

22 APR 2009

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RECEIVED

Mr Andrew Fraser
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West Dunbartonshire Council
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Dumbarton
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O/Cases/BRep/ LA/WD/732, 736, 749

21 April 2009

Dear Mr Fraser

Hearing of the Standards Commission for Scotland into alleged breaches of the Councillors' Code of Conduct by Councillor James Bollan held at the Beardmore Hotel and Conference Centre on 31 March and 01 April 2009.

Issue of Written Decision including findings as to Sanction

I refer to the Hearing detailed above concerning alleged breaches of the Councillors' Code of Conduct in terms of Section 2 (Respect), paragraphs 3.2, 3.3 and 3.4, (Relationship with Council Employees), paragraph 3.14 (Conduct in the Chamber or in Committee) and paragraphs 2 and 20 of Annex C (Protocol for Relations between Councillors and Employees), and now enclose a copy of the written decision of the Hearing Panel.

This letter confirms the sanction in relation to Councillor Bollan. A further letter confirming the decision has been issued to Mr McMillan in his capacity of the complainant in the case.

A separate decision letter has also been issued to Councillor Bollan.

In terms of section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the Act") and Rule 10.9 of the Commission's Hearings Rule, the Commission is required to afford any Council or Devolved Public Body receiving a copy of a written decision a period of 3 months (or longer as the Commission may determine) to consider the content of that decision. It is specified at section 18(3) of the Act that this consideration cannot be undertaken solely by a Committee, Sub-Committee or Officers of the relevant Council or Public Body.

I would therefore be grateful if arrangements could be made for consideration of the written decision in terms of Rule 10.9 of the Hearings Rules. Notification of any actions or decisions taken by the Council as a result of the written decision should be forwarded for my attention within 3 months of the date of this letter, i.e. by Monday 20 July 2009. I will then advise the Commission of the terms of any information received.

For your information, the Hearings Rules can be viewed in full on the Standards Commission website as follows:

www.standardscommissionscotland.org.uk

Thank you for your assistance with this matter.

I look forward to hearing from you.

Yours sincerely



JANET NIXON
Secretary to the Commission

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**Standards Commission for Scotland ("The Commission")
Decision of the Hearing Panel of the Commission following the
Hearing held at the Beardmore Hotel and Conference Centre,
Clydebank, on 31st March and 1st April 2009**

Panel Members: Mr Okain McLennan, Chairman
Mr Peter Donaldson
Mr Albert Tait

In respect of a Report by D Stuart Allan, Chief Investigating Officer ("the CIO") further to Complaint Nos. LAWD/732, LAWD/736 and LAWD/749 ("the Complaints") concerning alleged contraventions of the Councillors' Code of Conduct ("the Code") by Councillor James Bollan of West Dunbartonshire Council ("the Respondent").

The CIO was represented by Mr David Sillars, the Respondent attended the Hearing.

The Complaints

The Complainants were Mr David McMillan, Chief Executive of West Dunbartonshire Council, Councillor Robert McColl and Councillor Craig McLaughlin. The Complainants allege that the Respondent contravened the provisions of 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 3.14 and the provisions in paragraph 2 and 20 of Annex C of the Code. The relevant provisions are:

Section 2 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 Relationship with Council Employees

Para 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.*

Para 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.*

Para 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 a breach of this Code.*

Para 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.*

Protocol for Relations between Councillors and Employees Annex C

Principles

Para 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 in dealing with other issues as they come up.*

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

Para 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.*

The CIO's Report ("the Report") (in full at Appendix I) was submitted to the Commission in accordance with Section 14.2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the Act"). The Code came into effect on 01 May 2003 and the Commission accordingly had jurisdiction to hear the Complaint, as the alleged breaches of the Code occurred after the Code came into operation.

