
To: Council

On: 17 December 2020

Report by: Head of Corporate Governance as Monitoring Officer

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

1. Summary

- 1.1 Two complaints were made to the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) alleging that Councillor Paul Mack had contravened the councillors' code of conduct.
- 1.2 The Commissioner conducted an investigation into the complaints and concluded that Councillor Mack had contravened the code. The Commissioner subsequently submitted reports to the Standards Commission for Scotland (the Commission) on the outcome of her investigations.
- 1.3 The Commission, following receipt of the Commissioner's reports, decided to hold a hearing in relation to the complaints and this hearing took place in Renfrewshire House on 10 September 2020.
- 1.4 The Hearing Panel issued an oral decision at the conclusion of the hearing that Councillor Mack had breached paragraphs 3.2, 3.3, 3.5, 3.6, 3.7, and paragraphs 2 and 20 of Annex C. of the Code. As Councillor Mack had not been present at the hearing, he was sent a copy of the decision and was invited to submit any comments he wished to make in respect of mitigation within five working days, before the Panel would then reach a decision on the sanction to be applied. Councillor Mack did not provide any comments in respect of mitigation or the sanction to be applied.

- 1.5 The decision of the Hearing Panel was to disqualify Councillor Mack for a period of 17 months, from being, or from being nominated for election as, or from being elected, a councillor, with effect from 1 October 2020.
- 1.6 This sanction is made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 section 19(1)(d). The written decision of the Hearing Panel has 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.
- 1.7 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).
- 1.8 Cllr Mack has submitted an appeal to the Sheriff Principal challenging both the decision of the Commission that he had breached the Code and the sanction imposed. The appeal will be heard in Court although a date has still to be fixed for the hearing. Despite an appeal being lodged, the sanction imposed by the Standards Commission remains in place while the appeal has still to be determined.
- 1.9 Following consideration of the appeal the Court may:
- a) In respect of the Commissions finding of a breach of the Code:
 - i) confirm the finding;
 - ii) quash the finding;
 - iii) quash the finding and remit the matter back to the Commission to reconsider its decision
 - b) In respect of the sanction imposed by the Commission:
 - i) Confirm the sanction
 - ii) Quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission
- 1.10 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 issues arising from the Code.
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2. Recommendation

2.1 That the Council:

- a) in accordance with the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000, note the findings of the Standards Commission on the complaints against Councillor Mack; and
 - b) note that Councillor Mack has submitted an appeal against the findings of the Commission and the sanction imposed on him and that the appeal has still to be determined.
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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

13. **Climate Risk** – n/a

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

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Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Renfrewshire House, Cotton Street, Paisley, on Thursday, 10 September 2020.

Panel Members: Professor Kevin Dunion, Chair of the Hearing Panel
Ms Ashleigh Dunn
Mrs Tricia Stewart

The Hearing arose in respect of two reports referred by Ms Caroline Anderson, the Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint references LA/R/2257 and LA/R/3262, which concerned alleged contraventions of the Councillors' Code of Conduct (the Code) by Councillor Paul Mack (the Respondent).

The ESC was represented by Mr Martin Campbell, Director of Investigations and Solicitor to the Commissioner.

Referral

Following an investigation into two complaints received about the conduct of the Respondent, the ESC referred reports to the Standards Commission for Scotland on 27 April 2020 and 16 July 2020, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The substance of the referral on the first complaint, made by Councillor Devine, was that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 3.2, 3.3, 3.5, 3.6, 3.7, and paragraphs 2 and 20 of Annex C. The second referral concerned a complaint by Councillor Mackay and alleged that the Respondent had contravened paragraphs 3.2 and 3.6 of the Code.

