

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Motherwell Concert Hall, Windmillhill Street, Motherwell on 5 June 2017.

Panel Members: Mr Michael McCormick, Chair of the Hearing Panel
Mr Kevin Dunion, OBE
Mrs Tricia Stewart

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/1936, (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by former Councillor Marina Lyle (the Respondent).

The CESPLS represented himself at the Hearing. The Respondent was not in attendance and was not represented at 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 a right of ownership in property.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 4.18 and 4.19 of the Councillors' Code of Conduct.

The relevant provisions were:

4.18 You have a registrable interest where you own or have any other right or interest in houses, land and buildings, such as being an owner or a tenant, including Council tenant.

4.19 You are required to give the address of the property, or otherwise give a description sufficient to identify it.

The CESPLS submitted a report to the Standards Commission on 23 March 2017 in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

Preliminary Matters

The Executive Director of the Standards Commission advised the Hearing Panel that the Respondent had telephoned that morning to confirm that she had received the notice of the Hearing but was unwell and unable to attend. The Respondent had advised she did not wish to seek a continuation and was content for the Hearing to proceed in her absence.

The Hearing Panel was satisfied, therefore, that the notice of the Hearing was provided to the Respondent, in accordance with Section 20 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and the Standards Commission's Hearing Process Guide and Rules 2017.

The Hearing Panel determined that, in the circumstances, it was content to proceed with the Hearing in the absence of the Respondent.

Evidence Presented at the Hearing

No witnesses were called.

Submissions made by the CESPLS

The CESPLS representative outlined the facts as set out in his Report. In particular, he explained that paragraphs 4.18 and 4.19 of the Councillors' Code of Conduct require councillors to record any property ownership in their Register of Interests.

The CESPLS advised that the Respondent had been elected as a councillor on 3 May 2012. However, she had failed to include in her Register of Interests a property in Motherwell, despite having become a part owner of the property on 23 March 2012 when equal half shares in it were disposed to her and another individual. The CESPLS indicated that the Respondent had advised, during the investigation of the complaint, that she had understood she was not required to register an interest in the property as there continued to be a life-rent over it in favour of the previous owners.

The CESPLS noted that provision in the Councillors' Code of Conduct for ownership of property to be registered was absolute. He indicated that while the Respondent's interest in the property was limited until the end of the life-rent, the land register title nevertheless demonstrated that she had become a part owner in 2012. The CESPLS contended, therefore, that the Respondent should have registered her interest in the property.

The CESPLS advised that, during his investigation, he had been unable to find any evidence to support the Respondent's contention that she had received advice from an officer to the effect that there was no need to register her interest in the property. The Respondent had been invited to produce such evidence but had failed to do so. The CESPLS noted, however, that even if advice to that effect had been proffered, it would have been incorrect. In any event, it had been the Respondent's personal responsibility to ensure that she complied with the provisions in the Councillors' Code of Conduct. His position was that she had failed to do so.

The Respondent's position

The Executive Director advised the Hearing Panel that the Respondent's position, as outlined during their telephone conversation, was that she did not, at any stage, have any financial interest in the property given the existence of the life-rent. The Respondent's position was that she had sought advice from a council officer about whether she was required to register her interest in the property and had been told there was no need to do so. She had, therefore, followed this advice.

DECISION

The Hearing Panel considered all of the submissions, including the presentation made during the Hearing by the CESPLS's representative and the comments received verbally from the Respondent, and found as follows:-

1. The Councillors' Code of Conduct applied to the Respondent at the time.
2. The Hearing Panel found the Respondent had breached paragraphs 4.18 and 4.19 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel determined that:

- While the Respondent's interest in the property was limited until the end of the life-
rent, the land register title nevertheless demonstrated that she had become a part
owner in 2012. As such, the Respondent should have registered her interest in the
property.
- It was the Respondent's personal responsibility to be aware of, and comply with, the
provisions in the Councillors' Code of Conduct while she was a councillor, regardless
of any advice she may have received. She had failed to do so.

The Hearing Panel therefore concluded that the Respondent had breached paragraphs 4.18
and 4.19 of the Code.

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. Accepted the Respondent's failure to register the interest may have been based on a
misunderstanding of the legal position.

However, the Hearing Panel:

2. Considered that the requirement to register ownership of property is an integral
part, and absolute requirement, of the Councillors' Code of Conduct as it provides
the opportunity for openness and transparency in a councillor's role and affords
members of the public the opportunity to consider whether a councillor's interests
may or may not influence their discussion and decision-making.

3. 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.

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: 5 June 2017



**Mr Michael McCormick
Chair of the Hearing Panel**