

Interim Suspension - Decision of the Standards Commission for Scotland

Taken by Standard Commission Members: Ms Ashleigh Dunn
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BACKGROUND

General

Section 21 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act), as amended, provides the Standards Commission for Scotland (Standards Commission) with the power to impose an interim suspension on a councillor or member of a devolved public body upon receipt of an interim report from the Commissioner for Ethical Standards in Public Life in Scotland (ESC) on an ongoing investigation.

A decision to impose or not to impose an interim suspension is not, and should not be seen as, a finding on the merits or validity of any allegations against the councillor or member concerned. The imposition of an interim suspension should also not be viewed as a disciplinary measure.

In making a decision about whether to impose an interim suspension, the Standards Commission is not making findings of fact, nor making findings as to whether any allegations are or are not established. It is sufficient for the Standards Commission to act if it is satisfied that there is a *prima facie* case to do so. It should be noted that any differences in the recollections and accounts of witnesses can be explored during the investigation, before being weighed and tested during the adjudication process (should any complaints reach that stage).

Councillor Callum Purves

The Standards Commission received correspondence from the Chief Executive of Perth & Kinross Council advising that a number of formal complaints had been made to the ESC about Councillor Purves' conduct at a meeting of Perth and Kinross Health and Social Care Partnership on 29 July 2019. The Chief Executive advised that she was concerned that Councillor Purves' alleged behaviour had put officers in an environment that was untenable due to them being put into positions of fear, risk and alarm from working with him and that both the Council and the Health and Social Care Partnership may be unable to exercise their statutory functions as a result. The Chief Executive advised that officers and other Board Members of the Health and Social Care Partnership reported feeling intimidated and unsafe as a result of Councillor Purves' alleged conduct.

The Standards Commission considered that concerns raised by the Chief Executive were sufficiently serious for it to be appropriate for consideration to be given to whether an interim suspension should be imposed. As such, the Standards Commission requested, under Section 21(a) of the 2000 Act, an interim report from the ESC outlining the nature of the allegations made in the complaints

against Councillor Purves and the status of any ongoing investigation. The Standards Commission also asked the ESC to provide her views on:

- any public interest and proportionality considerations in respect of the imposition of an interim suspension, including any potential consequences of not doing so; and
- whether the further conduct of her investigation was likely to be prejudiced if an interim suspension is not imposed.

An interim report was received from the ESC on 20 September 2019.

INTERIM REPORT

The ESC advised that complaints about Councillor Purves had been received from four individuals. The first of these was from another elected member of Perth & Kinross Council, Councillor Murray Lyle, and concerned the conduct of Councillor Purves “over the last several months” and at a Council meeting on 27 February 2019 and, specifically, the way he had interacted with the Provost and the tone and manner in which he had spoken to officers. Councillor Lyle also complained about Councillor Purves having tried to become inappropriately involved during operational matters in the previous year.

The complaint from the second individual, being the Council’s Deputy Chief Executive, concerned the events in the lead up to, and at, a meeting of the Health and Social Care Partnership on 29 July 2019 and, specifically, that Councillor Purves behaved in an intimidating manner towards him, other councillors and other members of the Health and Social Care Partnership. The Council’s Deputy Chief Executive also raised concerns that, in his opinion, Councillor Purves had deliberately engineered a situation to bring both the Council and officers into disrepute and to expose them to unwarranted media coverage.

The ESC reported that the third complainer was the Council’s Head of Legal Services and Monitoring Officer, who had also raised concerns about Councillor Purves’ conduct in the lead up to, and at, the meeting of the Health and Social Care Partnership on 29 July 2019. The Head of Legal Services and Monitoring Officer complained that Councillor Purves had demonstrated a wilful disregard for the advice of officers and had been disrespectful to both them, the Chair and other members at the meeting.

The ESC advised that the fourth complainer was the Council’s Chief Executive who again had raised concerns about the conduct of Councillor Purves in the lead up to, and at, the meeting of the Health and Social Care Partnership on 29 July 2019 and, in particular, that he had behaved in a disrespectful, intimidating and inappropriate way. The ESC provided copies of statements from other members of the Health and Social Care Partnership who had been present at the meeting in support of her complaint.

The ESC noted that a number of the complaints received concerned allegations of bullying and intimidating behaviour on the part of Councillor Purves which, if established and taken cumulatively, could amount to serious behaviour. The ESC noted that such behaviour could have a significant impact on the health and wellbeing of others, particularly if it was repeated while her investigation was ongoing. The ESC noted that as she had received four complaints, over a five-month period, about analogous concerns, there was the potential for any such alleged behaviour to continue during the course of the investigation.

The ESC noted that a potential consequence of a failure to impose an interim suspension was the potential disruption to the Council and its normal operations if the alleged behaviour of Councillor Purves was causing relationships to breakdown. The ESC indicated that further potential consequences were that public confidence in the Council and in the ethical standards framework could be undermined should any bullying or intimidating behaviour be allowed to continue.

