made someone feel offended, humiliated, intimidated, frightened and / or uncomfortable at work. The CESPLS further noted that in her independent inquiry report on bullying and harassment of House of Commons staff, Dame Laura Cox had stated that typical features of bullying and harassment was behaviour that was unwarranted, unwelcome, intimidating, degrading, humiliating or offensive and that it was the “the deed itself and its impact on the target that mattered, not the intention of the perpetrator”. The CESPLS accepted that neither the Advice Note nor the Report had been published at the time of the events in question but argued, nonetheless, that their contents simply reiterated a well-established position and, as such, should not be unfamiliar to the Respondent.

The CESPLS contended that, in failing to treat both fellow elected members and officers with respect at the event on 11 October 2017, the Respondent had contravened paragraphs 3.1, 3.2 and 3.3 of the Code.

Submissions made by the Respondent

The Respondent reiterated that his intention was to be informal, friendly and tactile at the event on 11 October 2017 to demonstrate his willingness to work with colleagues and officers alike, and that he was sorry his conduct had been misinterpreted. The Respondent advised that his approach and the language he had used was intended to be complimentary. He had not been aware that it could be perceived as being offensive or disrespectful until this was subsequently brought to his attention.

The Respondent advised that he had been in the habit of making physical contact with everyone, regardless of gender and that in doing so, he was either attempting to be friendly or was emphasising a point / directing an individual to something. The Respondent advised that he was extremely saddened that his actions had been misinterpreted.

The Respondent argued that the Panel should take into account the fact that his conduct was inadvertent, in that he had not intended to be disrespectful, and also the cultural differences between Yorkshire (where he was from) and Angus. The Respondent noted that it was common to be tactile in Yorkshire and to use language such as “lovely ladies” and “dears” in everyday situations as complimentary and respectful terms of endearment. The Respondent noted that the respect provisions in the Code did not expressly prohibit physical contact or state that informal addresses and phrases could not be used. As such, he had not realised that there was such a cultural discrepancy and that his behaviour could potentially be perceived as being disrespectful.

DECISION

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

The Panel found that:

1. The Councillor's Code of Conduct applied to the Respondent.
2. The Respondent had breached paragraphs 3.1, 3.2 and 3.3 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel found the evidence of the four witnesses for the CESPLS to be credible and convincing and, as such, it preferred their versions of events to that given by the Respondent. The Panel noted, in particular, in respect of the incident involving Councillor Bell, that she had described her version of what had happened in her email to the Respondent of 13 October 2017 and that he had not disputed her description at the time. The Panel would have expected him to have done so had it been entirely different to his recollection of events.

The Panel further noted that Councillor Bell's evidence had been supported by witness D. The Panel was satisfied, in respect of the incident involving Councillor Speed that, regardless of where or how the contact occurred, it had been a clear and unwarranted invasion of her personal space.

The Panel was satisfied that, on balance of probabilities, the Respondent had made unwarranted and inappropriate physical contact with all four witnesses at the event on 11 October 2017. The Panel was further satisfied that it was the Respondent's personal responsibility to be respectful and to have an awareness of the impact or potential impact of his behaviour on others. The Panel considered that there were certain and universal standards of behaviour expected in the workplace and that this included avoiding any unprofessional and inappropriate behaviour, such as unwarranted and unwelcome physical contact.

The Panel was further satisfied that the Respondent's behaviour towards witnesses G and D, including references to them being "lovely ladies" in the context of a workplace and formal meeting, where the officers were acting in an official capacity and undertaking work related functions, was patronising and demeaning. The Panel did not accept that the Respondent would have made analogous remarks to male officers.

The Panel noted that the Respondent's position was that he was trying to be informal and friendly and that his use of language and particularly terms such as "lovely ladies" and "dears" was common in Yorkshire where he was from and, as such, was culturally justified. The Panel dismissed this justification as being totally without merit and agreed that the Respondent should have realised that their use towards female officers in a formal environment would be likely to be perceived as being humiliating and degrading. The formal nature of the event would be apparent to the Respondent, as evidenced by his reminder to Witness D to refer to him as Councillor Moore rather than by his first name.

The Panel agreed with the CESPLS that it was the conduct itself (and whether it was justified, appropriate and reasonable in the circumstances), along with the impact or potential impact it could have on the recipient that mattered, regardless of intent. The Panel was of the view that the Respondent was personally responsible for his own conduct and that he should have been aware that his behaviour could be offensive to the elected members and officers in question.

