

Report

Report to: **South Lanarkshire Council**
Date of Meeting: **23 August 2023**
Report by: **Chief Executive**

Subject: **Standards Commission's Hearing Outcome**

1. Purpose of Report

1.1. The purpose of the report is to: -

- Advise the Council of the decision of the Standards Commission of Scotland following the Hearing into a complaint against Councillor Joe Fagan held on 27 June 2023.

2. Recommendation(s)

2.1. The Council is asked to approve the following recommendation(s): -

- (1) that the decision of the Hearing Panel of the Standards Commission for Scotland that Councillor Joe Fagan had breached paragraphs 3.16 and 3.17 of the 2018 edition of the Councillors' Code of Conduct be noted; and
- (2) that the decision of the Hearing Panel to suspend Councillor Fagan for a period of two months with effect from 7th July 2023, being the date of their written decision, be noted.

3. Background

- 3.1. Complaints were received by the Commissioner for Ethical Standards in Public Life in Scotland (ESC) that on 30 April 2021, Councillor Fagan disclosed to the press confidential information about leisure and culture facilities that had been identified for potential closure.
- 3.2. Following an investigation, the ESC referred the complaint to the Standards Commission for Scotland on the basis that Councillor Fagan had failed to comply with the provisions of the 2018 edition of the Councillors' Code of Conduct, being the version in place at the time of the events, and that in particular he had contravened paragraphs 3.16 and 3.17 of the Code which are as follows:

Confidentiality Requirements

- 3.16 *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 or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.*
- 3.17 *You will often receive information of a private nature which is not yet public, or which perhaps would not be intended to be public. You must always respect and comply with*

the requirement to keep such information private, including information deemed to be confidential by statute. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your use as a councillor and must not be disclosed or in any way used for personal or party-political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

4. Hearing Panel Decision

- 4.1. The Hearing called by the Standards Commission took place in Hamilton on 27 June 2023. As a joint statement of facts had been agreed in advance of the hearing, no witnesses were called.
- 4.2. The Hearing Panel considered the submissions given orally at the Hearing and in writing and found that Councillor Fagan had received the information in his capacity as a member of a Cross -Party Working Group(CPWG) and that the Councillors' Code of Conduct applied to him at the time. The Panel concluded that Councillor Fagan had breached paragraphs 3.16 and 3.17 of the Code.
- 4.3. The Panel found that Council Fagan was fully aware that the CPWG's work in considering the future of the leisure facilities was confidential when he disclosed the information to the press. The Panel determined that he had knowingly and deliberately disclosed the confidential information in breach of paragraph 3.16 of the Code.
- 4.4. The Hearing Panel also noted that paragraph 3.17 of the Code stated that confidential information should not be used for personal or party-political advantage, or to discredit the Council. The Panel noted that Councillor Fagan had disclosed the information a week before the Scottish Parliamentary election and was satisfied that he had done so, at least in part, for party-political gain in breach of paragraph 3.17 of the Code.
- 4.5. In reaching its decision on sanction, the Panel considered and weighed up all relevant mitigating factors. The Panel noted that the requirement for councillors to refrain from disclosing confidential information is a key requirement of the Code and that a failure to do so can damage the reputation and integrity of a Council and can also impede discussions and decision-making. The Panel noted that Councillor Fagan had thought that he was allowed to disclose information in exceptional circumstances if there was a clear public interest in doing so but found that it was clear from the wording of the Code that this was not the case and that the information had been deliberately disclosed in part for party-political gain. The Panel was concerned by this finding, noting that he had been afforded ample opportunity to propose changes to the management of the release of the information as a member of the CPWG. The Panel was particularly concerned that he had sought to amplify the effect of his disclosure to the media, and by consequence its political impact, by emailing his news release to his party colleagues and encouraging them to share it with the public. The Panel was also concerned that Councillor Fagan appeared not to consider the potential impact of his action on officers who would have been responsible for dealing with any resulting press and public enquiries before disclosing the information. It also noted that the disclosure was likely to have resulted in speculation about facilities being closed, which may have caused undue concern, before any final decision had been taken.
- 4.6. The Panel further noted that Councillor Fagan had fully cooperated with the investigation and hearing process and had expressed remorse for breaching the Code. It noted the character references that had been submitted on his behalf, his contribution to public life and that he had undertaken further training on the

confidentiality requirements of the Code and his assurance that he had gained insight into the matter and Code.

4.7. The Panel subsequently expressed disappointment to note the quotes attributed to Councillor Fagan in the press following the Hearing, which appeared to indicate that he did not understand that there are legitimate reasons as to why certain information is deemed confidential for a period and why it should not be disclosed during that time. The Panel warned that any future breach of the confidentiality provisions of the Code by Councillor Fagan will be treated with the utmost seriousness.

4.8. The full decision is available on the Standards Commission for Scotland website.

5. Employee Implications

5.1. There are no employee implications arising from this report.

6. Financial Implications

6.1. There are no financial implications arising from this report.

7. Climate Change, Sustainability and Environmental Implications

7.1. There are no implications for climate change, sustainability or the environment in terms of the information contained in this report.

8. Other Implications

8.1. Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act requires a Council receiving a copy of a Hearing Decision to consider the findings within three months of receipt of the decision.

9. Equalities Impact Assessment and Consultation Arrangements

9.1. This report does not introduce a new policy, function, or strategy and therefore no Equality Impact Assessment is required.

Cleland Sneddon
Chief Executive

27 July 2023

Link(s) to Council Values/Ambitions/Objectives

- ◆ Accountable, effective, efficient and transparent
- ◆ Focused on people and their needs

Previous References

- ◆ None.

List of Background Papers

- ◆ None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:

-

Geraldine McCann Ext: 4658 (Tel: 01698 454658)

E-mail: geraldine.mccann@southlanarkshire.gov.uk