
To: Council

On: 15 December 2016

Report by: Head of Corporate Governance

Heading: Standards Commission for Scotland: Decision of the Hearing Panel of the Commission

1. Summary

- 1.1 A complaint was made to the Commission for Ethical Standards in Public Life in Scotland alleging that Councillor Paul Mack had contravened the councillors' code of conduct by failing to respect the chair at the meeting of the Education & Children Policy Board meeting held on 20 August 2015 and failing to comply with her rulings.
- 1.2 The Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) conducted an investigation into the complaint and concluded that Councillor Mack had contravened the code. The Commissioner subsequently submitted a report to the Standards Commission for Scotland (the Commission) on the outcome of his investigation.
- 1.3 The Commission, following receipt of the Commissioner's report, decided to hold a hearing in relation to the complaint and this hearing took place in Renfrewshire House on 17 October 2016.

- 1.4 The Hearing Panel issued an oral decision at the conclusion of the hearing that (1) The Councillor's Code of Conduct applied to the Respondent [Councillor Mack]; and (2) The Hearing Panel found, on the balance of probabilities, the Respondent had breached paragraph 3.2 of the Code, which obliges councillors to respect the Chair at meetings of the Council, its Committees or Sub-Committees and to comply with their rulings in the conduct of the business of such meetings. They then imposed a sanction of suspension to suspend Councillor Mack from meetings of the Education and Children Policy Board for a period of three months with effect from Friday, 21 October 2016. This sanction is made under terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 section 19(1)(b)(ii). The effect of the sanction is that Councillor Mack was unable to attend the meeting of the Board held on 3 November 2016 and will be unable to attend the meeting of the Board to be held on 19 January 2017.
- 1.5 The written decision of the Hearing Panel has now been received and a copy is appended to this report. This sets out the reasons for the decision that a breach of the code had been proven and the factors taken into account in deciding on the sanction imposed.
- 1.6 In terms of the Ethical Standards in Public Life (Scotland) Act 2000 a council receiving a copy of findings from the Standards Commission requires to consider those findings within three months of receiving them (or within such longer period as the Commission may specify).
- 1.7 Members are reminded that training on governance (which includes the councillors' code of conduct) has been and will continue to be provided to members as part of their training and development programme. Individual members can seek advice from the Head of Corporate Governance on any particular issues relating to the provisions of the Code.

2. **Recommendation**

- 2.1 That the Council, in accordance with the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000, note the findings of the Standards Commission on this complaint.
-

Implications of the Report

1. **Financial** - none
2. **HR & Organisational Development** - none
3. **Community Planning** – none
4. **Legal** – in terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 a council requires to consider the findings of the Standards Commission within 3 months of receipt (or within such longer period as the Commission may specify).
5. **Property/Assets** - none
6. **Information Technology** – none
7. **Equality & Human Rights** - The recommendation contained within this report has been assessed in relation to its impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** - none
9. **Procurement** – none
10. **Risk** – none.
11. **Privacy Impact** – none
12. **CoSLA Policy Position** – not applicable

List of Background Papers – none – report on Standards Commission's findings is appended.

Author: Lilian Belshaw, Democratic Services Manager, 0141 618 7112
e:mail – lilian.belshaw@renfrewshire.gsx.gov.uk

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Renfrewshire Council Headquarters, Cotton Street, Paisley, on 17 October 2016.

Panel Members: Mr Kevin Dunion, OBE, Chair of the Hearing Panel
Mr Ian Gordon, OBE, QPM, LL.B (Hons)
Mrs Julie Ward

The Hearing arose in respect of a Report by Mr Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland ("the CESPLS") further to complaint reference LA/R/1800 ("the Complaint") concerning an alleged contravention of the Councillors' Code of Conduct ("the Code") by Councillor Paul Mack ("the Respondent").

COMPLAINT

A complaint was received by the CESPLS about the alleged conduct of the Respondent. Following an investigation, the CESPLS referred the complaint to the Standards Commission for Scotland.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Councillors' Code of Conduct at a meeting of the Education and Children Policy Board of Renfrewshire Council on 20 August 2015 and, in particular, that he had contravened paragraph 3.2, which obliges councillors to respect the Chair at meetings of the Council, its Committees or Sub-Committees and to comply with their rulings in the conduct of the business of such meetings.

