

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Glasgow City Chambers, George Square, Glasgow, on 26 July 2017.

Panel Members: Mrs Lindsey Gallanders, Chair of the Hearing Panel
Mr Kevin Dunion, OBE
Mrs Patricia 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/G/1942 (the Complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by former Councillor William McAllister (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 3 May 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 paragraphs 3.1 and 3.2.

The relevant provisions were:

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.

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.

EVIDENCE PRESENTED AT THE HEARING

The Hearing Panel noted that Mr McAllister did not attend and was not represented at the Hearing. Section 20 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 obliges the Standards Commission to give the Respondent written notice of a Hearing. The Hearing Panel heard that written notice was issued to Mr McAllister at his home address on 9 May 2017 and that he confirmed receipt during a telephone conversation with the Standards Commission's Executive Director on 18 May 2017. Mr McAllister then advised the Executive Director, during a telephone conversation on 27 June 2017, that he would not be attending the Hearing and instead wanted a letter he sent to the Standards Commission, which was received on 26 June 2017, to be included in the papers before the Hearing Panel. The Hearing Panel noted the letter had been included in the papers.

The Hearing Panel was satisfied that Mr McAllister had been provided with notice of the Hearing, in accordance with Section 20 of 2000 Act. The Hearing Panel indicated it was therefore content to proceed with the Hearing in his absence.

The Hearing Panel heard evidence from the complainer, a police officer based at Maryhill Police Office, Glasgow, that he had known the Respondent for approximately 20 years. The Respondent was well known as a local activist in the area with a particular interest in social issues. The complainer advised that he had sometimes come across the Respondent at meetings, surgeries and school events that the complainer had attended in his previous role as a police community officer. The complainer advised that the Respondent had made several complaints about him over the years. These had been investigated by the police's Professional Standards Department and none had been upheld.

The complainer advised that, in his capacity as a ward councillor, the Respondent made frequent telephone calls to, and attended meetings with, the Chief Inspector of Maryhill Police Office about local issues. This included telephoning the Chief Inspector four to five times a day to find out or pass on information, particularly if there had been a major incident in the area. These telephone calls were made to the Chief Inspector's direct line. However, if the Chief Inspector was unavailable, such calls were diverted to the office where the complainer worked alongside two colleagues.

The complainer indicated that his complaint was that the Respondent had been disrespectful to him during two telephone calls made to Maryhill Police Office on 13 September 2016. The complainer advised that he had answered both calls as they had been diverted to his office from the Chief Inspector's direct line. In the first telephone call, the Respondent asked to speak to the Chief Inspector. The complainer contended that when he advised the Chief Inspector was unavailable, the Respondent made a number of personal and unfounded accusations concerning the complainer's past conduct. As the complainer considered the comments to be abusive, he ended the call.

The complainer alleged that, after he terminated the telephone call, the Respondent called back approximately five to ten minutes later. The complainer stated that, having recognised that it was the Respondent calling again, he put the call on loudspeaker to enable his two colleagues to listen to what was being said. The complainer alleged that, in the second telephone call, the Respondent was aggressive towards him and made a number of slanderous, demeaning and totally unfounded accusations, including that he had engaged in criminal activity. The Hearing Panel heard that the Chief Inspector had entered the room during the second telephone call in time to hear the Respondent make some of the accusations, before the complainer proceeded to end the call.

The Hearing Panel noted that the complainer's version of events was confirmed by his two colleagues who had overheard his side of the conversation during the first telephone call. Both colleagues confirmed, in signed witness statements, that the complainer had referred to the caller as Mr McAllister both during and after the conversation. The Hearing Panel noted that the two colleagues and the Chief Inspector had also confirmed, in signed witness statements, that they had overheard the Respondent making the personal accusations, as alleged by the complainer, during the second telephone call.

The Hearing Panel noted that in the letter the Respondent had submitted to the Standards Commission, he had questioned the credibility of the witnesses, including the complainer. In particular, the Respondent had questioned how the witnesses could have recognised his voice and identified him during the telephone calls that were the subject of the complaint.

The complainer advised that as the Respondent regularly contacted the Senior Management Team of Maryhill Police Office by telephone in his capacity as a ward councillor and in pursuit of ward business, his position as a councillor along with his voice and demeanour were familiar to those answering telephone calls at the office. In addition, the caller had rung on a telephone number only provided by the Chief Inspector to certain individuals, which included Councillor McAllister. The complainer advised that he recognised the Respondent's voice and had referred to him as 'Mr McAllister' during both telephone calls. The Hearing Panel noted the fact that the complainer had done so, and the caller had not corrected him, was confirmed by his colleagues in their witness statements.

The complainer advised that he had been upset by the telephone calls on 13 September 2016 as he considered the unfounded accusations that the Respondent had made against him during them could affect his professional reputation. As such, he had considered 'enough was enough' and had decided to make a complaint about the Respondent's conduct. The complainer indicated that he had asked his colleagues to supply witness statements the following day.

The CESPLS's representative advised that she had precognosed the complainer's two colleagues and the Chief Inspector. All three had confirmed that the events had occurred as outlined in their witness statements. The CESPLS's representative contended that the nature of the comments made in the telephone calls were the same, or very similar, to those the Respondent had made about the complainer in his complaints to the police's Professional Standards Department. She argued that it was simply not credible, therefore, that the caller was anyone other than the Respondent. The CESPLS's representative advised that it was clear the Respondent had been telephoning the Chief Inspector, as a councillor, to discuss local ward business. The contact had taken place in this context and, therefore, the Respondent had been acting in his capacity as a councillor at that time.