The relevant provisions of the Code are:

Relationship with other councillors and members of the public

3.2 *You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.*

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.3 *You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.*

3.5 *You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.*

Bullying and Harassment

3.6 *Bullying or harassment is completely unacceptable and will be considered to be a breach of this Code.*

Conduct at Meetings

3.7 *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.*

ANNEX C

PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

Principles

2. *Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.*

Public comment

20. *Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.*

Preliminary Matters

The Hearing was scheduled for 09:30 on 10 September 2020, having been rescheduled at Councillor Mack's request. Having waited for the Respondent who had failed to attend, the Panel started the Hearing at 09:40. The Panel was satisfied it could do so in terms of the Hearing Rules as it had evidence before it that the Respondent had been provided with adequate notice of the Hearing. The Panel noted that the Respondent had attended an online pre-Hearing meeting.

The Panel proceeded to hear submissions from the Ethical Standards Commissioner's representative and evidence from the two complainers, Councillors Eddie Devine and Alistair Mackay.

It was only after having retired to deliberate, that the Panel was advised that the Respondent had sent the Standards Commission's Executive Director an email at 15:10 the previous day advising that he had been in contact with someone who had tested positive for Covid-19 and therefore felt he had to self-isolate. Given that the Executive Director had, by that time, left Edinburgh to prepare for the Hearing in Renfrewshire, this email had not been seen prior to the Panel retiring around 13:00.

The Panel considered whether it should continue with the Hearing in the Respondent's absence. It noted that he had only sent his email to the Executive Director's direct email address. He had not made any further attempts, either by telephone or to the Standards Commission's general email address, to advise the Standards Commission that he would not be attending the Hearing. The Respondent had also not contacted anyone at the Council venue where he knew the Hearing was taking place. The Panel did not consider, therefore, that the Respondent had taken all reasonable steps to advise it that he would not be attending. The Panel noted that the Respondent had not asked that the Hearing be adjourned.

The Panel noted that, despite being required to do so, the Respondent had not submitted a statement of case to the Standards Commission and had not cooperated fully with the Ethical Standards Commissioner's investigation. The Panel noted that he had not disputed that he had sent the emails that were the subject of the complaints or that he disputed the video evidence of the Council meeting on 27 June 2019, that was also the subject of one of the complaints.

Having weighed up a number of options on how best to proceed in the circumstances, the Panel was satisfied that it had sufficient evidence before it to make a decision on breach. The Panel was further satisfied that, given the opportunities previously provided, but not taken, by the Respondent to make submissions on the complaint it considered that it was reasonable to proceed to make the decision in his absence.

Having made a decision on breach, the Panel adjourned to provide the Respondent with an opportunity to submit any comments he wished to make in respect of mitigation before it made a decision on sanction.

Evidence Presented at the Hearing

The ESC's representative led evidence from the two complainers, Councillors Devine and Mackay.

The ESC's representative advised that the events that gave rise to a large part of Councillor Devine's complaint concerned the allocation of a council property to Councillor Devine's daughter. The ESC's

representative indicated that the Respondent had taken up a case on behalf of a Ms A, who believed she should have been allocated the council property in question. The ESC's representative noted that the Council's Director of Communities, Housing & Planning had reviewed the matter and informed the Respondent, in an email of 12 March 2019, that she was satisfied the allocation had been made entirely in accordance with policy and that no elected member had had any influence, or opportunity for influence, over the allocation process. Having received further correspondence from the Respondent about the matter, the Director of Communities, Housing & Planning had then asked the Council's Chief Auditor to investigate his allegations about the housing allocation process. The ESC's representative advised that the Council's Chief Auditor thereafter undertook an independent review. The Chief Auditor had also concluded that the Council property was appropriately let to the complainer's daughter and that no elected member had influenced the allocation process.

The ESC's representative advised that the Respondent and another elected member had submitted a Motion calling for an independent inquiry into the allocation of property at a full Council Meeting on 27 June 2019. The motion had been agreed unanimously. The Panel noted that the enquiry was undertaken by Audit Scotland, who prepared a report, dated 13 November 2019, concluding that there was no evidence to suggest that:

- (a) Ms A was wrongly deprived in respect of the allocation of the property;
- (b) there was deliberate manipulation of the waiting list or the property allocation process; or
- (c) there was any attempt to manipulate the allocations process by, or at the request of, elected members of the Council.

