

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Fife House, Glenrothes on 25 June 2019.**

**Panel Members:** Mrs Tricia Stewart, Chair of the Hearing Panel  
Mr Michael McCormick  
Ms Ashleigh Dunn

The Hearing arose in respect of a Report by the then Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/Fi/2176 (the complaint) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Linda Holt (the Respondent).

The ESC was represented by Mr Paul Donnachie, Solicitor. Councillor Holt was represented by Mr John Campbell, QC.

### **COMPLAINT**

A complaint was received by the ESC about the alleged conduct of the Respondent. Following an investigation, the ESC referred the complaint to the Standards Commission on 8 February 2019, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended. The Standards Commission determined, under Section 16 of the 2000 Act that it was proportionate and in the public interest to hold a Hearing. The Hearing was scheduled to take place on 30 April 2019, but, at the request of both parties, it was agreed to adjourn it to 25 June 2019.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Councillors' Code of Conduct (the Code) and, in particular, that she had contravened paragraphs 4.1, 4.23, 5.3, 5.7 (ii) and 5.9.

The relevant provisions are:

#### ***Registration of Interests***

*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.*

#### ***Non-financial Interests***

*4.23 Councillors may also have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to Committees or memberships of other organisations.*

#### ***Declaration of Interests***

5.3 *You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test (“the objective test”) which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

#### **Your Non-Financial Interests**

5.7 *You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-  
(ii) that interest would fall within the terms of the objective test.*

5.9 *You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a councillor. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest, you should consider whether your interest (whether taking the form of association or the holding of office) would be seen in a different light by a member of the public, acting reasonably, because it is the interest of a person who is a councillor as opposed to the interest of an ordinary member of the public.*

#### **Preliminary Matters**

The Respondent’s representative indicated that, as previously intimated, he intended to call two witnesses, being the Respondent herself and a Mr L.

The ESC’s representative indicated that he wished to call two witnesses, being Fife Council’s Monitoring Officer and Committee Services Manager, who could give evidence on the Respondent’s attitude towards the training and any advice given to the Respondent in respect of the requirement to register and declare certain interests. The Hearing Panel noted that the Standards Commission and the Respondent’s representative had only received confirmation the day before the Hearing that the ESC’s representative intended to call the officers as witnesses. The Panel agreed that the Respondent’s representative would not have had the opportunity to prepare for the cross-examination of the proposed witnesses. It further agreed that, as it was not in dispute that the Respondent had attended training on the Code and that the slides used during the training session were the ones included in the bundle of productions before the Panel, it was not necessary or fair to hear from the witnesses. The Panel determined, therefore, that the ESC’s representative should not be allowed to do so.

#### **Evidence Presented at the Hearing**

##### **Joint Statement of Facts**

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the parties. In this, the parties confirmed that the Respondent has signed a declaration of her acceptance to comply with the Code and that, at a training session following the Respondent’s election, the Council’s Monitoring Officer and Committee Services Manager had given advice to the Respondent regarding the declaration of interests during her term as an elected member.

The parties further agreed that the Respondent had failed to register her interest in an organisation called Scotland Against Spin (SAS) which was current within the period of 12 months before her election and had, therefore, breached paragraph 4.1 of the Code.

The parties advised that the Respondent resigned as spokesperson for, and as a member of, SAS in October 2016. The parties further advised that the Respondent nevertheless remained an administrator for SAS's Facebook page and that, as of 17 October 2018, it was stated on the page that she was an administrator, and moderator, of it. The parties agreed that the Respondent made no declaration of interest in relation to SAS at a meeting of Fife Council's North East Planning Committee on 30 May 2018.

### **Witness Evidence**

The Respondent's representative led a Mr L as a witness. Mr L advised that he had become the Chair of SAS when it was founded in mid-January 2013. Mr L advised that SAS had been established as a lobbying organisation, which also provided guidance and support to groups and individuals who had concerns that they could be disadvantaged by the development of wind farms or turbines in their area. Mr L stated that the Respondent had been tasked with establishing a social media presence for SAS, which included the creation of the Facebook page. Mr L advised that when the Respondent decided to stand for election in mid-2016 she had resigned from SAS and had not taken part in any further lobbying on its behalf. She had, however, remained as the page administrator. Mr L indicated that it was open for any member of the public to post comments on the page. He advised that as some members wished SAS to be more antagonistic in terms of their engagement or otherwise with the Scottish Government, there had been a need for the Respondent to continue to administer the page to ensure the content posted on it was appropriate. Mr L indicated that there had been concerns that had the Respondent not remained an administrator of the page, other individuals could have taken control of it and pushed SAS in a different direction.

In response to cross-examination, Mr L confirmed that there would have been no consequence to the Respondent, in practical terms, had she removed herself as an administrator of the page when she decided to stand for election as a councillor.

The Respondent's representative then led the Respondent. The Respondent confirmed that she had not registered any interest as a member or spokesperson of SAS but indicated this was because she had resigned in October 2016 and had understood that only interests that existed in the six-month period before the election required to be disclosed. The Respondent advised that she had resigned from SAS because not only was she aware she should not be a councillor at the same time as being a member of a national lobbying organisation, but also because SAS was an apolitical organisation and she was standing as a candidate for a specific party.

