

ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER

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REPORT

**Complaint nos. LA/WD/732, 736 & 749
concerning an alleged contravention of
the Councillors' Code of Conduct**

by

Councillor James Bollan

of

West Dunbartonshire Council

The Ethical Standards in Public Life etc. (Scotland) Act 2000, Section 9(2), provides the Chief Investigating Officer has the function of investigating and reporting to the Standards Commission for Scotland on cases in which a councillor or member of a devolved public body may have contravened the councillors' or, as the case may be, the members' code of conduct.

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1.0 Introduction

- 1.1 Complaint numbers LA/WD/732, 736 and 749 allege a contravention of the Councillors' Code of Conduct ("the Code"). The Code was issued by the Scottish Ministers in terms of section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act") and came into effect on 1 May 2003.
- 1.2 The three separate complaints have been lodged by Mr David McMillan, Chief Executive, West Dunbartonshire Council, Councillor Ronald McColl, SNP, and Councillor Craig McLaughlin, SNP, ("the complainants") who allege a contravention of the Code by Councillor James Bolland, Scottish Socialist Party ("the respondent"). The respondent is an elected member of West Dunbartonshire Council ("the Council").
- 1.3 It is alleged that the respondent has contravened the Councillors' Code of Conduct, and, in particular, the provisions relating to the key principle of **Respect** in paragraph 2.1, **Relationship with Council Employees** in paragraphs 3.2, 3.3 and 3.4 and Annex C, and in paragraph 3.14.

The relevant parts of the Code state:

"Section 2: Key Principles

2.1 Respect

You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times."

"Section 3: General Conduct

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

3.2 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.

3.3 Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

3.4 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.

Conduct in the Chamber or in Committee

3.14 You must respect the chair, your colleagues, Council employees and any members of the public present within the Chamber during Council or Committee meetings or other formal proceedings of the Council. You must comply with rulings from the chair in the conduct of the business of the Council."

"ANNEX C

PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

Principles

1. This protocol sets out the way in which Councils and employees of Councils should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up.

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."

- 1.4 The respondent has signed a declaration of acceptance of the office of councillor under the Local Authorities (Councillors) (Declaration of Acceptance of Office) (Scotland) Order 1990, as amended, in terms of which the respondent has undertaken to meet the requirements of the Councillors' Code of Conduct in the performance of his functions in that office.
- 1.5 For the purpose of this investigation, I was assisted by Mrs Anne Mahoney, Investigating Officer.
- 1.6 This report has been prepared for submission to the Standards Commission for Scotland in terms of section 14(2) of the 2000 Act. The report was submitted in draft form to the respondent for any representations. Details of the representations received and the extent to which the representations have been accepted or otherwise are set out in Annexes A and B.

2.0 Outline of the Complaints and the Response

The Complaint

- 2.1 The complaints are set out in letters and complaint forms from three separate complainants and are attached as **Appendix A**.
 - 2.1.1. Complaint number LA/WD/732 by Mr David McMillan, Chief Executive, West Dunbartonshire Council, alleges misconduct by the respondent, Councillor James Bollan at Council meetings. The complainant said the respondent made accusations against, and swore at, Council officers and administration councillors. He alleged that Councillor Bollan's treatment of the Legal Officer at the meeting on 27 February 2008 and, in particular, the meeting on 26 March 2008 was entirely unacceptable and was an attempt to intimidate, bully and harass Council officers.
 - 2.1.2. Complaint number LA/WD/736 by Councillor Ronald McColl alleges that Councillor Bollan exhibited disrespect towards Councillor Craig McLaughlin at a meeting of the Corporate and Efficient Governance Committee on 26 March 2008. He also alleged that the respondent exhibited disrespect towards the Legal Officer and other councillors at the Council meeting later that day.
 - 2.1.3. Complaint number LA/WD/749 by Councillor Craig McLaughlin complains of the respondent's conduct and aggressive manner towards himself at the Corporate and Efficient Governance meeting on 26 March 2008 which he alleges were a prelude to events at the Council meeting later the same day. The complainant also alleges that at the Council meeting on 26 March 2008, Councillor Bollan harassed the Legal Officer and made a number of wild accusations. Also that he became increasingly aggressive and accused the Legal Officer of colluding with the Administration and lying, and refused to withdraw his remarks when requested by the Provost.