Witness Evidence

Councillor Devine stated that his complaint concerned three matters, being:

- A series of emails that were sent over a period of seven months (in March, May, June, August and September 2019) by the Respondent to various other councillors (including Councillor Devine) and senior officers. The emails predominantly related to the Respondent's allegations about the allocation of a Council property to Councillor Devine's daughter.
- Comments the Respondent made at a full Council meeting on 27 June 2019 regarding the housing allocation; and
- Comments the Respondent made in an email to him of 11 February 2020 (which had been copied to all other elected members), in relation to a motion Councillor Devine had lodged about the former Cabinet Secretary for Finance, Mr Derek Mackay, remaining in his role as an MSP.

Councillor Devine advised that, in his emails, the Respondent had repeatedly accused him of seeking preferential treatment for his daughter and of inappropriately influencing the housing allocation decision. Councillor Devine advised that the accusations had escalated over time, with the Respondent then accusing senior officers of lying and bullying junior staff in order to cover up Councillor Devine's alleged involvement. Councillor Devine stated that he had not been involved in any way, in the allocation of the property and, he was in favour of the motion seeking the independent inquiry as he knew he had done nothing wrong and wanted this to be established beyond all doubt. Councillor Devine confirmed that the investigations undertaken, including the one conducted by Audit Scotland, had found no impropriety. Councillor Devine further noted that although the Respondent had alleged that he had evidence to support his claims, he had never produced this, despite repeatedly being asked to do so.

Councillor Devine said that he had been angry and embarrassed by the accusations of corruption cronyism and abuse of power that the Respondent had made in his emails and at the full Council meeting on 27 June 2019 (which was publicly broadcast). Councillor Devine noted that the Respondent had also accused officers of corruption and that he found this to be particularly frustrating as the officers had no means of defending themselves or public right of reply. Councillor Devine also found references to him not having worked for a living that the Respondent had made in the emails to be disrespectful as the Respondent knew this to be

untrue. Councillor Devine stated that he was really angry that the Respondent had repeatedly called him a liar and a bully, when he was neither of those things.

Councillor Devine indicated that he found an email the Respondent had purportedly sent to a journalist on 29 March 2019 in which he referred to an image of Councillor Devine's daughter springing up from a grave to be particularly bizarre and scary. Councillor Devine advised that he had become so concerned about the nature and content of some of the emails that he had become worried about his family's safety. Councillor Devine advised that he had therefore contacted the police, who had offered to provide panic alarms to him, his wife and daughter. Councillor Devine further advised that he had been particularly angered and disgusted by an email the Respondent sent on 16 August 2019 in which he had falsely accused him of being a "white supremacist".

Councillor Devine explained, in respect of the third matter, that after he had lodged a motion calling for the former Cabinet Secretary for Finance, Mr Derek Mackay, to resign from his role as a Member of the Scottish Parliament after sending inappropriate texts to a 16 year old, the Respondent had sent him an email, copied to all other elected members, on 1 February 2020 falsely accusing him of covering up similar conduct. Councillor Devine advised that this had again made him upset and angry.

Councillor Devine's view was that, through his conduct, the Respondent was bullying and harassing him. Councillor Devine indicated that he considered the Respondent was fixated with him and sought to attack him whenever he perceived anything had gone wrong in respect of decisions or actions taken by the council.

In response to questions from the Panel, Councillor Devine stated categorically, on oath, that he had not at any time contacted any council officer regarding the allocation of the property ultimately allocated to his daughter. Councillor Devine advised that the first time he was aware of the possible allocation was when his daughter told him she had been asked by the relevant officers to consider it. Councillor Devine accepted that the Respondent was entitled to make representations on behalf of his constituent, Ms A, about the housing allocation, but confirmed it was the Respondent's insistence on making serious and false accusations about both Councillor Devine and senior council officers that was the issue. Councillor Devine further accepted that 'rough and tumble' was part and parcel of political life but that he considered the Respondent's behaviour went far beyond that.

