

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at City Chambers, 14 City Square, Dundee, DD1 3BY on 15 May 2019.**

**Panel Members:** Ms Ashleigh Dunn, Chair of the Hearing Panel  
Mr Paul Walker  
Professor Kevin Dunion

The Hearing arose in respect of a Report by Mr Bill Thomson, the then Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/D/2158 (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Gregor Murray (the Respondent).

The ESC was represented by Mr Dominic Scullion, Solicitor Advocate. The Respondent was not in attendance.

The Respondent identifies as non-binary, so the pronouns they/them are used below, when reference is made to them.

### **COMPLAINT**

A complaint was received by the ESC about the alleged conduct of the Respondent. Following an investigation, the ESC referred the complaint to the Standards Commission for Scotland on 25 February 2019, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, had contravened paragraphs 3.1 and 3.2.

The relevant provisions are:

**3.1** *The rules of good conduct in this section must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media.*

#### ***Relationship with other councillors and members of the public***

**3.2** *You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.*

The Hearing Panel noted that the Respondent had expressed concerns about the ESC's report and whether they had been given fair notice by the ESC of the extent of matters being investigated. The Panel was satisfied that these were matters for the ESC to address, and that they did not fall within the Standards Commission's or Hearing Panel's remit. The Panel was further satisfied that the Respondent had been provided with adequate and sufficient notice of the Hearing and the alleged breach the Panel would be considering, in accordance with Section 20 of the 2000 Act.

### **Evidence Presented at the Hearing**

No witnesses were called.

### **Joint Statement of Facts**

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the parties and that, in particular, the following matters were not in dispute. That:

- On 13 June 2018, the Respondent posted three tweets concerning an email exchange between the complainer and Dundee City Council's Equality and Diversity Co-ordinator about the complainer's concerns that the Respondent, in their capacity as the Council's Equal Opportunities Spokesperson, had incorrectly referred to sex as not being a protected characteristic under the Equality Act 2010. The Panel heard that the Respondent referred to the complainer as being a 'TERF' (being an acronym for Trans Exclusionary Radical Feminist) in all three tweets.
- On 13 July 2017, the Respondent had replied "good it's deserving", in a twitter exchange with the complainer when she had stated that the term 'TERF' was an expression of abuse.
- On 19 January 2018 that the Respondent posted tweets in which they referred to 'TERFS' as "scum" and "hateful and vile".
- On 13 June 2018 the complainer sent the Respondent an email later that day in which she stated that the term TERF was a "misogynist slur", and that she presumed that the Respondent was referring to her in the tweets. In a response email the same day, the Respondent advised that they did not consider the term 'TERF' to be misogynistic. The Respondent nevertheless indicated that they would continue to refer to the complainer as a TERF as they considered her feminism to be "both radical and trans-exclusionary". The Respondent proceeded to ask if she had a preferred nomenclature and stated, "Perhaps I can stick to anti-trans bigot?". When the complainer sent a further email complaining that the Respondent had insulted her, the Respondent replied advising that they would not be apologising.
- On 7 July 2018, the Respondent had posted a tweet referring to an allegation that lesbians were blocking the London Pride March, and had referred to the women in question as "TERFS" and "utter cunts".

### **Submissions made by the ESC's Representative**

The ESC's representative noted that the complaint concerned an email exchange between the complainer and the Respondent and also tweets posted by the Respondent both before, after and around the same time as the email interaction.

The ESC's representative advised that the Respondent had posted their tweet of 19 January 2018, in which they referred to 'TERFS' as "scum" and "hateful and vile" in response to another Twitter user, in the context of a general exchange on the issue of transphobia.

The ESC's representative advised that an email the complainer sent to Dundee City Council, on 12 June 2018, in which she pointed out that their Equalities Policy incorrectly referred to 'gender', rather than 'sex' as a protected characteristic under the Equality Act 2010, had been forwarded to

the Respondent, in their then capacity as the Council's Equal Opportunities Spokesperson. The ESC's representative indicated that the Respondent had then initiated the email exchange with the complainer on 13 June 2018 during which the Respondent called the complainer a 'TERF' and stated that her feminism was "both radical and trans-exclusionary". The ESC's representative noted that when the complainer took exception to this and asked the Respondent to desist from using the term 'TERF' as it was an expression of abuse, the Respondent replied advising that they would not be apologising, considered it was "deserving" and would continue to use it.

