

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Scottish Borders Council, Newtown St Boswells on 10 October 2014

Panel Members: Mrs Lindsey Gallanders, Chair of the Hearing Panel
Mr Ian Gordon, OBE, QPM
Mr Matt Smith, OBE

The Hearing arises in respect of a Report by Mr Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland ("the CESPLS"), further to complaint number LA/SB/1503 ("the Complaint") concerning an alleged contravention of the Councillors' Code of Conduct ("the Code") by Councillor Alastair Cranston ("the Respondent") of Scottish Borders Council ("SBC").

The Commissioner, Mr Bill Thompson, was represented by Mr David Sillars, Senior Investigating Officer, and was accompanied by Mr Iain McLeod, the Investigating Officer. The Respondent attended the Hearing and was accompanied, in an advisory capacity, by Councillor Stuart Bell. No witnesses were called by either the Commissioner's Representative or the Respondent.

The Complaint

The Complainant was Mr Ian Wilkie, the former Monitoring Officer of Scottish Borders Council. Mr Wilkie alleged that the respondent participated in the discussion of and voting on an item on the agenda of the meeting of Scottish Borders Council held on 12 December 2013, when, due to his registered financial interest in AgriKomp UK Ltd and his registered non-financial interest in Borders Machinery Ring Ltd, and in order to avoid contravening paragraphs 5.6 and 5.7 of the Code, he should have declared these interests and withdrawn from the meeting room until discussion of and voting on the relevant item had been concluded.

The CESPLS investigated the complaint and concluded that the Respondent had failed to comply with the objective test set out in paragraph 5.3 of the Code and has breached the requirements of paragraphs 5.6 and 5.7 of the Councillors' Code of Conduct.

The relevant provisions are:

Councillors' Code of Conduct

Section 5: Declaration of Interests

5.3 You may be able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is *whether a member of the public, with the knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

Your Financial Interests

5.6 You must declare, if it is known to you, **ANY FINANCIAL INTEREST** (including any financial interest which is registrable under any of the categories prescribed in Section 4 of this Code and any interest as defined in a specific exclusion defined in paragraph 5.18).



There is no need to declare:-

- (i) an interest where a general exclusion, as defined in paragraph 5.18, 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.

With regard to Declaration of Non-Financial Interests, paragraph 5.7 of the Code states:

Your Non-Financial Interests

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.

The CESPLS submitted a report to the Standards Commission on 16 July 2014 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 provided a Joint Statement signed on 29 September 2014, in respect of facts that were agreed and facts that were in dispute.





1. Part 1 of the Commissioner's report is agreed, subject to the following comments by the respondent.

1.2 I always felt I had a good working relationship with Mr Ian Wilkie. I am disappointed that he and/or his successor were unable to contact me on his concerns prior to or subsequent to his retirement. I would have taken advice and acted immediately on recommendations made.

1.3 I am able to provide all information via my accountant and banks to confirm I have received no Financial Gain from alleged actions to date.

1.4 I have always had difficulty in categorising my activities under Non-Financial Interest and its interpretation. The attachment does not clarify this for me and again I would have sought further advice on this if required.

2. Part 2 of the Commissioner's report is agreed, subject to the following comments by the respondent.

2.2 I have circulated to all SBC Councillors a list of Renewable Opportunities following my appointment by SBC as Energy Efficiency Champion. The title 'Energy Efficiency Champion' is also on my SBC Councillor calling card.

3. Part 3 of the Commissioner's report is agreed.

4. The facts contained within the following paragraphs in part 4 of the Commissioner's report are agreed.

4.1, 4.2, 4.3, 4.4 and 4.10

4.5 Any AD (sic) Anaerobic Digestive plant selected would be under a specification set up by a Community Interest Company. I confirm I would have no interest in this company or in the decision making process to arrive at a successful tender. If it was AgriKomp – then any commission within my current contract would be passed to a charity. All action would be verifiable.

4.6 I was late for this meeting and was unable to attend a meeting beforehand of SBC SNP Group. I therefore was unaware that there had been an (sic) SNP decision on the way to vote. I considered on the day that the move to amend the proposal for reconsideration made sense, so I voted as indicated. I note also that 2 other Admin Cllrs also voted the same way. At the time I did not consider it was a reason to declare I had an interest and accept, with my apologies, if I was wrong in this assumption. I mistakenly thought it was just democracy in action.