In his evidence Councillor Mackay said that his complaint concerned an email the Respondent had sent to him on 24 April 2020 in response to one Councillor Mackay had sent on 22 March 2020 regarding an update provided by an officer on Covid-19 related matters. Councillor Mackay noted that the Respondent's email had been copied to all other elected members of the Council and other individuals, including two media outlets. Councillor Mackay advised that he had found most of the contents of the email to be offensive and insulting. Councillor Mackay further advised that he had found references the Respondent had made, in the email, to someone going round to Councillor Mackay's house to inflict violence on him to be intimidatory. Councillor Mackay explained this was because he did not know who would see the email and whether someone might take it as an invitation to fulfil the suggestion that he deserved to be the target of violence. Councillor Mackay advised that he had been sufficiently concerned on receipt of the email to contact the police. Councillor Mackay noted that his concerns had been heightened by the fact that the email was sent in response to one he had sent nearly a month before, having had no interaction with the Respondent in the intervening period. Councillor Mackay stated that he had concluded, therefore, that the email was calculated in nature rather than being one that had simply been sent in the heat of the moment.

In response to questions from the Panel, Councillor Mackay accepted that, however ill-judged, there was a possibility that the Respondent was attempting to be humorous when making references to Councillor Mackay being the subject of violence. Councillor Mackay advised, however, that he had not taken it in that way as he did not know who followed or supported the Respondent and, as such, had been concerned that someone may have acted on his suggestion to go round to Councillor Mackay's house. Councillor Mackay

advised that his initial reaction, on receipt of the email, had been disbelief but that this had turned to concern. Councillor Mackay advised that he found the personal comments about him in the email to be insulting, particularly as the Respondent knew nothing about him or his background. Councillor Mackay stated that he considered the Respondent's intention, in sending it, was to make him the subject of public ridicule.

Submissions made by the ESC's Representative

The ESC's representative contended that both witnesses had given evidence in a measured way and had been careful to be as objective and factual as possible. The ESC's representative argued that, as such, both should be considered credible and reliable.

The ESC's representative argued that, in continuing over a long period of time, to make unfounded accusations of wrongdoing about Councillor Devine and senior officers, the Respondent's conduct had been entirely disrespectful. The ESC's representative contended that this had been compounded by the fact that the Respondent had copied multiple individuals into his emails and argued that, in doing so, it was evident the Respondent was attempting to undermine and demean Councillor Devine and the officers in question. The ESC's representative noted that the Respondent had continued with his unrelenting attacks on Councillor Devine even after all the investigations had entirely cleared him of having any involvement in the housing allocation matter.

Turning to Councillor Mackay's complaint, the ESC's representative argued that the entire email was designed to be offensive and was calculated to harass.

The ESC's representative argued that the Respondent's conduct was offensive and intimidating and fell well below the standard to be expected of a councillor.

DECISION

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Mack.
2. The Respondent had breached paragraphs 3.2, 3.3, 3.5, 3.6, 3.7, and paragraphs 2 and 20 of Annex C. of the Code

Reasons for Decision

In respect of the first part of Councillor Devine's complaint, the Panel was satisfied that, as the Respondent did not dispute having sent all the emails in question and as they were signed off in his name, he was responsible for writing them and for the statements they contained. These included:

1. Stating in an email to Councillor Devine of 11 March 2019 (that was copied to all other elected members and the Council's Director of Communities, Housing & Planning), that Councillor Devine had abused his position of authority and engaged in cronyism to obtain one of the Council's most sought-after properties for his family at the expense of Ms A.
2. Accusing Councillor Devine, in an email to the Director of Communities, Housing & Planning of 22 March 2019 that was copied to all elected members, of having given his daughter the property. In the email, the Respondent accused everyone involved in the housing allocation of fraud.

