

**Decision of the Hearing Panel of the Standards Commission
for Scotland following the Hearing held at the Townhouse,
Inverness on 18 March, 2013**

Panel Members: Mr Matt Smith OBE, Chair
Mr Ian Gordon OBE, QPM
Mrs Julie Ward

This Hearing arose in respect of a report by Mr D. Stuart Allan, Public Standards Commissioner for Scotland (“the PSC”) further to complaint No. LA/H/1231 (“the Complaint”), concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Kenneth MacLeod of Highland Council (“the Respondent”).

The PSC was accompanied by Investigating Officer, Mr Jon Miller. The Respondent, who attended the Hearing, was not represented. No witnesses were called by either the PSC or the Respondent.

At the outset the Chair advised that Mrs Lindsey Gallanders was attending in an observational capacity as a newly appointed member of the Commission.

The Complaint

The Complainant in this case was Ms Jean Urquhart MSP, a Councillor with Highland Council at the time of the complaint. The Complainant alleged that the Respondent had contravened the Councillors’ Code of Conduct and in particular the provisions on making representations on planning applications as contained in Section 7 of the Code.

The PSC investigated the complaint and concluded that the Respondent had contravened the following within the Code:

- (1) paragraph 5.3 of the Code in respect of compliance with the ‘objective test’
- (2) paragraph 5.6 of the Code in respect of declaration of financial interests



(3) paragraph 7.15 of the Code in respect of making representations on behalf of constituents or other parties in respect of planning matters.

The relevant provisions are:

Councillors' Code of Conduct

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.*

5.6 *You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registerable 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.*



Section 7: Taking Decisions on Quasi-Judicial or Regulatory Applications

Decisions on Planning Matters

7.15 *If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so providing:-*

- (i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so,*
- (ii) you declare your interest in the matter; and*
- (iii) after making those representations you then retire from the meeting room.*

The PSC's Report ("the Report") (in full at Appendix 1) was submitted to the Commission in accordance with Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Joint Statement of Facts

The PSC and the Respondent provided a Joint Statement of Facts signed on 7 March and 5 March 2013 respectively, in respect of facts which were agreed.

Parts 1 to 4 of the PSC's Report were agreed.

Part 5 of the PSC's Report was agreed under explanation by the Respondent of the effect and impact of the health circumstances relating to the matter as set out in his email to the PSC on 14 January, 2013.

Appendices A to E of the PSC's Report were agreed as accurate records of the matters which they purport to record.

Annexes A to B of the PSC's Report were agreed as accurate records of the matters which they purport to record.

There were no matters of dispute between the PSC and the Respondent in respect of the PSC's Report.



Evidence Presented at Hearing

Mr Allan outlined the facts and presented his case to the effect that by attending and speaking at the North Planning Applications Committee of Highland Council on 14 February, 2012, the Respondent failed to declare a financial interest in the matter under discussion and continued his presence at the Committee while a decision on the matter was taken. Having taken instruction from the objectors to the application, albeit on a pro bono basis, the Respondent had undermined the decision making process and as a consequence breached the Code in respect of paragraphs 5.3, 5.6 and 7.15.

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

The Respondent admitted to the breaches as presented by the PSC and invited the Hearing Panel to consider the circumstances under which the breaches had occurred.

The Decision

The Hearing Panel considered all of the evidence and submissions given both in writing and orally at the Hearing and found that:-

1. The Councillors' Code of Conduct applied to the Respondent
2. The Respondent had breached paragraph 5.3 of the Code, the 'objective test', in so far as he had failed to declare an interest in the matter of the planning issue, while at the time of the application being considered he was found to have been acting on behalf of the objectors to the application, the Morefield Riverside Action Group.
3. The Respondent had breached paragraph 5.6 of the Code in so far as he was in receipt of monies paid to him by the objectors to the application, in respect of expenses, while acting in a professional capacity on their behalf and made no declaration of interest in respect of this matter.
4. The Respondent had breached paragraph 7.15 of the Code in so far as he had attended and made representations to the North



Planning Applications Committee of Highland Council, he had failed to declare any interest and he did not absent himself prior to the decision being made.

Sanction

The Panel decided to censure the respondent, Councillor Kenneth MacLeod. This sanction is made under the terms of Section 19 (1) (a) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Reasons for Sanction

In reaching their decision, the Panel had taken into account:

1. Their recognition of the serious nature of the failure to disclose an interest and the potential impact of such an action on the planning process. This could have resulted in the applicant for planning permission not being afforded an equal opportunity to make representations. The Hearing Panel carefully considered this factor when deciding between the sanctions of 'suspension' and 'censure'.
2. The comments of the PSC that the actions of the respondent had been negligent rather than intentional.
3. The statement in mitigation of the Respondent that he had personal business and family issues to address at the time of the incident under report.

Right Of Appeal

The attention of the Respondent is drawn to Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which details the Right to Appeal in respect of this Decision.

Date: 25/3/2013

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 Matt Smith OBE
 Chair of the Hearing Panel

