

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at City Art Centre, 2 Market Street, Edinburgh on 29 November 2017.

Panel Members: Professor Kevin Dunion OBE, Chair of the Hearing Panel
Mrs Julie Ward
Mrs Patricia 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/E/2028, (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Frank Ross (the Respondent).

The CESPLS was represented by Mrs Claire Gilmore, Senior Investigating Officer. The Respondent was not in attendance at the Hearing but provided written submissions to the Standards Commission in advance of 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 (the Code) and, in particular, the requirements to register certain interests.

The CESPLS investigated the complaint and concluded that the Respondent had breached paragraphs 4.2 and 4.20 of the Code.

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.

*4.20 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body and the nominal value of the shares is:-
(i) greater than 1% of the issued share capital of the company or other body; or
(ii) greater than £25,000.*

The CESPLS submitted a report to the Standards Commission on 12 September 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 noted that these were not in dispute. In particular, the CESPLS's representative explained that paragraph 4.2 of the Councillors' Code requires councillors to register any interests in line with the timescales outlined in regulations made by Scottish Ministers. The CESPLS's representative advised that Regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (the 2003 Regulations) requires councillors to update their register of interests within one month of the date of any declaration of acceptance of office. The CESPLS's representative further noted that paragraph 4.20 of the Code states that councillors have a registrable interest if they have an interest in shares comprised in the share capital of a company, where the nominal value of the shares is greater than 1% of the issued share capital of the company.

The CESPLS's representative advised that the Respondent accepted that he had failed to include in his Register of Interests an 82% shareholding in a company, Silverfjord Kingussie Ltd. The company was formed in February 2015 and had remained dormant until October 2016, when it became active. The CESPLS's representative indicated that the Respondent had the shareholding from the outset but failed to register his interest until 20 April 2017, when the Council's Monitoring Officer brought the matter to his attention. This was despite the Respondent having completed Notice of Registrable Interest forms on 10 December 2015, 3 March 2016 and 5 September 2016.

The CESPLS's representative contended that, as such, the Respondent failed to ensure his interests were registered in line with the requirements of the Code and the 2003 Regulations.

The CESPLS's representative noted that the Respondent's position was that he had attempted to register his shareholding by including it in a Notice of Registrable Interest form, which he had completed and deposited in an outgoing internal mail tray, addressed to Members' Services, in October 2016. The CESPLS's representative advised, however, that the Respondent had been unable to produce any copy of the handwritten document he alleged had been submitted and the Council's Monitoring Officer had confirmed that the Council had no record of it having been received.

The CESPLS's representative contended that, regardless of whether such a form had been completed or not, that the Respondent had a personal responsibility to ensure he complied with the provisions in the Code. The CESPLS's representative noted that provision in the Code requiring the registration of certain shareholding interests was absolute and no distinction was made as to the status of a company, such as it being active or dormant. The CESPLS's representative indicated that, in addition, there was no latitude in the 2003 Regulations about the time within which a change to a councillor's register of interests should be made. The CESPLS's representative advised that the Respondent should, therefore, have registered his shareholding within one month of acceptance of office. He had failed to do so and, as such, had failed to comply with the Code.

Written submissions made on behalf of the Respondent

The Hearing Panel noted that the Respondent accepted he had breached paragraphs 4.2 and 4.20 of the Councillors' Code of Conduct by failing to ensure his shareholding was included in his Register of Interests.

DECISION

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

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Hearing Panel accepted the admission from the Respondent that he had breached the Code. The Hearing Panel found the Respondent had breached paragraphs 4.2 and 4.20 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel heard that the Respondent accepted that he had failed to include in his Register of Interests an 82% shareholding in a company, Silverfjord Kingussie Ltd., which had been formed in February 2015 and remained dormant until October 2016, when it became active. The Hearing Panel heard that the Respondent had his 82% shareholding from the outset but failed to register this interest until 20 April 2017, despite having completed Notice of Registrable Interest forms on 10 December 2015, 3 March 2016 and 5 September 2016.

