

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Council Offices, Almada Street, Hamilton, ML3 0AA on 4 April 2019.

Panel Members: Mr Mike McCormick, Chair of the Hearing Panel
Professor Kevin Dunion
Ms Ashleigh Dunn

The Hearing arose in respect of a Report by Mr Bill Thomson, the former Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/SL/2153 (the complaint), concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Gerry Convery (the Respondent) of South Lanarkshire Council (the Council).

COMPLAINT

A complaint was received by the ESC about the alleged conduct of the Respondent. Following an investigation, the ESC referred the complaint to the Standards Commission for Scotland on 31 January 2019, 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 that, in particular, he had contravened its paragraphs 3.1 and 3.2.

The relevant provisions are:

3.1 The rules of good conduct in this section must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media.

Relationship with other councillors and members of the public

3.2 You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.

Evidence Presented at the Hearing

Joint Statement of Facts

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the parties and that, in particular, the following matters were not in dispute:

- That on 27 June 2018, while attending a meeting of South Lanarkshire's Executive Committee, the Respondent uttered the words "seig heil" as the Chair of the meeting concluded the debate on an item of business.

- That the Respondent was thereafter quoted in various national newspapers on the incident and admitted saying the words “seig heil”. The Respondent was quoted as having stated he did so out of frustration and that he had immediately retracted the comment.

Neither party called any witnesses. The CESPLS was represented at the Hearing by Mr Ian Mackay, Investigating Officer, (the ESC’s representative).

Submissions made by the ESC’s Representative

The ESC’s representative advised that the Respondent had been a councillor for 23 years and was a member of the Scottish Labour party. The ESC’s representative advised that the Respondent was a member of the Council’s Executive Committee and had, in that capacity, attended a meeting of the Committee on 27 June 2018, along with 26 other elected members. The ESC’s representative noted that the Executive Committee comprised of the Chairs of the main Council committees, leaders of the political groups and elected members who had been appointed on a proportionate party basis; and was chaired by a member of the Scottish National Party (SNP). The ESC’s representative advised that one of the items being discussed at the meeting was a proposal to increase the level of funding for school clothing grants.

The ESC’s representative noted that a Labour party councillor who had been sitting next to the Respondent had put forward an amendment proposing that the suggested funding be increased further. The ESC’s representative advised that it was not in dispute that the Chair of the meeting had curtailed a discussion on the amendment and moved to a vote, with the original motion then being carried. The ESC’s representative indicated that it was further not in dispute that it was when the Chair had moved to a vote that the Respondent had uttered the words “seig heil”. The ESC’s representative noted that the Respondent had remained seated when doing so, and that there was no evidence or suggestion he had made any accompanying hand gestures. The ESC’s representative advised that when another SNP councillor had objected to the comment, the Respondent had retracted it immediately.

The ESC’s representative advised that a number of witnesses had been interviewed, during the investigation into the complaint about the Respondent’s conduct, and that while there were discrepancies between their accounts of what had happened at the meeting in terms of whether the Respondent had shouted the words and whether he had apologised for uttering them; all the witnesses agreed that the Respondent had a loud voice and that he had retracted the comment when asked to do so. The ESC’s representative further noted that witnesses had given evidence to the effect that the discussion on the item had been somewhat heated, but not unusually so, in terms of a typical political debate.

The ESC’s representative indicated that coverage of the Respondent’s comment had appeared in several newspapers published between 27 June and 4 July 2018. The ESC’s representative advised that it was not in dispute that the Respondent was quoted in the press as saying that the comment had “just come out”, had been said “through frustration”, and that he knew it had been a “stupid” thing to say.

The ESC’s representative argued that, in order to amount to disrespectful behaviour, it would have to be established, on the balance of probabilities, that the words in question had been directed at a particular individual or group (as opposed to simply being a throwaway comment). The ESC’s

representative noted that the Respondent's position was that he had not directed the comment at anyone in particular. The ESC's representative contended, however, that all the witnesses present had understood the comment to have been directed at the Chair of the meeting. The ESC's representative further contended that, given the words had been uttered at the point the Chair had curtailed the debate, he was the only plausible recipient.

The ESC's representative noted that, in a political environment, the enhanced protection afforded to politicians under Article 10 of the European Convention on Human Rights (ECHR) meant that the use of some emotive language was allowed. The ESC's representative argued, however, that directing words that were synonymous with the former Nazi regime in Germany, towards the Chair of a meeting during a political debate was offensive, unnecessary and demeaning. As such, the ESC's representative contended that they were egregious and disrespectful, and fell outwith the protection afforded under Article 10.

The ESC's representative concluded that the Respondent had failed to treat the Chair with respect, as required by paragraphs 3.1 and 3.2 of the Code and had, therefore, contravened these provisions.

