

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at North Lanarkshire Council, Scott Street, Motherwell on 6 April 2017.

Panel Members: Mrs Julie Ward, Chair of the Hearing Panel
Mrs Lindsey Gallanders
Mr Michael McCormick

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/NL/1940, (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Rosa Zambonini (the Respondent).

The CESPLS was represented by Mr David Sillars, Senior Investigating Officer. The Respondent was not in attendance at the Hearing. However, written submissions were provided by her representative, Mr Aamer Anwar, solicitor, to the Standards Commission in advance of the Hearing.

COMPLAINT

A complaint was received by the CESPLS about the alleged conduct of the Respondent. The substance of the allegation was that the Respondent had contravened the Councillors' Code of Conduct and, in particular, the requirement to register remunerated employment.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 4.3 and 4.7 of the Councillors' Code of Conduct.

The relevant provisions were:

4.3 You have a registrable interest where you receive remuneration by virtue of being:-

(i) employed;

(ii) self-employed;

(iii) the holder of an office;

(iv) a director of an undertaking;

(v) a partner in a firm; or

(vi) undertaking a trade, profession or vocation, or any other work.

4.7 When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

The CESPLS submitted a report to the Standards Commission on 16 January 2017 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.

Submissions made by the CESPLS's representative

The CESPLS's representative outlined the facts as set out in the CESPLS's Report and noted these were not in dispute. In particular, he explained that paragraphs 4.3 and 4.7 of the Councillors' Code of Conduct require councillors to register and provide details of any remunerated employment. In addition, Regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (the 2003 Regulations) requires councillors to update their register of interests within one month of their circumstances changing.

The CESPLS's representative advised that the Respondent had been elected as a councillor on 13 August 2015 and had not recorded any remunerated employment in her register of interests at that time. The Respondent then secured remunerated employment as an office manager with a Member of the Scottish Parliament (MSP). Her contract of employment stated that her start date was 23 May 2016, although she did not actually begin work until 30 May 2016.

The CESPLS's representative advised that, contrary to the requirement under the 2003 Regulations, the Respondent failed to update her register of interests within one month of becoming employed. The CESPLS's representative advised that it was only after having a conversation with another councillor that the Respondent realised she was required to register the employment. She had then taken steps to do so by notifying Council officers on 8 August 2016. The Respondent's register of interests was subsequently updated on 16 August 2016 to include an entry about her employment.

The CESPLS's representative concluded that provision in the Councillors' Code of Conduct for remunerated employment to be registered was absolute. In addition, there was no latitude in the 2003 Regulations about the time within which a change to a councillor's register of interests should be made. Therefore, the Respondent should have registered her remunerated employment with the MSP within one month of it commencing.

Written submissions made on behalf of the Respondent

The Hearing Panel noted that the Respondent accepted she had breached paragraphs 4.3 and 4.7 of the Councillors' Code of Conduct by failing to register her employment with the MSP within one month. The Respondent had not, however, intended or tried to conceal this information. This was demonstrated by the fact that she had declared on 22 May 2016, via a posting on a social media site, that she would be working for the MSP.

The Hearing Panel further noted the submission that the Respondent had not been offered any training on the Councillors' Code of Conduct and that, on learning of her failure to register the employment, she had taken immediate steps to rectify the matter.

DECISION

The Hearing Panel considered all of the submissions, including the presentation made during the Hearing by the CESPLS's representative and the written comments received from the Respondent's representative, 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 she had breached the Code. The Hearing Panel found the Respondent had breached paragraphs 4.3 and 4.7 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel heard that the Respondent admitted that she had failed to take steps to timeously register her remunerated employment as an office manager with a MSP, until 8 August 2016, despite her contract commencing on 23 May 2016. The Hearing Panel determined that:

- Paragraph 4.3 of the Councillors' Code of Conduct requires councillors to register any remunerated employment. Paragraph 4.7 of the Code requires them to provide the name of the employer along with nature of the business and post held.
- Regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 requires councillors to update their register of interests within one month of their circumstances changing.
- It was evident, and had been admitted, that the Respondent failed to register her remunerated employment with the MSP within one month, as required.
- The Hearing Panel considered it was the Respondent's personal responsibility to be aware of, and comply with, the provisions in the Councillors' Code of Conduct. She had failed to do so despite having been provided with a copy of the Councillors Code of Conduct by the local authority following her election as a Councillor.

The Hearing Panel therefore concluded that the Respondent had breached paragraphs 4.3 and 4.7 of the Code.

Evidence in Mitigation

The Hearing Panel noted the written representations made on behalf of the Respondent in mitigation. In particular, the Hearing Panel noted the statement regarding her personal circumstances at the time of the events in question.

SANCTION

The decision of the Hearing Panel was to censure the Respondent. The sanction was made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 section 19(1)(a).

Reason for Sanction

In reaching their decision, the Hearing Panel:

1. Noted the statement submitted on behalf of the Respondent in mitigation and, in particular, her personal circumstances at the time of the events in question.
2. Noted that the Respondent had not received any induction training following election in May 2015. The Hearing Panel accepted that the Respondent had immediately taken steps to rectify her register of interests upon being informed of the requirements during the course of a conversation with another councillor.
3. Noted that the Respondent had publicly announced, via a posting on a social media site on 22 May 2016, that she would be working for the MSP. The Hearing Panel accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment.

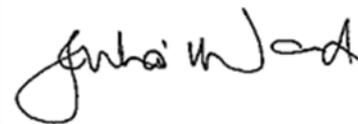
However, the Hearing Panel:

4. Emphasised it was a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complied with them.
5. Further emphasised the registration of interests is a fundamental and absolute requirement of the Code. While the Hearing Panel noted it had found there was no intent to conceal the information, it nevertheless considered that a failure to register remunerated employment in an official register of interests removed the opportunity for openness and transparency in a councillor's role. This could deny a member of the public the opportunity to consider whether a councillor's interests may or may not influence their decision-making process.

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: 7 April 2017



**Mrs Julie Ward
Chair of the Hearing Panel**