The relevant provision was:

Conduct at Meetings

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

The CESPLS submitted a report to the Standards Commission on 15 August 2016 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended. In essence, the conclusions reached by the CESPLS were that the Respondent had been disrespectful towards the Chair and had failed to comply with a ruling the Chair had made, in contravention of paragraph 3.2 of the Councillors' Code of Conduct.

Preliminary Matters

Both parties identified the witnesses they intended to call.

The Respondent indicated he was unhappy that the Hearing was being held at the Council Headquarters as he considered it was not a neutral venue. The Chair of the Hearing Panel explained that the decision was made in accordance with the Standards Commission's Hearing Process Guide & Rules 2016, which state that Hearings will normally be held in the Headquarters of the Local Authority where the Respondent is elected are located. The reason for this is that the

Standards Commission is publicly funded and, as such, it aims to minimise costs to the public purse.

Evidence Presented at the Hearing

The Hearing Panel heard evidence to the effect that the complaint had been made by Councillor Jacqueline Henry, who was the Convener of Renfrewshire Council's Education and Children Policy Board. The complaint concerned the Respondent's conduct at a meeting of the Policy Board on 20 August 2015.

The CESPLS advised that Councillor Henry had chaired the meeting and that the Respondent was in attendance. Item 13 of the Agenda concerned an invitation from a Dr Thomas Jung, the Oberbürgermeister of the Council's twin town of Furth in Germany. Approval was being sought from the Policy Board for a proposal that a delegation comprising of the Convener, the Provost and two senior education officers visit Furth. The CESPLS indicated that Councillor Henry had proposed a motion that the Policy Board approve the proposal. Councillor Lorraine Cameron, the opposition Education Spokesperson had moved an amendment, which had been seconded by Councillor Brian Lawson. Councillor Henry had then invited the Respondent to speak.

The CESPLS advised that during his speech the Respondent made a comment that he could envisage the headlines in the local newspaper that Councillor Henry and the Provost were going to Germany 'on the lash' to play 'hide the frankfurter with the Oberbürgermeister'.

The CESPLS indicated that Councillor Henry objected to the Respondent's comments and threatened to adjourn the meeting if he did not stop talking. He failed to do so and continued to talk loudly over her. As a result, Councillor Henry made the reasonable decision to adjourn the meeting. The CESPLS indicated that, as Councillor Henry was leaving the room, the Respondent made a further comment to the effect that 'there are no dirty words, only dirty minds'. When the meeting resumed, the Respondent intervened when someone else was speaking and had asked if he could speak again. Councillor Henry declined the request and moved that a vote be taken. The meeting had concluded after the vote.

The CESPLS advised that, on 21 August 2015, Councillor Henry submitted a written complaint to the Council's Chief Executive Officer about the Respondent's conduct at the meeting. The Respondent subsequently sent a letter to all Renfrewshire councillors accusing Councillor Henry of 'histrionics' and arguing he had made his comments 'sotto voce'.

The CESPLS noted that, in the main, the facts of the complaint were not in dispute. What was in dispute was whether the Respondent's remarks and language used were humorous and appropriate or whether they were offensive and disrespectful, in breach of the Councillors' Code of Conduct. The CESPLS contended that the Respondent's remarks, the manner in which they were delivered and his failure to desist from speaking when directed to do so had been disrespectful towards Councillor Henry, as Convener of the Policy Board. In particular, the Respondent's remark about hiding the frankfurter was a sexual innuendo. It was intended to be, and indeed was, both demeaning and offensive to the recipients. As such, the Respondent's conduct amounted to a contravention of paragraph 3.2 of the Councillors' Code of Conduct.

The CESPLS drew the Hearing Panel's attention to the Standards Commission's own Guidance on the Councillors' Code of Conduct and, in particular, point 17, which states that abusive or offensive language in the Chamber or at Committee meetings should not be tolerated.

