



Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Glynhill Hotel, Renfrew on 6 March 2014

Panel Members: Ms Jan Polley, Chair
 Ms Julie Ward
 Ms Lindsey Gallanders

The Hearing arises in respect of a Report by D Stuart Allan, Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”), further to complaint No. LA/R/1397 (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Mark Macmillan of Renfrewshire Council (“the Respondent”).

The Commissioner attended the hearing and was accompanied by Mr Jon Millar, Investigating Officer. The Respondent, who attended the Hearing, was not represented. No witnesses were called by either the Commissioner or the Respondent.

The Complaint

The Complainant was Councillor Kenny MacLaren (“the Complainant”) who alleged that the respondent, had contravened the Councillors’ Code of Conduct, and, in particular, the provisions set out in section 5 on Declaration of Interests.

The complaint was that on 20 March 2013 the Respondent participated in his position as a councillor at a meeting of the Economy and Jobs Policy Board of Renfrewshire Council during its consideration of funding in support of a community project to be managed by the Respondent’s employer, failed to declare an interest arising from that and spoke in favour of the proposal.

The relevant provisions of the Code are:

SECTION 5: DECLARATION OF INTERESTS

5.3 You may feel 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 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.**

Interests which Require Declaration

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of



other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

The Financial Interests of Other Persons

5.10 The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

You must declare if it is known to you ANY 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;
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare an interest if it 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 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 Commissioner submitted a report to the Commission on 5 December 2013 in accordance with section 14.2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended. The Commissioner's findings were that Councillor Macmillan contravened the provisions of the Code and had breached the terms of paragraphs 5.3, 5.5 and 5.10.



Joint Statement of Facts

The Commissioner lodged as a production a Joint Statement of Agreed Fact signed on 31 January 2014. In the agreed joint statement parts 1, 2, 3, 4, 5, appendices A to D and annexes A to B of the Commissioner's report were accepted by the Respondent. The Respondent also drew the Standard Commission's attention to the explanations and representations made by him referred to in paragraphs 5.5, 5.6e, 5.7, 5.8 and 5.9 of the Commissioner's report.

Evidence presented at the Hearing

Mr Allan outlined the facts and presented his case as set out in his report to the effect that Councillor Macmillan, who is employed on a remunerated basis by the Kibble organisation, in taking part in an item on the agenda of the Council's Economy and Jobs Policy Board during its meeting on 20 March 2013 and seconding the motion to approve the proposal in which he had a financial interest, had failed to apply the objective test as set out in the Code and thereby breached paragraphs 5.3, 5.5 and 5.10 of the Councillors Code of Conduct.

Mr Allan noted that the reference in the agenda for the meeting had not referred to the involvement of KibbleWorks in the proposal and the paper itself made only a single mention of the company and he accepted that Councillor Macmillan had, following the meeting, emailed the Chief Executive and Monitoring Officer of the Council that same day to acknowledge that he should have made a declaration. Mr Allan also noted that Councillor Macmillan had declared an interest at the next council meeting with a bearing on this issue and had acknowledged in a forthright manner his failure with regard to the 20 March 2013 meeting in their subsequent correspondence.

Mr Allan asked the Hearing Panel to adopt the findings and conclusions contained in the report.

Councillor Macmillan referred to the Joint Statement of Facts and said that he was in agreement with the content of the Commissioner's report. On the day of the meeting in question, he had been very busy and had failed to read the meeting papers fully. On realising his mistake he had taken the action referred to by the Commissioner and had apologised for his actions.

Decision

The Hearing Panel considered all of the evidence, submissions given in writing and orally at the Hearing, and found as follows:

1. The Councillors' Code of Conduct applied to the Respondent
2. The Respondent had breached paragraphs 5.3, 5.5 and 5.10 of the Councillors' Code of Conduct.

Sanction

The Panel decided to suspend for 4 weeks Councillor Macmillan's entitlement to attend meetings of Renfrewshire Council's Economy and Jobs Policy Board. This sanction was made under the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended section 19 (1) (b) (ii). The date on which the suspension was imposed and commenced was 6 March 2014.

Reasons for Sanction

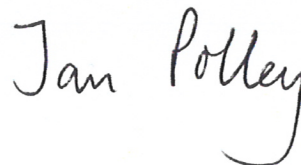
In reaching their decision, the Panel took into account

1. The serious nature of any breach of the Code's provisions relating to financial interests and in this case the Councillor was a remunerated employee of the organisation in question;
2. The fact that the Respondent not only failed to declare an interest and withdraw from the room but instead spoke to the motion, seconded it and voted in its favour;
3. He is an experienced councillor of 13 years and Leader of the Council and so has additional responsibilities as a role model for others;
4. The general public has a right to expect due diligence from its councillors when it comes to checking the content of council papers;
5. In mitigation, the Respondent acted swiftly on appreciating what had happened and apologised for his actions. The Panel accepted that his responsibilities as Council Leader meant that he was very busy and the breach had occurred because of an oversight and was not intentional.

Conclusions

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: 7 March 2014



Jan Polley
Chair of the Hearing Panel

