

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Aberdeenshire Council, Woodhill House, Westburn Road, Aberdeen on 21 June 2017**

**Panel Members:** Mrs Julie Ward, Chair of the Hearing Panel  
Mrs Lindsey Gallanders  
Mrs Tricia Stewart

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/As/1963 & 1993 (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Alexander Duncan (“the Respondent”).

The CESPLS represented himself at the Hearing, as did the Respondent.

### **COMPLAINT**

The Respondent had referred himself to the CESPLS. In addition, a further complaint had been made about the alleged conduct of the Respondent in relation to the same circumstances. The CESPLS had, therefore, investigated both complaints together. The substance of the complaints was that the Respondent had contravened the Councillors’ Code of Conduct and, in particular, the provisions relating to using council facilities, seeking preferential treatment and lobbying other councillors.

The CESPLS investigated the matter and concluded that the Respondent had breached paragraphs 3.16, 3.19 and 7.10 of the Councillors’ Code of Conduct.

The relevant provisions were:

#### *Use of Council Facilities*

*3.16 The Council will normally provide facilities to assist councillors in carrying out their duties as councillors or as holders of a particular office within the Council. This may involve access to secretarial assistance, stationery and equipment such as telephones, fax machines and computers. Such facilities must only be used in carrying out Council duties in accordance with your relevant Council’s information technology, communications and member support policies or for incidental personal use as authorised by your Council and not related in any way to party political or campaigning activities. Where the Council recognises party political groups, assistance to such groups is appropriate in relation to Council matters but must not extend to political parties more generally and you should be aware of and ensure the Council complies with the statutory rules governing local authority publicity.*

#### *Dealings with the Council*

*3.19 You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, ratepayer, tenant, recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any*

*action which could lead members of the public to believe that preferential treatment is being sought.*

#### *Decisions on Planning Matters*

*7.10 You must never seek to pressure planning officers to provide a particular recommendation on any planning decision and you should not seek privately to lobby other councillors who have a responsibility for dealing with the application in question.*

The CESPLS submitted a report to the Standards Commission on 30 March 2017, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

#### **Joint Statement of Facts**

The Respondent and CESPLS signed a Joint Statement of Facts on 5 and 7 June 2017 respectively, which outlined the parts of the CESPLS's Report that were agreed. The Hearing Panel noted that it was not in dispute that a company, of which the Respondent was a partner, submitted a planning application for a wind turbine, which had been considered by the Banff and Buchan Area Committee (the Committee) at a meeting on 16 August 2016 and was due to call again at a meeting on 6 September 2016. The Hearing Panel heard that it was also not in dispute that the Respondent sent two emails from his Council email address, which were signed off by him as a councillor, to seven out of nine members of the Committee on 4 September 2016 putting forward some points in favour of the planning application. The Respondent's standard sign off as a councillor was included at the end of both emails.

The Hearing Panel further noted that the application in respect of the wind turbine called at the Committee meeting on 6 September 2016.

#### **Submission made at the Hearing**

The CESPLS outlined the facts as set out in his Report. He explained that the Respondent's company's planning application for the wind turbine had previously been approved by the Committee at a meeting on 26 May 2015. However, the decision had been judicially reviewed and, following a decision by the Council not to contest the legal action, had been remitted back to the Committee to consider *de novo*.

At their meeting on 6 September 2016, the Committee granted planning permission by five votes to four. After the meeting, a council officer discovered a copy of the Respondent's first email of 4 September 2016 that had been left in the Council Chamber.

The CESPLS indicated that the Respondent had sent both emails on 4 September 2016 despite having received an email from the Council's Monitoring Officer on 23 November 2015 in which she had referred to the judicial review proceedings in respect of the planning application and had reminded him not to use his council email account or to refer to himself as a councillor when dealing with personal matters. The Monitoring Officer asked the Respondent to note there 'could be ramifications in terms of the Code of Conduct' if he did so. She advised the Respondent to ensure that he kept his personal business and the planning matter separate from his role as a councillor.

CESPLS also drew the Hearing Panel's attention to an email sent by the Monitoring Officer to all Aberdeenshire councillors on 1 February 2016 reminding them about the Council's Acceptable Use of ICT policy. In this, the Monitoring Officer reminded elected members that while they were permitted to use Council computers and telephones for incidental personal use, the use of Council email addresses for personal use was prohibited by the Council's Code of Practice. The CESPLS noted that while the Respondent had indicated he did not recall seeing this email, he had nevertheless accepted that he had used a Council computer and his council email address to send both emails of 4 September 2016. The Respondent had admitted, therefore, that he had breached paragraph 3.16 of the Councillors' Code of Conduct. The CESPLS noted that in his first email of 4 September 2016, the Respondent had indicated that he was merely putting forward the company's position and was 'in no way' trying to influence the decision. However, earlier in the email the Respondent had indicated why 'speaking as a councillor' who had made many decision on wind turbine applications; he considered the site being proposed was suitable for one.

The CESPLS noted that in both emails the Respondent had made points in favour of the planning application. He argued, therefore, that the Respondent had sought preferential treatment and had sought to lobby other councillors privately. As such, the CESPLS contended that the Respondent had also contravened paragraphs 3.19 and 7.10 of the Councillors' Code of Conduct.

The Respondent advised that he had only sent the emails of 4 September 2016 to seven out of the nine Committee members as he considered there was no point in sending the correspondence to the remaining two Committee members as they never supported wind turbine applications in the area, regardless of their merits.