The CIO's findings that Councillor Bollan contravened the provisions of the Code relate to the allegations that Councillor Bollan made accusations in open forum against the Chief Executive and the Legal Officer which inferred they were acting improperly to prevent debate and acting partially towards the current administration. Furthermore, the CIO found that Councillor Bollan was disrespectful and impugned the professional integrity of the Chief Executive and the Legal Officer. In addition the CIO found that Councillor Bollan used foul language and considerable disrespect towards fellow councillors. The CIO found therefore that Councillor had breached 3.2, 3.3 and 3.14 and paragraphs 2 and 20 of Annex C of the Code and failed to comply with the key principle of Respect set out in section 2 of the Code.

Joint Statement of Facts

The CIO and the Respondent lodged as a production a Joint Statement agreed on 23rd and 26th of March, in respect of facts which were agreed and facts which were in dispute between the parties in relation to documents already submitted to the Commission:

Parts 1-3 of the CIO's report dated 30th December 2008 were agreed.

Part 4 of the CIO's report dated 30th December 2008 was agreed subject to the following:

- i. The Respondent agreed that paragraphs 4.1 to 4.36 of the CIO's report are agreed as a record of the information provided to the CIO.
- ii. The Respondent agreed that the information set out in paragraphs 4.29 to 4.36 of the CIO's report reflects the evidence provided by him as part of the investigative process.

Part 5 of the CIO's report was agreed, with exception of the following:

- i. With regard to paragraph 5.6.4, the Respondent disputes that an inference could be taken from what he said that officers were acting improperly.
- ii. With regard to paragraph 5.6.7, the Respondent disputes that an inference could be taken from what he said that officers were acting improperly and showing bias towards the SNP administration.
- iii. Paragraphs 5.6.9 and 5.6.10 were not accepted.
- iv. Paragraphs 5.7, 5.8 and 5.9 were not accepted.

Appendices A to J of the CIO's report were agreed as accurate records of the matters which they purport to record.

Annexes A and B of the CIO's report were agreed as accurate records of the matters which they purport to record.

The productions set out in the inventory of productions by the CIO were agreed as accurate records of the matters which they purport to record.

The Decision

The Hearing Panel considered all the evidence, submissions given in writing and orally at the Hearing, and found as follows:

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Respondent's language and demeanour towards the legal officer was aggressive, discourteous and disrespectful.
3. The Respondent used words such as "gagging", "stitch up", and made allegations of "secret meetings" between the Council Leader and Officers. This, together with his admission that he said "it appears officers may be protecting the SNP administration, gives a clear implication that Officers were acting improperly.
4. The Respondent cast doubts about the competence and integrity of the legal officer in a public meeting.

5. By his own admission, the Respondent used foul language towards fellow councillors at a public meeting.
6. On the balance of probabilities the Respondent did contravene the Councillors' Code of Conduct as set out in Section 2 (Respect), paragraphs 3.2, 3.3 and 3.4, (Relationship with Council Employees), paragraph 3.14 (Conduct in the Chamber or in Committee) and paragraphs 2 and 20 of Annex C (Protocol for Relations between Councillors and Employees).

Sanction

The Panel decided to suspend for 9 months Councillor Bollan's entitlement to attend all meetings of West Dunbartonshire Council and of any committee and sub-committee thereof and of any other body of which he is a representative or nominee of the Council. This sanction is made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 Section 19 (1) (c). The date on which the sanction is imposed and will commence will be 6th April 2009.

Reasons for Decision and Sanction

In reaching their decision, the Panel had taken into account:

1. The considerable experience of Councillor Bollan.
2. That the actions of the Respondent constituted serious breaches of the Code of Conduct.
3. The importance of upholding the key principles underlying the high standards of conduct as outlined in the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Panel concluded that the actions of the Respondent brought West Dunbartonshire Council and more generally, local government, into disrepute.
4. The relevant incidents in the report submitted by the CIO were supported by the evidence submitted to the Panel.

5. The Respondent refused to accept the conclusions reached in the CIO's report, did not acknowledge that he had breached the Code, nor made any apology for his actions.

Conclusion

The attention of the Respondent is drawn to Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which details the Right of Appeal in respect of this Decision.

Date: 21/04/09

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Okain/McLennan
Chairman of the Hearing Panel