

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in Angus House, Orchardbank, Forfar on 15 March 2016**

**Panel Members:** Mr Ian Gordon, OBE, QPM, LL.B (Hons), Chair of the Hearing Panel  
Mrs Lindsey Gallanders  
Mr Matt Smith 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/An/1772, (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Colin Brown (“the Respondent”).

The CESPLS presented his case in person. The Respondent also represented himself.

### **COMPLAINT**

A complaint was received by the CESPLS about the alleged conduct of the Respondent. Following an investigation, the CESPLS referred 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, the provisions relating to the declaration of interests. Essentially the complaint alleged that the Respondent failed to declare the financial interests of a close relative when participating in council meetings where the proposed disposal of former Council offices, to a pub and hotel chain, was considered.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 5.2, 5.3 and 5.10 of the Councillors’ Code of Conduct.

The relevant provisions were:

*5.2 It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.*

*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.*

*5.10 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 CESPLS submitted a report to the Standards Commission on 10 December 2015 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

### **Evidence Presented at the Hearing**

No witnesses were called by either party.

The CESPLS outlined the facts as set out in his Report, which he confirmed were not in dispute. In particular, the CESPLS explained that the Respondent had failed to declare the financial interests of a close relative, being his son in law, at three meetings of the Council where the disposal of former Council premises to a pub and hotel chain was considered. This was despite his son in law being employed as Head Chef at a restaurant a few hundred yards from the premises in question. The CESPLS explained that it was his view that the interests were such that a member of the public, with knowledge of the relevant facts, would reasonably regard them as so significant that they would be likely to prejudice the Respondent's decision making in his role as a councillor.

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

a lack of awareness of the provisions of the Code, as opposed to any deliberate attempt to conceal information. He indicated that he was simply representing the interests and wishes of his constituents and businesses in the town, as demonstrated in a petition which had over 1600 signatories, in objecting to the proposal. The Respondent advised that he would have taken a different approach had he had a better understanding of the Code. He had subsequently received training on the Code and now had a much greater awareness of its requirements.

### **DECISION**

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing by the CESPLS and 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 of Conduct.
3. The Hearing Panel found that the Respondent failed to comply with the provisions of the Code of Conduct in respect of the requirement to register his interests and that he contravened paragraphs 5.2, 5.3 and 5.10 of the Councillors' Code of Conduct.
4. The Respondent advised the Hearing Panel that he had acted in good faith. The failure to fully declare the financial interests of a close relative 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.
5. The Hearing Panel determined that whether or not the failure was inadvertent, the Respondent had a responsibility to adhere to the requirements of the Code of Conduct and should have been more diligent in ensuring he complied with its requirements.

### **Evidence in Mitigation**

The Respondent reiterated that the breach had been inadvertent and that he had simply been representing his constituents and businesses in the town. The Respondent advised that he had served as a councillor for nine years and had an unblemished disciplinary record. The Respondent emphasised that he himself did not have any financial interest in the matter although he fully accepted that he should have declared the financial interests of his close relative. The Respondent apologised for his failure and for any inconvenience caused.

### **SANCTION**

The decision of the Hearing Panel was to suspend the Respondent from all meetings of Angus Council, its Committees and Sub-Committees for a period of two months with effect from Friday 18 March 2016.

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

### **Reason for Sanction**

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

1. The Respondent's statement in mitigation and, in particular, that he 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 5 when declaring his interests; and
2. The apology given by the Respondent and the contribution he has made to public life, including the nine years he had served as a councillor.

However the Hearing Panel:

3. Considered the Respondent's failure to declare the financial interests of a close relative demonstrated a lack of understanding of the Councillors' Code of Conduct and its implications for the role of a councillor; and
4. Emphasised that the declaration of interests (financial and non-financial) is a fundamental requirement of the Code. Failure to declare 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.
5. Considered that whenever a councillor is deliberating potential declarations of interest, the application of the Objective Test, set out at 5.3 of the Councillors' Code of Conduct, is essential.

### **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:** 24 March 2016



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