

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Municipal Buildings, Clyde Square, Greenock, PA15 1LY on 21 September 2018.**

**Panel Members:** Mrs Lindsey Gallanders, Chair of the Hearing Panel  
Mrs Tricia Stewart  
Mr Paul Walker

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/1/2113 (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Luciano Rebecchi (the Respondent).

The CESPLS was represented by Mr Ian MacKay, Investigating Officer.

**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 on 17 July 2018, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Councillors' Code of Conduct and, in particular, that he had contravened paragraphs 5.3, 5.5, 5.7, 5.10(ii) and 7.4.

The relevant provisions are:

***Declaration of Interests***

*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.*

***Interests which Require Declaration***

*5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.*

***Your Non-Financial Interests***

*5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-  
(i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or*

*(ii) that interest would fall within the terms of the objective test.*

*There is no need to declare:-*

*(i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or*

*(ii) an interest which 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 general exclusion or 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 Financial Interests of Other Persons***

*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:-*

*(ii) a close relative, close friend or close associate;*

### ***Fairness and Impartiality***

*7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.*

## **Evidence Presented at the Hearing**

### **Submissions made by the CESPLS's Representative**

The CESPLS's representative advised that it was accepted that the Respondent had participated in a meeting of Inverclyde Council's Planning Board on 6 December 2017 and, specifically, in respect of a planning application for the creation of a roof timber enclosure at the rear of a factory in Gourrock, which was intended to alleviate noise emanating from air conditioning units within the premises.

The CESPLS's representative advised that it was also accepted that the Respondent had attended the factory premises on 5 May 2017 in a personal capacity, at the invitation of a third-party contractor, who was seeking his advice on some technical issues relating to noise reduction. The CESPLS's representative noted that the visit took place before any planning application was submitted, albeit he argued that it was reasonably foreseeable that planning consent may be required in respect of any proposed work.

The CESPLS's representative further indicated that it was not in dispute that the Respondent had not declared any interest in the planning application at the meeting on 6 December 2017 despite:

- Having a close and long-standing friendship with the family who owned the premises and were seeking the planning consent; and

- Recognising, both at the site visit on 5 May 2017 and before the Planning Board meeting on 6 December 2017, that he might have a declarable interest, which led him to seek the advice of a fellow elected member before the planning meeting.

The CESPLS's representative contended that the Respondent should have had regard to, and considered, the objective test, as outlined in paragraph 5.3 of the Code. The CESPLS's representative noted that the Respondent's attendance at the meeting on 5 May 2017 did not, in itself, give rise to any breach of the Code. He argued, however, that it was likely that a member of the public, with knowledge of the site visit on 5 May 2017, and the Respondent's friendship with the family, would reasonably have regarded his interest in the planning application as potentially being so significant that it would be likely to prejudice his discussion or decision-making. The CESPLS's representative contended, therefore, that the Respondent should have declared a non-financial interest in the planning application under paragraphs 5.5 and 5.7 of the Code. The CESPLS's representative further contended that the Respondent should have declared the financial interests of the applicant family, as close friends or associates, as required by paragraph 5.10 of the Code.

The CESPLS's representative advised that there was nothing to suggest that the Respondent had been improperly influenced by his friendship with the applicant family. The CESPLS's representative noted, however, that paragraph 7.4 of the Code obliges councillors to ensure they not only avoided any impropriety but also avoided giving rise to any occasion for suspicion and any appearance of improper conduct. The CESPLS's representative argued that as it was known that the Respondent had attended the premises on 5 May 2017 in a personal capacity, he had failed to avoid the appearance of impropriety when he subsequently took part in the discussion and decision-making on the planning application, in breach of this provision.

### **Submissions made by the Respondent**

The Respondent confirmed that he accepted the facts and conclusions, as outlined in the CESPLS's report. The Respondent explained that he had not discussed any planning matters at the site visit on 5 May 2017, and had made it clear he could not do so due to his membership of the Planning Board. The Respondent indicated that, in any event, at the time he left the premises on 5 May 2017 there had been nothing to suggest that planning consent would definitely be sought or required.

The Respondent confirmed that he had not considered the objective test. He indicated that his usual practice would be to seek advice from the Council's Monitoring Officer before a meeting about whether any declaration of interest was required. The Respondent advised, however, that the Monitoring Officer had been unavailable and, as such, he had sought advice from a fellow councillor before the Planning Board meeting on 6 December 2017. The advice had been that there was no need to declare any interest. The Respondent indicated that he accepted, however, that regardless of any advice received, it was nonetheless his personal responsibility to comply with the provision in the Code.

