

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in City Chambers, City Square, Dundee on 13 and 14 June 2016.

Panel Members: Mrs Lindsey Gallanders, 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/D/1714 (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Ken Guild (“the Respondent”).

The CESPLS was represented by Mr David Sillars, Senior Investigating Officer. The Respondent was represented by Mr Scott Martin, solicitor.

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 at a public meeting of the Council’s Policy and Resources Committee on 12 February 2015 and, in particular, that he had contravened paragraphs 3.14 and 3.15, which concern confidentiality.

The relevant provisions were:

Confidentiality Requirements

3.14 Council proceedings and printed material are generally open to the public. This should be the basis on which you normally work, but there may be times when you will be required to treat discussions, documents or other information relating to the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

3.15 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your individual use as a councillor and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

The CESPLS submitted a report to the Standards Commission on 21 January 2016 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended. In essence, the conclusions reached by the CESPLS were that the Respondent had disclosed confidential information, in contravention of paragraphs 3.14 and 3.15 of the Councillors’ Code of Conduct.

Preliminary Matters

Both parties identified the witnesses they intended to call. The CESPLS's representative requested that the Hearing be part heard and then reconvened at a later date in order for the Hearing Panel to hear from a further witness, Councillor Keenan, who was currently unavailable. The CESPLS's representative indicated it was a matter of 'fundamental fairness' for him to be able to call Councillor Keenan. However, the Hearing Panel declined the request on the grounds that the Hearing had already been postponed twice, once at the request of the Respondent and once at the request of the CESPLS. In addition, the Standards Commission had advised the CESPLS by email of 26 April 2016 that the Hearing Panel would be prepared to hear Councillor Keenan's evidence by other means, such as by affidavit. In the circumstances, the Hearing Panel was of the view that the public interest in the expeditious disposal of the case outweighed any potential inconvenience or prejudice to the parties that would be caused by the absence of any evidence from Councillor Keenan.

Evidence Presented at the Hearing

The Hearing Panel heard evidence to the effect that the complaint had been made by an employee of the Council, who, at the time of the events in question, had been the Principal Teacher of a Young Mothers' Unit based at Menzieshill High School, Dundee. The complaint concerned remarks made by the Respondent at a public meeting of the Council's Policy and Resources Committee on 12 February 2015 to the effect that the complainant had signed herself off from work for one month due to ill health. The CESPLS's representative argued that while the Respondent had not specifically named the complainant, the unique nature of her post and public awareness of the budget proposal being considered, meant that she was clearly identifiable. Matters relating to her health were confidential and should not have been disclosed by the Respondent during the meeting.

The CESPLS's representative contended that the Respondent had not disclosed the information about the complainant in the course of dealing with an operational issue. He had done so for political advantage; namely to help ensure the Administration's budget proposal was approved. The CESPLS's representative argued that the complainant had an expectation that information about her attendance and health would be kept confidential. In breaching this confidence for political advantage, the Respondent had contravened paragraphs 3.14 and 3.15 of the Councillors' Code of Conduct.

The Hearing Panel heard that when the Respondent visited the Unit, the complainant had only been absent for one day. She returned to work shortly after the Committee meeting on 12 February 2015 and, was not, therefore, absent for one month. The Hearing Panel further heard that, contrary to the remarks made by the Respondent, the complainant had not signed herself off. A General Practitioner had certified her absence.

The CESPLS's representative led four witnesses, being the Council's Chief Executive, Monitoring Officer, Head of Education and Councillor McCready.

The Chief Executive confirmed that the purpose of the Policy and Resources Committee meeting on 12 February 2015 was to set the Council's annual budget. The budget proposed by the

Administration included a proposal to relocate the Young Mothers' Unit and to remove the complainant's post. The proposal had attracted public interest and press scrutiny and concerns had been expressed by some opposition councillors that the intention was to close rather than relocate the Unit. The Chief Executive advised that the Respondent had referred to a recent visit he had made to the Unit and made remarks to the effect that the complainant 'had signed herself off for a month' and that 'the Unit continues to function'. The Chief Executive was unable to recall exactly what words the Respondent had used, but confirmed he was content the comment had been made in the context of debating whether the role was required, as opposed to being in any way disrespectful of, or disparaging about, the complainant.

The Chief Executive advised that, following the meeting, Councillors McCready and Keenan had met with him and the Monitoring Officer and had expressed concerns that the Respondent had disclosed confidential information about a council officer in public. The Chief Executive indicated that he had considered writing to all the Council's elected members to remind them of their responsibilities under the Councillors' Code of Conduct. However, having reflected on the matter, the Chief Executive had reached the conclusion that the Respondent's comment had not identified the officer or been disrespectful as it had been made in the context of how the service being provided by the Unit could be delivered in a different way. As such, he had decided that it was not necessary to issue a reminder to all elected members.

The Monitoring Officer could not remember the exact words the Respondent had used at the meeting, but confirmed the tenor of them was that the Unit's Principal Teacher was off sick and the Unit was functioning effectively in her absence. His view, both at the time and now, was that the information disclosed by the Respondent had not been confidential. It was not uncommon for other council officers, school staff, parents and pupils to be told when a teacher was absent from work due to ill health. The Monitoring Officer considered that no data protection issues had arisen because the information had been imparted to the Respondent for legitimate operational reasons and because he had then disseminated it in the context of explaining why he considered there would be no diminution in the service provision if the post was redeployed.

