

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the East Service Centre of the Fire and Rescue Service, 21 Claylands Road, Newbridge on 1 March 2017

Panel Members: Mrs Julie Ward, 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 reference NB/SFRS/1919 concerning an alleged contravention of the Scottish Fire and Rescue Service Board Members’ Code of Conduct (“the Code”) by Mr Neil Pirie (“the Respondent”).

The CESPLS was represented by Mr David Sillars, Senior Investigating Officer. The Respondent represented himself.

COMPLAINT

A complaint was received by the CESPLS about the alleged conduct of the Respondent. The substance of the allegation was that the Respondent had contravened the Scottish Fire and Rescue Service Board Members’ Code of Conduct and, in particular, the provision relating to confidentiality.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 3.5 of the Scottish Fire and Rescue Service Board Members’ Code of Conduct.

The relevant provisions were:

3.5 Confidentiality Requirements

There may be times when you will be required to treat discussions, documents or other information relating to the work of the SFRS in a confidential manner. You will often receive information of a private nature which is not yet public, or which perhaps would not be intended to be public. You must always respect the confidential nature of such information and comply with the requirement to keep such information private.

It is unacceptable to disclose any information to which you have privileged access, for example, derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for the purposes of personal or financial gain or for political purposes or used in such a way as to bring the SFRS into disrepute.

The CESPLS submitted a report to the Standards Commission on 8 November 2016 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

Joint Statement of Facts

The CESPLS and Respondent submitted a Joint Statement of Facts on 22 February 2017, which outlined the parts of the CESPLS’s Report that were agreed. The Hearing Panel noted that the

Respondent accepted the CESPLS's Report with the exception of the conclusion that the information disclosed had been confidential in nature.

Submissions made at the Hearing

The CESPLS's representative outlined the facts as set out in the CESPLS's Report. He explained that, following a previous and publicly available decision by the Scottish Fire and Rescue Service to sell its premises at Lauriston Place, Edinburgh, its Board Members, including the Respondent, had been provided with a report in advance of a private meeting on Thursday, 30 June 2016 containing information in respect of the proposed sale. This included information in respect of a valuation undertaken on the property. The accompanying instructions advised Board Members that the paperwork regarding the proposed sale was 'private'. In addition, the Report itself was marked as 'restricted'. The CESPLS's representative advised that, at the outset of the meeting on 30 June 2016, the Chair invited Board Members to respect the confidentiality of matters under discussion and they had agreed to do so. The CESPLS's representative indicated that the meeting concluded with a decision that the property was to be marketed through named selling agents with immediate effect. The property was subsequently placed on the market the following Monday, being 4 July 2016.

The CESPLS's representative advised that in the afternoon of 30 June 2016 after the meeting concluded, the Respondent, in the company of another Board Member, met an acquaintance, who was a property developer. The Respondent advised the developer that the property would be marketed imminently and also disclosed the name of the selling agents. The developer then contacted the selling agents to ask for details of the sale who, in turn, contacted officers of the Scottish Fire and Rescue Service.

While the CESPLS's representative accepted that the disclosure of the information had no practical impact on the marketing of the property, he noted that officers were concerned that it may have given the developer an unfair advantage over other bidders. The CESPLS's representative argued that the information disclosed by the Respondent to the developer was confidential in nature. It was identified and given such status by the Board and, therefore, it was information that the Respondent was required to keep private until the Board stated otherwise, regardless of the fact that the decision to sell the property on the open market was already in the public domain. The CESPLS's representative contended that, in failing to respect the requirement to keep the information confidential, the Respondent contravened paragraph 3.5 of the Scottish Fire and Rescue Service Board Members' Code of Conduct.

The Respondent accepted that that he made the statements attributable to him to the developer but explained that it was a chance meeting and not one that had been pre-arranged. He had disclosed the information in response to being asked by the developer when the property was going to be marketed.

The Respondent indicated he understood that other information provided in the report and discussed at the Board meeting concerning the valuation and identity of another potential purchaser was confidential. However, the Respondent argued that the only information he had disclosed, concerning the fact that the property was to be put on the market imminently and the name of the selling agents, was not confidential. It was already in the public domain that the property was to be publicly sold. In addition, the Respondent contended that the decision taken

at the meeting to market the property ‘with immediate effect’ meant that it was incumbent on the Scottish Fire and Rescue Service to have done so straightaway, meaning that no advantage could have been gained from knowing such a decision had been made.