4.7 I understood that my Declaration of Interest Statement at the end of 4.7 covered the situation as described in the rest of 4.7.

4.8 I agree with 4.8 and found the attitude of Chief Executive and former Monitoring Officer correct at the meeting.

4.9 The note of what was discussed with Mr Dickson is noted as I remember it. I saw an opportunity for SBC to save considerable long term costs. I continued to believe that my Declaration of Interest (ref 4.7) allowed me to discuss this opportunity as there would be no financial gain to me – and it would be able to be proved correct at all times. At no point in this or any other meetings did Mr Dickson, or other Officers attending the meeting, indicate he or they had concerns about our meetings and correspondence. If he or they had, I would have taken legal advice immediately.

- 5 Appendices A-C in the Commissioner's report contain true copies of the documents which they purport to be; which copies may be treated as equivalent to the oral evidence of the authors.

Evidence presented at the Hearing

Mr Sillars presented the Commissioner for Ethical Standards case as set out in his report to the effect that by attending and voting on an item on Waste Management Strategy at the meeting of Scottish Borders Council on 12 December 2014 Councillor Cranston had breached the Code in respect of paragraphs 5.6 and 5.7 as a result of his registered financial interest in AgriKomp UK Ltd and registered non-financial interest in Borders Machinery Ring (BMR).

Paragraph 5.2 of the Code places the responsibility for deciding whether to declare an interest on the councillor and paragraph 5.3 requires councillors, in making such decisions, to comply with the objective test. The objective test is "whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor." The CES concluded that a member of the public knowing the respondent's interests in both BMR and AgriKomp UK Ltd and with knowledge of the terms of the proposal for the setting up of an anaerobic digestion plant in Hawick would consider that the respondent's interests were relevant and significant enough to be likely to prejudice him in his Council decision making role. Indeed the respondent has confirmed that his voting decision was directly related to his interests.

Mr Sillars asked the Hearing Panel to adopt the findings and conclusions contained within the CESPLS report

The Respondent admitted the breach as presented by the CESPLS in his report and invited the Hearing Panel to consider the circumstances under which the breach had occurred and his apology for his actions.

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 Councillor's Code of Conduct applied to the Respondent
2. The Panel accepted the admission from the Respondent to the breach of the Code of Conduct for Councillors at Paragraphs 5.6 and 5.7.

The reasons for our decision on the complaint include:

1. The submission by both parties of an agreed Joint Statement of Facts at the Hearing
2. The admission by the respondent to the breach of the Code
3. The acceptance by the Commissioner for Ethical Standards of that admission

For these reasons the Hearing Panel conclude that the Respondent has breached paragraphs 5.6 and 5.7 of the Councillor's Code of Conduct.



Sanction

The decision of the Panel is to suspend Councillor Cranston from all Council, Committee and Sub Committee meetings of the Scottish Borders Council, effective from Friday 16 October 2014 for a period of THREE months.

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

Reasons for Sanction

In reaching their decision, the Panel took into account:

1. That the declaration of interests, both financial and non-financial, by councillors is a fundamental requirement of the Code and the Panel wish to reinforce that requirement
2. In failing to declare properly and timeously, his registered financial and non-financial interests in both AgriKomp UK Ltd and BMR he did not demonstrate the openness and transparency required by the Code.
3. The Respondent accepts that it is his responsibility to comply with the Code and that he should have been more diligent in doing so and he has apologised for that failure.
4. In mitigation the Panel took account of the Joint Statement of Facts and the Respondent's personal statement.
5. The Panel noted the Respondent cooperated fully throughout the investigation procedure.
6. The Panel is pleased to note the recognition by the respondent of the importance of the Code to public service in Scotland and, in particular, the need for transparency on the part of public office holders and elected Members.
7. The Panel acknowledges the insight shown by the Respondent in relation to his failings. It does, however, note his admission that he did not fully take on board what was explained to him during two induction sessions. It is imperative that he corrects that situation at the earliest opportunity.

Right of Appeal

The attention of the Respondent is 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: 17/10/14

L. M. Gallanders

Mrs Lindsey Gallanders
Chair of the Hearing Panel