The Head of Education indicated that the Respondent had made an informal visit to the Young Mothers' Unit with another councillor on 5 February 2015. The Head of Education had met the Respondent at the Unit and had advised him that the complainant was absent from work. The Head of Education was unsure as to exactly what he had told the Respondent, but advised it was to the effect that he would not be able to meet with the complainant that day as she was going to be off work for some time. The Head of Education advised that it had not crossed his mind at the time that the information was in any way confidential as a teacher's absence was always widely known within a school. The Head of Education indicated he had disclosed it because the Respondent clearly had an expectation he would meet all staff in the Unit that day.

Councillor McCready gave evidence to the effect that while the Respondent may just have referred to the complainant having 'signed herself off' and had commented that the Unit was working well without her, the clear impression he had as a result was that the complainant was off sick. Councillor McCready advised he had immediately raised a point of order asking that the Respondent withdraw his remarks. Councillor McCready stated that he had done so because he considered it was inappropriate to disclose personal information pertaining to a council officer at a public meeting. However, the Committee Chair had dismissed his point of order. Councillor McCready advised that while he remained concerned that the Respondent had shared confidential

information in support of an administration proposal, he would have considered the matter to have been at an end if his point of order had been upheld and the remark withdrawn.

The Respondent's representative led evidence from the Respondent himself. The Respondent indicated that it was his understanding from his visit on 5 February 2015 that the complainant's absence was common knowledge amongst other staff in the Unit and the wider school. The Respondent accepted that he had referred to the complainant being absent but disputed the contention that he had referred to her health in doing so. He argued that employees could sign themselves off for reasons other than ill health. The Respondent further argued that the information was not, in any event, confidential, given the complainant's absence had been general knowledge within the Unit and school at the time. He contended that he had simply made a factual statement in order to counter other claims made at the meeting to the effect that the Unit could not operate effectively without the Principal Teacher post. The Respondent stated that his remarks were about the viability of the post and not about the individual who held it. At no stage had he referred to the complainant by name.

The Respondent disputed the notion that the phrase 'signed off' was synonymous with ill health or that he had disseminated confidential information. While he accepted the complainant had in fact been signed off work by a General Practitioner and had not in fact been absent for a month, having returned to work shortly after the Policy and Resources Committee meeting, the Respondent indicated his statement had been based on what he had been told during his visit to the Unit on 5 February 2015. At the time of the meeting, he had no reason to think this information was inaccurate or confidential.

The Respondent's representative argued it was clear from the evidence led that neither the Council itself nor its officers had treated the information as confidential. It was not in dispute that the Respondent had not been so advised. The Respondent's representative contended that information about the complainant being absent from work was not confidential given she had not been personally named and given that, in any event, her absence would have been widely known in the Unit and school itself. The Respondent's representative further contended that the Respondent had not used the information for either personal or party political purposes; he had simply made the statement in order to rebut objections to a proposal.

DECISION

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 Hearing Panel found as follows: -

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Hearing Panel found the Respondent had breached paragraphs 3.14 and 3.15 of the Code, which oblige councillors to observe and comply with requirements to keep certain information confidential.

The Hearing Panel determined:

- It was unable to conclude whether or not the Respondent had referred to the post holder of Principal Teacher of the Young Mothers' Unit as being 'signed off sick' at the Policy and Resources Committee of Dundee City Council on 12 February 2015; however, it concluded that those present readily understood his comments to the effect that she had signed herself off to mean she was absent from work due to ill health. The Hearing Panel considered this was a logical and reasonable conclusion.
- While the complainant had not been named, she was readily identifiable due to the nature of the post.
- The Respondent had been provided with the information when visiting the Unit on 5 February 2015. Whilst he was not explicitly advised this was confidential information, he should nonetheless have been aware it was personal information about a council employee and was, therefore, confidential. The complainant had a reasonable expectation that personal information about her attendance and health status would be kept confidential and not be publicly disseminated.
- The information was of a private nature and while it may have been known to other employees and service users, it was not in the public domain and as such should not have been disclosed in the manner in which it was. The Hearing Panel concluded the information had not been disclosed by the Respondent for operational reasons. Instead, his remarks had been made in the context of eliciting support for the Administration's budget proposals.
- 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 paragraphs 3.14 and 3.15 of the Code.

Evidence in Mitigation

The Hearing Panel heard that the Respondent had been a councillor for over 22 years and had never before been the subject of a complaint.

The Respondent's representative reiterated that the Respondent had not considered the information to be confidential when he made his remarks in the context of a Fraught Committee meeting.

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

In reaching their decision, the Hearing Panel:

1. Noted the Respondent's statement in mitigation and, in particular, that he had never previously been the subject of a complaint.
2. Recognised the remark had been made in the context of a fraught public meeting.
3. Noted the contribution the Respondent has made to public life including over 22 years as a councillor.

However the Hearing Panel:

4. Found there had been a clear breach by the Respondent of the Councillors' Code of Conduct in respect of confidentiality.
5. Emphasised that councillors must comply with the Code and must take care when dealing with information of a confidential nature.

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: 17 June 2016

L. M. Gallanders

**Lindsey Gallanders
Chair of the Hearing Panel**