

Interim Suspension - Decision of the Standards Commission for Scotland

Taken by Standard Commission Members: Ms Ashleigh Dunn
Mr Michael McCormick
Mr Paul Walker

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 Colin Stewart

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 Stewart's 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 Stewart's 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 Stewart's alleged conduct, and that NHS non-executives and senior officers had suggested being unable to work with him "primarily due to the aggression and intimidation they experienced".

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 Stewart 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 Stewart had been received from six individuals. The first of these was from another elected member of Perth & Kinross Council, Councillor Rosalind McCall and concerned interaction she had had with Councillor Stewart on 8 February and 25 February 2019. Councillor McCall complained that Councillor Stewart had shouted aggressively at her on both occasions.

The second individual is another elected member, Councillor Murray Lyle, who has complained that Councillor Stewart had sent unacceptable text messages and emails to a Councillor Shiers, had questioned Councillor McCall aggressively and had intimidated her, had shouted at a Councillor Baird and had spoken aggressively to a Councillor Forbes and blocked his path in a corridor.

The ESC reported that the third complainer was the Council's Deputy Chief Executive, who had submitted two complaints. In this first of these, the Council's Deputy Chief Executive alleged that Councillor Stewart had described a recommendation made by Council officers as 'stupidity on stilts' in the local press. The ESC noted, however, that the article in question reported Councillor Stewart as referring to the proposals of the Council as 'stupidity on stilts'. The ESC advised that the Council's Deputy Chief Executive's second complaint 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 Stewart had bullied and intimidated 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 Stewart had deliberately engineered a situation to bring both the Council and officers into disrepute and expose them to unwarranted media coverage. The ESC advised that, in support of the above complaints, the Council's Deputy Chief Executive submitted various documents which provided more specific accounts of Councillor Stewart's alleged behaviour including that he had refused to accept the decision to hold the meeting in private and had shouted at him and another officer, being the Council's Head of Legal Services and Monitoring Officer.

The fourth complainer is also an elected member, Provost Melloy who alleged that Councillor Stewart had attempted to pressure him into releasing 'private' Council papers, had berated him for not doing so, had insulted him and had forced his car door out of his hands as he tried to get into the vehicle.

The ESC reported that the fifth complainer was the Council's Head of Legal Services and Monitoring Officer, who had also raised concerns about Councillor Stewart's 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 Stewart had demonstrated a wilful disregard for the advice of officers and had been disrespectful to officers, the Chair and other Board Members at the meeting.

The ESC advised that the sixth complainer was the Council's Chief Executive who again had raised concerns about the conduct of Councillor Stewart 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 Chief Executive alleged that Councillor Stewart had invited members of the public to the meeting, despite knowing a decision had been taken to hold it in private. 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 stated that the Chief Executive had submitted a number of documents, some of which provided additional specification around some aspects of the complaint. The ESC indicated that there was corroborative evidence in these to support the contention that Councillor Stewart had shouted at the Head of Legal Services and Monitoring Officer. The ESC noted, however, that there were also some inconsistencies in the accounts provided to her office. The ESC further noted that as part of a live investigation into the complaint by Councillor Rosalind McCall, a witness had described a culture of bullying and intimidation within the councillor group at the Council.

The ESC noted that a number of the complaints received concerned allegations of bullying and intimidating behaviour on the part of Councillor Stewart 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 seven 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 Stewart 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 if any bullying or intimidating behaviour was 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 damage to Councillor Stewart. 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 Stewart 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 considered that it was possible that the behaviour, if established, would lead to the suspension or disqualification of Councillor Stewart, given the seriousness of the allegations, the number of the allegations and the variety of people affected.

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 Stewart 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 Stewart on 23 September 2019. The Standards Commission invited Councillor Stewart to submit any representations he wished to make on:

- The interim report; and
- Whether an interim suspension should be imposed.

within five days.

REPRESENTATIONS RECEIVED

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 Stewart. 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 as while a Special Council meeting had been convened to consider a motion to remove both Councillor Stewart and another elected member from committees, this had been rejected by opposition councillors pending the completion of the ESC's investigation. The Chief Executive advised that she had not received any formal complaint about a culture of bullying in the Council since she took up post on 1 September 2018.

Councillor Stewart submitted representations on 1 October 2019. Councillor Stewart 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 Purves. Councillor Stewart further advised that he refuted all of the allegations in the complaint made by Councillor McCall and confirmed that, to date, he had co-operated with the ongoing investigation, which included being interviewed.

