AGENDA ITEM 9

FALKIRK COUNCIL

Subject: ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000
Meeting: FALKIRK COUNCIL
Date: 14 MAY 2014
Author: CHIEF GOVERNANCE OFFICER

1. INTRODUCTION

1.1 Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 requires a Council in receipt of findings from the Standards Commission following a hearing, to consider those findings at a meeting of Council. It is not available to delegate this function to an officer or to a committee and the findings must be considered within three months of receipt. These provisions are repeated in Rule 10.9 of the Commission's Hearings rules which also require the outcome of any consideration to be reported back to the Commission.

2. HEARING AND FINDINGS

2.1 The Standards Commission met in Falkirk on 17 and 18 February 2014 for a hearing to consider a complaint against Councillor Robert Spears. As required by the Act, a copy of the Commission's findings, which were issued on 4 March 2014, is attached to this report.

3. RECOMMENDATION

3.1 It is recommended that Council considers the findings of the Standards Commission as required by Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

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Chief Governance Officer

Date: 13 March 2014

LIST OF BACKGROUND PAPERS

Nil

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Best Western Park Hotel, Falkirk on 17 and 18 February 2014.

Panel Members: Mr Ian Gordon OBE, QPM, Chair
Mr Matt Smith OBE
Mrs Julie Ward

This Hearing arose in respect of a Report by Mr D. Stuart Allan, Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner), further to complaint No. LA/Fa/1392 ("the Complaint"), concerning an alleged contravention of the Councillors' Code of Conduct ("the Code") by Councillor Robert Spears of Falkirk Council ("the Respondent").

Mr Ranald Macpherson attended the Hearing as the representative of the Commissioner and presented his case and was accompanied by Mr Ian McLeod, Investigating Officer. The Respondent attended the Hearing and was represented by Councillor Brian McCabe.

At the opening of the Hearing Councillor Spears indicated concern that he had had insufficient time to engage legal representation. The Chair drew Councillor Spear's attention to correspondence from the Standards Commission, as on 19 December 2013, when he had been advised of his entitlement to representation of his choice. Councillor Spears then asked if it would be in order for him to be represented by one of his witnesses, Councillor McCabe. The Chair, having invited comment from the Commissioner's representative agreed to this form of representation and as a consequence provided an opportunity for Councillor McCabe to give opening evidence, as a witness, before assuming his representational role. To further facilitate this process, the Chair offered Councillors Spears a brief adjournment.

The Complaint

The Complainant was Councillor Dennis Goldie. The complaint alleged that the Respondent, while an elected member of Falkirk Council, had contravened the Code and, in particular, the provisions relating to conduct at meetings.

The Commissioner investigated the complaint and concluded that the Respondent had, on a balance of probability, given Provost Reid a straight arm salute and did say the words "Sieg Heil" at a public meeting of Falkirk Council. Therefore the Respondent was found to have breached Paragraph 3.2 within the Councillors' Code of Conduct.

The relevant provisions are:

Councillors' Code of Conduct

Section 3: General Conduct: Conduct at Meetings

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its committees or sub-committees or of any public bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

Joint Statement of Facts

The Commissioner and the Respondent failed to agree a Joint Statement of Facts.

Evidence presented at the Hearing

1. The Respondent was present at a meeting of the Falkirk Council held on 6 March 2013 and took part in a vote by those present on a motion to suspend Council Standing Orders. The vote was taken by a show of hands from Councillors that was counted by the Clerk to the Council.

2. The motion was controversial and the Chamber was noisy; the term 'dictatorship' had been used. The Respondent voted for the motion; those supporting the motion voted first whilst those against the motion voted second. Mr Macpherson stated that after the vote was completed, the Respondent raised his arm in a straight-arm salute and said the words "Sieg Heil", which appeared to be directed at the Provost who was seated opposite the Respondent in the Council Chamber.

3. Councillor McCabe, for the Respondent, stated that the Respondent gave no straight-arm salute. The only time he had raised his arm was whilst voting for the motion. Councillor McCabe said the Respondent had made a comment: "We'll be Sieg Heiling in here next", directed at Councillor McCabe but he had not in fact heard it. The Respondent stated that he said those words during the vote. Councillor McCabe was seated next to the Respondent during the meeting.