The CESPLS led one witness, being, Councillor Henry. Councillor Henry advised that when she had invited the Respondent to speak at the meeting on 20 August 2015, he did so for some several minutes. Councillor Henry gave evidence to the effect that the Respondent had become increasingly agitated and kept raising his voice. She had been forced to speak over him. When he made the remarks that she and the Provost were going to Germany 'on the lash' to play 'hide the frankfurter with the Oberburgermeister', she told him she found these comments to be offensive and abusive and asked him to stop talking. Councillor Henry advised that when the Respondent failed to do so, she decided to adjourn the meeting for five minutes.

Councillor Henry gave evidence that her recollection was that, when making his remarks, the Respondent referred to her and the Provost as 'wee Annie and wee Jackie' and also referred to the Oberburgermeister as 'Oberburgermeister Tommy'. He made the comments in a very loud voice. Councillor Henry indicated that when she adjourned the meeting, left her chair and was walking out of the room, the Respondent said 'there are no dirty words in here, only dirty minds'.

Councillor Henry advised that when the meeting resumed after the adjournment, the Respondent asked whether he could finish his contribution but she said no and proceeded to move to voting on the agenda item. She wrote to the Chief Executive the next day to complain about the Respondent's behaviour at the meeting. Councillor Henry indicated her concerns were that he had disregarded her directions, as Convener of the Policy Board, and that he had inappropriately used sexual innuendo.

The Respondent attempted to lead evidence about Councillor Henry's motives in making the complaint but was advised by the Hearing Panel Chair that the Hearing Panel would only hear and consider relevant evidence, which was evidence that directly related to the events in question and whether his conduct amounted to a breach of the Councillors' Code of Conduct.

The Respondent led one witness, being Councillor Lawson.

Councillor Lawson gave evidence to the effect that the previous administration's policy was that councillors should not visit Furth or any of the Council's other twin towns. The proposal was, therefore, a controversial one and the amendment proposed by Councillor Cameron at the Policy Board meeting on 20 August 2015 was that any delegation to Furth should only comprise of officers. Councillor Lawson advised that he was concerned that the real purpose of the visit was not to study educational practices in Furth but rather was simply a twinning visit and, as such, it did not fall within the remit of the Policy Board. Councillor Lawson argued that the proposal should have gone to a full Council meeting. He indicated remarks he made at the meeting had been to this effect and that, as such, the Respondent's use of the word 'hide' might have been in the context of agreeing with him that the proposal was a 'smokescreen' to cover the real purpose of the visit.

Councillor Lawson confirmed that the meeting had been conducted in a 'business like' manner until the agenda item in question. In response to a question about the atmosphere of the meeting he described it as being 'controversial'. He indicated that while he remembered the Respondent's

remark about Councillor Henry going to play 'hide the frankfurter with the Oberburgermeister', he could not recall whether the Respondent used the Convener and Provost's first names. Councillor Lawson indicated that his recollection was that Councillor Henry had taken offence at the respondent's comments and had not known how to handle the situation. Councillor Lawson advised he had been surprised when Councillor Henry got up and left the meeting.

The Respondent argued that Councillor Henry's reaction to his remarks was disproportionate and that the CESPLS investigation and Standards Commission Hearing were a charade. The Respondent indicated he considered that the Hearing Panel was being used as a means to silence councillors. He argued that no one could have been offended by his remarks. The only person that had been was Councillor Henry.

The Respondent argued that up until that point his remarks were made, the Policy Board meeting had been good humoured. The Respondent submitted that his remarks that Councillor Henry and the Provost were going to play 'hide the frankfurter with the Oberburgermeister' were made humorously. He had been using a euphemism to make a serious point and, further, was using parlance that was common in Paisley. If anything, all he was guilty of was plagiarising a joke.

The Respondent gave evidence to the effect that he had not used the Convener or Provost's first names. He did not recall whether or not he had said anything when the Councillor Henry had left the room after calling the adjournment, although he accepted this was a possibility as he had a habit of saying things 'off piste'.

He disputed the notion that he had been disrespectful to a fellow councillor and argued he did not know anyone who was more respectful than he was, although he considered all politicians to be 'fair game'.

When asked if he was familiar with the Councillors' Code of Conduct, the Respondent said he was not. The Respondent argued he had not read the Code as his right to absolute privilege as a politician trumped it. He stated that he was at 'a more superior level than the Code'. He had been elected on a manifesto to be honest and transparent and would continue to demonstrate these values. The Respondent indicated he would not be silenced.