Councillor Stewart provided comments on the merits of the complaints against him and noted that the allegations concerning his behaviour towards other councillors were "extremely vague". Councillor Stewart advised that he and Councillor Purves 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 Stewart highlighted the fact that the ESC's interim report had correctly stated that his comments in the local press concerned a policy proposal, as opposed being about any individual officer or officers as a collective and, in any event, would be likely to attract the enhanced protection of freedom of expression afforded to politicians under Article 10 of the ECHR. In respect of Councillor Melloy's complaint, Councillor Stewart confirmed that while there had been a disagreement about whether papers were confidential or not, he categorically rejected Councillor Melloy's account of their interaction and, specifically, that he had "yanked" the car door from his hand.

Councillor Stewart 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 Stewart 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 Stewart confirmed that he had voiced concerns about the appropriateness of the move to cancel the meeting, but disputed having been aggressive or having behaved inappropriately in any other way. Councillor Stewart supplied nine eyewitness statements and noted none referred to him having acted in the way described. Councillor Stewart noted that, in fact, seven of the nine eyewitnesses explicitly stated that they had not seen any inappropriate behaviour whatsoever.

Councillor Stewart 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 Stewart 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 Purves. Councillor Stewart advised that the Chief Executive had also put in place measures to allow him and Councillor Purves 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 Stewart 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 Stewart 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. In addition, Councillor Stewart advised that he had regularly attended both formal and informal meetings of NHS Tayside since the events at the end of July 2019 “with no reported issues”.

Turning to the questions of public interest and proportionality, Councillor Stewart advised that the political balance of the Council was finely balanced and that decisions to suspend him and Councillor Purves would create a political majority on the Council, “that did not exist”, and would not reflect the wishes of the electorate. Councillor Stewart alleged that removing him and Councillor Purves 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 Stewart 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 Stewart advised that he considered the complaint made by Councillor McCall should be discounted as a witness statement has been provided that contradicted the principal part of it. He advised that Councillor Lyle’s complaint should also be discounted as there with no supporting evidence and the concerns raised were vague. Councillor Stewart advised that the Depute Chief Executive’s first complaint was fundamentally one about his [Councillor Stewart’s] stance on a policy issue and should, therefore, be considered in that light. Councillor Stewart further advised that Councillor Melloy’s complaint arose out of a disagreement over procedure and should be considered in that light. Councillor Stewart indicated that discounting these complaints meant that what was left were complaints about the events in the lead up to, and at, a meeting of the Health and Social

Care Partnership on 29 July 2019. Councillor Stewart maintained that, during this time, he had acted solely in the public interest and to maintain the reputation of the Health and Social Care Partnership.

Councillor Stewart advised that he had had “civil, even friendly, discussions and interactions” with all of the complainers since the time of their complaints, including at both formal and informal meetings, and was not aware that any individuals concerned had felt the need to absent themselves from his presence at any point following the submission of the complaints. Councillor Stewart noted that the ESC had not referred to having received any complaints about him relating to matters after 29 July 2019. Councillor Stewart indicated that he believed the complaints about the events on 29 July 2019 were an attempt by the complainers to deflect attention from the embarrassment they felt by their “inadequate handling of the circumstances of the disputed meeting”.

Councillor Stewart accepted that it was clear that a failure to address bullying, aggressive and intimidating behaviours could undermine public confidence in the Council and the Health and Social Care Partnership but indicated that following press coverage of the complaints about his conduct and behaviour, members of representative bodies and public partners on the Health and Social Care Partnership had supported him, meaning that it was “likely that any interim suspension may therefore in itself be seen as victimisation” of him, thus undermining public confidence in the ethical standards framework.

Councillor Stewart advised that he had already suffered reputational damage by the reporting of “prejudicial comments from Councillor Lyle” about him in the local press in respect of his suspension from the party group on the Council. Councillor Stewart indicated that the imposition of an interim suspension would be likely to increase this reputational damage, notwithstanding that the Standards Commission was making no judgement on the merits of the complaints.

Councillor Stewart 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 Stewart 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 Stewart advised that he and Councillor Purves were seeking to address the issues raised in the report.

Councillor Stewart 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 concluded that:

1. It was not satisfied that 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 nevertheless in the public interest to impose such a measure.

The Standards Commission determined, therefore, to suspend Councillor Stewart's entitlement to attend all meetings of Perth & Kinross Council and any committee or sub-committee thereof, all meetings of Perth and Kinross Health and Social Care Partnership, and all meetings of any other outside body that he has been appointed or nominated to by the Council, with effect from and including Tuesday 8 October 2019.

Having noted that the ESC had advised that it was likely that the investigation would not be completed for at least four months, the Standards Commission determined that the suspension should, in the first instance, be for a period of three months.

The interim suspension will automatically end in any of the following circumstances:

- If the ESC decides, following investigation, that there has not been a breach of a Code.
- if the Standards Commission receives an investigation report but decides not to hold a Hearing.
- if the Standards Commission receives an investigation report, holds a Hearing and imposes a sanction.

