

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Committee : Council 29 April 2009

Subject: Suspension of Councillor James Bollan

1. Purpose

- 1.1** The purpose of this report is to allow Council to consider the decision of the Standards Commission for Scotland to suspend Councillor James Bollan from his entitlement to attend meetings of the Council and of any committee or sub-committee and of any other body in which the Councillor is a representative or nominee of the Council. The suspension period started on 6 April 2009. The Commission is required to state its findings in writing and the Council is obliged in terms of Section 18(1)(c) of the Ethical Standards in Public Life etc (Scotland) Act 2000 to consider those findings within 3 months of receiving them. The Commission have indicated that their decision letter will be issued by 21 April 2009. A copy of the decision letter and any supplementary report will follow as a supplementary item.

2. Background

- 2.1** The Standards Commission hearing was in respect of complaints arising out of Councillor Bollan's behaviour at the Council meeting on 26 March 2008. The hearing took place on 31 March and 1 April 2009 in the Beardmore Hotel, Clydebank. The Commission found that the language and demeanour of Councillor Bollan was disrespectful, that it implied that Officers were acting improperly, that it cast doubt about the integrity of the Legal Officer in a public forum and that he used foul language. That behaviour contravened Section 2.1, 3.2, 3.3, 3.14 and Annex C paragraph 2 and 20 of the Councillors' Code of Conduct. Those parts of the Code are detailed in Appendix 1.
- 2.2** The decision of the hearing was to suspend under Section 19(1)(c) of the 2000 Act for a 9 month period Councillor Bollan's entitlement to attend all meetings of Council, committees and sub-committees and any other bodies in which he is a representative or nominee of the Council. The suspension will commence on 6 April 2009 and expire on 5 January 2010.
- 2.3** These sanctions are mandatory and cannot be overturned or varied by the Council. Although Councillor Bollan has a right to appeal to the Sheriff Principal within 21 days, Section 22(5) of the Act makes it clear that sanctions can be imposed before the period for appeal expires and will continue to have effect notwithstanding the lodging of any appeal. Therefore the suspension must commence on 6 April 2009.

3. Main Issues

3.1 Council is asked to consider the report from the Standards Commission and this will be dealt with in the supplementary report which will accompany the decision letter.

3.2 Council is also asked to note the practical affects of suspension. These are:-

- Councillor Bollan cannot attend any Council meeting, committee, sub-committee or any other bodies on which he is a representative or nominee of the Council.
- Councillor Bollan presently serves on the Appeals Committee, Corporate and Efficient Governance Committee, Housing, Environment and Economic Development Committee, Social Work & Health Committee and the Tendering Committee. He is also nominated by the Council to serve on the Clydebank Independent Resource Centre Management Committee and the National Association of Councillors.
- Otherwise Councillor Bollan still remains a Councillor and will still continue to receive remuneration as a Councillor.
- Councillor Bollan can continue to hold surgeries, raise constituents concerns with Officers and generally represent his ward. To this end he should continue to be kept informed on Council business through receiving Council and committee agendas, minutes, reports and papers generally. However, where papers are distributed on a 'need to know' basis only, as for the Appeals Committee, he should not be included on the circulation list for these restricted items.
- Unlike the situation where a Member is disqualified, temporary suspension from attending meetings does not give rise to any vacancies on the committee or body. Therefore the normal quorum for each meeting should continue to apply.
- Paragraph 125 of the Guidance issues by the Standards Commission suggests that, depending on the length of suspension, the Council should consider appointing other Councillors to the vacancies on committees or sub-committees, or to any other body where the Councillors has been the Council's representative or nominee. As Councillor Bollan's suspension does not result in a vacancy on any committee, Standing Orders would need to be suspended in order for Council to replace him on any committee. The reason for this is that Council made a decision on committee memberships on 25 February 2009. On that date Council also decided that where a member has been nominated by a political group and that member resigns, a replacement member will be appointed by the respective political group and notified to Committee Admin no less than 11 clear days prior to the date of the next meeting. SSP were in the category of a political group. Accordingly if Councillor Bollan resigned from any committees then as

the sole representative of the SSP political group he would be entitled to nominate the replacement Member. For Council to determine otherwise would require suspension of Standing Orders. As regards membership of outside bodies, a decision regarding this was made by Council in March 2009. Accordingly any motion to replace Councillor Bollan on a body would also require suspension of Standing Orders. If Councillor Bollan chose to resign from his membership of outside bodies then it would be for Council to appoint. This would not require suspension of Standing Orders.

- Paragraph 122 of the Guidance Note issued by the Standards Commission for Scotland refers to the possibility that constituents may perceive that a limitation in entitlement to attend meetings will adversely affect the Councillor's ability fully to represent their interests. It is suggested that Councils should make appropriate arrangements to provide representative cover for the suspended Member for the benefit of his constituents. While suspended, there is nothing to stop Councillor Bollan raising constituent's concerns with Officers or passing on constituents concerns to appropriate committee members; or indeed for constituents to raise general concerns directly with either of the 3 Members in the wards affected. Clearly Councillor Bollan is the only SSP member in the Council and it may be difficult for other members to deal with political issues raised by constituents. In all of these circumstances and unless the Council considers that this is likely to become a serious issue, at this stage I would suggest that no special arrangements require to be made.
- Paragraph 123 of the Guidance suggests that Councils should consider carefully whether it would be appropriate for the Councillor to continue to be consulted in various issues as the local member. As it is only Councillor Bollan's entitlement to attend meetings which is suspended and as he otherwise continues to act as a constituency member it is suggested that consultation should continue as normal in line with the Councillor's continuing representative role as an Elected Member. However the paragraph goes on to say that particular thought should be given to regulatory or quasi-judicial matters where the Councillor has been suspended from the committee dealing with this matter. The Appeals Committee is the only such committee which Councillor Bollan sits on. It is suggested that as Appeals Committee papers are distributed on a need to know basis and as Councillor Bollan would not receive these during the period of his suspension, and since he would not hear any individual cases, that this is not an issue. He would not be consulted on specific Appeals Committee cases during the period of his suspension.
- The question remains as to whether Councillor Bollan is entitled to attend Council, committee and outside body meetings as a member of the public. On one view it could be argued that what is being suspended is the Councillor's entitlement to attend meetings in the sense of being entitled to participate and vote in any committee

