

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in the Town House, Haddington on 13 November 2015

Panel Members: Mr Ian A Gordon OBE, QPM, LL.B (Hons), Chair of the Hearing Panel
Mr Matt Smith OBE
Mr Kevin Dunion OBE

The Hearing arose in respect of a Report by Mr Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland (“the CESPLS”) further to complaint reference LA/EL/1654, (“the Complaint”) concerning alleged contraventions of the Councillors’ Code of Conduct (“the Code”) by Councillor Paul McLennan (“the Respondent”).

The CESPLS was represented by Mr David Sillars, Senior Investigating Officer. The Respondent represented himself.

COMPLAINT

A complaint had been received by the CESPLS relating to the alleged conduct of the Respondent. Following an investigation, the CESPLS dismissed one allegation and referred the remainder of the complaint to the Standards Commission for Scotland.

The substance of the allegation was that the Respondent had contravened the Councillors’ Code of Conduct and, in particular, Sections 3 and 4 of the Code, which deal with general conduct and the registrations of interests respectively.

Essentially the complaint alleged that the Respondent submitted an expenses claim on 7 June 2013 that did not relate to duties in connection with the functions of the Council and, therefore, that he failed to comply with the rules in respect of expenses. The complaint also alleged that the Respondent failed to register interests including remunerated employment and non-financial interests during his current term of office as a councillor from May 2012 onwards.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 3.6, 4.1, 4.2, 4.7, 4.8 and 4.22 of the Councillors’ Code of Conduct.

The relevant provisions are:

3.6 *You must comply with the rules for the payment to councillors of remuneration, allowances and expenses.*

4.1 *The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registrable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. **The register should cover the period commencing from 12 months prior to and including your current term of office.***

4.2 *Regulations 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.*

4.7 *When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.*

4.8 *When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.*

4.22 *Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to committees or memberships of other organisations.*

The CESPLS submitted a report to the Standards Commission on 26 August 2015 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

Joint Statement of Facts

The CESPLS and the Respondent signed a Joint Statement of Facts on 28 October 2015, which stated that a number of points had been agreed. These included the following:

- The Respondent had failed to appropriately register, describe and regularly review his remunerated interests in compliance with paragraphs 4.1, 4.2, 4.7 and 4.8 of the Councillors' Code of Conduct.
- The Respondent had failed to register non-financial interests, being directorships, in compliance with paragraph 4.1 and 4.22 of the Councillors' Code of Conduct.
- The Respondent had submitted a claim to East Lothian Council for mileage expenses for travel on 7 June 2013.
- The Respondent agreed the Findings and Conclusion in Section 5 of the CESPLS Report, subject to a number of observations.
- The Respondent had breached the Councillors' Code of Conduct.

Evidence Presented at the Hearing

No witnesses were called by either party in respect of whether or not there had been a breach of the Councillors' Code of Conduct.

The CESPLS's representative outlined the facts and presented the CESPLS's case as set out in his Report and the Joint Statement of Facts. In particular, the CESPLS's representative emphasised the importance of registering interests in accordance with the Councillors' Code of Conduct. Doing so enabled the public to have confidence that all relevant information available was correctly recorded and that the key principles of openness and integrity underpinned the actions of councillors when they made decisions on council business.

While the CESPLS's representative acknowledged there was no evidence to suggest that the Respondent's failure to register his remunerated employment had been a deliberate attempt to conceal information or to mislead any party as to the nature and extent of his interest, and no complaint had been received to that effect, he nevertheless contended that the requirement to register interests and to regularly review and update them was clear and straightforward. While the Respondent had suggested the support he had received from East Lothian Council was unsatisfactory, he acknowledged that it was his personal responsibility to ensure that he complied with the provisions of the Code. The Respondent could have sought advice from officers or attended the training on the Code that had been offered. He had chosen not to do so.

The CESPLS's representative argued that the Respondent had failed to comply with paragraph 3.6 of the Code in submitting the expenses claim for mileage on 7 June 2013 because the expenses were not incurred in respect of an approved duty in pursuance of the business of East Lothian Council. Section 1 of the East Lothian Council's Councillors' Expenses Guide outlined what 'approved duties' were. The CESPLS's representative argued that, given the circumstances surrounding the journey that was the subject of the expense claim in question, the reasonable inference was that the Respondent was acting in a private capacity and was not undertaking business on behalf of East Lothian Council. Therefore, the claim did not fall within any category of approved duty under the Expenses Guide.

The CESPLS's representative acknowledged that the complaint in respect of paragraph 3.6 related to one isolated journey and there was no evidence or suggestion of any strategy by the Respondent to defraud the Council.