3. Making comments in an email to the Chief Executive, on 28 March 2019, that was copied to all other elected members, to the effect that Councillor Devine and another councillor had abused their positions of power and had lied.
4. Accusing the Chief Executive, in an email of 29 March 2019 purportedly sent to a columnist for the Observer newspaper (which was copied to the Chief Executive and Councillor Devine), of having prevented a more deserving family from getting the council house that had been allocated to Councillor Devine's daughter. In the email the Respondent accused Councillor Devine of intimidating and bullying other members of staff.
5. Calling for the Director of Communities, Housing and Planning, Head of Planning and Chief Auditor to be suspended, in an email of 26 May 2019 to the Chief Executive and all other elected members, and stating that the Chief Executive should consider her own position. The Respondent alleged that their complete absence of any attempt to recognise the plight of the individual who had missed out on the allocation of the council property in question was "bordering on the criminal".
6. Referring, to Councillor Devine as "a White Supremacist" in an email of 16 August 2019, sent to the Commissioner, with the Chief Executive and all other elected members copied in.
7. Accusing senior officers of the Council, in an email to the Chief Executive of 6 September 2019, of "coaching witnesses and destroying and doctoring documentation" to suit their "whitewash of a cover-up", and of "bullying, intimidating and coaching staff" involved in the allocation of the Council property.

Turning to the second part of Councillor Devine's complaint, the Panel was satisfied, having viewed a video of the Council meeting on 27 June 2019, that the Respondent made the comments attributed to him in the complaint, which were to the effect or insinuated that Councillor Devine had inappropriately intervened or "meddled" in the council property allocation process to benefit himself or his family; and that the Council and its officers had covered this up. The Panel noted the Respondent had also stated that there were councillors who had "rigged" the Council property allocation system to ensure their family gained an advantage and that it was "patently obvious" the system was "rotten".

In respect of the third part of the Councillor Devine's complaint, the Panel was satisfied that the Respondent sent an email to the complainer, on 11 February 2020, with all other elected members copied in, in which he stated that there was "something creepy" about the complainer "leading the charge" on the former Cabinet Secretary for Finance's resignation. The Respondent stated that he considered the complainer had been "paid handsomely to assist in a cover-up" of crimes or conduct "of a similar nature".

The Panel accepted that the Respondent was entitled to raise concerns about the allocation of council housing, particularly if he was doing so on behalf of a constituent. The Panel noted, however, that it was the manner in which the Respondent pursued the matter that had given rise to Councillor Devine's concerns.

The Panel noted that two senior Council officers had conducted separate reviews of the Respondent's concerns and that these were then the subject of an independent inquiry by Audit Scotland. The Panel was therefore satisfied that there was evidence that officers had dealt with the Respondent's concerns and had ensured that these were investigated. The Panel nevertheless found that the Respondent refused to await and / or accept the outcome of both the internal and external reviews. The Panel found that, instead, the Respondent embarked upon a course of conduct in which he accused the complainer of lying, corruption, cronyism and covering up criminal activity. The Respondent had further accused senior officers of covering up the housing allocation matter, of bullying and intimidating staff and of engaging in conduct that was bordering on the criminal. The Panel was satisfied that the Respondent's accusations, made in his emails, and at the Council meeting on 27 June 2019 amounted to unjustified personal attacks which were offensive and

abusive. The Panel also considered that, in copying in all elected members to some of the emails, in purportedly sending one to a newspaper and in making comments at a full Council meeting, the Respondent had made his accusations public with the intention of inflicting reputational harm. The Panel was satisfied that, having been asked repeatedly by a number of individuals to provide the evidence he said he had, the Respondent had failed to do so. The Panel was of the view that the pattern of making gratuitously offensive and damaging comments was also apparent in the email, reacting to a motion for the resignation of a local MSP, in which the Respondent publicly called the complainer a White Supremacist and accused him of having been paid to cover up crimes.

In response to a question from the Panel, Councillor Devine had answered, on oath, that he had not at any time contacted any council officer regarding the allocation of the property ultimately allocated to his daughter. The Panel noted that Councillor Devine advised that the first time he was aware of the possible allocation was when his daughter told him she had been asked by the relevant officers to consider it. The Panel accepted that the investigations undertaken had found no impropriety. The Panel noted that Councillor Devine had become so concerned about the nature and content of some of the emails that he had contacted the police, who had offered to provide panic alarms to him, his wife and daughter.