The ESC's representative noted that the Respondent's position was that the term 'TERF' was a descriptor and was not in itself abusive or offensive. The ESC's representative contended, however, that the Respondent's use of the term 'TERF' to describe the complainer in the circumstances where the complainer had asked them to desist from doing so, where the Respondent had responded indicating that it was warranted, and where the Respondent had previously publicly identified 'TERFS' as being "scum", "hateful" and "vile", demonstrated that the Respondent accepted that 'TERF' was a term of abuse and was using it as such.

The ESC's representative advised that the Respondent's tweet of 7 July 2018 had not been directed at the complainer and, instead, had been posted in response to another Twitter user having alleged that lesbians were blocking the London Pride March. The ESC's representative noted that the Respondent had apologised subsequently for the use of the term "utter cunts" in the tweet and had accepted that they should not have used such language in a publicly available online posting. The ESC's representative further noted that the Respondent's position was that they had not directed the tweet at any identifiable individual or group. The ESC's representative argued, however, that regardless of this, the Respondent's use of obscene language in a tweet was offensive to the public at large.

The ESC's representative noted that the Standards Commission's Guidance on the Councillors' Code of Conduct specifically stated that the respect provisions in the Code covered all situations where councillors were acting, or could be perceived to be acting as such, and that this could include when they were using social media. The ESC's representative advised that the Respondent's Twitter account identified them as a councillor and argued that it was evident that they were responding to the complainer, during the email exchange, in their capacity as the Council's Equal Opportunities Spokesperson. The ESC's representative contended, therefore, that the Respondent was acting as a councillor or, at least, could be perceived to be doing so, during the email exchange with the complainer and when posting the tweets in question.

The ESC's representative noted that while politicians have an enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights, this did not extend to directing gratuitously offensive insults towards members of the public. The ESC's representative argued that it was evident from the context, as previously outlined, that the Respondent's use of the term 'TERF' was intended to insult the complainer. The ESC's representative argued that both this, and the use of the word "cunts" in the tweet of 7 July 2018, were disrespectful and amounted, therefore, to a breach of paragraphs 3.1 and 3.2 of the Code.

The ESC's representative noted that the Respondent had lodged the case of *Campbell v Dugdale*, [2019] SC Edin 32, as an authority and had argued that the judgement in this was an authority to support their position that they were entitled to express their honest opinion and use a descriptive term such as 'TERF' when it was merited. The ESC's representative advised, however, that the case concerned the civil wrong of defamation and argued that, as such, it was not relevant as it was plain

the Code could be breached in circumstances where the conduct in question did not amount to a civil wrong. The ESC's representative noted, for example, that insulting a member of the public by using an expletive would not amount to defamation but could nevertheless be disrespectful in terms of the Code.

In response to questions from the Panel, the ESC's representative accepted that the use of the term 'TERF', in itself, was not necessarily insulting or disrespectful. The ESC's representative noted that it was a controversial term and apt to offend although this was the subject of ongoing public discourse. The ESC's representative argued that the Respondent should have known that the expression was controversial and apt to offend the public, and therefore they should have been careful about how they used it in a public forum. The ESC's representative further argued that the Respondent's use of it required to be considered in the context of the associated abusive terms used when directing it towards a member of the public.

### **DECISION**

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Murray.
2. The Respondent had breached paragraphs 3.1 and 3.2 of the Code.

### **Reasons for Decision**

The Panel noted that the Respondent's email exchange with the complainer of 13 June 2018 concerned the Respondent's actions as the Council's Equal Opportunities Spokesperson. The Panel further noted the Respondent's twitter account biography referred to them as being a councillor. The Panel was satisfied, therefore, that they were identifiable as such when posting tweets using the account and that they were acting, or could be perceived as acting, as a councillor during the email exchange of 13 June 2018 and in all the tweets. The Panel determined, therefore, that the Code of Conduct applied to the Respondent at the time of the events in question.

The Panel noted the Respondent's position was that while they accepted the use of the 'c' word was inappropriate, it had not been directed at any specific individual and, instead, had been addressed at a group of people who the Respondent considered were protesting against the trans-community's human rights. The Panel further noted that the Respondent's position was that the term 'TERF' was a descriptor and, as such, was akin to labelling someone's beliefs as homophobic or racist.

The Panel accepted that the Respondent, as Scotland's only openly trans elected representative, had suffered from unwarranted bullying and abuse, and that they were determined to stand up for the trans community.