Turning to the question of proportionality, the ESC stated that she considered that the imposition of an interim suspension would cause financial and reputational damaged to Councillor Purves. The ESC noted that some of the complaints were somewhat unspecific and contained some conflicting evidence. The ESC further commented that, depending on the specific context in which it was displayed, Councillor Purves might be entitled to enhanced protection in respect of his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC advised that she was not satisfied, at this stage, that the complaints were so serious that, if established, they would result in Councillor Purves being suspended or disqualified.

The ESC subsequently indicated that she anticipated that her investigation would be completed within four to five months.

The Standards Commission noted that the crux of the complaints was that Councillor Purves had failed to comply with the provisions in the Councillors' Code of Conduct and the Health and Social Care Partnership's Code of Conduct that require councillors and members to treat their colleagues and officers with courtesy and respect and not to engage in any behaviour that could amount to bullying or harassment.

In accordance with its Interim Suspension Pending Completion of Investigation Policy, the Standards Commission sent a copy of the interim report to Councillor Purves on 23 September 2019. The Standards Commission invited Councillor Purves to submit, within five days, any representations he wished to make on:

- the interim report; and
- whether an interim suspension should be imposed.

REPRESENTATIONS RECEIVED

Another elected member of Perth & Kinross Council, Councillor Eric Drysdale, provided a witness statement about events surrounding the Health and Social Care Partnership meeting on 29 July 2019. Councillor Drysdale advised that Councillor Purves had activated a microphone and "loudly voiced his own objections" to the Chair's announcement that the meeting would be held in private. Councillor Drysdale advised that the Chair had then spoken over Councillor Purves and had indicated his comments were out of order. Councillor Drysdale indicated that when the Chair then repeated a similar message, Councillor Purves had again loudly voiced his objections and had spoken over the Chair.

The Chief Executive of Perth & Kinross Council advised, by email on 30 September 2019, that she had received correspondence from employment lawyers representing one of the Council's most senior members of staff. The legal representatives had noted that Council officers have a right to work in a safe environment and advised that the individual concerned continued to feel bullied, humiliated and intimidated from having to continue to work with Councillor Purves. The Chief Executive indicated that due to the seniority of the officer's role she was unable to offer suitable alternative deployment. The Chief Executive further advised that she had been asked, in her

capacity as Head of Paid Service to take immediate action to resolve matters so that they did not escalate further. She noted, however, that she was unable to do so, despite having taken human resource and legal advice, and, while a Special Council meeting had been convened to consider a motion to remove both Councillor Purves and another elected member from committees, this had been rejected by opposition councillors pending the completion of the ESC's investigation.

Councillor Purves submitted representations on 1 October 2019. Councillor Purves advised that he rejected the complaints made against him and considered that there may be a political motive behind the ones made against both him and his colleague, Councillor Stewart.

Councillor Purves provided comments on the merits of the complaints against him. In particular, he noted that that video evidence was available of the full Council meeting on 27 February 2019 and indicated that this would demonstrate that he had not been disrespectful to the Provost. Councillor Purves advised that he and Councillor Stewart had made "several efforts" to resolve the personal and political differences within their party group, including acceding to the Chief Executive's offer of mediation, but that to date others within the group had not agreed to participate in this.

Councillor Purves advised that he considered there were "many inconsistencies, contradictions and factual inaccuracies" in respect of the complaints regarding the events on 29 July 2019. He noted that the Chief Executive had not been present and that a greater number of individuals who had been there disputed the complainers' versions of events.

Councillor Purves contended that the meeting of the Health and Social Care Partnership on 29 July 2019 was a public one and that any decision to cancel or postpone it had been *ultra vires*. Councillor Purves confirmed that he had voiced concerns about the appropriateness of the move to cancel the meeting, but disputed having interrupted the Chair to do so or having behaved inappropriately in any other way, and a number of witness accounts he provided supported his account.

Councillor Purves disputed the Chief Executive's contention that his alleged behaviour was seriously impacting on the functioning and governance of either the Council or the Health and Social Care Partnership. Councillor Purves noted that while the Chief Executive had prohibited meetings of the Health and Social Care Partnership from taking place for several weeks, she had subsequently agreed they could recommence following a meeting with him and Councillor Stewart. Councillor Purves advised that the Chief Executive had also put in place measures to allow him and Councillor Stewart to continue to perform their roles as councillors and board members "without fear of further complaints" being made against them, by specifically requiring them to put any requests for meetings to the appropriate director and by having at least two officers present at any meeting. Councillor Purves stated that several Council committee meetings and a meeting of the Health and Social Care Partnership had taken place after the events on 29 July 2019, with no issue, and advised that no formal or informal meetings of the Council have been cancelled as a result of any alleged behaviours. Councillor Purves alleged, therefore, that both the Council and the Health and Social Care Partnership had been able to fully execute their statutory governance and democratic functions.

