



2 April 2024

MEDIA RELEASE

HIGHLAND COUNCILLOR CLEARED OF BREACH OF CODE OF CONDUCT

At a Hearing held online on 2 April 2024, Highland Councillor Andrew Jarvie was found by the Standards Commission to have breached the Councillors' Code of Conduct, on the face of it, in respect of a comment he made about the Council's former Chief Executive at a full Council meeting held online on 8 December 2022. The Hearing Panel found, however, that Cllr Jarvie was entitled to enhanced protection of freedom of expression, as a politician commenting on a matter of public interest. The Panel was of the view that a restriction on this right could not be justified in the circumstances of the case and, therefore, that a formal finding of breach could not be made.

Helen Donaldson, Standards Commission Members and Chair of the Hearing Panel, said: "The Panel found that, at the meeting, Cllr Jarvie made a public comment that amounted to a personal attack on the then Chief Executive."

The Standards Commission's Hearing Panel heard that it was not in dispute that Cllr Jarvie stated at the meeting that: "in view of this am I wrong in feeling the Chief Executive came to Caithness and lied to us", when discussing the Chief Social Work Officer's Annual Report and the closure of a children's home in his ward.

The Panel noted that Cllr Jarvie's position was that after a press release about the home was issued by the Council in June 2022, the then Chief Executive met local councillors in Caithness, stated that the press release was incorrect and promised the home would not close. The Panel accepted that when it was then reported in a local media outlet, on 7 December 2022, that the home was to close, Cllr Jarvie had a right to raise the matter and question why the position had changed.

The Panel was of the view that such a public attack on the then Chief Executive's character could have been highly damaging, not only to her reputation as an individual, but also to the Council itself, given she was its senior officer. The Panel accepted the question of whether the position in respect of the closure of the home may have changed between June and the Council meeting in December 2022, and that the then Chief Executive's position on the home, as outlined in June, may have been accurate and made in good faith at that time.

The Panel considered that Cllr Jarvie must have known that the making of such an accusation in the context of a discussion on such an emotive subject, had the potential to have a significant, detrimental impact on the then Chief Executive's reputation. The Panel noted that there had been nothing to prevent Cllr Jarvie from raising his concerns about the

apparent change in position regarding the potential closure of the home in a respectful manner.

As such, the Panel concluded that Cllr Jarvie had, on the face of it, contravened the requirements under the Code for councillors to treat council officers with courtesy and respect and to refrain from criticising their conduct, performance or capability in public.

The Panel accepted, nevertheless, that Cllr Jarvie was entitled to the enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights afforded to politicians commenting on matters of public interest. The Panel noted that the Courts have held that where a statement amounts to a value judgment, there must exist a factual basis to support it, failing which it will be excessive.

In this case, the Panel accepted that the Cllr Jarvie's accusation that the former Chief Executive had lied was a value judgement made in good faith. In considering it was made in good faith, the Panel accepted that Cllr Jarvie was motivated by concerns about the closure of the home, rather than a desire to question the then Chief Executive's integrity in general. The Panel further considered that there was evidence to demonstrate that, while not necessarily accurate, the accusation had a basis in fact, given it appeared the position had changed in respect of the potential closure of the home, despite the apparently categorical assurances that the then Chief Executive had given at the meeting in Caithness. The Panel was satisfied, therefore, that in the very specific and particular circumstances of the case, Cllr Jarvie's comment amounted to a value judgement that was not excessive.

The Panel found that, in the circumstances, Cllr Jarvie's comment was not sufficiently offensive, personally abusive or gratuitous as to justify a restriction on his enhanced right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail. In reaching this view, the Panel took account of its finding that Cllr Jarvie had expressed an opinion in good faith. It also took account of the fact that Cllr Jarvie and others had sought information on the position in respect of the home in advance of the Council meeting on 8 December 2022, and that this had not been provided. The Panel was satisfied, therefore, that Cllr Jarvie had attempted to seek clarification about whether the Chief Executive's position, as outlined at the meeting in Caithness, was accurate or had changed.

The Panel concluded, therefore, that a formal finding of a breach of paragraphs 3.1, 3.8 and 3.10 of the Code could not be made.

Ms Donaldson, stated: "The Code of Conduct does not prevent councillors from being able to express their views or to ask questions and scrutinise the performance of the Council. The Standards Commission considers, however, that they should do so without making serious, unfounded allegations about officers, particularly if any such allegations have the potential to have a significantly detrimental impact on the reputation of the officers in question."

A full written decision of the Hearing will be issued and published on the Standards Commission's website within 7 days.

ENDS

NOTES FOR EDITORS

1. Complaints about councillors are made to the Ethical Standards Commissioner (ESC). The Standards Commission and ESC are separate and independent, each with distinct functions. The ESC is responsible for investigating complaints. Following investigation, the ESC will refer its report to the Standards Commission for Scotland for adjudication. Email: info@ethicalstandards.org.uk, <https://www.ethicalstandards.org.uk/> Tel: 0300 011 0550
2. The [Standards Commission for Scotland](#) is an independent public body, responsible for encouraging high standards of behaviour by councillors and those appointed to boards of devolved public bodies including in education, environment, health, culture, transport, and justice. The role of the Standards Commission is to encourage high ethical standards in public life; promote and enforce the Codes of Conduct; issue guidance to councils and devolved public bodies and adjudicate on alleged breaches of the Codes of Conduct, applying sanctions where a breach is found.
3. The [Codes of Conduct](#) outline the standards of conduct expected of councillors and members of devolved public bodies. In local authorities, there is one Code of Conduct, approved by Scottish Parliament, which applies to all 1227 councillors elected to Scotland's 32 Local Authorities.