

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the City Art Centre, 2 Market Street, Edinburgh on 3 July 2018.**

**Panel Members:** Mrs Patricia Stewart, Chair of the Hearing Panel  
Professor Kevin Dunion OBE  
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/CES/2091 (the complaint), concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Finlay Cunningham (the Respondent).

The CESPLS represented himself at the Hearing. The Respondent was not in attendance, 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. 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 4.20 of the Code.

The relevant provision is:

*Category Six: Interests in Shares and Securities*

*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 27 April 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**

The CESPLS outlined the facts as set out in his Report and noted that these were not in dispute. In particular, the CESPLS explained that the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (the 2003 Regulations) require councillors to register their interests within one month of the date of any declaration of acceptance of office. The CESPLS further advised 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 stated that the Respondent was elected on 4 May 2017. The CESPLS advised that the Respondent and two members of his family were, at that time, directors of a limited company, JFRC Properties Limited. The Respondent and the two family members each held ten shares out of the 30 shares issued.

The CESPLS indicated that the Respondent had completed a Declaration of Acceptance of Office on 9 May 2017, and a register of interests on 11 May 2017. The CESPLS advised that no entry was made on the register under the 'interest in shares' category.

The CESPLS advised that it was not in dispute that the Respondent had failed to register his shareholding within one month of accepting office, despite the shareholding amounting to more than 1% of the share capital of the company. The CESPLS advised that the Respondent failed to register his interest until December 2017, when the Council's Monitoring Officer brought the omission to his attention.

The CESPLS contended that the Respondent should have registered his shareholding in the company within one month of his acceptance of office, in line with the requirements of 2003 Regulations. He had failed to do so and, as such, had failed to comply with the Code.

The CESPLS noted that the Respondent had accepted, in correspondence to him of 3 January and 20 April 2018, that he should have registered his shareholding at an earlier stage and that he had offered an unreserved apology for the failure to do so. The CESPLS advised that he had no reason to doubt the Respondent's position that the failure was inadvertent and an oversight, as opposed to a deliberate attempt to conceal information.

### **Written submissions received from the Respondent**

The Hearing Panel noted that the Respondent accepted he had breached paragraph 4.20 of the Code by failing to ensure his shareholding was included in his Register of Interests within one month of acceptance of office and had again apologised for the failure to do so.

The Panel further noted that the Respondent advised he had been mistakenly of the belief that the requirement under paragraph 4.20 of the Code only applied to shares in companies listed on the London Stock Exchange. The Respondent indicated, however, that he accepted that it was his personal responsibility to establish what interests were registrable and to ensure any such interests were included on his register of interests.

### **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 he had breached the Code. The Panel found the Respondent had breached paragraph 4.20 of the Councillors' Code of Conduct.

### **Reasons for Decision**

The Hearing Panel heard that the Respondent accepted that he had failed to timeously register his shareholding in the company, despite it being greater than 1% of the issued share capital of the company.

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 his interests were registered correctly and timeously. The Panel determined that the Respondent had failed to do so in respect of the shareholding.

The Panel therefore concluded that the Respondent had breached paragraph 4.20 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 the failure to timeously register his shareholding was not deliberate. The Panel accepted that there was no intention to mislead or deceive, and that neither the Respondent nor the company had gained any benefit from the breach.
- Further noted the Respondent had admitted the breach from the outset, had accepted responsibility and had apologised.

However, the Panel:

- Considered that the requirement to register a significant interest in a company, including, as in this case, a shareholding of more than 1% is an integral part, and absolute requirement, of the Councillors' Code of Conduct. 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, to ensure that he or she complied with them and, in this respect, the Respondent was 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:** 4 July 2018



**Mrs Tricia Stewart  
Chair of the Hearing Panel**