The Respondent advised his company had initially lodged the planning application on 23 August 2013 via a firm of agents. However, due to delays, it had not been considered by the Committee until some 21 months later. After the matter had been remitted back to the Committee to consider *de novo*, an objector had made a number of incorrect assertions when it was considered at a meeting on 16 August 2016. The Committee had deferred its decision at that meeting in order to make a site visit. The Respondent indicated that following this, he had attempted to contact the agents to ask them to make representations on his behalf when the application called again at the meeting on 6 September 2016. However, the agents had not responded and the Respondent subsequently discovered the firm had gone into liquidation.

The Respondent advised that he had a hospital appointment on the day of the Committee and his son, who was also a partner in the company, had been away with work. As such, there had been no one available to attend the meeting on 6 September 2016 and make submissions in favour of the application. The Respondent advised that when he sent the emails on 4 September 2016, he had simply been trying to correct the misrepresentations made by the objector. His statement in in the first email that he was in no way trying to influence the decision was intended to convey that he wanted the recipients to support the application on its merits rather than because he, as a fellow councillor, was making it.

The Respondent indicated that, in sending the emails, he had simply been thinking as an applicant and not as a councillor. The Respondent indicated he had been under a great deal of pressure at the time due to stress about the length of time it had taken to get the application to that stage and also as a result of adverse press coverage about the matter at the time. He had signed the emails off as 'Sandy' and had overlooked the fact that his formal designation of councillor would

appear at the end of the emails. The Respondent argued that, in any event, all the recipients of the emails were well aware that he was a councillor. In addition, the points he had made in the emails were simply ones he would have made to the Committee had he been able to attend the meeting on 6 September 2016. This was evidenced by the similar submissions his son had made to the Council's Infrastructure Services Committee when it had subsequently considered the planning application at a meeting on 3 February 2017.

The Respondent accepted he should not have used a Council computer or email account to send the emails of 4 September 2016. However, he contended that he had not been attempting to collude with his fellow councillors and or deliberately seeking to gain an advantage. The Respondent argued that had there been collusion with his fellow councillors, there would have been no need to send the emails. Instead, the sending of the emails had simply been a 'foolish' act on his part. The Respondent accepted, however, that there was a formal procedure for applicants to follow in order to make submissions to a planning committee and that he should have followed that.

### **DECISION**

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing by 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 3.16, 3.19 and 7.10 of the Councillors' Code of Conduct.

The Hearing Panel determined that:

- The Respondent used his Council address to send the emails of 4 September 2016 relating to his company's planning application, despite having been previously expressly warned by the Council's Monitoring Officer of the need to keep his personal interests and the specific planning matter separate from his councillor role. In doing so, the Respondent had contravened paragraph 3.16 of the Councillors' Code of Conduct, which states that Council facilities should only be used for carrying out Council duties or for incidental personal use authorised by the Council.
- The Respondent sent two emails from his Council email account to selected members of the Committee making representations in support of the planning application. His standard sign off as a councillor was included at the end of both emails. The Respondent had, therefore, failed to follow the formal procedures for making submission to such a Committee. The Hearing Panel was of the view that, members of the public with knowledge of this information, would reasonably conclude that, through his actions, the Respondent was using his position to seek preferential treatment in respect of the planning application made by A.D. Duncan and Co., of which he was a partner. The Hearing Panel concluded, therefore, that the Respondent had contravened paragraph 3.19 of the Code.

- Both emails of 4 September 2016 were sent to selected members of the Committee two days before it was due to meet to consider the planning application. The Hearing Panel noted that the Respondent had stated that the emails were intended to merely put forward his company's points and correct alleged misinformation given by an objector. However, the Respondent explained he had not sent the emails to the two other councillors on the Committee as he did not consider the point he was making would influence their decision. The Hearing Panel considered that this demonstrated that he had made representations in favour of the application in both emails, outwith the Committee forum and not in accordance with the correct procedure, which would have been to send any submissions to the Local Authority Officer (Area Manager). The Hearing Panel concluded that, in doing so, the Respondent had contravened paragraph 7.10 of the Code, which prohibits elected members from seeking to privately lobby other councillors about planning applications.
- The Hearing Panel considered 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 3.16, 3.19 and 7.10 of the Code.

### **SANCTION**

The decision of the Hearing Panel was to suspend for a period of six months, the Respondent, from all committees and sub-committees of the Council that make decisions on quasi-judicial or regulatory matters, with effect from 26 June 2017 (being the Formartine Area Committee and the Licensing Board- North).

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

### **Reason for Sanction**

In reaching their decision, the Hearing Panel:

1. Took account of the negative impact the protracted planning application process and adverse press coverage had had on the Respondent's health and family at the time he sent the emails.
2. Acknowledged the Respondent's early acceptance that he had breached paragraph 3.16 of the Councillors' Code of Conduct and that he should have done things differently.
3. Took into account the Respondent's previously unblemished record.

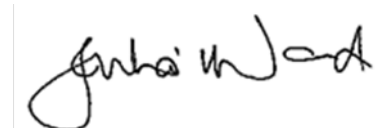
However, the Hearing Panel:

4. Found that the Respondent had disregarded advice from a senior officer warning him of the potential repercussions of not separating his personal interests from his role as a councillor in respect of the particular planning matter.
5. Was concerned that the Respondent did not seem to accept that his actions in sending the emails amounted to seeking preferential treatment for himself and his family business and also to the lobbying of other councillors.
6. Was concerned that the Respondent, who had been a councillor for 10 years, with experience including membership of quasi-judicial and regulatory committees had displayed such conduct and demonstrated a lack of knowledge and understanding of the requirements of the Councillors' Code of Conduct.
7. Found that there had been a serious breach by the Respondent of the Councillors' Code of Conduct in respect of using his position as a councillor to further his own personal interest in a planning matter. The Hearing Panel considered such conduct had the potential to result in decisions on planning matters being legally challenged and could erode public confidence and trust in local government and the democratic process itself.

#### **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:** 23 June 2017



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