The Response

- 2.2 The response is set out in two emails from the respondent which are attached as **Appendix B**. The respondent provided information about the background to events at the Council meeting on 26 March 2008 and he alleges that at no time did he harass or bully any officer or councillor or use some of the language attributed to him in the complaints. Regarding the allegations made relating to the Corporate and Efficient Governance Committee meeting, he agreed that he made a comment to Councillor McLaughlin but said he did this because Councillor McLaughlin had interrupted him. Councillor Bollan did not believe he had breached the Code and in the circumstances of the meetings considered his contributions at both meetings to be measured and restrained.

3.0 The Investigation

- 3.1 To establish the background to the complaints, the Investigating Officer sought and received information from the Council.
- 3.2 Having considered the documentary evidence, the Investigating Officer proceeded individually to interview the complainants, the respondent and relevant witnesses. The interviews took place on 19 and 26 June and 19 September 2008. A list of those interviewed is attached as **Appendix C**.

4.0 Consideration of the Evidence

- 4.1 West Dunbartonshire Council has a minority SNP administration. At 26 March 2008 there were 22 members of whom 10 were Labour councillors, 9 SNP, 2 Independent and 1 Scottish Socialist. Councillor Iain Robertson, SNP, is Council Leader. Councillor Dennis Agnew, Independent, is Provost and chairs Council meetings. The respondent, Councillor James Bollan, is the Scottish Socialist member. (A recent change occurred on 3 November 2008 when a Labour member changed party representation from Labour to Independent).
- 4.2 The complaints were made by Mr David McMillan, who is the Council's Chief Executive, and by Councillors Ronald McColl and Craig McLaughlin who are both SNP members. The complainants allege misconduct by Councillor Bollan at meetings of West Dunbartonshire Council in February and March 2008 and at the Corporate and Efficient Governance meeting in March 2008.
- 4.3 Complaint number LA/WD/732 was made by Mr David McMillan, Chief Executive. It relates partly to events at the Council meeting on 27 February 2008, and more particularly at the Council meeting on 26 March 2008. The complainant states that Councillor Bollan's treatment of Mr Stephen Brown, the Head of Legal, Administrative and Regulatory Services (the Legal Officer) at these meetings was unacceptable. At the meeting on 26 March 2008, Councillor Bollan said advice given by the Legal Officer was contorted; he made allegations about officers being in cahoots with the Administration and shouted that he was "not prepared to put up with this shite any longer". Also that he pointed to officers and administration councillors and shouted, "You lot are a fucking lot of shite and I can tell you that this is not going to end here". The complainant said Councillor Bollan stormed out of the meeting and slammed the door behind him.
- 4.4 In making the complaint, the Chief Executive also referred to an incident at a previous Council meeting in January 2008. He did not want to make a formal complaint on this matter; it is described here for background purposes and no finding will be made in regard to this. Mr McMillan states that during the Council meeting on 30 January 2008, Councillor Bollan referred to him (the Chief Executive) as being a bully who was attempting to blackmail staff into accepting single status proposals¹. The minute of the January meeting confirms that, during the debate on an emergency motion on single status, Councillor Bollan was asked

¹ Single Status Agreement – a national agreement whereby all jobs within its scope in a local authority are graded on a common basis in accordance with fairness and equal pay legislation.

to withdraw remarks he had made about 'blackmail' and 'bullying', but Councillor Bollan refused to do so. However the complainant says that the respondent apologised to him the following day therefore he did not intend to take this particular complaint further.

- 4.5 At the Council meeting on 27 February 2008, item 7 on the agenda related to a report on Best Value Improvement Activity. Councillor Black wanted to move an amendment to the report. However, the Legal Officer advised the Provost, as Chair, that the amendment might expose the Council to legal challenge because it could interfere with approved Council terms and conditions of service. Councillor Black did not agree with the Legal Officer's opinion, but the Provost accepted it and did not allow the amendment. The complainant says that Councillor Bollan made comments to the effect that the Legal Officer was trying to control what members say in Council. The minutes of the meeting confirm that the Chief Executive made a statement referring to 'certain comments having been made by Members'. The Legal Officer's own notes on the meeting refer to Councillor Bollan having made a remark that officers were 'interfering in the legitimate business of the Council'. The Chief Executive told members at the meeting that he was not prepared to tolerate such criticism of officers and he reminded members of the guidance in the Councillors' Code of Conduct. As a follow up, on 5 March 2008, the Chief Executive wrote to all members again expressing concern and setting out the requirements of the Code. The Chief Executive has said that had this been an isolated incident he would not have raised it in the complaint, but he was concerned that it was becoming part of an accumulative series of events.