Turning to the questions of public interest and proportionality, Councillor Purves advised that the political balance of the Council was finely balanced and that decisions to suspend him and Councillor Stewart would create a political majority on the Council, "that did not exist", and would not reflect the wishes of the electorate. Councillor Purves alleged that removing him and Councillor Stewart from the Health and Social Care Partnership would "upset the delicate balance" on it, as it was likely

they would be replaced by councillors “supportive of the NHS position”, which was against the wishes of many public representatives. Councillor Purves argued that, as such, it was explicitly in the public interest for him to continue in his role and that a suspension would further undermine public confidence in the Health and Social Care Partnership, the Council and NHS Tayside.

Councillor Purves further advised that the Care Inspectorate and Healthcare Improvement Scotland had recently published a report on their joint strategic inspection of the Health and Social Care Partnership, in which they had stated that members of it “lacked training and development opportunities to have the knowledge and confidence required to fulfil their role and provide effective governance [and] as a result... the IJB was not fulfilling its role”. Councillor Purves noted that it was clear from the inspection report that there were governance issues within the Health and Social Care Partnership and that members were not being provided with sufficient support from officers to carry out their duties. Councillor Purves advised that he and Councillor Stewart were seeking to address the issues raised in the report.

Councillor Purves concluded that, in light of the above, it would be disproportionate and not in the public interest to impose an interim suspension.

DECISION

The Standards Commission considered all the evidence before it, including the representations received. It was not satisfied that:

1. There was evidence that a failure to impose an interim suspension would be likely to prejudice the further conduct of the ESC’s investigation to any significant degree.
2. It was otherwise in the public interest to impose such a measure.

As such, the Standards Commission determined not impose an interim suspension.

Reasons for Decision

In accordance with its Interim Suspension Pending Completion of Investigation Policy, the Standards Commission considered whether the further conduct of the ESC’s investigation was likely to be prejudiced if an interim suspension was not imposed (for example if there were concerns that the councillor or member may try to interfere with evidence or witnesses), or whether it was otherwise in the public interest to impose such a measure.

The Standards Commission noted that the ESC had indicated that she had not received any information that the future conduct of the ESC’s investigation may be prejudiced or that an interim suspension was required to protect witnesses. The Standards Commission was pleased to note that Councillor Purves had confirmed, in his submissions, that he would fully co-operate with the investigation and any adjudication process (should the complaints reach that stage). The Standards Commission noted that while it was possible that some potential witnesses might feel more comfortable in co-operating with the investigation should an interim suspension be in place, there was no evidence before it to suggest that a decision not to apply a suspension would be a significant impediment to the investigation. The Standards Commission concluded that it was not persuaded, in the circumstances, that an interim suspension was necessary to prevent the ESC’s investigation from being prejudiced or to protect witnesses.

The Standards Commission proceeded to consider whether it was nevertheless in the public interest for an interim suspension to be imposed.

The Standards Commission considered that some of allegations made against Councillor Purves, and specifically, that he had engaged in intimidating behaviour, were serious in nature. The Standards Commission confirmed that councillors and members of devolved public bodies were required to behave with courtesy and respect at all times when undertaking their roles. The Standards Commission reiterated that any form of behaviour that could amount to bullying or harassment was completely unacceptable and should not be tolerated. It noted that it was important to recognise the impact such behaviour could have on any individual experiencing it, as well as on the councillor or member's wider organisation, in terms of morale and operational effectiveness. The Standards Commission further noted that such conduct was capable of diminishing the public's confidence in a council or public body. It considered that officers, councillors and board members should be able to work in an inclusive environment where they felt safe and were valued and respected.

Having reviewed the information before it in detail, the Standards Commission noted, nevertheless, that the main crux of the complaints about Councillor Purves concerned one key event, being the meeting of the Health and Social Care Partnership on 29 July 2019. The Standards Commission further noted that there was some conflicting information in the material before it about the extent of Councillor Purves' alleged behaviour and, further, that some of the concerns raised lacked specificity. Given the limited extent of the complaints, and given that the ESC had been unable to conclude with any certainty that the complaints were so serious that, if established, they would result in Councillor Purves being suspended or disqualified, the Standards Commission was not satisfied that it would be proportionate for it to impose an interim suspension.

The Standards Commission noted that concerns had been raised that a failure to suspend Councillor Purves may cause harm to officers and other members of the Council and the Health and Social Care Partnership as they could be put into positions of fear, risk and alarm from working with him and, further, that both organisations may be unable to exercise their statutory functions as a result. The Standards Commission also recognise that the reputation and well-being of a person can be adversely affected by a suspension. The Standards Commission recognised that there was a risk of harm to all parties, and that there could be some disruption to the normal operation of the Council and the Health and Social Care Partnership as a result of the ongoing breakdown in some relationships. The Standards Commission was not satisfied, however, that the Councillor Purves' alleged behaviour was so serious that any potential harm and disruption could not be managed. It noted that there was evidence that additional steps had already been taken to protect officers, and that meetings of the Council and the Health and Social Care Partnership had taken place since the events in question. The Standards Commission concluded, therefore, that it was not satisfied that the potential consequences of not imposing an interim suspension were so serious that the public interest required one to be imposed.

Date: 7 October 2019

**LORNA JOHNSTON
Executive Director**