

At a Hearing of the Standards Commission for Scotland, held in Ecclesmachan on 24 November 2016, Councillor Frank Toner of West Lothian Council, and formerly of Lothian NHS Board, was censured.

Councillor Toner was appointed by West Lothian Council as a non-executive director of NHS Lothian, and also to represent the Council on the St John's Hospital Stakeholder Group. The decision to censure was imposed as a result of Councillor Toner's failure to declare an interest in a discussion on the structure, progress and timescales of a Royal College of Paediatrics and Child Health's review of child health and medical paediatric inpatient services in Lothian at a meeting of the Stakeholder Group on 20 January 2016; and also at a Lothian NHS Board meeting on 3 February 2016.

In reaching its decision, the Hearing Panel:

1. Found that Councillor Toner failed to declare, at both meetings, a financial interest arising from his employment by Neil Findlay MSP, despite being aware that Mr Findlay had taken an active interest in the retention of paediatric services at St John's Hospital and in the RCPCH review, which had included raising the issue in the Scottish Parliament, making public statements in the press and submitting a Freedom of Information request on the matter to NHS Lothian.
2. Found that Councillor Toner, in being aware of Mr Findlay's widely known and publicised concerns about the matter, should also have declared a non-financial interest of his employer, as required under both the Councillors' Code of Conduct and the Code of Conduct for Members of Lothian NHS Board.
3. Accepted that there was no evidence that Councillor Toner was influenced by Mr Findlay's views in his discussions. The objective test, however, as outlined in both the Codes of Conduct, obliges councillors and members of public bodies to consider whether a member of the public, with knowledge of the relevant facts, would reasonably regard an interest as so significant it was likely to prejudice their discussion or decision-making. In applying the objective test, therefore, Councillor Toner should have considered not only whether he could be influenced by his employer's interest in the matter, but also if his actions might be perceived by as member of the public as being so influenced.

The Panel Chair, Mrs Lindsey Gallanders, in delivering the Hearing Panel's decision said:

"The Hearing Panel emphasises to all councillors and members of devolved public bodies the importance of declaring all relevant interests, financial or non-financial. The declaration of interests is a fundamental requirement of the Codes of Conduct for councillors and members of devolved public bodies. The failure to declare such interests removes the opportunity for openness and transparency in a councillor or

member's role and denies any member of the public the opportunity to consider whether such interests may or may not influence the decision-making process.

25 November 2016

Note for editors:

It should be noted that complaints in terms of the Councillors' Code are made to the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS). It is for the CESPLS to investigate and determine if any matter should be referred to the Standards Commission for Scotland as alleged breach of the Councillors' Code. It is for the Standards Commission for Scotland to determine if there has been a breach and if so proven, to issue an appropriate sanction.

The Hearing Panel concluded that the Respondent had breached paragraphs 5.3, 5.6 and 5.12 of the Councillors' Code of Conduct and also paragraphs 5.3, 5.4, 5.8 and 5.12 of the Code of Conduct for Members of Lothian NHS Board.