The Respondent confirmed that he accepted he had breached the Councillors' Code of Conduct, as found by the CESPLS, in respect of the registration of his interests. He fully accepted that it was his personal responsibility to correctly register his interests in accordance with the Code and that he had failed to do so. The Respondent apologised for this failure.

The Respondent advised that he had been under the impression that the Register of Interests required to be completed annually and was retrospective. He confirmed that there had been no corresponding failure to declare any interests, nor any personal gain from the failure to register them appropriately.

The Respondent argued that he had found numerous breaches of the registration requirements by other East Lothian Councillors, which he contended suggested a lack of training. However, the Respondent conceded that while training sessions had been provided, he had chosen not to attend any as he mistakenly thought he knew the

requirements of the Code. The Respondent conceded that he had not read the Code in detail and accepted he should have done so.

In respect of the expenses claim, the Respondent contended that the purpose of the journey was to attend a meeting with the Scottish Government to discuss maximising the cultural and commercial opportunities of St Andrew's day. There was a clear link between this and other flagship events he had organised for East Lothian Council, being the Saltire Festival and the John Muir Festival.

The Respondent accepted, however, that he had not sought advance approval from the council. He conceded that the email he had sent the Scottish Government to arrange the meeting had been issued from his Scottish Parliament email address.

DECISION

The Hearing Panel considered in detail all of the submissions, including the productions and presentations made during the Hearing by the CESPLS's representative and on behalf of Respondent and found as follows:-

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Hearing Panel accepted the admission from the Respondent that he had breached paragraphs 4.1, 4.2, 4.7, 4.8 and 4.22 of the Councillors' Code of Conduct.

In terms of the expenses claim in question, the Hearing Panel heard that while the Respondent accepted he had failed to comply with the Code of Conduct in respect of the registration of his interests, it was his contention that the expense claim in question related to expenses that he had incurred in pursuance of legitimate business on behalf of East Lothian Council.

However, the Hearing Panel considered:

1. The initial contact for the meeting was from the Respondent's Scottish Parliament email address and referred to him doing some work with a company to arrange a seminar.
2. There was no reference in the email to the Respondent's role as a councillor or to the business of East Lothian Council.
3. There was evidence that the Finance Officer of East Lothian Council "could find no legitimate basis for the claim in terms of the Council's Rules".
4. The admission from the Respondent that he had not sought approval in advance of the meeting.

While the Hearing Panel accepted the submission that this was one isolated incident, it nevertheless concluded that the Respondent had breached paragraph 3.6 of the Code.

The Hearing Panel further concluded that the Respondent had breached paragraphs 4.1, 4.2, 4.7, 4.8 and 4.22 of the Councillors' Code of Conduct.

Evidence in Mitigation

The Respondent advised the Hearing Panel that he had acted in good faith. The failure to correctly register his interests stemmed from his misunderstanding of the Code and not from any deliberate attempt to conceal information. However, the Respondent accepted it was his personal responsibility to comply with the Councillors' Code of Conduct and that he had failed to do so.

In respect of the expense claim, the Respondent reiterated that he thought that in arranging the meeting with Scottish Government he was fulfilling his duties as a councillor in an attempt to make a difference for his constituents.

SANCTION

The decision of the Hearing Panel was to suspend, for a period of three months with effect from 20 November 2015, the Respondent's entitlement to attend all meetings of the Council and any Committees or sub committees thereof on which he is a representative.

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

Reason for Sanction

The Respondent had breached the Councillors' Code of Conduct. In reaching their decision as to the sanction, the Hearing Panel:

1. Noted the Joint Statement of Facts and the Respondent's statement in mitigation.
2. Carefully weighed the evidence and took into account the mitigating factor that there was no evidence of any failure to declare the non-registered interests.
3. Noted that the Respondent accepted that it was his responsibility to comply with the Code and that he should have been more diligent in considering the requirements of Section 4 when registering his interests.
4. Noted the apology offered by the Respondent and the contribution he has made to his local community.

However, the Hearing Panel:

5. Was concerned that the Respondent had failed to participate in the training provided by the Council and the Standards Commission.

6. Considered the chronic failure of the Respondent to register his interests demonstrated a lack of understanding of the Councillors' Code of Conduct and its implications for the role of a councillor.
7. Emphasised the registration of interests (including remuneration and non-financial interests) is a fundamental requirement of the Code. A failure to register these interests removes the opportunity for openness and transparency in a councillor's role and denies any member of the public the opportunity to consider whether a councillor's interests may or may not influence the decision-making process.

RIGHT OF APPEAL

The attention of the Respondent was drawn to Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended which details the right of appeal in respect of this decision.

Date: 25 November 2015



**Ian A. Gordon OBE, QPM, LL.B (Hons)
Chair of the Hearing Panel**