

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Enterprise House, Strathkelvin Place, Kirkintilloch, on 22 August 2017.

Panel Members: Mr Kevin Dunion, OBE, Chair of the Hearing Panel
Mrs Lindsey Gallanders
Mrs Julie Ward

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/ED/1863, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by former Councillor Eric Gotts (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 12 June 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 3.3, 3.5, 3.14 and 3.15.

The relevant provisions were:

Relationship with Council Employees

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.

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

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.

Evidence Presented at the Hearing

The Hearing Panel noted that the Respondent submitted a letter to the Standards Commission advising that he accepted the material facts and conclusions in the Commissioner for Ethical Standards' report.

The CESPLS advised that the Respondent had also indicated, in a letter to him of 25 May 2017, that he had contravened paragraphs 3.3, 3.5, 3.14 and 3.15 of the Councillors' Code of Conduct, albeit the Respondent indicated he had not done so 'intentionally or knowingly'.

The CESPLS indicated that the Respondent had been elected as a councillor in 1984 and stood down before the local government elections in May 2017. During his time as an elected member, the Respondent had been Provost for three years and had also been Convener of the Education Committee for two periods, including at the time of the events in question.

The Hearing Panel heard that it was not in dispute that, between September 2015 and January 2016, the Respondent engaged in a course of conduct towards a council officer who had been temporarily appointed, in June 2015, to a relatively junior managerial position. While having control over a service budget, the officer had no role in its determination or allocation as this was the responsibility of the Service Director, who was also the Respondent's formal point of contact for any budget related issues he might have as Convener of the Education Committee. The Respondent had no formal or expected role in the operational management, planning or workings of the Service.

The CESPLS advised that the course of conduct engaged in by the Respondent included consistently engaging with the officer outwith established procedures and practices and without consulting her line manager or any senior managers. It involved:

- actively pursuing frequent contact with the officer both during and outside working hours by means of emails, texts and telephone calls (including at weekends and on Christmas day);
- suggesting they have lunch together and also meetings in the Respondent's car and at his home, purportedly to discuss matters related to Council activities;
- attempting to secure the officer's home address of two occasions purportedly to send a birthday card and a bereavement card; and
- inviting the officer to external events, including the unsolicited provision of a ticket for a concert which was not work related and taking her in a Council car to an official event at the Scottish Parliament without seeking the approval of the Service Director.

The Hearing Panel heard that the Respondent pursued interactions with the officer that were far more frequent and informal than those he had sought and maintained with her predecessor. The Hearing Panel also heard that the Respondent used his interest as Convener of Education and the budget for the Service as the reason to hold meetings with her. This was despite the officer not being the formal point of contact for any budget related issues the Respondent may have had as Convener of the Education Committee.

The CESPLS advised that the Respondent's apparent support for the Service and his position as an elected member of some influence was said by the officer to have prompted her courtesy, patience and co-operative interaction with him. Any intention or desire to extend this working interaction into any kind of social or personal relationship with the Respondent had not been reciprocated by the officer and was unsolicited.

The CESPLS advised that the Respondent pursued the interactions and a social relationship with the officer despite being advised by five separate officers (including the officer herself and senior managers) that his conduct was professionally and procedurally inappropriate. This included the Director of the Service having advised the Respondent that his attendance with the officer at the Scottish Parliament event was inappropriate. The CESPLS indicated that the Director had travelled to the same event by train and had been surprised to see the officer there as he considered there had been no legitimate reason for her to attend.

The CESPLS indicated that, in early November 2015, the Respondent asked to speak to the officer's line manager and advised her he was seeking advice 'for a friend' who was a councillor in another authority in regard to a platonic friendship which had developed between this friend and a female officer in the same authority. The officer's line manager was in no doubt that the Respondent was actually referring to himself and the officer. The officer's line manager advised the Respondent that such a scenario raised concerns for both parties as there were very clear boundaries which had to be maintained and such a relationship was particularly inappropriate if either party felt uncomfortable. The officer's line manager pointed out that public perception was important, particularly as an elected member's decision making should be beyond criticism. The CESPLS noted the Respondent accepted he had sought this advice on his own behalf, alleging he had done so because he felt embarrassed.

The Hearing Panel also heard that, following an enquiry made by him, the Respondent was advised that the officer had taken a leave of absence for medical reasons. The Hearing Panel heard that the Respondent subsequently disclosed information about the officer's medical condition to a third party. The CESPLS argued that the Respondent's experience in public life meant that he should have been aware that information about a person's health must be treated confidentially. The CESPLS noted that the Respondent had only obtained the information about the officer's health because of his position as a councillor. While there was no suggestion that the Respondent used the information for political advantage, the CESPLS contended he had done so for personal advantage; namely in the pursuit of a personal relationship with her. The CESPLS indicated that the information fell within one of the categories of exempt information referred to in paragraph 3.15, being specifically listed in paragraph 1 of part 1 of Schedule 7A to the Local Government (Scotland) Act 1973. The Respondent now accepted that he ought to have complied with the requirement to keep it private.

