

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Loch Lomond and the Trossachs National Park Headquarters at Carrochan, Carrochan Road, Balloch on 12 April 2016

Panel Members: Professor Kevin Dunion, OBE, Chair of the Hearing Panel
Mr Ian Gordon, OBE, QPM, LL.B (Hons)
Mrs Lindsey Gallanders

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 NPA/LLT/1781, (“the Complaint”), concerning an alleged contravention of the Loch Lomond and the Trossachs National Park Authority’s Code of Conduct for Board Members (version 2011) (“the Code”) by Mr Owen McKee (“the Respondent”).

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

The Respondent chose not to attend, nor be represented at, the Hearing and instead submitted a written statement. The Hearing Panel was satisfied that the Standards Commission had provided the Respondent with proper notice of the Hearing in compliance with the Standards Commission’s Rules. The Respondent had not raised any objections to the Hearing proceeding and had not sought an adjournment. The Hearing Panel noted that the Respondent had voluntarily absented himself and had indicated that he considered the CESPLS’s Report to be reasonable and fair. In the circumstances, the Hearing Panel was satisfied that there was no prejudice to the Respondent in proceeding with the Hearing, and did so on that basis.

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.

The substance of the allegation was that the Respondent had contravened the Authority’s Code of Conduct and, in particular, the provisions relating to the declaration of interests. Essentially the complaint alleged that the Respondent failed to declare his shareholding in a gold mining company, Scotgold Ltd, and failed to withdraw from a Board meeting of the Authority when arrangements for the consideration of an application from Scotgold Ltd to extend a planning permission were being considered.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 5.6 and 7.11 of the Authority’s Code of Conduct in place at the time.

The relevant provisions were:

5.6 Any financial interest which is registerable must be declared. If, under Section 4 of this Code you have registered an interest as a Councillor of a Local Authority within the area of the National Park Authority or a Member of another Devolved Public Body (where the other Devolved Public Body has nominated, appointed or approved you as a Member of the Board)

you do not, for that reason alone, have to declare that interest.

7.11 If you have an interest, whether financial, non financial, or personal, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, you must declare that interest and refrain from taking part in the consideration of the application.

The CESPLS submitted a report to the Standards Commission on 14 December 2015 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 by either party.

The CESPLS's representative outlined the facts as set out in his Report, which he confirmed were not in dispute. In particular, the CESPLS's representative explained that the Respondent had failed to declare his shareholding interests in Scotgold Ltd and failed to withdraw from a Board meeting of the Authority on 8 December 2014 when the date of a meeting to determine an application from Scotgold Ltd to extend planning consent was being discussed. The CESPLS's representative advised that while the Respondent had instructed the sale of the shares, in fact the sale did not take place until 9 December 2014. He was, therefore, still a shareholder when he attended the meeting on 8 December 2014.

While the CESPLS's representative confirmed that the substance of the application was not determined at the meeting on 8 December 2014, he argued that a failure to agree a date for when it was to be considered at the meeting could have been detrimental to Scotgold Ltd. As a shareholder of Scotgold Ltd, the Respondent had a financial interest that was of direct interest to a matter before the Authority. This interest was, therefore, registerable and should have been declared under paragraph 5.6 of the Authority's Code of Conduct in place at the time. The CESPLS representatives further confirmed that paragraph 7.11 of the Code imposed a strict and absolute obligation to take no part in the consideration of an application if a declaration of interest was required. The Respondent should therefore, not have participated in the item of business relating to the arrangement of a meeting to consider the Scotgold Ltd planning application.

The Respondent had indicated in his written statement that he accepted the facts and conclusions in the CESPLS Report, as outlined above. The Hearing Panel noted that Mr McKee's position was that this was a result of a failure of judgement on his part, as opposed to a deliberate breach of the Code.

DECISION

The Hearing Panel considered in detail all of the submissions, including the presentations made during the Hearing by the CESPLS's representative and the Respondent's written statement and found as follows:-

1. The Authority's Code of Conduct applied to the Respondent.
2. The Hearing Panel accepted the admission from the Respondent that he had breached the Code. It determined that it was the Respondent's personal responsibility to be aware of, and comply with, the provisions in the Code of Conduct. He had failed to do so.
3. That whether or not the failure was the result of a lack of judgement, as opposed to a deliberate attempt to conceal information, the Respondent had a responsibility to adhere to the requirements of the Code and should have ensured he complied with those requirements.
4. The Hearing Panel therefore concluded that Mr McKee had breached paragraphs 5.6 and 7.11 of the Authority's Code of Conduct for Board Members (version 2011), which was in place at the time.

Evidence in Mitigation

In a written statement submitted to the Standards Commission, the Respondent accepted the facts as found by the CESPLS in his Report and his conclusions. The Respondent stated that the breach resulted from a failure of judgment on his part, as opposed to any deliberate attempt to conceal information. He indicated that he had always endeavoured to act in accordance with the highest possible standards of conduct.

SANCTION

The decision of the Hearing Panel was to censure the Respondent.

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

Reason for Sanction

In reaching its decision, the Hearing Panel noted:

1. The Respondent's written statement in mitigation and, in particular, his position that there had not been any deliberate attempt on his part to breach the Code.

However the Hearing Panel:

2. Considered the Respondent's failure to declare his financial interests demonstrated a fundamental lack of understanding of the Code of Conduct and its implications for the role of a Board Member.
3. Emphasised the declaration of interests (including financial interests) is an essential requirement of the Code. Failure to declare interests removes the opportunity for openness and transparency in a Board Member's role and denies any member of the

public the opportunity to consider whether a Member's interests may or may not influence the decision-making process.

4. Wished to make it clear, in the circumstances of this case, the sanction would have been to suspend the Respondent from all meetings of the Authority for a period of time, not exceeding one year. However, this option was not available as the Respondent has already resigned from the Authority and has been replaced as a Member.

RIGHT OF APPEAL

The attention of the Respondent was 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: 13 April 2016



**Professor Kevin Dunion OBE, M.A.(Hons); MSc, LLd FRSA
Chair of the Hearing Panel**