

STANDARDS UPDATE

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News

Appeal Judgement

The Standards Commission was pleased to note the terms of a judgement by the Sheriff Principal of Tayside, Central and Fife on 17 July 2019 in respect of an appeal lodged against a decision of one of its Hearing Panels in case LA/Fi/2050. The Sheriff Principal refused the appeal in its entirety and made no criticisms of the Panel's decision or reasoning in respect of both breach and sanction.



Following a Standards Commission's Hearing held on 25 April 2018, the appellant, a councillor with Fife Council, lodged the appeal against both the decision to find him in breach of the Councillors' Code and the decision to suspend him, for two months, from the Council's Regulation and Licensing Committee.

The Sheriff Principal rejected the appellant's arguments and did not identify any difficulties with the approach taken by the Standards Commission when assessing the alleged breach of the respect provisions in the Councillors' Code against a Respondent's right to freedom of expression under Article 10 of the ECHR. In particular, the Sheriff Principal agreed with the Hearing Panel that, in the specific circumstances of the case, the appellant did not benefit from the enhanced protection afforded to politicians under Article 10 when commenting on political matters or matters of public concern, as it was clear the remarks that were the subject of the breach finding were not made in such a context.

The Sheriff Principal found that it was "abundantly clear" the comments were made in the course of determining an application for renewal of a taxi driver's licence, a quasi-judicial setting - not the debating chamber of the Council or in any other political forum. There was nothing in the material before the Sheriff Principal suggestive of the appellant indulging in political commentary, or engaging in commercial observation or discussing Council policy or matters of public concern.

The Sheriff Principal found that when considering whether there were relevant and sufficient reasons to interfere with the right to freedom of expression and whether any such a restriction was proportionate, there was a balance to be struck, and this had not been lost on the Panel. The Panel had considered with care the issues of necessity and proportionality.

The Sheriff Principal was satisfied that the Panel had applied Article 10 of the ECHR correctly and that it had "carried out a thorough and independent assessment of the evidence".

The Sheriff Principal found the appellant liable for the Standards Commission's expenses in respect of the appeal. A link to the full judgement can be found on our [website](#).

LA/Fi/2050: Summary of Hearing, 25 April 2018

Hearing Panel heard that the Respondent, as a member of Fife Council's Regulation and Licensing Committee had considered an application from the complainer for renewal of his taxi driver's licence at a meeting in December 2015. The Hearing Panel found that the Respondent had made remarks at the meeting to the effect of questioning why women would live with or marry the applicant. The Panel heard that the making of these remarks had been a factor in the success of a subsequent legal challenge brought by the complainer against the Council. The Panel found, on the balance of probabilities, that the Respondent had made comments substantially to the effect, and in the tenor, of those ascribed to him. The Panel found that the Respondent's remarks amounted to a personal attack and were not relevant or appropriate questions to determine whether the complainer was a fit and proper person to hold a taxi licence. The Panel was therefore satisfied that, in doing so, the Respondent failed to observe the rules of good conduct by behaving in a respectful manner towards the complainer and had, therefore, contravened paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

The Panel accepted that the Respondent may not have prejudged the application. It nevertheless found that, in making disrespectful comments to, or about, the complainer at the meeting, the Respondent failed to avoid any appearance of having not dealt with him fairly. As such, the Panel further found the Respondent failed to avoid any occasion for suspicion or appearance of improper conduct, which would have reduced the risk of a successful legal challenge against the Council's decision, in breach of paragraphs 7.3 and 7.4 of the Code.

Cases Overview

Since the last briefing in July 2019, two cases were referred to the Standards Commission by the Commissioner for Ethical Standards in Public Life in Scotland (ESC) about Councillor Frank Anderson of **West Lothian Council** and Councillor James Fullarton of **Scottish Borders Council**. The Standards Commission has scheduled Hearings in both cases. The Standards Commission held a Hearing in respect of a case concerning a councillor from Midlothian Council, the outcome of which is detailed below.

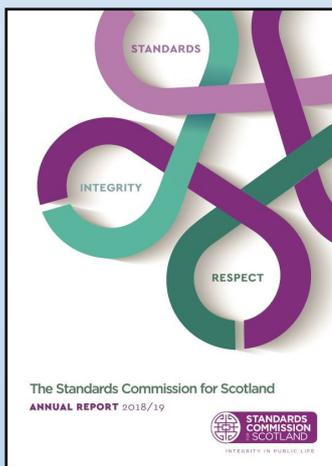
Midlothian - LA/Mi/2166 and 2169

The Hearing Panel found that the Respondent, Councillor Colin Cassidy of **Midlothian Council** had failed to apply the objective test at a Planning Committee meeting, where an application by Dalkeith Lawn Tennis Club for the erection of screen netting was considered. Councillor Cassidy remained in the room and took part in the decision-making on the proposal, despite in the past having been a member of the tennis club and on its Committee; having undertaken work for the club in terms of renewing the fencing; having lent equipment to the club; still having friends who were members of it; and having been to the objectors' property to move blaise material at the request of the club. The Panel also heard that Councillor Cassidy had previously put up and taken down the netting between the club and the objectors' property, and had also got to know the objectors while undertaking the work to move the blaise and also through joint membership of various community groups.

The Panel accepted that Dalkeith was a small community, which meant that it was inevitable that Cllr Cassidy would know people and attend the same events. The Panel nevertheless considered that, having taken Cllr Cassidy's relationship with both the tennis club and the objectors into account, a member of the public, with knowledge of these relevant facts could reasonably have concluded that he had an interest in the matter before the Planning Committee that was sufficiently significant as being likely to affect his discussion or decision making. The Panel was not satisfied that Councillor Cassidy had complied with the objective test under paragraph 5.3 of the Code and that he had given it sufficient consideration. The Panel found that Councillor Cassidy had breached the Code and censured him.



Details of cases, including full written decisions and information about scheduled Hearings, can be found in the [Our Cases](#) section of our website.



Review of Councillors' Code of Conduct

The Scottish Government has confirmed that Ministers wish to proceed with the review of the Councillors' Code. The Government has asked the Standards Commission to contribute to the review, so if you have any suggestions in respect of either the content or format, including on how any current provisions can be improved, please let us know, either by email or telephone, and we will ensure that these are considered.

Annual Report and Accounts

Both our Annual Report and Annual Accounts for 2018/19 have been laid before the Scottish Parliament and published on our website under the [Corporate Information](#) section. The Annual Report contains information about the work we undertook last year in order to meet our strategic objectives. It also contains case statistics and summaries of the outcomes of the Hearings we held, along with an overview of our priorities for 2019/20. The Annual Accounts provide an overview of our governance arrangements and financial performance.

Monitoring Officers' Workshop

The Monitoring Officer's workshop is scheduled to take place on 4 November 2019 between 11:00 (with tea and coffee available from 10:30) and 14:00. The event will be held at the **Hilton Edinburgh Carlton, North Bridge, Edinburgh, EH1 1SD**. The programme will be issued shortly.



For further information on the support we can offer councillors and members of devolved public bodies, please either speak to your Monitoring Officer or Standards Officer or look out for information on our website. Alternatively, please contact us:

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