

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 18 March 2019.

Panel Members: Mrs Patricia Stewart, Chair of the Hearing Panel
Mr Michael McCormick
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 ESC), further to complaint reference LA/As/2173 (the complaint), concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Paul Johnston (the Respondent).

The ESC represented himself at the Hearing. The Respondent was not in attendance.

COMPLAINT

A complaint was received by the ESC about the alleged conduct of the Respondent. This included an allegation that the Respondent had breached provisions in the Code requiring the registration of certain interests.

The ESC investigated the complaint and concluded that the Respondent had breached paragraphs 4.1 and 4.20 of the Code.

The relevant provisions are:

Category Six: Interests in Shares and Securities

4.1 The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registrable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. The register should cover the period commencing from 12 months prior to and including your current term of office.

*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 ESC submitted a report to the Standards Commission on 25 January 2019, 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.

The Respondent advised the Standards Commission, by telephone on 6 February 2019, that he accepted the facts and conclusions as outlined in the ESC's report, including the description of his response to the complaint.

Submissions made by the ESC

The ESC outlined the facts as set out in his Report and noted that these were not in dispute. In particular, the ESC explained that the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 require councillors to register their interests within one month of the date of any declaration of acceptance of office. The ESC further advised that paragraph 4.1 requires councillors to register interests when they are elected and when their circumstances change, while 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 ESC advised that the Respondent was the sole director of a limited company, Enoteca 2016 Limited, which had been incorporated on 25 April 2016. The ESC advised that the Respondent owned 100% of the company's issued shares.

The ESC advised that the Respondent was re-elected as a councillor on 4 May 2017 and had submitted a form detailing his registrable interests later that month. The ESC advised, however, that no mention of the shareholding in Enoteca 2016 Limited had been made on the form or included in the Respondent's register of interests, under the 'interest in shares' category.

The ESC advised that while the Respondent's position was that he believed he had advised the Council of his shareholding in Enoteca 2016 Limited when the company was incorporated in April 2016, for inclusion on his register of interests, he had been unable to provide any evidence that he had done so. The ESC noted that the Respondent accepted, nonetheless, that it was his responsibility to ensure that his publicly available register of interests was accurate and up to date. The ESC advised, therefore, that it was not in dispute that the Respondent had failed to register his shareholding timeously, despite it amounting to more than 1% of the share capital of the company. The ESC advised that the Respondent failed to register his shareholding in Enoteca 2016 Limited until September 2018, when the complaint that he had omitted to do so was brought to his attention.

The ESC contended that the Respondent should have registered his shareholding in the company within one month it being incorporated. The ESC argued that the Respondent's failure to do so before September 2018 amounted to a breach of the Code.

DECISION

The Hearing Panel considered all of the submissions, including the presentation made during the Hearing by the ESC 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 paragraphs 4.1 and 4.20 of the Councillors' Code of Conduct.

Reasons for Decision

The Hearing Panel found that the Respondent had been the sole director of a limited company that had been incorporated on 25 April 2016, and that he owned 100% of the issued shares.

The Panel noted that while the Respondent's position was that he believed he had provided information to the Council about his shareholding in Enoteca 2016 Limited after its incorporation, he had not been able to provide any evidence that he had done so. The Panel further noted that despite having submitted a form detailing his registrable interests when he was re-elected to office in May 2017, the Respondent failed to ensure his shareholding was registered until September 2018.

The Panel found that the Respondent had not registered his shareholding within one month of the company being incorporated, despite it amounting to more than 1% of the share capital.

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 paragraphs 4.1 and 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 Hearing Panel:

- Noted the Respondent's position that the failure to register the shareholding timeously was not deliberate and that he had believed he had included information about the shareholding when the company was incorporated in 2016 (albeit he accepted he could not provide evidence that he had done so).
- Noted that there was no evidence that the Respondent or the company had gained any benefit from the breach.
- Further noted the Respondent had admitted the breach from the outset, accepted responsibility and expressed regret.

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 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. The Panel considered that, as an experienced councillor, the Respondent should have been cognisant of this.

- 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: 19 March 2019



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