DECISION

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

The Hearing Panel was of the view that the Respondent would have been well aware of the clear distinction between the officer's role and his own position of authority and influence as Convener of Education, particularly given his responsibilities for budgetary oversight over the Service in which she was employed. The Hearing Panel considered that the Respondent had been

discourteous and disrespectful as he had failed to show any consideration for the officer's position and the effect of his behaviour on her. The Hearing Panel considered that the Respondent's behaviour was wholly inappropriate in a professional context and that he had embarked upon it solely for personal advantage, with the aim of pursuing a personal relationship. The Hearing Panel therefore concluded that the Respondent had breached paragraph 3.3 of the Code.

The Hearing Panel noted that the Respondent had continued to pursue a social relationship with the Respondent despite his interest in doing so not being reciprocated and despite him having been advised by five separate officers (including the officer herself and senior managers) that his conduct was inappropriate. The Hearing Panel further noted that the Respondent had, on occasions, resorted to subterfuge to secure meetings with the officer. The Hearing Panel determined that, in doing so, the Respondent failed to exercise caution and had failed to interact with the individual officer, and officers of the Council in general, in an atmosphere of mutual trust and respect. As a consequence, not only was his relationship with the officer damaged but it also damaged relationships with other officers who had sought to manage the situation. This demonstrated a lack of courtesy towards these other officers. As such, the Hearing Panel concluded the Respondent had failed to observe the requirements of paragraphs 2 and 19 of the Protocol for Relations between Councillors and Employees at Annex C of the Code and had, therefore, breached paragraph 3.5 of the Code.

The Hearing Panel determined that the information the Respondent had disclosed about the officer to the third party was private, personal and sensitive and that it was, by its very nature, confidential. The Hearing Panel was of the view that the Respondent had only obtained, or been supplied with, the information as a result of his role as a councillor. As such, the Hearing Panel concluded that, in disclosing the information, the Respondent had breached paragraphs 3.14 and 3.15 of the Code. The Hearing Panel agreed this breach of confidentiality was another example of the Respondent failing to treat the officer with courtesy and respect.

The Hearing Panel, having given careful consideration to the particular facts and specific circumstances of the case, therefore determined that the Respondent, Mr Gotts, had breached paragraphs 3.3, 3.5, 3.14 and 3.15 of the Councillors' Code of Conduct.

Evidence in Mitigation

The Hearing Panel noted the comments made by the Respondent in a letter to the Standards Commission of 11 July 2017.

SANCTION

The Hearing Panel noted that, having found contraventions 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 to it were either censure or disqualification.

The decision of the Hearing Panel was to censure the Respondent, former Councillor Gotts. The Hearing Panel wished to make it clear that it would have imposed a suspension had that option been available to it.

This sanction is made under 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 comments the Respondent made in a letter to the Standards Commission of 11 July 2017 and, in particular, his contention that the breach of confidentiality was inadvertent.
2. Acknowledged the Respondent's early acceptance that he had contravened the Councillors' Code of Conduct and also the conclusion in the Commissioner's report that there was no evidence that the breach of confidentiality was made for political advantage.
3. Noted the Respondent's assertion that he had not intended to show disrespect, discourtesy or a lack of consideration to the officer and that he now accepted his actions had caused her distress.
4. Took into account the Respondent's contribution to public life over a significant period of time

However, the Hearing Panel:

5. Considered it had been the Respondent's personal responsibility to comply with the Code. As an experienced councillor of over 33 years who had held senior positions within the Council, including as Provost and as a Committee Convener, he should have been familiar with the roles and responsibilities within the Council and the requirements of the Code. Despite this, the Respondent had failed to do so.
6. Noted the Respondent had continued with his course of conduct over a period of five months despite being advised by five officers that his behaviour was inappropriate. The Hearing Panel was concerned that the Respondent had not recognised, at the time, that his conduct was disrespectful and had also not recognised the impact his behaviour would have on the officer and other officers.
7. Did not accept the Respondent's behavior was inadvertent. The Hearing Panel was particularly concerned that the Respondent had resorted to concealment and dishonesty as he sought to develop his relationship with the officer and representation of it to others. This included providing false justification to secure meetings and contact with the officer and in trying to obtain her address.
8. Was critical that the Respondent had disclosed confidential medical information about the officer, which he had only received by virtue of his role as a councillor.
9. The Hearing Panel considered the Respondent's conduct amounted to a serious breach of the Councillors' Code of Conduct. It had the potential to undermine the relationship of

mutual trust and respect between councillors and officers and could also have discredited the Council.

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: 23 August 2017



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