

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Fife House, Glenrothes, KY7 5LT, on 5 February 2018.

Panel Members: Mrs Lindsey Gallanders, Chair of the Hearing Panel
Mr Michael McCormick
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/Fi/2044 (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Tim Brett (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 16 November 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 paragraph 3.16.

The relevant provision is:

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.

Evidence Presented at the Hearing

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the parties and that neither the facts, nor the CESPLS's conclusions as stated in his Report, were in dispute.

The CESPLS's representative outlined the facts as found by the CESPLS. In particular, the CESPLS's representative explained that paragraph 3.16 of the Councillors' Code acknowledges that a Council will normally provide IT equipment and facilities to assist elected members in carrying out their duties as councillors. The CESPLS's representative noted, however, that paragraph 3.16 further states that such facilities must only be used in accordance with the relevant Council's information technology, communications and member support policies or for incidental personal use as authorised by the Council not related in any way to party political or campaigning activities.

The CESPLS's representative advised that the Respondent had assisted constituents in his ward with an issue concerning the realignment of a public footpath. In doing so, the Respondent had been liaising with the Chair of a local Community Trust over a period of time and had exchanged emails with him about the footpath on 24 and 25 April 2017. The subject heading of the email exchange was the 'Re-alignment of Footpath at Drumoig'. The CESPLS's representative indicated that all the Respondent's emails to the Chair had been sent from his Council email address and that he was designated as a councillor in the correspondence.

The CESPLS's representative indicated that, on 26 April 2017, the Respondent sent the Chair of the Community Group a further email as part of the exchange, with the same subject heading, asking whether he or any of his friends or neighbours would be willing to help deliver election leaflets in the local area. The CESPLS's representative advised that the Chair had circulated the Respondent's email to other members of the Community Group's Management Committee. One of the other members, the complainer, then sent the Respondent an email on 27 April 2017 questioning the appropriateness of his request on the grounds that the Community Group was required to engage with the whole community and could not, therefore, become involved in political recruitment and campaign communications. The CESPLS's representative noted the Respondent had not replied to this email and, as such, the complainer proceeded to lodge a formal complaint.

The CESPLS's representative submitted that, in his email of 26 April 2017, the Respondent made a request for assistance in delivering party political leaflets as part of campaigning for the impending local government and general elections. This was despite the Council's Chief Executive circulating pre-election period guidance to all elected members on 1 February 2017 entitled 'Requirement for Political Neutrality', which reiterated that council facilities and resources should never be used for party political or campaign activities. The CESPLS's representative advised that the Respondent had confirmed he had received the guidance.

The CESPLS's representative indicated there was no dispute that the leaflets in question were campaign ones and that the request had been sent in an email exchange concerning legitimate Council work. The CESPLS's representative contended that, in using his Council computer and email account to send the email of 26 April 2017 and make such a request, the Respondent had contravened both the guidance issued by the Council's Chief Executive and the Code. The CESPLS's representative advised that the Respondent had accepted the CESPLS's findings and had apologised upon being formally notified of the complaint.

The Respondent confirmed that he did not dispute the facts, as presented. The Respondent advised that he had known the Chair of the Community Group for over 10 years and had intended to make the request on a personal basis. The Respondent advised he had not been expecting the Chair to share his request with the Management Committee although he could understand why the Chair may have assumed he was being asked to do so. The Respondent accepted, nevertheless, he should not have sent the request using his Council email account and that in doing so he had made a 'serious, albeit inadvertent mistake'.

DECISION

The Hearing Panel considered the submissions given orally at the Hearing and in writing and found as follows:

1. The Councillor's Code of Conduct applied to the Respondent.
2. The Respondent had breached paragraph 3.16 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel heard that the Respondent accepted that, on 26 April 2017, he used his Council email identity, account and computer to send an email to the Chair of a Community Trust containing a request for assistance in delivering party political campaign leaflets.

The Hearing Panel noted that paragraph 3.16 of the Councillors' Code of Conduct acknowledges that a Council will normally provide IT equipment and facilities to assist elected members in carrying out their duties as councillors. Paragraph 3.16 indicates that such facilities must only be used in accordance with the relevant Council's information technology, communications and member support policies or for incidental personal use as authorised by the Council not related in any way to party political or campaigning activities.

The Hearing Panel noted the Respondent had assisted the Community Trust with a number of issues and that the request had been sent within a chain of email correspondence about an existing issue, being the realignment of a public footpath. The Hearing Panel noted the Respondent's position was that he had made a 'serious, albeit inadvertent mistake', in sending what was intended to be a personal note requesting assistance from the Chair of the Community Trust in distributing election literature from his Council email address as part of the chain. The Respondent accepted that by using his Council email account and computer to send the email, he had failed to comply with the restriction the use of Council facilities for political or campaigning purposes. He had apologised for doing so.

The Hearing Panel determined that it was the Respondent's personal responsibility to be aware of, and comply with, the provisions in the Councillors' Code of Conduct, which included ensuring he did not use Council facilities for party political or campaigning purposes. He had failed to do so in respect of the email.

The Hearing Panel therefore concluded that the Respondent had breached paragraph 3.16 of the Code.

Evidence in Mitigation

The Respondent advised he had been a councillor for 15 years and considered himself to be diligent and hard-working. The Respondent confirmed that he had never previously been the subject of a complaint before the Standards Commission.

The Respondent reiterated that he was not attempting to exploit his relationship with the Community Group or its Chair. The Respondent advised that he could not recall the exact circumstances that led to him sending the email of 26 April 2017, but suspected he would have been very tired at the time as, by then, the local government elections were just days away and a general election had just been announced. The Respondent indicated that while this had resulted in him making an inadvertent mistake, he accepted that he should have been much more careful

and should not have sent a request for assistance with a party political matter using his Council email account. The Respondent apologised for doing so to the CESPLS, the Standards Commission and the complainer.

SANCTION

The decision of the Hearing Panel was to censure the Respondent. A censure is a severe and formal reprimand.

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:

- Noted the Respondent's early acceptance that he should have been more careful and should not have used his Council email identity, account and computer to seek assistance in distributing election literature; and his apology for doing so.
- Acknowledged the Respondent's position that his actions were the result of an inadvertent lapse, as opposed to any deliberate attempt to exploit his relationship with the Community Trust.
- Noted the Respondent's contribution to public life as a councillor for 15 years. The Hearing Panel was pleased to note the Respondent's recognition and clear insight into the potential perception of his actions.

However, the Hearing Panel:

- Noted that the Council's Chief Executive issued guidance to all elected members on 1 February 2017 reminding them that Council facilities and resources should never be used for party political or campaigning purposes. The Hearing Panel considered this reminder and the proximity of the Local Government and General elections should have put the Respondent on notice that he was required to take extra care during the election period.
- Considered that the prohibition on using Council facilities and resources for party political or campaigning purposes was an important part of the Code as it provided the public with confidence that public resources were being used appropriately. A breach of this provision had the potential to bring the Council into disrepute.
- Emphasised it was a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complied with them.

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: 7 February 2018

L. M. Gallanders

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