When referred to the paperwork, the Respondent confirmed that a week or so after the meeting on 20 August 2015 he had issued an email to all Renfrewshire councillors in which he referred to the meeting and confirmed that he had said he could envisage the deadline in the local newspaper as being 'you're just going off on the lash. Playing hide the frankfurter with the Oberburghmeister'.

DECISION

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing by the CESPLS and Respondent, and the evidence provided by the witnesses.

The Hearing Panel found as follows: -

1. The Councillors' Code of Conduct applied to the Respondent.

2. The Hearing Panel found the Respondent had breached paragraph 3.2 of the Code, which obliges councillors to respect the Chair at meetings of the Council, its Committees or Sub-Committees and to comply with rulings of the Chair in the conduct of the business of such meetings.

The Hearing Panel determined that, at a meeting of the Education and Children Policy Board of Renfrewshire Council on 20 August 2015, during an item to discuss an invitation for a small delegation from Renfrewshire Council to visit the Council's twin town of Furth:

- Councillor Mack addressed the Convener and said she was going to Germany 'on the lash' with the intention of 'playing hide the frankfurter with the Oberburgermeister'. Whether or not Councillor Mack used specific names, the comment was directed at identifiable individuals; namely the Convener and the Provost.
- While it may have been the case that Councillor Mack did not intend these remarks to be offensive, his comments and, in particular, the use of a sexual innuendo, were inappropriate and disrespectful. He gave no consideration to the impact or potential impact of his comments on the recipients.
- Councillor Mack failed to comply with a ruling from the Convener and continued to speak despite being asked to cease, which resulted in her having to adjourn the meeting.
- It was Councillor Mack's personal responsibility to be aware of, and comply with, the provisions in the Councillors' Code of Conduct. He had failed to do so and, moreover, has openly admitted he was wilfully ignorant of the content of the Code.

The Hearing Panel therefore concluded that the Respondent had breached paragraph 3.2 of the Code.

Evidence in Mitigation

The Hearing Panel heard that the Respondent took exception to the finding that he had been wilfully ignorant of the content of the Councillors' Code of Conduct. This did not take into account his incredibly high caseload and workload, the fact that he had never missed a full Council meeting and that the Council had withdrawn secretarial services.

The Respondent indicated it had never been his intention to offend anyone and there had been no malice behind his remarks. He made them in good humour and had simply lapsed into working class argot. No impartial observer had been offended and Councillor Henry's reaction was simply aimed at traducing and maligning him in order to generate disparaging headlines about him in the local newspaper.

SANCTION

The decision of the Hearing Panel was to suspend the Respondent from meetings of the Education and Children Policy Board for a period of three months with effect from Friday, 21 October 2016.

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

Reason for Sanction

In reaching their decision, the Hearing Panel noted:

- The Respondent's statement in mitigation and, in particular, that he said he had not intended any malice.
- The Respondent's view that his workload was such that he could not give time to familiarise himself with the Councillors' Code of Conduct.

However, the Hearing Panel:

- Found the Respondent had failed to respect the Convener and failed to respect her rulings as Chair during the meeting of Renfrewshire Council's Education and Children Policy Board meeting on 20 August 2015.
- Found there had been a clear breach by the Respondent of the Councillors' Code of Conduct concerning a lack of respect. While councillors are entitled to challenge other councillors, they should not do so in a personal or offensive manner. Abusive or offensive language and/or unnecessary disruptive behaviour should not be tolerated.
- Found the Respondent had wilfully ignored the Councillors' Code of Conduct. The Hearing Panel would remind the Respondent that councillors hold public office under the law and must observe the rules of conduct stemming from the law, including the Code.
- Considered the breach of the Code by the Respondent was exacerbated by his continuing lack of awareness that his comments may have been offensive, as evidenced by the email he had sent all councillors a week or so after the meeting on 20 August 2015. The Hearing Panel considered the Respondent had not reflected on his behaviour and had not demonstrated any insight into the effect it may have had on the recipients.

RIGHT OF APPEAL

The attention of the Respondent was drawn to Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended which details the right of appeal in respect of this decision.

Date: 25 October 2016



**Professor Kevin Dunion OBE, M.A.(Hons); MSc, LLd FRSA
Chair of the Hearing Panel**