Submissions made by the Respondent

The Respondent confirmed that he had uttered the words "seig heil", during the course of what he contended was a "heated" meeting of the Executive Committee. The Respondent advised, however, that he had not shouted them, made any accompanying hand gesture or looked at anyone when doing so. The Respondent stated that he had not directed the comment toward any individual in the room. The Respondent indicated that he could not explain why he had said the words, did not know where they came from and had been horrified that he had uttered them. The Respondent advised that they were not words he would ever associate himself with, as he had spent his whole political life arguing and protesting against any forms of fascism.

The Respondent indicated that he took his role as a councillor very seriously and that, in his 23 years in the role, had always tried to treat his colleagues and officers with courtesy and respect. The Respondent confirmed that he had retracted the comment at the meeting and had subsequently apologised to the Chair.

When questioned by the Hearing Panel, the Respondent advised that he had apologised to the Chair because he thought it was the right thing to do, given that he had disrupted the meeting by uttering the comment (as opposed to apologising because the words had been directed at the Chair). The Respondent reiterated that he did not know why he had said the words and that it was not necessarily the case that they had been provoked out of frustration at the Chair's decision to curtail the debate on the item in question.

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 paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel noted that it was not in dispute that, that on 27 June 2018, while attending a meeting of South Lanarkshire's Executive Committee, the Respondent uttered the words "seig heil" as the Chair of the meeting concluded the debate on an item of business.

The Panel noted that it was not in dispute that the Respondent was thereafter quoted in various national newspapers on the incident and admitted saying the words "seig heil". The Respondent was quoted in the newspapers as having stated he did so out of frustration and that he had immediately retracted the comment.

The Panel noted that it was further not in dispute that the Respondent had uttered the words when the Chair of the meeting had, fairly abruptly, drawn a debate on an amendment the Respondent had supported under discussion to a close. The Panel noted it was accepted that the debate on the item was politically charged and that the Chair had not been supportive of the amendment.

The Panel noted that the Respondent's position was that he could not explain why he had uttered the words and had no idea where they had come from. The Panel further noted that the Respondent's position was that he had not shouted the comment and had not directed it at anyone in particular. The Respondent advised that he had immediately retracted the words. The Respondent indicated that he had subsequently apologised to the Chair, albeit because the Chair was the convener of the Committee, rather than because he accepted the words had been directed at the Chair.

The Panel accepted the Respondent may not have shouted the words, although it was nevertheless satisfied he had said them loudly enough for others present to hear. In the absence of any other plausible explanation, the Panel determined, on the balance of probabilities, that the Respondent had uttered the comments as a result of frustration at the way the Chair had handled the proceedings and curtailed the debate and, as such, it was reasonable for those present to conclude that the comment had been directed at the Chair. The Panel was satisfied that the evidence of witnesses who had been present at the meeting supported this conclusion.

The Panel was further satisfied that the words "seig heil" are synonymous with the former fascist Nazi regime in Germany and are directly associated with obedience to an oppressive dictatorship. As such, the Panel considered the Respondent's use of them could only be taken as an intention to convey that he was frustrated with how the Chair had conducted the meeting in respect of the item under consideration. The Panel determined that the comment amounted to a personal and political attack on the Chair in respect of the way he had conducted himself and the business of the meeting. The Panel was therefore satisfied that the Respondent had behaved in a disrespectful manner towards the Chair and thus had failed to observe the rules of good conduct.

The Panel found, therefore, that the Respondent's behaviour amounted, on the face of it, to a contravention of paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct. The Panel then proceeded to consider whether such a finding would breach the Respondent's right to freedom of expression under Article 10 of the ECHR and, 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.

The Panel concluded that the making of such a comment, in the circumstances, was offensive and gratuitous and amounted to a personal and political attack on the Chair. As such, the Panel determined that the imposition of a restriction in the circumstances was relevant, sufficient and proportionate. The 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 concluded that the Respondent had breached paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

SANCTION

The decision of the Hearing Panel was to censure the Respondent, Councillor Convery.

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

Reasons for Sanction

In reaching its decision on sanction, the Panel considered, and weighed up, all relevant aggravating and mitigating factors, in line with the Standards Commission's Policy on the Application of Sanctions.

The Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes. The Panel further noted the contribution the Respondent had made to public life in his 23 years as a councillor.

The Panel noted that the requirement for councillors to behave in a respectful manner was an important part of the Code, however, as it prevented a Council and role of a councillor from being brought into disrepute and ensured public confidence in both were not adversely affected. In this case, the Panel considered that the Respondent had failed to conduct himself in a respectful manner and had, instead, engaged in personal and politically offensive abuse in the context of formal Executive Committee meeting attended by councillors from across the political spectrum and Council officers. The Panel 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. The Respondent had been negligent in this regard.

The Panel was nevertheless of the view that the Respondent's conduct did not warrant a more severe sanction. This was because there was no evidence or suggestion it had formed part of a course of conduct or that the making of the comment had been pre-meditated. The Panel also accepted that the Respondent had immediately retracted the comment and had subsequently apologised. The Panel was satisfied that the Respondent fully recognised that his comment was entirely inappropriate.

RIGHT OF APPEAL

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

Date: 9 April 2019



Mr Mike McCormick, Chair of the Hearing Panel