business. In theory this might not prevent him from observing committee meetings like an ordinary member of the public by sitting on the public benches while non-confidential items were being discussed. However the other view is that Section 19(1)(c) of the 2000 Act suspends the Member's entitlement to attend meetings regardless of what capacity they attend in. The English Court of Appeal case of Richardson and Orme versus North Yorkshire County Council of 2003, while dealing with a case where a Member declared an interest but remained in chamber as a member of the public stated that

"a Member of the authority attending a Council meeting cannot in my judgment, simply by declaring that he attends in his private capacity, thereby divest himself of his official capacity as a Councillor. He is still to be regarded as conducting the business of his office. Only by resigning can he shed that role."

If Councillor Bollan attended a meeting in a personal capacity, then any complaint that he had breached the terms of his disqualification would be dealt with the Standards Commission. The Secretary to the Standards Commission has indicated in previous cases that she would not expect any suspended Member to be present at any committee meetings even as a member of the public. This was because of

- a) The clear wording of the Act;
- b) The requirement for a Member under the Councillors' Code of Conduct and the statutory Guidance Note, after declaring an interest and the intention to withdraw, actually to leave the meeting room; and
- c) Concerns that members of the public could perceive the mere presence of suspended members in the meeting as potentially influencing the committee's decision.

The Head of Legal Administrative and Regulatory Services has written to the Secretary to the Standards Commission asking for confirmation of her views. From discussions with Monitoring Officers and Senior Officers in other Councils, including some whose Members had received suspensions, only one supported the argument that suspended Councillors could attend meetings as if they were ordinary members of the public.

On balance, and pending further advice from the Secretary to the Standards Commission it is by far the safer course, both for the Councils reputation and the risk to the suspended Member himself of generating further complaints to the Commission, that he is not present at these meetings while still receiving all relevant committee papers.

4. Personnel Issues

4.1 There are no personnel issues.

5. Financial Implications

5.1 There are no financial implications.

6. Risk Analysis

6.1 It was evident from the Standards Commission hearing that the Council meeting of 26 March 2008 was a particularly stormy one, with repeated challenges by a number of Members to the legal advice given by the Head of Legal Administrative and Regulatory Services, to advice given by the Chief Executive and to rulings by the Provost. This was particularly regrettable as immediately prior to the meeting a letter had been issued all Members exhorting better standards of behaviour. That letter in turn followed from difficult meetings in January and February 2008. It is also evident that three of the last eight Standards Commission hearings have dealt with Councillors from West Dunbartonshire Council. There is reputational damage to the Council through these events and, depending on the decision issued by the Standards Commission, Council may wish to reflect on this. Depending on the wording of the decision this issue may be dealt with in greater detail in any supplementary report attaching the Commissions decision.

7. Conclusions

7.1 Council is asked to consider the Commission's decision letter and to advise the Commission of the Council's own decision and of any actions it intends to take.

8. Recommendations

8.1 The Council is recommended

- a) To consider the Commission's decision letter and to advise the Commission of the Council's own decision and of any actions it intends to take.
- b) Note the suspension of Councillor Bollan's entitlement to attend all meetings of the Council, of any committee or sub-committee and of any other body on which the Councillor is a representative or nominee of the Council, commencing on 6 April 2009, unless and until such suspension is overturned by any appeal to Sheriff Principal.

- c) To note that the sanction does not extend to internal forums, seminars or informal meetings generally where the Councillor is not participating in formal Council committee, sub-committee or body on which the Councillor is a representative or nominee of the Council.
- d) To agree that Councillor Bollan should continue to be kept informed on Council business through receiving Council, committee and sub-committee agendas, minutes and reports and papers generally, but where papers are distributed on a 'need to know' only basis, such as for the Appeals Committee, he should not be included on the circulation lists for the period of his suspension.
- e) To agree that no special arrangements require to be made at this stage to provide representative cover for the benefit of the suspended Members constituents.
- f) To agree that Councillor Bollan should continue to be consulted as local Member on all relevant issues.
- g) To note that unless Councillor Bollan resigns from a committee, that there is no vacancy on that committee. To remove and replace Councillor Bollan from any committee will require suspension of Standing Orders.
- h) To make any other comment or responses that Members might wish to feed back to the Commission after considering its findings.

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Appendices: Appendix 1 – Extracts from Councillors Code of Conduct

Background Papers: Councillors Code of Practice, Standards Commission Guidance Notes.

Wards Affected: ALL

Appendix 1 – Councillors’ Code of Conduct

Sections of the Code that the Standards Commission found were breached by Councillor Bollan.

Section 2 – Key Principles

Section 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).

Section 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 turn.

Section 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 participate in decisions on matters placed before you, not to engage in direct operational management of the Councils’ services; that is the responsibility of the Councils’ employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

Section 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 Committee

Section 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 Councillors 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 the 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.