The Panel determined that, in making the accusations of that nature, the Respondent had, on the face of it, failed to comply paragraph 3.3, 3.5, 3.6, 3.7 and paragraphs 2 and 20 of Annex C of the Councillors' Code of Conduct of the Code, which obliges councillors to:

- treat officers and their colleague with respect at all time, including at Council meetings;
- avoid any conduct that amounts to bullying and harassment; and
- refrain from raising matters relating to the conduct or capability of officers in public.

Turing to the second complaint, the Panel was satisfied that the Respondent had made a number of gratuitous personal comments and offensive, demeaning remarks about Councillor Mackay in his email of 24 April 2020. These included insinuating that Councillor Mackay had treated him like a servant and been under the influence of alcohol or drugs when sending an email. In addition, the Panel noted that the Respondent had made remarks about someone going round to Councillor Mackay's house and inflicting personal harm on him. The Panel noted that Councillor Mackay had found the remarks to be intimidatory in nature. The Panel considered that the contents of the email were disrespectful and, further, amounted to harassment towards Councillor Mackay, as they were publicly circulated, thus inviting public ridicule. The Panel determined, therefore, that the Respondent had also, on the face of it, breached paragraphs 3.2 and 3.6 of the Code in respect of Councillor Mackay's complaint.

The Panel noted, however, that before coming to a final finding on the complaints, it was obliged to consider the provisions of Article 10 of the European Convention on Human Rights, which concerns the right to freedom of expression.

The Panel accepted that some of the Respondent's comments and statements concerned matters of public interest, namely the allocation of council housing and the resignation of the Cabinet Secretary for Finance. As such, the Panel noted that the Respondent could attract the enhanced protection of freedom of expression afforded under Article 10 of the European Convention on Human Rights. The Panel noted that the Courts have interpreted Article 10 widely and have found that the enhanced protection for politicians can even extend to comments which some may consider to be inappropriate, offensive and emotive. In addition, comments made in the political context which amount to value judgments are tolerated even if untrue, so long as they have some or any factual basis.

The Panel noted, however, that gratuitous personal accusations and / or comments that amount to simple offensive abuse do not attract the enhanced protection afforded to politicians. The Panel was of the view that, when viewed individually, and as whole, the comments and accusations as made by the Respondent, as quoted, were of that nature. The Panel was further satisfied that given the accusations about the housing

allocation matter had been made and publicly aired after the internal review, and continued following the independent external enquiry had concluded, there was no evidence of wrongdoing or manipulation of the process, it was not possible to say that the allegations had any basis in fact when they were made.

As such, the Panel found that the Respondent was not entitled to the enhanced protection for political expression afforded under Article 10.

The Panel further found that the Respondent's conduct was unacceptable and that, as such, it was satisfied that a finding of breach, and subsequent application of a sanction, was justified in the circumstances and would not amount to a contravention of Article 10.

The Panel concluded, therefore, that the Respondent had contravened paragraphs 3.2, 3.3, 3.5, 3.6, 3.7 and paragraphs 2 and 20 of Annex C of the Councillors' Code of Conduct.

MITIGATION

The Respondent was sent a copy of the decision on breach on 14 September 2020 and was invited to submit any comments he wished to make in respect of mitigation within five working days, before the Panel would then reach a decision on the sanction to be applied.

The Respondent did not provide any comments in respect of mitigation or the sanction to be applied.

SANCTION

The decision of the Hearing Panel is to disqualify the Respondent, Councillor Mack for a period of 17 months, from being, or from being nominated for election as, or from being elected, a councillor, with effect from 1 October 2020.

The decision is made in terms section 19(1)(d) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Reason for Sanction

In reaching its decision on sanction the Hearing Panel noted that, despite being provided with an opportunity to do so, the Respondent declined to offer any submissions in mitigation.

The Panel emphasised that the requirement for councillors to behave with courtesy and respect is a fundamental requirement of the Code. The Panel noted that a failure to do so has the potential to disrupt effective working relations and, further, can be a threat to reputation of the council and the role of an elected member.

