

Agenda Item	12
Report No	HC16/24

THE HIGHLAND COUNCIL

Committee: Highland Council

Date: 9 May 2024

Report Title: Decision of Standards Commission for Scotland - Hearing

Report By: Head of Legal and Governance / Monitoring Officer

1. Purpose/Executive Summary

- 1.1 The purpose of this report is to fulfil the statutory duty placed on the Council under Section 18 of the Ethical Standards in Public Life etc (Scotland) Act 2000, following a Hearing.

2. Recommendations

- 2.1 Council is asked to consider and note the decision of the Standards Commission of Scotland.

3. Implications

- 3.1 There are no Resource, Community (Equality, Poverty, Rural and Island), Climate Change/ Carbon Clever, Risk or Gaelic implications.
- 3.2 There are no legal implications arising as the Standards Commission decided a formal finding that paragraphs 3.1, 3.8 and 3.10 of the Code had been breached could not be made.

4. Complaint against Councillor Andrew Jarvie

- 4.1 A complaint was made to the Ethical Standards Commissioner (ESC) alleging that Councillor Jarvie had failed to comply with the Code of Conduct, and, in particular, that he had breached paragraphs 3.1, 3.8 and 3.10, which are as follows:

Respect and Courtesy

3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.

3.10 I will follow the Protocol for Relations between Councillors and Employees at Annex A and note that a breach of the Protocol will be considered a breach of this Code. I will also comply with any internal protocol the Council has on councillor / employee relations.

Annex A: Protocol for Relations between Councillors and Employees

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 or influence.

25. Councillors should not raise any adverse matters relating to the performance, conduct or capability of employees in public. Employees must ensure they treat councillors with similar respect and courtesy.

4.2 The Standards Commission for Scotland convened a Hearing on 2 April 2024. The Commission Hearing Panel heard submissions from both the ESC and Councillor Jarvie.

4.3 The Hearing Panel concluded that:

1. The Councillors' Code of Conduct applied to Councillor Jarvie.

2. A formal finding that Councillor Jarvie had breached paragraphs 3.1, 3.8 and 3.10 of the Code could not be made.

4.4 The complaint arose from Councillor Jarvie's attendance at the full Council meeting on 8 December 2022. During consideration of agenda item 12, being the Chief Social Work Officer's Annual Report, the Respondent spoke about the closure of two children's homes (including one in Wick) and stated:

"I have two questions about this. Did the Council deliberately let standards slip so low at [the Children's home in Wick] that it ended up being closed so the Council didn't do it itself"; and

"And in view of this am I wrong in feeling the Chief Executive came to Caithness and lied to us" ..

4.5 The Hearing Panel heard it was not in dispute that Councillor Jarvie made the two statements at the meeting. The Panel noted that Councillor Jarvie's position was that after a press release about the home was issued by the Council in June 2022, the then Chief Executive met local councillors in Caithness, stated that the press release was incorrect and promised the home would not close. The Panel accepted that when it was then reported in a local media outlet, on 7 December 2022, that the home was to close, Cllr Jarvie had a right to raise the matter and question why the position had changed.

- 4.6 The Panel was of the view that such a public attack on the then Chief Executive's character could have been highly damaging, not only to her reputation as an individual, but also to the Council itself, given she was its senior officer. The Panel accepted the question of whether the position in respect of the closure of the home may have changed between June and the Council meeting in December 2022, and that the then Chief Executive's position on the home, as outlined in June, may have been accurate and made in good faith at that time.
- 4.7 The Panel considered that Councillor Jarvie must have known that the making of such an accusation in the context of a discussion on such an emotive subject, had the potential to have a significant, detrimental impact on the then Chief Executive's reputation. The Panel noted that there had been nothing to prevent Councillor Jarvie from raising his concerns about the apparent change in position regarding the potential closure of the home in a respectful manner. As such, the Panel concluded that Councillor Jarvie had, on the face of it, contravened the requirements under the Code for councillors to treat council officers with courtesy and respect and to refrain from criticising their conduct, performance or capability in public.
- 4.8 The Panel accepted, nevertheless, that Councillor Jarvie was entitled to the enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights afforded to politicians commenting on matters of public interest. The Panel noted that the Courts have held that where a statement amounts to a value judgment, there must exist a factual basis to support it, failing which it will be excessive. In this case, the Panel accepted that the Councillor Jarvie's accusation that the former Chief Executive had lied was a value judgement made in good faith. In considering it was made in good faith, the Panel accepted that Councillor Jarvie was motivated by concerns about the closure of the home, rather than a desire to question the then Chief Executive's integrity in general.
- 4.9 The Panel further considered that there was evidence to demonstrate that, while not necessarily accurate, the accusation had a basis in fact, given it appeared the position had changed in respect of the potential closure of the home, despite the apparently categorical assurances that the then Chief Executive had given at the meeting in Caithness. The Panel was satisfied, therefore, that in the very specific and particular circumstances of the case, Councillor Jarvie's comment amounted to a value judgement that was not excessive.
- 4.10 The Panel found that, in the circumstances, Councillor Jarvie's comment was not sufficiently offensive, personally abusive or gratuitous as to justify a restriction on his enhanced right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail. The Panel took account of its finding that Councillor Jarvie had expressed an opinion in good faith. It also took account of the fact that Councillor Jarvie and others had sought information on the position in respect of the home in advance of the Council meeting on 8 December 2022, and that this had not been provided. The Panel was satisfied, therefore, that Councillor Jarvie had attempted to seek clarification about whether the Chief Executive's position, as outlined at the meeting in Caithness, was accurate or had changed.
- 4.11 In all the circumstances the Panel concluded, therefore, that a formal finding of a breach of paragraphs 3.1, 3.8 and 3.10 of the Code could not be made.

- 4.13 A full copy of the decision of the Standards Commission can be found at www.standardscommission.org.uk

5. Consideration of the Decision

- 5.1 The Council provides training on both the Code of Conduct as part of its induction for Councillors and refresher training is also provided. Councillors are also kept informed of changes and developments through circulation of the Standards Commission's regular newsletter. Training on the Code of Conduct will continue to be part of the Council's ongoing training programme and Members are encouraged to seek advice from officers upon any potential issues arising.

Designation: Head of Legal and Governance/Monitoring Officer

Date: 22 April 2024

Author: Stewart Fraser, Head of Legal and Governance / Monitoring Officer