The CESPLS's representative drew the Hearing Panel's attention to a letter from the Chief Inspector who had responsibility for complaints about police within the Greater Glasgow Division to the Respondent of 16 January 2017. In this, the Chief Inspector confirmed that complaints the Respondent had had made about the complainer in 2012 had been fully investigated and not upheld. The CESPLS's representative noted the complaints concerned the allegations about the complainer that the Respondent had repeated in the telephone calls of 13 September 2015.

DECISION

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

In reaching its decision, the Hearing Panel took the following approach. Firstly, it considered whether the facts, as determined, led it to conclude that the Respondent had failed to comply with the Councillors' Code of Conduct. Secondly, if so, whether such a finding in itself was *prima facie* a breach of the Respondent's right to freedom of expression under Article 10 of the

European Convention on Human Rights (as incorporated in the Human Rights Act 1998). Thirdly, if so, whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society, and in particular, in this case for the protection of the reputation or rights of others.

Stage 1: Has there been a failure to comply with the Code?

The Hearing Panel noted that while the Respondent had questioned how the witnesses had identified him, he had not specifically denied making the telephone calls and comments in question. The Hearing Panel was satisfied, from the evidence before it, that the Respondent had made the telephone calls and, during them, had conducted himself in the manner alleged.

The Hearing Panel was further satisfied that the Respondent had contacted Maryhill Police Office on 13 September 2016 in his capacity as a ward councillor. The Hearing Panel therefore concluded that the provisions of the Councillors' Code of Conduct applied to the Respondent at the time of the events in question.

The Hearing Panel found that the comments made by the Respondent in the telephone conversations amounted to a personal attack on the complainer, which were clearly intended to impugn and demean him. The Hearing Panel noted that the Respondent was aware that the accusations he made during the telephone calls were unfounded, having received confirmation that the complaints he had made through the appropriate channel about the same issues had been fully investigated and not upheld.

The Hearing Panel was therefore satisfied that the Respondent failed to observe the rules of good conduct by behaving in a disrespectful manner towards the complainer.

In terms of the first stage of the test, the Hearing Panel found that the Respondent's behaviour amounted to a contravention of paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct. However, before coming to a finding on the matter, the Hearing Panel was obliged to give consideration to the provisions of Article 10.

Stage 2: Is this finding a breach of Article 10?

The Hearing Panel proceeded to consider whether a finding that the Respondent failed to comply with the provisions of the Code was, *prima facie*, a breach of his right to freedom of expression under Article 10 of the European Convention on Human Rights.

In coming to a view, the Hearing Panel noted that the Respondent's comments had been made in one to one telephone conversations, as opposed to a public forum. The Hearing Panel considered that the Respondent's behaviour had not taken place in a political context or in respect of a debate on a question of public interest. This was particularly the case given that the comments related to allegations the Respondent had made that he knew had been previously investigated and not upheld. In the circumstances, the Hearing Panel was satisfied that the Respondent should not be afforded the enhanced protection under Article 10 for political expression.

Stage 3: Is the restriction involved by the finding justified by Article 10(2)?

The Hearing Panel then proceeded to consider whether the restriction involved by a finding that the Code had been breached was justified by Article 10(2), which allows restrictions that are necessary in a democratic society for the protection of the reputation or rights of others.

The Hearing Panel was of the view that the intention of the provisions in paragraph 3.1 and 3.2 of the Code, and the imposition of any sanction if a breach of them was found, was to protect the rights and reputations of others from, for example, offensive, abusive and defamatory remarks. The Hearing Panel was content, therefore, that the proposed restriction was in pursuance of a legitimate aim.

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 reaching an evaluative judgment, the Hearing Panel took into account that the Courts had held that the more egregious the conduct in question, the easier it would be for a Panel or Tribunal, when undertaking such a balancing exercise, to justifiably conclude that a restriction was required.

In this case, the Hearing Panel concluded that the Respondent's comments were of a gratuitous, offensive and abusive in nature and amounted to a personal attack on the complainer. The Hearing Panel was of the view, therefore, that the Respondent's conduct was egregious and that his comments adversely affected the rights and reputation of the complainer as an individual. As such, the Hearing Panel determined that the imposition of a restriction in the circumstances was relevant, sufficient and proportionate. The Hearing Panel concluded, therefore, that it was satisfied that a finding of breach, and subsequent application of a sanction, would not contravene Article 10.

The Hearing Panel, having given careful consideration to the particular facts and specific circumstances of the case, determined that the Respondent, Mr McAllister, breached paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

SANCTION

The Hearing Panel noted that, having found a breach of the Code, it was obliged to impose a sanction. The Hearing Panel further noted that as the Respondent was no longer a councillor, the only options available were either censure or disqualification.

The decision of the Hearing Panel was to censure, the Respondent, Mr McAllister.

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

Reason for Sanction

In reaching its decision, the Hearing Panel:

1. Took account of the comments the Respondent made in a letter to the Standards Commission received on 26 June 2017 and, in particular, his commitment to serving his community.

However, the Hearing Panel:

2. Considered it had been the Respondent's personal responsibility to comply with the Code at the time. He had failed to do so.
3. Found that the Respondent's comments amounted to a personal attack on a public servant. The Hearing Panel considered that public servants have a right to be protected from unwarranted personal attacks of this nature.
4. Noted that it would have considered imposing a suspension had the Respondent still been a councillor.

RIGHT OF APPEAL

The attention of the Respondent is 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: 28 July 2017

L. M. Gallanders

**Mrs Lindsey Gallanders
Chair of the Hearing Panel**