The Panel considered that councillors should be able to undertake a scrutiny role and represent the public and any constituents in a respectful, courteous and appropriate manner, without resorting to personal attacks, being offensive, abusive and / or unduly disruptive. The Panel was of the view that officers, in particular, should be able to work in an environment where they are not subjected to unwarranted and serious public criticisms and accusations. The Panel was particularly concerned that the Respondent had continued to subject senior officers to repeated and unmerited abuse, despite them having agreed to review the housing allocation matter. The Panel was also concerned about the scale and seriousness of the allegations made, particularly in the context of the Respondent having not provided any evidence to support his accusations and the officers having no right of public reply. The Panel was keen to emphasise that councillors have a right to challenge officers and have a key role in scrutinising the service provided by their

local authority. The Panel reiterated, however, that this did not entitle councillors to ignore any response received and evidence provided or to make (and continue to make) unfounded accusations.

The Panel was also concerned about the nature of the Respondent's correspondence with the complainers. The Panel was concerned that he had made extremely serious wholly unfounded allegations against Councillor Devine and had subjected both complainers to offensive and demeaning personal attacks, which went well beyond what might be considered normal or even acceptable in a party-political context and, instead, amounted to harassment. The Panel was of the view that, as politicians, councillors may be expected to tolerate a degree of inappropriate, emotive or even offensive criticism. They should not, however, have to put up with being harassed or being made to feel unsafe. The Panel considered that the Respondent's conduct in this regard was completely unacceptable.

The Panel took fully account of the aggravating and mitigating factors as set out in the Standards Commission's Policy on the Application of Sanctions. It found that all of the following aggravating factors were evident:

- Repeated behaviour over a long period of time.
- Deliberate conduct.
- Previous contraventions by same Respondent.
- No understanding, reflection, insight and/or acceptance of actions.
- Lack of remorse and/or no apology.
- Failure to co-operate with investigation and/or adjudication process.
- Failure to take any opportunity to rectify.
- Continuing with the conduct/behaviour after it being brought to Respondent's attention and/or the complaint being made.

Mitigating factors are ones that may lessen the severity or culpability of the breach. However, the Panel found very few applied, as:

- There was no admission of breach at any stage,
- In respect of the first complaint of LA/R/2257 the conduct was not of limited duration of contravention and, instead, had continued over several months.
- The impact of contravention in LA/R/2257 was not limited, affecting councillors, senior and more junior officers.
- These were not inadvertent or technical breaches, but were knowing and deliberate.
- There was no action taken to rectify and/or apologise at any stage.
- There was no evidence of demonstrating understanding, reflection, insight and/or acceptance of actions.
- Co-operation with investigation and the adjudication process was limited.
- The Respondent had not acted on incorrect advice.
- There was repetition since the first occasion of contravention occurred.

The Panel noted that the Standards Commission had previously suspended the Respondent for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. While the Panel was aware that the previous Hearings had taken place, and the suspensions imposed had expired, before the events in respect of the complaints that were the subject of this Hearing had occurred, it nevertheless considered that it was apparent the Respondent had not learnt from the previous suspensions. In particular, there was no evidence that the Respondent had made any attempt to moderate his behaviour or consider how it could impact others. Rather the Respondent had previously expressed his disdain and disregard for the statutory framework in place to promote and uphold the Councillors' Code of Conduct, despite having signed a Declaration of Office on 5 May 2017 confirming he would abide by the Code.

The Panel determined that the Respondent's behaviour was persistent, deliberate and serious in nature. The Panel considered that the manner in which the Respondent had raised his concerns was completely unacceptable and that amounted to personal attacks on officers and fellow councillors. The Panel considered that, as such, it was likely that the Respondent's behaviour could seriously undermine public confidence in local government and the role of a councillor and could also have a significantly detrimental impact on working relationships within the Council. Given the repeated breaches of the Code's respect provisions conveyed by email to councillors, council officers and the press, the Panel was of the view that simply suspending the Respondent from future Council meetings was insufficient and would not prevent the conduct from recurring. It determined, therefore, that disqualification was necessary and appropriate in the circumstances.

RIGHT OF APPEAL

The Respondent's attention is drawn to his right, under Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to appeal the decision.

Date: 28 September 2020



**Professor Kevin Dunion
Chair of the Hearing Panel**