

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Aberdeenshire Council Headquarters, Woodhill House, Westburn Road, Aberdeen on 28 August 2018.

Panel Members: Mr Paul Walker, 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/As/2062 (the complaint), concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Anne Allan (the Respondent).

The CESPLS was represented at the Hearing by Mrs Claire Gilmore, Senior Investigating Officer. The Respondent was not in attendance, but submitted written comments to the Standards Commission beforehand.

COMPLAINT

A complaint was received by the CESPLS about the alleged conduct of the Respondent. This included an allegation that the Respondent had contravened the requirements in the Code to register certain interests.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraph 4.22 of the Code.

The relevant provision is:

Category Eight: Non-Financial Interests

4.22 Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to Committees or memberships of other organisations.

The CESPLS submitted a report to the Standards Commission on 19 June 2018, 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 that these were not in dispute. The CESPLS's representative advised that the Respondent had been a councillor for some 15 years and served on a number of the Council's committees.

The CESPLS's representative explained that, in order to encourage inclusive growth and greater public / private partnership working at a local level, funding is available for business groups and local bodies, working in partnership with their local authority, to develop proposals for Business Improvement Districts (BIDs) across Scotland. The funding is intended to support the development of town and city neighbourhoods, tourism and visitor areas, rural areas, business and industrial parks, food and drink and single business sector BIDs, such as textile or whisky. BIDs are developed, managed and paid for by the business sector by means of a compulsory levy. Businesses within the proposed BID area must vote in favour, in a public ballot, of it proceeding before the BID can be established. Any business liable to contribute to the BID is entitled to vote on whether or not the BID should proceed.

The CESPLS's representative indicated that, at a meeting on 26 November 2015, Aberdeenshire Council's Infrastructure Services Committee agreed to support a BID proposal for Peterhead. A Steering Group comprising of members of the Peterhead business community was subsequently established to progress the proposal. The CESPLS's representative advised that the Respondent was nominated, and agreed, to be a member of the Steering Group, along with some Council officer representatives. The CESPLS's representative noted that the Respondent was the only councillor member of the Steering Group.

The CESPLS's representative advised that the Scottish Government and Aberdeenshire Council had approved match funding in respect of the Peterhead BID by the time a ballot for the Peterhead BID was held in September 2017. The CESPLS's representative indicated that the Respondent's membership of the Steering Group and support of a 'yes' vote had been prominent in the published ballot material. The BID was approved, enabling it to proceed from 2017 for a period of five years. The CESPLS's representative indicated that the Steering Group was dissolved following the successful BID ballot.

The CESPLS's representative advised that the Respondent had not, at any stage, included her interest as a member of the Steering Group in her register of interests held by the Council. The CESPLS's representative contended that the Respondent should have done so as it was a significant non-financial interest that fell within the scope of paragraph 4.22 of the Code. This was because the BID process was a matter of public interest due to the use of public funds and the holding of a public ballot of local businesses. The CESPLS's representative contended that as the Respondent was a member of the Steering Group during 2016 and 2017 prior to, during and after the ballot, members of the public might reasonably have considered that her interest in the organisation could influence her actions, speeches or votes in the Council.

Written submissions received from the Respondent

The Hearing Panel noted that the Respondent advised that she had been nominated by the Council to the Steering Group and that her membership had not involved any voting, either by the Group or the Council. The Respondent indicated that there had been no occasion

where she had been asked to make a decision on the BID at any Council meeting and, therefore, had been no time when her membership of the Steering Group could have influenced her actions or decision-making. The Respondent indicated that, as such, it had simply not occurred to her to register her membership.

The Respondent advised, however, that she fully accepted the CESPLS findings. The Respondent advised that she further accepted that she should have erred on the side of caution and registered her membership of the Steering Group.

DECISION

The Hearing Panel considered all of the submissions, including the presentation made during the Hearing by the CESPLS, and found as follows:-

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Panel accepted the admission from the Respondent that she had breached the Code. The Panel found the Respondent had breached paragraph 4.22 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel noted that the Respondent accepted the findings as outlined in the CESPLS's report, including that she should have registered her membership of the Steering Group as a non-financial interest.

The Hearing Panel found that while the Respondent's position as a member of the Steering Group was not remunerated and, therefore, there was no evidence or suggestion that she had any financial interest; the BID process was nevertheless a matter of public interest due to the use of public funds and the public ballot. The Hearing Panel determined that as the Respondent was a member of the Steering Group both before and after the ballot, members of the public might reasonably have considered that her interest in the organisation could influence her actions, speeches or votes in the Council. As such, the Hearing Panel concluded that the Respondent should have registered her membership of the Steering Group as a non-financial interest.

The Panel determined that it was the Respondent's personal responsibility to be aware of, and comply with, the provisions in the Code, which included ensuring all relevant interests were registered. The Panel determined that the Respondent had failed to do so in respect of her membership of the Steering Group.

The Panel therefore concluded that the Respondent had breached paragraph 4.22 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 Panel:

- Noted the Respondent's position that she had been nominated by the Council to the Steering Group and that her membership had not involved any voting, either by the Group or the Council. As such, the Respondent's position was that it had not occurred to her to register her membership.
- Noted that the Respondent had not sought or received advice about whether she should have registered her membership of the Steering Group. The Hearing Panel considered she may have been prompted to do so had the nomination or appointment process been undertaken in a more formal manner.
- Recognised that the Respondent accepted, however, that she should have erred on the side of caution and registered her membership. She had admitted the breach from the outset, had accepted responsibility and had apologised.

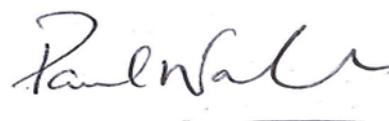
However, the Panel:

- Considered that the requirement to register non-financial interests was 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 influence their discussion and decision-making.
- Emphasised it was a councillor's personal responsibility to be aware of the provisions in the Code, to ensure that he or she complied with them and, in this respect, the Respondent had been negligent.

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: 30 August 2018



**Mr Paul Walker
Chair of the Hearing Panel**