The Respondent further argued that, in any event, he had a discretion under paragraph 3.5 of the Code to decide what should or should not be made available to outside bodies or individuals. In this case, he had exercised this discretion in determining that the information was not intrinsically confidential. The Respondent concluded, therefore, that there been no breach of paragraph 3.5 of the Scottish Fire and Rescue Service Board Members’ Code of Conduct.

DECISION

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing by the CESPLS’s representative and the Respondent.

The Hearing Panel found as follows: -

1. The Scottish Fire and Rescue Service Board Members’ Code of Conduct applied to the Respondent.
2. The Hearing Panel found the Respondent had not breached paragraph 3.5 of the Scottish Fire and Rescue Service Board Members’ Code of Conduct.

The Hearing Panel found that the Respondent, as a member of the Scottish Fire and Rescue Service’s Board received papers for a private meeting of the Board on 30 June 2016, which were accompanied by covering instructions stating that agenda items 13 and 14, concerning the disposal of the Service’s premises at Lauriston Place, Edinburgh were restricted and private. These papers contained commercially sensitive information such as information on the valuation of the property and other potential bidders and were, therefore, marked as ‘restricted’. The Hearing Panel further found that at the meeting on 30 June 2016, Board Members were invited, and agreed, to treat discussions on the matter as confidential.

The meeting concluded with a decision that the property should be marketed through named selling agents with immediate effect. The property was then placed on the market the following Monday, being 4 July 2016.

The Hearing Panel found that it was not in dispute that on the afternoon of Thursday, 30 June 2016, following the conclusion of the meeting, the Respondent had a chance meeting, while in the company of another Board Member, with an acquaintance who was a property developer. When the developer, who was aware of the public knowledge that the property was to be sold, asked when it was going to be placed on the market, the Respondent responded to the effect that the property would be marketed imminently. He further advised the developer of the name of the selling agents.

The Hearing Panel noted that it was also not in dispute that, later that afternoon, the developer contacted the selling agents, who in turn contacted officers of the Scottish Fire and Rescue Service. This contact gave rise to concerns as expressed by an officer in an email of 4 July 2016 to a senior officer. The Hearing Panel noted that the officer stated that their concern was not with

the fact that the developer had 'been afforded early information on the marketing agent, as this was to become public knowledge on Monday 4 July 2016 anyway', but rather that 'the valuation reports and the conversations relating to the interest of other parties' may have been made shared with the developer.

The Hearing Panel indicated it understood why officers of the Scottish Fire and Rescue Service were concerned, on receiving the telephone call from the developer, that information may have been disclosed which gave the developer an unfair advantage.

The Hearing Panel noted, however, that there was no suggestion that the Respondent disclosed to the developer any details in respect of the marketing of the property, such as the valuation, potential sale price or identity of any interested parties. It was accepted by the CESPLS's representative that the investigation undertaken demonstrated that no such information was provided by the Respondent to the developer.

The Hearing Panel noted, therefore, that the alleged breach only concerned the disclosure of the imminence of the sale and the identity of the selling agents. The Hearing Panel was required to consider whether this amounted to a breach of the Board's requirement for confidentiality.

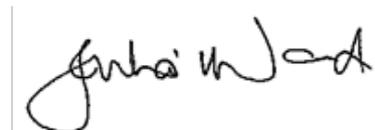
The Hearing Panel determined that while it had been made clear to the Respondent that the information supplied to the Board at the meeting on 30 June 2016 was private and there was an explicit instruction to treat the matters being discussed as confidential, it did not accept the argument that only the Board could determine information it had deemed confidential was no longer so. The Hearing Panel was of the view that information is not necessarily confidential if it is already in the public domain. In addition, even if information is confidential at a certain point, it can cease to be confidential with the passage of time.

The Hearing Panel concluded that, in this case, the information that the property was to be sold on the open market was already in the public domain and the names of the selling agents were to become public knowledge the following Monday. Given this, that the decision had been that the property was to be marketed with immediate effect and that the Respondent had not, in any event, disclosed the exact date the property was to be advertised, the Hearing Panel concluded that there was nothing in the information he had shared that was essentially confidential.

The Hearing Panel further determined that there was no evidence or suggestion of the Respondent or any third party accruing any personal or commercial gain from the disclosure.

The Hearing Panel therefore concluded that, in the circumstances, the Respondent had not breached paragraph 3.5 of the Code.

Date: 3 March 2017



**Mrs Julie Ward
Chair of the Hearing Panel**