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 her investigation may be prejudiced or that an interim suspension was required to protect witnesses. The Standards Commission was pleased to note that Councillor Stewart had confirmed, in his submissions, that he had co-operated with the investigation to date and would continue to do so. The Standards Commission considered, however, that given the serious nature of the complaints against Councillor Stewart, the suggestion of a pattern of behaviour over a number of months and the references in the complaints to the possibility of other individuals having experienced similar behaviour but have not submitted complaints or accounts of these incidents, intervening in the circumstances to impose a suspension might allow any potential witnesses to feel more confident to report their experiences. The Standards Commission noted that this was particularly relevant in one specifically cited instance where a potential witness is described as feeling unable to lodge a complaint. The Standards Commission considered, however, that given that the ESC reported not having any specific reason to report that witnesses require protection, the concern to secure the integrity of the investigation was not considered - on its own - to require a suspension to be applied, although it was recognised that a suspension may be of assistance to the inquiry.

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

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 all the information before it in detail, the Standards Commission was satisfied that the allegations made against Councillor Stewart and, specifically, that he had engaged in bullying and intimidating behaviour over a period of time, were serious in nature. The Standards Commission noted that this view was supported by the ESC, who had advised that she considered that it was possible that the behaviour, if established, would lead to his suspension or disqualification.

The Standards Commission accepted that there was some conflicting information in the complaints about Councillor Stewart's alleged behaviour and that some of the concerns raised lacked specificity. The Standards Commission further accepted that Councillor Stewart had provided evidence to demonstrate that some of the complainers' versions of events were disputed. It noted that his position was that some of the complaints should be disregarded on these and other grounds. The Standards Commission noted, however, that there was also evidence before it to corroborate the complainers' accounts. The Standards Commission confirmed, in any event, that in making a decision about whether to impose an interim suspension, it was not making findings of fact, nor making findings as to whether the allegations were or were not established. The Standards Commission was satisfied that there was a *prima facie* case that there may have been a pattern of bullying and intimidating behaviour by Councillor Stewart towards a number of individuals over a period of months. The Standards Commission considered that it was sufficient for it to act on the basis that there was such a *prima facie* case. It noted that any differences in the recollections and accounts of witnesses could be explored during the investigation, before being weighed and tested during the adjudication process (should the complaints reach that stage).

Turning to the potential consequences of the imposition of an interim suspension, the Standards Commission noted that there was no evidence there would be any significant financial impact on Councillor Stewart. It noted that, in terms of Section 21 of the Act, he would still be entitled to receive basic allowance and special responsibility allowance from the Council and any salary or daily or other periodic allowance or other payment from the Health and Social Care Partnership (other than the payment or reimbursement of travelling, subsistence or other allowances or expenses).

The Standards Commission noted that Councillor Stewart had indicated that the imposition of an interim suspension would result in reputational damage to him. While the Standards Commission considered that it had no control over any damage he may already have suffered as a result of press coverage and, further, that an interim suspension was not a decision on the merits or otherwise of the complaints, nor a disciplinary measure, it nonetheless accepted that there was a risk it could be perceived as such. The Standards Commission was of the view, however, that this risk required to be balanced against any other potential consequences.

The Standards Commission noted that both Councillor Stewart and the ESC had referred to the potential political impact of an interim suspension being imposed. The Standards Commission confirmed however that, in order for it to be as fair, objective and consistent as possible, it did not take the party affiliation (or otherwise) of councillors into consideration in any of its decision-making. As such, the Standards Commission disregarded any such references to, and information about, any potential political impact.

The Standards Commission noted that concerns had been raised that a failure to suspend Councillor Stewart 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 considered that, given the seriousness and extent of the allegations against Councillor Stewart and the variety of individuals affected by his alleged conduct, there was a significant risk of harm to others. The Standards Commission considered that while 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, this risk in itself could result in disruption to the normal operations of both organisations. The Standards Commission considered that the potential consequences to other individuals and to both the organisations, outweighed the risk of reputational damage to Councillor Stewart, or any known predictable impact to his well-being.

The Standards Commission concluded that it was satisfied that it was both proportionate and in public interest for it to impose an interim suspension.

REVIEW

If the investigation does not conclude before 7 January 2020, being the end of the period of the interim suspension, the Standards Commission will consider renewing it, in terms of Section 21(10). In making a decision about whether or not to renew the interim suspension, the Standards Commission will again consider the factors as outlined under section 3 in its Interim Suspension Pending Completion of Investigation Policy. The Standards Commission will not specifically seek any further representations from the councillor or member, but will take any received into account when making its decision.

Date: 7 October 2019

LORNA JOHNSTON
Executive Director