### **DECISION**

The Hearing Panel considered the submissions given orally at the Hearing and in writing and found as follows:

1. The Councillor's Code of Conduct applied to the Respondent.
2. The Respondent had breached paragraphs 5.3, 5.5, 5.7, 5.10(ii) and 7.4 of the Councillors' Code of Conduct.

### **Reasons for Decision**

The Hearing Panel noted that the Respondent advised he accepted the findings as outlined in the CESPLS's Report.

The Hearing Panel found that the Respondent had a non-financial interest as a close friend of the applicant family. The applicant family also had a financial interest in the matter. As such, the Hearing Panel determined that, in terms of paragraph 5.5. of the Code, the Respondent should have declared a non-financial interest in the planning matter being considered by the Planning Board on 6 December 2017, as required by paragraph 5.7. The Hearing Panel further concluded that the Respondent should have also declared the financial interests of close friends as required by paragraph 5.10(ii).

The Hearing Panel noted that the Respondent accepted that he had failed to apply, and comply with, the objective test at the meeting on 6 December 2017, as required by paragraph 5.3 of the Code. The objective test states that councillors must consider whether a member of the public, with knowledge of the relevant facts, would reasonably regard an interest as so significant that it was likely to prejudice the councillor's discussion or decision-making. In this case, the Hearing Panel was satisfied that a member of the public, knowing that the Respondent was close friends with the family who had a financial interest in the planning application, would reasonably regard the interest as sufficiently significant as to be likely to prejudice his discussion and decision-making.

The Hearing Panel was satisfied that there was no evidence or suggestion that the Respondent's interests had influenced his discussion or decision-making at the meeting on 6 December 2017 or that it had resulted in any personal gain to him. The Hearing Panel further noted that the planning application had been approved by eight votes to two and was satisfied, therefore, that the Respondent's vote had not been a decisive factor in the Planning Board's decision.

The Hearing Panel further considered that, while the Respondent had been perfectly entitled to attend the factory premises on 5 May 2017, before the planning application was submitted to provide advice to a contractor, the fact that he had done so was known. As such, the Hearing Panel determined that the Respondent's prior involvement meant that he had failed to avoid any occasion for suspicion, as required by paragraph 7.4 of the Code, when he subsequently participated in the consideration of the application at the planning meeting on 6 December 2017. The Respondent should have declared the interest and left the meeting.

The Hearing Panel therefore concluded that the Respondent had contravened paragraphs 5.3, 5.5, 5.7, 5.10(ii) and 7.4 of the Councillors' Code of Conduct.

### **Evidence in Mitigation**

The Respondent apologised for his failure to comply with the Code and advised that he was also sorry that he may have brought Inverclyde Council into disrepute. He confirmed that it had not been his intention and that he had simply not considered that any declaration was required.

The Hearing Panel noted the contents of a character reference from Inverclyde Council's Chief Executive, in which he confirmed that he had known the Respondent for some 12 years and that, during that time, the Respondent worked hard on behalf of his constituents and actively participated in Council business. The Chief Executive noted that the Respondent had made a significant contribution to both the Council and his local community during his terms of office. The Chief Executive further advised that he had found the Respondent to be polite and respectful towards officers, his colleagues and the public and had conducted himself in accordance with the high standards expected of those in public life in the 30 years that he had been a councillor.

### **SANCTION**

The decision of the Hearing Panel was to censure the Respondent, Councillor Rebecchi.

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

### **Reasons for Sanction**

In reaching its decision, the Hearing Panel:

- Noted that the Respondent accepted he had breached the Code and had apologised to the complainer, the CESPLS and the Panel for doing so.
- The Hearing Panel further noted the contribution the Respondent had made to public life in the 30 years he had served as a councillor.
- Was satisfied that, in this particular case, there was no personal gain to the Respondent and that he had now demonstrated insight and understanding of the importance of compliance with the Code.

However, the Panel:

- Wished to make it clear that the requirement to declare interests is an integral part 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 his or her discussion and decision-making.
- Reiterated that public confidence in a Council's decision-making processes can be eroded by a failure to declare interests as required by the Code. The Panel noted that it was essential for the public to have the highest confidence that those elected to local government are making decisions in the public interest and not the interests of themselves or their friends and families.

- 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 was negligent.

### **RIGHT OF APPEAL**

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

**Date:** 28 September 2018

*L. M. Gallanders*

**Mrs Lindsey Gallanders  
Chair of the Hearing Panel**