

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in the Town House, Aberdeen on 12 January 2016

Panel Members: Mrs Julie Ward, Chair of the Hearing Panel
Mrs Lindsey Gallanders
Mr Kevin Dunion OBE

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/AC/1720 & 1743, ("the Complaints") concerning alleged contraventions of the Councillors' Code of Conduct ("the Code") by Councillor Willie Young ("the Respondent").

The CESPLS presented his case in person. The Respondent was represented by Mr Roddy Dunlop QC.

COMPLAINT

The Respondent had made a self-referral to the CESPLS and a complaint had also been received by the CESPLS relating to the alleged conduct of the Respondent. Following an investigation, the CESPLS referred the complaints to the Standards Commission for Scotland.

The substance of the allegation was that the Respondent had contravened the Councillors' Code of Conduct and, in particular, the provision relating to confidentiality.

Essentially the complaint alleged that the Respondent breached confidentiality by releasing legal advice to a member of the public, by email, on 4 March 2015.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraph 3.14 of the Councillors' Code of Conduct.

The relevant provision was:

3.14 Council proceedings and printed material are generally open to the public. This should be the basis on which you normally work, but there may be times when you will be required to treat discussions, documents or other information relating to the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

The CESPLS submitted a report to the Standards Commission on 16 October 2015 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

Evidence Presented at the Hearing

Councillor Young gave evidence to clarify that he had not received administrative support in connection with forwarding email correspondence. No other witnesses were called by either party.

The CESPLS outlined the facts as set out in his Report, which he confirmed were not in dispute. In particular, the CESPLS explained that Councillor Young had been attempting to disseminate the legal advice in question to four fellow councillors. However, he had inadvertently sent it to a member of public instead of one of the councillors.

While the CESPLS accepted the Respondent's failure to maintain confidentiality had been inadvertent, he argued it was nevertheless careless. The Councillors' Code of Conduct did not differentiate between intentional and unintentional disclosure. The CESPLS argued that having to establish a breach was deliberate would render the duty to maintain confidentiality under the Councillors' Code of Conduct meaningless as anyone could argue a disclosure had been unintentional.

The Respondent's representative confirmed that the Respondent accepted he had breached the Councillors' Code of Conduct, as found by the CESPLS, in respect of the confidentiality provision. He fully accepted that it was his personal responsibility to maintain confidentiality in accordance with the Code and that he had failed to do so. The Respondent apologised for this failure.

The Respondent's representative stated that the failure was entirely inadvertent. He advised that the mistake had arisen as a result of the Respondent typing in an email address for a fellow councillor on Microsoft Outlook instead of using a distribution list. When the Respondent had started to type in one of the councillors' names, the autocorrect function had brought up the member of the public who had the same first name. Unfortunately, the Respondent had not noticed this and had sent the email to the member of public. The Respondent's representative indicated that the email itself had referred to the fact that the legal advice was confidential and contained a footnote to that effect. The member of the public was therefore aware that he was not legally entitled to disclose the information sent to him in error.

DECISION

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing by the CESPLS and on behalf of Respondent and found as follows:-

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Hearing Panel accepted the admission from the Respondent's representative that the Respondent had breached the Code of Conduct.
3. The Hearing Panel found that the Respondent failed to comply with the provisions of the Code of Conduct in respect of the requirement to maintain confidentiality and that he contravened paragraph 3.14 of the Councillors' Code of Conduct.
4. The Hearing Panel heard that on 4 March 2015 Councillor Young sent an email communication containing confidential legal advice to a member of the public. Councillor Young submitted that this was done in error.

5. The Hearing Panel concluded that this had been entirely inadvertent and had not resulted in any advantage to the Respondent.
6. The Hearing Panel, however, determined that whether or not this action was accidental, Councillor Young had a responsibility to adhere to the requirements of the Code of Conduct and he should have been more diligent in ensuring he complied with its requirements.
7. The Code of Conduct outlines that while council proceedings and printed material are generally open to the public, there may be times when a Councillor will be required to treat discussions, documents or other information relating to the Council in a confidential manner.

Evidence in Mitigation

The Respondent's representative reiterated that the breach had been inadvertent. He pointed out that such mistakes were, unfortunately, part and parcel of everyday life. It was ironic that the Standards Commission itself acknowledged that correspondence it had sent to the Respondent advising him of the Hearing had erroneously referred to the wrong allegations. The incorrect references had been repeated on the Standards Commission's website, which had caused the Respondent a great deal of discomfort and distress.

In addition, the Respondent's representative asked the Hearing Panel to note:

1. The breach had been made in an email which contained content that sought to protect against any inadvertent disclosure;
2. When it had become apparent during a Council meeting on 5 March 2015 that the legal advice had reached the media and the Respondent realised this was a result of his mistake, he had immediately apologised and referred the matter to the CESPLS;
3. The Respondent had fully co-operated with the CESPLS's investigation and admitted the breach;
4. At their meeting on 5 March 2015, councillors had voted by 22 votes to 21 to keep the legal advice confidential. The Respondent had been one of the majority voters. Had he voted differently, the legal advice would have been in the public domain the next day, thus rendering the breach so trivial as to not warrant consideration; and
5. The Respondent was demonstrably of good character. He had served as a councillor since 2007 and had an unblemished record. The fact that he had apologised at the Council meeting and referred himself to the CESPLS was evidence that he was acutely aware of his obligations under the Councillors' Code of Conduct.

SANCTION

The decision of the Hearing Panel was to censure the Respondent.

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

Reason for Sanction

The Respondent had breached the Councillors' Code of Conduct. In reaching their decision as to the sanction, the Hearing Panel:

1. Noted the statement made on the Respondent's behalf in mitigation.
2. Recognised the Respondent had referred himself to the CESPLS when he realised he had sent the email containing the confidential information to a member of the public instead of a fellow councillor.
3. Noted the Respondent's sincere apology and immediate admittance of his error.
4. Accepted that this had been entirely inadvertent and had not caused the Respondent any advantage. However, even an inadvertent disclosure of confidential information constitutes a breach.
5. Reminded all councillors of the importance of due care and consideration when handling information that is of a confidential nature.
6. Recognised the Respondent's significant contribution to public life.

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: 14 January 2016


Julie Ward
Chair of the Hearing Panel