The Panel considered that while the term 'TERF' was apt to be controversial and could be seen as one of abuse, it could also be used or perceived as simply a descriptor. The Panel was of the view, however, that it was evident from the Respondent's description, over an extended period of time, of 'TERFS' as being 'scum' and 'hateful and vile', that the Respondent intended it to be an expression of abuse. The Panel further considered that the Respondent's use of it in the context of their reply

to the effect that it was deserved, when the complainer had indicated that the use of the term was abusive, demonstrated that the Respondent was aware that the term could reasonably be taken to be offensive. The Panel was further satisfied that the Respondent had directed the term at the complainer as an individual and that it was about her as a person, rather than simply being a descriptor of her alleged views.

The Panel considered that the reference to the complainer as a 'TERF', in context, amounted to a personal attack on her. The Panel was therefore satisfied that the Respondent failed to observe the rules of good conduct by behaving in a respectful manner towards the complainer. The Panel further determined that the Respondent's use of the 'c' word in a public forum, such as a tweet, was highly offensive and inappropriate, regardless of whether it had been directed at any individual or identifiable group of individuals.

The Panel found, therefore, that the Respondent's behaviour amounted to a contravention of paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

Regarding Article 10 of the European Convention on Human Rights, the Panel concluded that the Respondent's reference to the complainer as being a 'TERF', in the circumstances and in the context of their other tweets, amounted to a personal attack on her. The Panel was of the view that the use of the term in the emails to the complainer was gratuitously offensive given that the Respondent's emails were in response to legitimate concerns the complainer had raised with the Council about whether its interpretation of the Equalities Act 2010 was correct.

The Panel was further of the view that the Respondent's use of the 'c' word was egregious, offensive and particularly gratuitous. As such, the Panel determined that the imposition of a restriction in the circumstances was relevant, sufficient and proportionate. The Panel concluded, therefore, that it was satisfied that a finding of breach, and subsequent application of a sanction, would not contravene Article 10.

The Hearing Panel concluded that the Respondent had breached paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.

### **Evidence in Mitigation**

The Hearing Panel noted that the Respondent had advised, in written submissions, that as Scotland's only openly trans elected representative, they had been the target of a great deal of online harassment and abuse from anti-trans campaigners. The Respondent had indicated that their use of the term 'TERF' had to be seen in the context of them being entitled to calling out transphobia and their desire to stand up for the trans community.

The Panel noted that the Respondent had apologised for the language used in the tweet of 7 July 2018 and, further, that their acknowledgement that this was unacceptable had led them to resign from their post as the Council's Equalities Opportunities Spokesperson, for which they had been entitled to receive an additional allowance.

The Panel further noted the Respondent's personal circumstances.

### **SANCTION**

The decision of the Hearing Panel is to suspend, for a period of two months, the Respondent Councillor Murray's entitlement to attend all meetings of Dundee City Council and of any committee or sub-committee thereof, with effect from and including Monday, 20 May 2019.

The decision is made in terms section 19(1)(c) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

### **Reasons for Sanction**

In reaching its decision on sanction, the Hearing Panel considered, and weighed up, all relevant aggravating and mitigating factors, in line with the Standards Commission's Policy on the Application of Sanctions.

The Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes. The Panel noted that the Respondent had recognised that their use of the 'c' word in a public tweet was inappropriate and that they had resigned from their position as the Council's Equalities Opportunities Spokesperson as a result.

The Panel recognised that the Respondent's actions had been taken in the wider context of them being the subject of a great deal of unwarranted anti-trans abuse. The Panel further recognised that the Respondent's personal circumstances may also have had an impact on their judgement. The Panel also noted that the Respondent had asked the complainer to desist from using the incorrect pronoun for them and that the Respondent may have been frustrated by this matter.

The Panel noted, however, that the requirement for councillors to behave in a respectful manner is an important part of the Code as it prevents a Council and role of a councillor from being brought into disrepute, and ensures public confidence in both are not adversely affected. In this case, the Panel considered that the Respondent had failed to behave in a respectful manner and had, instead, engaged in personal abuse and had posted a gratuitously offensive online comment. The Panel emphasised it was a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that they complied with them. The Respondent had been negligent in this regard.

The Panel was concerned that the Respondent had singularly failed to provide an apology to the complainer. The Panel was further concerned that the Respondent had failed to demonstrate any insight into the impact their behaviour may have had on the complainer and her ability to raise issues with the Council, or on the public's view of councillors in general. The Panel also noted that the conduct was not a one-off incident.

### **RIGHT OF APPEAL**

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

**Date:** 17 May 2019



**Ms Ashleigh Dunn  
Chair of the Hearing Panel**