

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at West Lothian Council, West Lothian Civic Centre, Livingston on 24 May 2017.

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

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/WL/1824, (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by former Councillor, Ms Angela Moohan (the Respondent).

The CESPLS was represented by Mrs Claire Gilmore, Senior Investigating Officer. The Respondent was in attendance at the Hearing and represented by Mrs Frances Randle, Solicitor.

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 requirements to register remunerated employment and to declare non-financial interests and the financial interests of others.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 4.2, 5.7 and 5.10 of the Councillors' Code of Conduct.

The relevant provisions were:

4.2 Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.

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:-

- (i) a spouse, a civil partner or a co-habitee;*
- (ii) a close relative, close friend or close associate;*
- (iii) an employer or a partner in a firm;*
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;*
- (v) a person from whom you have received a registrable gift or registrable hospitality;*
- (vi) a person from whom you have received registrable election expenses.*

There is no need to declare an interest if it 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 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 CESPLS submitted a report to the Standards Commission on 1 February 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 advised that these were not in dispute.

The CESPLS's representative advised that the Respondent had been involved in the formation of an unincorporated voluntary organisation, The Larder, in 2010. The Larder became a private company limited by guarantee on 1 August 2011, at which point the Respondent had become a director of the company. She was also its Chairperson until 2014. The CESPLS's representative indicated that The Larder was a member of the Social Enterprise Network in West Lothian.

The CESPLS's representative stated that towards the end of 2013, the Respondent had received an award of £20,000 from a Social Entrepreneurs' fund to develop The Larder. The Board of The Larder had decided, at a meeting on 8 January 2014, to employ the Respondent and to use the money received to pay her a salary. The CESPLS's representative advised that the Respondent had, however, failed to take steps to register her remunerated employment as Manager of The Larder until 4 March 2014. The CESPLS's representative noted this was despite the Council's Monitoring Officer having sent all elected members an email on 27 November 2013 asking them to review their registered interests and reminding them that any changes, including to their employment, would need to be made.

The CESPLS's representative accepted that, in an email of 4 March 2014, the Respondent notified officers that she had been a remunerated employee of The Larder from January 2014, and that she subsequently sent emails asking them to ensure this information was reflected in her published register of interests. However, the CESPLS's representative noted that regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, required any change to a Register of Interests to be made within one month. The CESPLS's representative advised that the Respondent's failure to take steps to register the remunerated employment until 4 March 2014 meant that she had failed to comply with this provision and had, therefore, contravened paragraph 4.2 of the Code.

The CESPLS's representative advised that the Respondent had taken part in a meeting of the Council Executive on 18 March 2014 where it was decided to divert £50,000 to the Social Enterprise Network. The CESPLS's representative indicated that, knowing The Larder was a member of the Social Enterprise Network and could, therefore, benefit from the additional funding, the Respondent should have applied the objective test under paragraph 5.3 of the Code. In doing so, the Respondent should have considered whether a member of the public, with knowledge of the relevant facts, would reasonably regard her interest as a remunerated employee of the Larder as so significant as being likely to prejudice her discussion and / or decision-making. The CESPLS's representative argued that as The Larder relied heavily on external funding, any member of the public who was aware of this would reasonably regard the Respondent's interest in it to be likely to be influence her. The CESPLS's representative indicated that the Respondent should, therefore, have declared the financial interest of her employer and taken no further part in the discussions and decision-making at the meeting. By failing to do so, she had breached paragraph 5.10 of the Code.

The CESPLS's representative further advised that that the Respondent had not declared any interest at meetings of the Council's Voluntary Organisations Policy Development and Scrutiny Panel (the VOPDS Panel) on 14 March 2013, 26 September 2013 and 5 June 2014 during which reports were presented about voluntary organisations moving from a system of best value reviews to an externally accredited system of quality standards. The CESPLS's representative advised that The Larder was one of the voluntary organisations in question and was specifically mentioned in reports considered by the VOPDS Panel at the meetings.

The CESPLS's representative indicated that while the VOPDS Panel was not a decision-making committee, the Respondent, knowing that The Larder would be impacted by significant changes in the system being used, should have applied the objective test and considered whether a member of the public, with knowledge of the relevant facts, would conclude that she would likely to be influenced by her interest in it. The CESPLS's

representative contended that the Respondent's failure to declare her non-financial interest in The Larder at the VOPDS Panel meetings in question amounted to a breach of paragraph 5.7 of the Code.

The CESPLS's representative confirmed that, contrary to the complaint, the CESPLS had not found that the Respondent had sought any preferential treatment or had used her position as a councillor to obtain benefits for The Larder.

Submissions made on behalf of the Respondent

The Respondent's representative confirmed the Respondent accepted the facts as found by the CESPLS. She noted that the Respondent's failure to register her remunerated employment with The Larder had been between 8 January 2014 and 4 March 2014, which amounted to only 36 working days.

