

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in Fife House, Glenrothes on 14 July 2015**

**Panel Members:** Mr Matt Smith OBE, Chair of the Hearing Panel  
Mrs Julie Ward  
Mrs Lindsey Gallanders

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 complaints number LA/Fi/1501, 1516, 1518 and 1536, (“the Complaints”) concerning alleged contraventions of the Councillors’ Code of Conduct (“the Code”) by Councillor Brian Thomson (“the Respondent”).

The CESPLS was accompanied by Mr. Ralph Noble, Investigating Officer. The Respondent attended the Hearing and was represented by Ms Frances Randle, Steel and Shamash Solicitors (“the Respondent’s Representative”).

### **COMPLAINT**

A number of complaints had been received by the CESPLS relating to the alleged conduct of the Respondent during the course of an Education Authority public consultation process, a planning pre-determination Hearing and subsequent planning decision concerning the refurbishment or new build of Madras College, St Andrews. Following an investigation, the CESPLS dismissed a number of the complaints and referred the remainder to the Standards Commission for Scotland.

The substance of the allegations was that the Respondent had contravened the Councillors’ Code of Conduct and, in particular, Sections 5 and 7 of the Code, which deal with declarations of interests and taking decisions on quasi-judicial or regulatory applications respectively.

Essentially the complaints allege that Councillor Thomson had failed to declare his own non-financial interest and also the non-financial interests of close relatives in respect of a lobbying group after a planning application had been received and the formal planning process was underway.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 5.7, 5.12, 5.13 and 7.12 of the Councillors’ Code of Conduct.

The relevant provisions are:

- 5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-
- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or
  - (ii) that interest would fall within the terms of the objective test.
- There is no need to declare:-
- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
  - (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a general exclusion or a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.12 You must declare if it is known to you ANY NON-FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality; or
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare the interest unless it is clear and substantial.

There is only a need to withdraw from the meeting if the interest is clear and substantial.

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

7.12 If you have an interest, whether financial or non-financial, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, or in a Local Review Body, you must declare that interest and refrain from taking part in making the decision.

The CESPLS submitted a report to the Standards Commission on 18 February 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 19 June 2015, which stated that a number of points had been agreed. These included the following:

- On 10 September 2013, a planning application (Planning Permission in Principle) was submitted and formally registered by Fife Council in respect of the erection of a secondary school to replace Madras College on land to the north of Pipeland Farm, Largo Road, St Andrews;

- The Respondent made no declaration of interest at pre-determination Hearings on 21 and 22 February 2014. Both the Respondent's sister and father-in-law had spoken to the meetings as individuals;
- On 6 March 2014 the Respondent sought advice from two senior officers of the Council as to whether he could participate in the North East Planning Committee meeting and the full Council meeting, which would consider the planning application;
- The Respondent made no declaration of interest and took part in the voting at a special meeting of the North East Planning Committee on 20 March 2014;
- The Respondent made no declaration of interest and took part in the voting at a full meeting of the Fife Council on 3 April 2014, where the planning application was approved;
- The Respondent had breached the Councillors' Code of Conduct.

The Joint Statement of Facts also included the following statement provided by the Respondent's Representative:

“our client accepts with regret that he has breached the Code of Conduct by his failure to declare his personal non-financial interest in the two information gathering meetings in February and March 2014. He also accepts and wishes to apologise for, his failure to declare the same interest at the full Council meeting on the 3rd April 2014, from which he fully acknowledges now he should have withdrawn”.

### **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 outlined the facts and presented his case as set out in his Report, the Addendum to the Report and the Joint Statement of Facts. In particular, the CESPLS stated that before he was elected as a councillor, the Respondent had been the spokesperson for a lobbying group, Parent Voice. He had stood down from this position but had continued to receive and send emails to members of the group, including his sister and father-in-law. However, he had failed to declare his involvement as a non-financial interest and had failed to declare the non-financial interests of his sister and father-in-law, as close relatives, at meetings where the planning application was considered.

The CESPLS noted that in his initial response to the complaints, the Respondent had indicated that he had kept an open mind in respect of the planning application and had taken all relevant material considerations into account. The Respondent had indicated that he did not consider that he had fallen foul of the objective test as that there was no real possibility of bias.

While the CESPLS acknowledged the Respondent had discussed the matter with officers, he did not consider the Respondent had made them aware of all relevant facts and the extent of

his involvement with Parent Voice and should not have assumed they would have been aware of this.

The CESPLS further acknowledged that the Respondent had not benefitted either personally or politically from the actions which are the subject of the complaints. However, the CESPLS considered the following points were relevant for the purpose of determining whether the Respondent had complied with the objective test:

- The Respondent's pre-election position as Spokesperson for Parent Voice;
- The Respondent's post-election public support for a new build site and his opposition to the refurbishment of the existing school;
- The Respondent had continued to exchange emails about the matter with members of Parent Voice and had attended meetings of Parent Voice in the last quarter of 2013. This meant his involvement with the group had continued after his election as a councillor;
- The 'Pipelands' site was the only potential option by the time the planning meetings took place, which meant the Respondent could not have attended the meetings with an open mind;
- The Respondent had subsequently declared his interests at a meeting of the North East Planning Committee on 10 December 2014.