The Standards Commission has produced an Advice Note outlining the approach the its Hearing Panels will take when issues that concern the application of Article 10 of the European Convention on Human Rights and the right to freedom of expression arise. A Hearing Panel will consider firstly whether the facts found lead it to conclude, on the balance of probabilities, that the Respondent has failed to comply with the applicable Code of Conduct. If so, the Panel will then consider whether such a finding in itself is *prima facie* a breach of the right to freedom of expression under Article 10, before it will then consider whether any interference to freedom of expression it is considering making, in determining a breach of the Code of Conduct has occurred and in applying a sanction, is justified. In this case, the Panel determined, for the reasons outlined above, that the facts found led it to conclude, on the balance of probabilities, that the Respondent had failed to behave in a respectful manner at the event on 11 October 2017, therefore, that his behaviour amounted, on the face of it to a contravention of paragraphs 3.1, 3.2 and 3.3 of the Councillors' Code of Conduct.

The Panel noted that neither party had suggested that the Respondent's right to freedom of expression would, in any way, be affected by such a finding. The Panel was of the view, in any event, that the issue did not arise in relation to its conclusion that the Respondent had been disrespectful by making unwelcome and unwarranted physical contact with the two councillors and two officers concerned. The Panel was further of the view that any interference with the right to freedom of expression in respect of the way the Respondent addressed the officers would be justified as the Respondent's remarks had not been made in a political context or in respect of a debate on questions of public interest and, therefore, the enhanced protection afforded to politicians in such situations did not apply. In addition, the Panel considered that any interference with the Respondent's right to freedom of speech was justified in the circumstances, as the aim of such a restriction was to protect the mutual bond of trust and confidence between members and officers and to ensure officers were not subject to demeaning and degrading remarks. The Panel was further satisfied that any restriction would not have a disproportionate effect, for example on the Respondent's ability to make a political point or to undertake his scrutiny role in an open and transparent manner, as there was nothing to prevent him from addressing officers and trying to get their attention in a more respectful manner.

The Panel concluded, therefore, that the Respondent had breached paragraphs 3.1, 3.2 and 3.3 of the Councillors' Code of Conduct.

The Panel noted that there was a further ground of complaint concerning an unrelated incident. However, as no evidence was led on the further ground of complaint, the Panel did not find it to be upheld.

Evidence in Mitigation

The Respondent indicated that when Councillor Bell had raised the issue of his behaviour towards her at the event on 11 October 2017, he had responded with a full apology, which she had accepted. The Respondent reiterated that he had offered to apologise to the officers face to face and that as he had not been aware of the exact nature of their concerns, he had been unable to address these specifically in his written apology.

The Respondent advised that he had not intended to be disrespectful or to cause any offence. He had been unaware that there was such a cultural difference between Angus and Yorkshire. The

Respondent advised that he had amended his behaviour and how he addressed people since the concerns had been raised, and that he was now much more formal in his approach.

The Respondent indicated that while he appreciated the use of language changed with time, he had not considered that the use of a form of address that inferred respect, such as “lady” combined with a complimentary term such as “lovely” could now be perceived as disrespectful or degrading by some people.

The respondent advised that he had served on the City of York Council for eight years, without any complaint being made against him. He further advised that he had assisted various charities over the years, including being a fundraising volunteer at a local hospice in York for 21 years before his move to Scotland.

The Respondent indicated that the length of time for the matter to reach a Hearing had caused both physical and mental strain for him and his wife. The Respondent further contended that, as a result of the allegations, he had not been appointed to either Angus IJB or Tayside Health Board. In addition, although the Leader of the Council had wished to recommend that the Respondent become Convener of the Tayside Valuation Board, he had felt unable to proceed while the complaint was ongoing. The Respondent noted that he had lost out on potential income as a result of these missed opportunities.

The Respondent submitted two character references.

SANCTION

The decision of the Hearing Panel is to suspend the Respondent’s entitlement to attend all meetings of Angus Council and of any committee or sub-committee thereof, for a period of three months with effect from Friday, 23 November 2018.

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

Reasons for Sanction

In reaching their decision, the Hearing Panel noted:

- That the Respondent proffered an apology to Councillor Bell and the officers concerned in an email of 15 October 2017.
- That the Respondent further advised that he had amended his behaviour in light of the concerns raised.
- The character references submitted on behalf of the Respondent and his evidence in respect of his contribution to charities and public life.

However, the Panel:

- Found that the Respondent had been disrespectful towards fellow councillors and officers in four separate incidents. The Panel was concerned that while the Respondent advised he had amended his language and conduct, he did not appear to understand or be cognisant of the impact of his behaviour on others. The Panel was particularly concerned that the Respondent had not demonstrated insight into how the language he had used in a professional environment would have made female colleagues and officers feel and, instead had sought to minimise this. The Panel was further concerned that the Respondent had not demonstrated insight into the fact that unwarranted physical contact was wholly inappropriate, particularly in the workplace.
- Considered it was the Respondent's personal responsibility to abide by the terms of the Code and to ensure he behaved in a respectful manner towards fellow elected members and officers. The Panel noted that a failure on the part of the Respondent to do so had the potential to disrupt effective working relations between elected members and officers and, further, was a threat to reputation of the Council and the role of an elected member.

RIGHT OF APPEAL

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

Date: 22 November 2018



**Mr Kevin Dunion
Chair of the Hearing Panel**