The Respondent's representative advised that the Respondent had declared her interest in The Larder at meetings of the VOPDS Panel held on 18 September 2012 and 13 November 2012, where applications for funding were being considered. This demonstrated that the Respondent had not been trying to hide her interest in the Larder and had not been seeking any preferential treatment. The Respondent's representative argued that while there had been mention of training being funded, the focus of the later meetings of the VOPDS Panel at which the Respondent had not declared any interest was on the implementation of the new accredited system of quality standards. The Respondent's representative noted the VOPDS Panel was an advisory body. As such, a member of the public, with knowledge of these facts, might not necessarily consider the Respondent would be influenced by her interest at the meetings of the Panel in question. It was therefore arguable that the objective test did not apply.

DECISION

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

1. The Councillors' Code of Conduct applied to the Respondent at the time of the events in question.
2. The Hearing Panel found the Respondent had breached paragraphs 4.2, 5.7 and 5.10 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel noted that the Respondent acknowledged that she had failed to take steps to register her remunerated employment as Manager of 'The Larder', a private company limited by guarantee, until 4 March 2014, despite her employment commencing on 8 January 2014, following a Board meeting that day.

The Hearing Panel determined that:

- The Respondent failed to register her remunerated employment with The Larder within one month, as required by regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003.
- The Respondent had therefore breached paragraph 4.2 of the Councillors' Code of Conduct.

The Hearing Panel noted that the Respondent accepted that she had not declared an interest at a meeting of the Council Executive on 18 March 2014 where it was decided to divert £50,000 to the Social Enterprise Network.

The Hearing Panel noted that it was not in dispute that The Larder was a member of the Social Enterprise Network and could, therefore, benefit from the additional funding. As such, the Hearing Panel determined that the Respondent should have applied the objective test under paragraph 5.3 of the Code. The Hearing Panel was satisfied that a member of the public, with knowledge of the relevant facts, would reasonably regard the Respondent's interest as a remunerated employee of the Larder as so significant as being likely to prejudice her discussion and / or decision-making at the meeting. As such, the Hearing Panel considered the Respondent should have declared the financial interest of her employer and taken no further part in the discussions and decision-making.

The Hearing Panel determined, therefore, that:

- The Respondent had breached paragraph 5.10 of the Councillors' Code.

The Hearing Panel further noted that it was not in dispute that the Respondent had not declared any interest at meetings of the Council's VOPDS Panel on 14 March 2013, 26 September 2013 and 5 June 2014 during which reports were presented about voluntary organisations, including The Larder, moving to a new accredited system of quality standards. The Hearing Panel noted that The Larder was specifically mentioned in reports considered by the VOPDS Panel at the meetings in question.

The Hearing Panel again considered that the Respondent should have applied the objective test. Had she done so, the Hearing Panel was of the view that she would have considered that a member of the public, with knowledge of her position and the matters under discussion at the meetings, would reasonably regard her interest as so significant as being likely to prejudice her discussion and / or decision-making. This was because while the VOPDS Panel was not making funding decisions at the meetings in question, it was nevertheless introducing a new system of quality standards that could have a significant impact on The Larder. As such, the Hearing Panel considered the Respondent should have declared her non-financial interest in The Larder and taken no further part in the discussions and decision-making at the meetings.

The Hearing Panel determined, therefore, that:

- The Respondent had, therefore, breached paragraph 5.7 of the Councillors' Code.

The Hearing Panel considered it was the Respondent's personal responsibility as a Councillor at that time to be aware of, and comply with, the provisions in the Councillors' Code of Conduct. She had failed to do so.

The Hearing Panel therefore concluded that the Respondent had breached paragraphs 4.2, 5.7 and 5.10 of the Code.

Evidence in Mitigation

The Respondent's representative reiterated that there had been no evidence or suggestion that the Respondent had deliberately concealed her interests in The Larder or that she had sought to gain any preferential treatment or benefit. The Respondent's representative argued that the breaches of the Code had in no way been deliberate and that the Respondent had simply lacked an understanding or full awareness of the nuances of the objective test and how it should be applied. The Respondent's representative asked the Hearing Panel to note that the Respondent had made an early admission of the breaches and had fully co-operated with the CESPLS's investigation.

The Respondent's representative further reiterated that the failure to register the remunerated employment had been for a very limited duration. She asked the Hearing Panel to note that the Respondent had made a number of efforts after 4 March 2014 to ensure her register of interests was correct.

The Respondent advised the Hearing Panel that her involvement with The Larder was solely motivated by her aim of providing a service and make a difference for disadvantaged communities in West Lothian. She advised that she had taken her role as a councillor seriously and had worked hard as an elected member to serve and help the public.

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 submissions on behalf of the Respondent in mitigation and, in particular, that she was motivated by trying to act in the interests of her constituents and service users in respect of her work with The Larder.
2. Acknowledged the contribution to public life made by the Respondent and the effort she had made in attending the Hearing and addressing the Panel.
3. Noted that while it was a late notification, the Respondent had taken steps to rectify her register of interests within approximately one month of the required timescale.

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 and declaration of interests are fundamental requirements of the Code and that a failure to register and declare interests appropriately removes 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 discussion and decision-making.

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: 25 May 2017

L. M. Gallanders

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