The CESPLS argued that the Respondent had failed to comply with the objective test under Section 5 of the Code as a member of the public, with knowledge of these facts, could not fail to regard the Respondent's interests as significant. That being the case the Respondent, as provided within Section 7 of the Code, should have then declared these non-financial interests, refrained from taking part in the planning decision and withdrawn from the room.

The Respondent's Representative confirmed the Respondent now accepted all the breaches of the Councillors' Code of Conduct as found by the CESPLS. He accepted he had misinterpreted the Code, and in particular the objective test, and that he should have declared his non-financial interests and those of his close relatives at the meetings where the planning application was being considered.

The Respondent's Representative indicated that at the time, the Respondent considered the objective test had been met. This was because Parent Voice was not a formally constituted organisation with a constitution and agendas but rather a homogenous group who were opposed to the refurbishment of Madras College at its existing site. The question of whether to refurbish the school or build a new one was the subject of huge local interest and the Council had received in the region of 2700 submissions from the public on the matter. The involvement of so many people helped explain why the Respondent had not considered the involvement of his sister or father-in-law to be worthy of a declaration of interest. He had genuinely forgotten about the three Parent Voice meetings he had attended after becoming a councillor and had considered that his role in Parent Voice had ceased before he became a councillor.

The Respondent's Representative advised that the Respondent had sought advice from officers. He accepted that he had not told them about his connection to Parent Voice but this was on the assumption that they must have known, given his former role as spokesperson and the public comments he had made. The Respondent's Representative indicated that Councillor Thomson had felt able to put his involvement and that of his family members

aside when considering the planning application. However, he now accepted that public perception was important and that a member of the public, with knowledge of the relevant facts, might regard his interests as being so significant that they were likely to prejudice his decision-making. He had realised this objective test applied by the meeting on 10 December 2014, which is why he had declared an interest at that meeting.

## **DECISION**

The Hearing Panel considered in detail all of the submissions, including the productions and presentations made during the Hearing by the CESPLS 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 the Code.

The Hearing Panel found that the Respondent had breached paragraphs 5.7, 5.12, 5.13 and 7.12 of the Councillors' Code of Conduct.

## **Evidence in Mitigation**

The Respondent's Representative advised the Hearing Panel that the Respondent had acted in good faith. He had stood down as spokesperson from Parent Voice when elected and his formal involvement with the group had ceased at that stage. At no time had he attempted to conceal his involvement with the organisation.

The Respondent gave evidence to the effect that when he had sought advice from officers, he had assumed they were fully aware of his previous involvement with Parent Voice due to his public comments, which had been reported in the press. He had not sought to withhold information from the officers and in fact had sought their advice as he was trying to err on the side of caution. However, he accepted it was his personal responsibility to comply with the Councillors' Code of Conduct and that he had failed to correctly interpret the objective test.

The Respondent reiterated that he had not benefitted either personally or politically from his actions in respect of the matter.

## **SANCTION**

The decision of the Hearing Panel was to suspend Councillor Thomson from all meetings of Fife Council North East Planning Committee and from any meeting of the full Council where planning matters relating to North East Fife are to be considered for the months of July and August 2015. This was with effect from 14 July 2015.

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

### **Reason for Sanction**

The Respondent had breached the Councillors' Code of Conduct. In reaching their decision as to the sanction to be imposed, the Hearing Panel had taken into account the following considerations:

1. The Respondent had accepted his responsibility to comply with the Councillors' Code of Conduct and that he should have been more diligent when considering the requirements of the objective test and the provisions contained within 7.12 of the code.
2. The content of the Joint Statement of Facts along with the Respondent's evidence and submissions put forward in mitigation.

The Hearing Panel considered the following points:

1. The requirements of Section 7.12 were unambiguous and were not qualified by the application of the objective test.
2. The declaration of interests (including non-financial interests and the interests of close relatives) and the application of the objective test is a fundamental requirement of the Code. The Hearing Panel wished to reinforce that requirement.
3. The Respondent had indicated his awareness of the requirement to declare interests and withdraw but had failed to apply the same rigour in the circumstances of this breach.
4. The situation was exacerbated by the Respondent's failure to seek advice on a consistent basis and the Panel was not persuaded that he provided sufficient information to officers to enable that advice to be informed and comprehensive.
5. The Respondent suggested that he had assumed that his involvement and that of his close family with Parent Voice was known to Council Officers. No such assumption should have been made and it was solely for the Respondent to provide this information.
6. The apology offered by the Respondent was welcomed. The Hearing Panel acknowledged his commitment to his local community.

### **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 detailed the right of appeal in respect of this decision.

Date: 20 July 2015



Mr Matt Smith OBE  
Chair of the Hearing Panel