The Hearing Panel noted that paragraph 4.2 of the Councillors' Code of Conduct requires councillors register any interests. Paragraph 4.20 of Code states that councillors have a registrable interest if they have an interest in shares comprised in the share capital of a company, where the nominal value of the shares is greater than 1% of the issued share capital of the company. The Hearing Panel noted that paragraph 4.20 does not make a distinction as to the status of a company, such as it being active or dormant.

The Hearing Panel noted that the Respondent accepted he should have registered his shareholding. His position was that he had completed a handwritten document declaring this interest in October 2016 and had placed it in the Council's internal mail system, addressed to Member Services. The Hearing Panel noted, however, that the Council's Monitoring Officer had confirmed that the Council had no record of this. The Hearing Panel concluded that, in the absence of any other evidence to support the Respondent's version of events, it was impossible to determine categorically whether he had submitted such a document. The Hearing Panel noted, in any event, that the Respondent accepted he had not taken any steps to check that his Register of Interests had been updated to record the interest.

The Hearing Panel determined that:

- The shareholding should have been registered, regardless of whether or not the company was dormant.

- It is the Respondent's personal responsibility to be aware of, and comply with, the provisions in the Councillors' Code of Conduct, which includes ensuring his interests are registered. He failed to do so in respect of the shareholding.

The Hearing Panel therefore concluded that the Respondent had breached paragraphs 4.2 and 4.20 of the Code.

Written Submission made in Mitigation

The Hearing Panel noted the written representations submitted by the Respondent in mitigation. In particular, the Respondent indicated that the company's existence could be clearly divided into two periods. He advised it had been set up and registered with Companies House in February 2015 to facilitate the family purchase of the Silverfjord Hotel in Kingussie. When the original deal fell through in March 2015, however, the company status had immediately been changed to dormant and Companies House notified accordingly. The Respondent advised this status had remained unchanged until October 2016. The second period started in October 2016 when the company became active and began to trade. The Respondent indicated that he had submitted details of both share ownership in, and directorship of, the company for inclusion on his Register of Interests at that stage. The Respondent contended, however, that for reasons that were unknown to him the register had not been updated. The shareholding had only been registered in April 2017 after the omission was brought to his attention.

The Respondent advised that, as a result of the episode, the City of Edinburgh Council had changed its process in relation to the registration of interests so that individual councillors were now sent a positive response confirming that any requested changes or updates had been made.

The Respondent further asked the Hearing Panel to note that the company's trading activities were restricted to Kingussie, which was within the Highland Council area and, as such, there was no conflict of interest with his position as a City of Edinburgh Councillor.

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:

- Noted the Respondent drew a distinction between the period when the company was dormant and when it became active in October 2016. The Hearing Panel noted the Respondent's position was that when the company became active in 2016 he had submitted details of his share ownership for inclusion in his Register of Interests. The Hearing Panel further noted that the Respondent had also drawn its attention to the

fact that the company was a £100 off the shelf company and that the hotel it owned was outwith the City of Edinburgh Council area.

- Took account of the Respondent's position that he had attempted to revise his Register of Interests to include the shareholding when the complaint became active in 2016 but that he nevertheless accepted it had been his responsibility to ensure that it was updated accordingly.

However, the Hearing Panel:

- Was concerned that the points made by the Respondent in mitigation failed to recognise that the requirement under the Code to register a shareholding did not distinguish between an active and dormant company. The Respondent's submission also failed to recognise that the Code required an interest to be registered regardless of whether or not the company or any assets it owned was located within their own Council area.
- Considered that the requirement to register a significant interest in a company, including a shareholding of more than 1% or of a value greater than £25,000 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.
- 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. This would include checking that the Register of Interests was correct and that any required changes had been made within one month of it occurring.

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: 1 December 2017



**Professor Kevin Dunion, OBE
Chair of the Hearing Panel**