4. Four witnesses, including the Provost (who was chairing the meeting) and the Democratic Services Manager of the Council, both of whom were sitting opposite the Respondent, stated they saw the Respondent make the straight-arm salute and heard him say the words, "Sieg Heil". These witnesses further state that the raising of the arm and words spoken were after the vote had been taken.

5. The Democratic Services Manager made a handwritten note of the meeting in which, after the vote had been concluded, he had written that the Respondent had said "Sieg Heil". When he was preparing the notes for typing he added (arm raised). He did this because that is what he had seen the Respondent do after the vote.

6. Two witnesses for the Respondent (including Councillor McCabe) said they had become aware of a commotion in the Chamber but had not seen the Respondent raise his arm or speak the words. One of those witnesses thought the commotion may have been after the vote. Two other witnesses were not aware of anything untoward in the Chamber and had not seen the Respondent raise his arm or speak the words. These four witnesses could not therefore clarify if the event did or did not take place.

7. The Respondent, in evidence, said that he only raised his arm to vote on the motion– as did the other councillors; he did not make a straight arm salute and he did not say "Seig Heil". He did make a flippant comment to Councillor McCabe, who was sitting next to him, comprising: "We'll be Sieg Heiling in here next". He regrets making that comment. No other witnesses heard that comment.

8. There was no clarity by the witnesses as to whom the salute was directed but it was clear that it was made towards the Bench, where the Provost was seated. Those persons, who had witnessed the action and heard the words, gave evidence that they considered it was offensive. The Provost said he was angered by the Respondent's actions and said so at the time.

9. Evidence was given that the Respondent made a statement in the Chamber, to the Provost in relation to the event. Not all witnesses saw or heard this and those who did thought it was not an apology, as such, by the Respondent. Evidence was also given that the Respondent saw the Provost immediately after the event, in the Provost's private Chamber, and apologised for making the remark.

The Decision

The Hearing Panel considered all of the evidence, the 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 had breached Paragraph 3.2 of the Councillors' Code of Conduct when he was disrespectful in the Council Chamber of Falkirk Council on the 6 March 2013.

The reasons for the Hearing Panel decision are based on the balance of probabilities arising from the evidence heard:

1. During the meeting on 6 March 2013, in relation to an agenda item under discussion, a vote was taken to allow for the suspension of Standing Orders; those supporting the motion, which included Councillor Spears, voted first. Those opposing the suspension of the Standards Orders voted second. The result of the votes was announced. This had been a contentious issue during which there had been exchanges across the Chamber including an allegation of dictatorship. At this point, following the vote, it is alleged that

Councillor Spears raised his arm in a straight-arm salute and said the words "Sieg Heil".

The Hearing Panel carefully considered the evidence of four witnesses who had observed and heard this event and when it occurred, giving particular credence to that of the Provost and the Democratic Services Manager. The Hearing Panel heard evidence from other witnesses who said that they had not observed this event.

The Respondent admitted that he had said a form of words that included the phrase "Sieg Heil". There was no evidence given of the other form of words used by Councillor Spears.

The Hearing Panel determined, on the balance of probabilities, that this event - action and words, had taken place.

2. There is evidence from the Provost that he had objected to what had been done and said by the Respondent and, as a consequence, he had received a form of apology from the Respondent, which was later repeated by him in the Provost's Chamber. The Hearing Panel considers the event was directed at the Provost.

3. There is clear evidence from the witnesses who had seen and heard this event that the Respondent was disrespectful of the Provost; the Hearing Panel considered it was unreasonable and disrespectful for Councillor Spears to conduct himself in this way.

Sanction

The Hearing Panel decided to censure Councillor Spears.

This sanction is made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 section 19(1)(b)(ii).

The reasons are:

1. The Hearing Panel accepted the action was a moment of indiscretion on the part of Councillor Spears.

2. The Hearing Panel also accepted that he showed regret and made an immediate apology to the Provost and repeated that apology at a later time.

3. The Hearing Panel carefully considered all of the evidence, the circumstances and the mitigation. Councillor Spears has made a significant contribution in public life in Scotland and elsewhere. The Panel saw no merit in suspending Councillor Spears even for a limited time.

4. The Hearing Panel considered that censure will allow Councillor Spears to reflect on his future conduct in the Chamber.

Appeal

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: 3 March 2014

Ian A Gordon OBE, QPM
Chair of the Hearing Panel