

ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER

Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

REPORT

**Complaint no. LA/E/824
concerning an alleged contravention of
the Councillors' Code of Conduct
by
Councillor Cameron Day
of
the City of Edinburgh Council**

The Ethical Standards in Public Life etc. (Scotland) Act 2000, Section 9(2), provides the Chief Investigating Officer has the function of investigating and reporting to the Standards Commission for Scotland on cases in which a councillor or member of a devolved public body may have contravened the councillors' or, as the case may be, the members' code of conduct.

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1.0 Introduction

- 1.1 Complaint number LA/E/824 alleges a contravention of the Councillors' Code of Conduct ("the Code"). The Code was issued by the Scottish Ministers in terms of section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act") and came into effect on 1 May 2003.
- 1.2 The complaint has been lodged by Councillor Alastair Paisley ("the complainant") who alleges a contravention of the Code by Councillor Cameron Day ("the respondent"). The complainant and the respondent are both elected members of the City of Edinburgh Council ("the Council").
- 1.3 It is alleged that the respondent has contravened the Councillors' Code of Conduct, and, in particular, the provisions of paragraphs 4.2 (**Registration of Interests**) and 4.18 and 4.19 (**Category Five: Houses, Land and Buildings**) which are as follows:-
- "4.2 Regulations¹ made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.
- 4.18 You have a registerable interest where you own or have any other right or interest in houses, land and buildings, such as being an owner or a tenant, including council tenant.
- 4.19 You are required to give the address of the property, or otherwise give a description sufficient to identify it."
- 1.4 The respondent has signed a declaration of acceptance of the office of councillor under the Local Authorities (Councillors) (Declaration of Acceptance of Office) (Scotland) Order 1990, as amended, in terms of which the respondent has undertaken to meet the requirements of the Councillors' Code of Conduct in the performance of his functions in that office. The declaration was signed on 10 November 2008.
- 1.5 For the purpose of this investigation, I was assisted by Harris Wells, Investigating Officer.

¹ For the purposes of this complaint, the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 as amended apply. They prescribe that it is the duty of any councillor to submit a first notice of registerable interests within one month of having made the declaration of acceptance of office (regulation 4) and to submit any amendments to these registerable interests to the relevant council officer within one month of any change to the information (regulation 5).

- 1.6 This report has been prepared for submission to the Standards Commission for Scotland in terms of section 14(2) of the 2000 Act. The report was submitted in draft form to the respondent for any representations. No material amendments have been made to the report as its contents have been accepted in their entirety by the respondent.

2.0 Outline of the Complaint and the Response

The Complaint

- 2.1 The complainant alleges that the respondent failed to register his interest in a property which he owns jointly with his brother.

The Response

- 2.2 The respondent explains that he was elected to the Council in a local by election on 6 November 2008 and that, as soon as he became aware of the requirement to register his interest in the property following a meeting with the Council Secretary, he did so.

3.0 The Investigation

- 3.1 To establish the background to the complaint, the Investigating Officer sought and received information from the respondent, from the Council Secretary and from the Monitoring Officer of the Council.
- 3.2 Having considered the documentary evidence, the Investigating Officer proceeded individually to interview the complainant and the respondent. The interviews were held on 12 and 13 May 2009.

4.0 Consideration of the Evidence

- 4.1 Councillor Alastair Paisley, the complainant, represents the Pentlands Hills ward on the Council as a member of the Scottish Conservative Party. He serves on the Planning Committee, the Health, Social Care and Housing Committee and a number of other Committees.
- 4.2 Councillor Cameron Day, the respondent, was elected to the Council on 6 November 2008. He represents the Forth ward on the Council as a member of the Scottish Labour Party. Councillor Day is a member of the Economic Development Committee and the Education, Children and Families Committee.
- 4.3 In his initial letter dated 21 January 2009, the complainant pointed out that the respondent had not registered in the Members' Register of Interests his interest in a property at 31 Saughton Grove, Edinburgh which he owns jointly with his brother. The complainant had become aware of the existence of this property as a result of information (passed to him anonymously) which included a copy

of the entry for the property in the Register of Scotland. In a subsequent letter dated 9 February 2009, the complainant identifies section 4 (**Registration of Interests**) as being the part of the Code which he considers the respondent has breached. The complainant indicates that he has no knowledge of any item of Council business in respect of which the respondent required to declare his interest in the property.