- 4.6 The events which occurred at the Council meeting on the evening of 26 March 2008 were the main subject of the Chief Executive's complaint. They arose out of consideration of proposed motions relating to item 6 on the agenda entitled "Changes to Membership of Committees and Outside Bodies". The Council meeting was held in Clydebank Town Hall where the Chambers are relatively small and the accommodation is such that, when Council officers and members are seated around the table, the press and public are also in close proximity. The available records of the Council meeting consist of contemporary written notes which were made by the Legal Officer (see below paragraphs at 4.7) the Committee Clerk's notes taken during the meeting (paragraphs at 4.8) and the approved minutes (see paragraph 4.10). Notes provided by Councillor Martin Rooney are also referred to at paragraph 4.20.

4.7 The Legal Officer's Written Notes

- 4.7.1 The Legal Officer's notes state that late in the afternoon of the meeting, he and the Chief Executive and the Head of Human Resources had been asked to go to the Council Leader's office. Councillor Robertson informed them there was a possibility of an amendment coming forward at item 6 on the agenda which would change the Administration, and there might also be a motion regarding single status; indeed, his own SNP Group might raise a motion on single status. The Legal Officer asked whether the Provost (as Chair) had been consulted and the Council Leader indicated he did not think so. The Legal Officer advised the Council Leader that he saw no business on the agenda which would deal with

these items; item 6 had nothing to do with single status and did not, in his view, allow an item to be introduced for a change in the Administration. Such an item should be lodged by way of Motion and it could be dealt with by requisitioning a Special Council Meeting, or the Provost could allow the item as a matter of urgency. Irrespective of which group or which councillor raised an item, if it did not arise directly out of a matter before the Council, the Legal Officer said he would advise the Provost as Chair of the meeting that it was not a competent motion, however, the decision would ultimately be for the Provost to make. Item 6 on the agenda of the meeting on 26 March 2008 included a report by the Executive Director of Corporate Services on Changes to Membership of Committees and Outside Bodies; essentially, it was asking the Council to nominate a member to serve on the Road Safety Forum, to request a change to nominees on six other outside bodies and to note recent changes to membership of committees.

- 4.7.2 The Legal Officer's notes record that, at item 6 in the meeting, Councillor Robertson did propose a motion regarding single status. It expressed concerns about the number of grading appeals and proposed that a working group be set up comprising Councillors Black and Bollan plus one SNP and one Labour member. The Legal Officer advised the Provost that he did not consider the motion arose out of business before the Council and therefore was not competent. The Provost accepted the advice and ruled accordingly. There was some debate about this among members and the Chief Executive indicated that he would meet with the two group leaders to discuss a working group that would allow councillors to consider various issues relating to single status negotiations. Councillor Robertson then moved that item 6 be agreed per the recommendation in the officers' report. The Legal Officer's notes state that Councillor Bollan shouted he would play no part in the working group because it would be a fix. There is no record in the minutes or in the Committee Clerk's notes of an intervention by Councillor Bollan at that point in the meeting.
- 4.7.3 The Legal Officer's notes go on to state that Councillor Rooney of the opposition Labour group then tabled an amendment². This took the form of a 24 page document proposing changes to the leadership of the Council, Committee chairpersons, composition of committees and other appointments. If agreed, it would have had the effect of changing the Administration from SNP to Labour. While it was being circulated the Provost asked the Legal Officer if it was competent. The Legal Officer expressed the view that it did not arise directly out of the business before the Council and did not accord with the statutory requirement³ which only allowed an item of business to be considered if it were included in the agenda three clear days before the meeting, or if the Chair allowed it as a matter of urgency. He indicated that the Council had recently been

² An amendment proposing changes set out in a 24 page Appendix and relating to:

(1) spokesperson/chairpersons as set out in Part 1 of the Appendix, (2) revised political make up of committees and to the Administration's nominations in respect of membership, chairs and vice-chairs of these committees as in Part 2 of the Appendix, (3) changes in memberships of Working Groups as shown in Part 3 of the Appendix, (4) other changes shown in Parts 3 to 6 of the Appendix, (5) Opposition members invited to notify their nominations in writing, and (6) invite Opposition to populate their allocation as specified in the Appendix.

³ Section 50B Local Government (Scotland) Act 1973