- 4.4 The respondent states that, as a newly elected councillor, he arranged to meet with the Council Secretary following his election to go over the many requirements of being an elected member. However, due to their respective workload pressures, the Christmas and New Year holidays and other circumstances, the meeting did not take place until mid-January 2009. In the meantime he provided the Council Secretary with his first notice of the interests which he understood he was required to register on 6 January 2009 and these were duly recorded in the register. In relation to Category Five: Houses, Land and Buildings, of the first notice, the respondent registered an interest as “Joint owners – 35 Easter Drylaw Gardens”. No mention was made in respect of any other heritable interests.
- 4.5 At his meeting with the Council Secretary on 20 January 2009 the respondent became aware that he also needed to register his joint interest in a property at 31 Saughton Grove, Edinburgh which he and his brother had purchased in 2008 for his mother, and he duly did so (the respondent and his brother acquired ownership of the property with entry as at 31 July 2008). He states that he has not been involved in any vote or decision by the Council that required him to declare his joint interest in this property.
- 4.6 During the meeting on 20 January 2009 it became apparent to the Council Secretary that the respondent had an interest jointly with his brother in another Edinburgh property in which their mother lived. As soon as he was made aware that he had to register this property too, the respondent amended his first notice of interests on 20 January 2009 by including in Category Five: Houses, Land and Buildings his interest described as “Joint owner – 31 Saughton Grove, Edinburgh”; the amended notice is dated 20 January 2009 (incorrectly dated as “2008”). The Council Secretary received this on 21 January 2009 and the updated information appeared on the Council’s website the following day.
- 4.7 The Monitoring Officer advises that the Council Secretary is the proper officer for the purpose of dealing with councillors’ Declarations of Acceptance of Office, Registration of Interests and general matters relating to the Councillors’ Code of Conduct. The Council Secretary offered to brief the respondent and assist him with these matters when he was elected as a councillor but due to a combination of pressures of work and the intervention of the holiday period the meeting did not take place until 20 January 2009. The Council Secretary accepts that he was responsible, in part, for the delay in arranging the meeting.

5.0 Findings and Conclusion

- 5.1 The complainant alleges that Councillor Cameron Day contravened the Councillors' Code of Conduct, as outlined in paragraphs 1.3 and 2.1 of this Report.
- 5.2 The complaint alleges that the respondent failed to register in the Members' Register of Interests, his interest in a property which he owns jointly with his brother. The straightforward issue for consideration is whether the respondent registered his interests timeously and fully, following his election on 6 November 2008.
- 5.3 The statutory requirements regarding registration of interests are laid down in the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interest) Regulations 2003, as amended ("the Regulations"). In terms of the Regulations the respondent is required to give the proper officer a first notice of his interests not later than one month after signing a Declaration of Acceptance of Office. As the respondent signed the Declaration of Acceptance of Office on 10 November 2008 he should have provided the proper officer with his first notice of interests not later than 11 December 2008. The Council Secretary, who is the proper officer for this purpose, did not receive the first notice of interests from the respondent until 6 January 2009. This was more than three weeks later than required in terms of the Regulations. The first notice did not provide information under Category Five: Houses, Land and Buildings on property at 31 Saughton Grove, Edinburgh which the respondent has owned jointly with his brother since 31 July 2008 but this information was included in an amended notice dated 20 January 2009 and received by the Council Secretary on 21 January 2009.
- 5.4 Having regard to the foregoing facts, which the respondent accepts, I find that the respondent did not comply with the Code and the Regulations in that (i) he failed to register his first notice of interests by the statutory time limit (in his case) of 11 December 2008 and only did so on 6 January 2009 and (ii) he failed to include in his first notice his interest as joint owner of 31 Saughton Grove, Edinburgh which he had jointly owned since 31 July 2008 and only did so when he amended his first notice by an appropriate entry on 20 January 2009 received by the Council Secretary on 21 January 2009. I find that, by failing to do so, the respondent has breached paragraphs 4.2, 4.18 and 4.19 of the Code and regulations 4 and 5 of the 2003 Regulations.
- 5.5 The requirement to register interests within the statutory period and to do so fully are fundamental requirements of the Code. I would add, however, that the breach should be seen in the context of the following factors. Firstly, the respondent was a newly elected Councillor and might have expected some guidance regarding the responsibilities on councillors in relation to the registration of interests and other matters relating to the Code. Secondly, the Council Secretary has acknowledged that the delay in meeting with the respondent to brief him on his obligations under the Code was partly his (the Council Secretary's) responsibility. Thirdly, the respondent registered his interest in the property which he owns jointly with his brother as soon as he

was advised of the need to do so. Finally, the interest the respondent has in respect of 31 Saughton Grove, Edinburgh has not, on the basis of the information available, given rise to a situation where the respondent should have declared an interest at any meeting of the Council or in Committee.

- 5.6 It should be noted that the respondent has accepted in full my report on this matter. He has cooperated with my investigations to the fullest extent and there is no evidence before me that his failure to register the necessary interest constituted a deliberate course of conduct on his part. The respondent points out that his meeting with the Council Secretary did not take place until 20 January 2009 and I accept that it was unfortunate that the respondent did not receive the full benefit of the Council Secretary's advice until that date. The respondent expresses disappointment that the complainant did not bring to his attention, or that of the Council Secretary, the need for him to register his interest in the property at 31 Saughton Grove, Edinburgh before reporting the matter to me for investigation. I can appreciate that the respondent considers that the complainant might have sought to have the matter regularised simply by drawing it to his attention, particularly as he (the respondent) was a newly elected councillor, nevertheless, there was a breach of the Code and the complainant was fully entitled to report the matter for investigation.
- 5.7 In relation to complaint number LA/E/824 I have come to the conclusion that, having regard to the findings in section 5 and in particular paragraphs 5.3 and 5.4 of this Report, Councillor Cameron Day has contravened the Councillors' Code of Conduct.

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Chief Investigating Officer

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21 July 2009