The Respondent confirmed that she had not declared an interest in SAS at the planning committee meeting on 30 May 2018 when an application for the renewal of planning consent for an individual wind turbine was being considered. The Respondent advised that, at the meeting, she had expressed concerns that a full assessment of the visual impact and cumulative visual impact of the turbine had not been undertaken as the officer's recommendation was based on a theoretical picture montage and not on actual photographs. The Respondent contended that her opposition to the application was not tinged by any inherent dislike of wind turbines and stated that she had moved to reject the application for renewal of the planning consent on the grounds of the

cumulative visual and landscape impacts and the impact on residential amenity only. The Respondent confirmed that as she had failed to find a seconder, the motion had fallen, and the application had been approved.

Turning to the contention that she had an ongoing involvement with SAS that might have led to her having a declarable interest, the Respondent advised that, until she resigned in October 2016 (after seeking selection as a candidate for election), she had been the spokesperson for, and had undertaken most of the publicity on behalf of, SAS. The Respondent advised that she had automatically become the owner and an administrator of the Facebook page when she created it. The Respondent advised that while she had not played any active role in SAS after her resignation, it had been important for her to remain as an administrator to ensure that the page was not taken over by anyone trying to push SAS in a different direction to that agreed by its original members. The Respondent indicated that it had been agreed that Mr L would be more involved in the administration of the page after her resignation from SAS and that the only action she had taken in respect of the page after October 2016 had been to accept some individuals as members, having received automatic notifications that they wished to join the organisation via the Facebook site.

The Respondent advised that she had been very open about her previous involvement with SAS during her election campaign and that information about this had been included in her campaign literature. The Respondent confirmed that her election campaign had been based to some extent on her opposition to the development of wind farms. The Respondent contended, however, that while she had publicly opposed aspects of the Scottish Government's wind energy policy, she did not consider her lobbying work in respect of this was relevant in terms of her role as a councillor on the planning committee. The Respondent advised that she did not have any pre-disposition against individual wind turbines and could see no reason why she could not take part in considering applications for planning consent in respect of them. The Respondent stated that she considered any such application on its individual merits only. The Respondent reiterated that her objections to the application in question at the meeting on 30 May 2018 all concerned the cumulative visual and landscape impacts it would have and did not concern any matters relating to wind energy policies.

In response to cross-examination, the Respondent conceded that SAS could have opened a new Facebook page had she closed the one she had created. The Respondent argued that doing so could have led to data and members being lost, albeit she accepted information posted on the page could have been archived. The Respondent advised that she had removed herself as an administrator of the page after being informed by the ESC that the complaint had been received.

The Respondent accepted that she had attended a training session on the Code and that the slide presentation from this, as included in the productions, noted that all relevant interests that existed in the 12-month period before election should be registered. The Respondent advised that the failure to register the interest in SAS was simply an oversight as opposed to any attempt to conceal her previous involvement with the organisation.

When questioned about a letter she had submitted that had been published in the Scotsman newspaper on 31 May 2017 in which she referred to wind turbines "littering the Scottish countryside" and a cut to subsidies having stemmed "the tsunami of rapacious wind speculation", the Respondent accepted that she had a publicly articulated position on wind farms and the Government's wind energy policy, but argued that this could not be taken to demonstrate that she had any pre-disposition against individual wind turbine applications. The Respondent accepted that

it may be difficult for members of the public to perceive the distinction between her well-known and publicly stated views on wind energy policy and her ability and willingness to consider wind turbine applications on their individual merits alone, but contended that she could not be responsible for what other people may imagine.

The Respondent stated that she could not recall whether she had applied the objective test when determining if she was required to declare an interest at the meeting on 30 May 2018. The Respondent accepted that she would have had to declare an interest had she still been a member of SAS, but argued that as her association with the organisation had ended a long time before the meeting, she had taken the view that her previous association with it was no longer relevant. The Respondent further accepted that she had not sought advice on whether she should declare an interest at the meeting and confirmed that she could not recall whether she had read the Code at the time she signed the declaration confirming she would abide by it.

### **Submissions made by the ESC's Representative**

The ESC's representative noted that the Respondent accepted that she had breached paragraph 4.1 of the Code by not registering that she had an interest in SAS within the 12-month period before her election. The ESC's representative argued that as the Respondent accepted she had attended a training session on the Code shortly after her election, at which the evidence demonstrated she had clearly been advised that all relevant interests that existed in the 12-month period before election required to be registered, it was difficult to accept her position that she thought the applicable period was only six months as credible.

The ESC's representative noted that the Respondent had been a publicly prominent member of SAS, being a national campaign group, and that details of her involvement as a lobbyist for it had been included on her political party's local website at the time the complaint was made. The ESC's representative contended that, in the circumstances, it would have been reasonable for members of the public to have expected that such a membership would be included in the Respondent's register of interests, notwithstanding the fact that she had submitted a resignation by email from the organisation six months before her election as a councillor on 4 May 2017. The ESC's representative argued that the Respondent's membership of SAS was one that members of the public might reasonably think could influence her actions, speeches or votes in the Council and, as such, contended that the failure to register it as a non-financial interest also amounted to a breach of paragraph 4.23.

Turning to the question of whether any interest should have been declared at the North East Planning Committee on 30 May 2018, the ESC's representative noted that the Respondent had not sought advice about whether or not she had a declarable interest. Instead, she had engaged in a discussion with a planning officer and had then moved a motion to reject the application. The ESC's representative noted that the Respondent had sought to draw a distinction between her publicly stated opposition, both as a member of SAS and afterwards, to national wind energy policies and any interest in any specific individual wind turbines. The ESC's representative noted, however, that the Respondent's election campaign had been based, at least in part, on her opposition to the development of wind farms. The ESC's representative argued that as wind farms comprised of individual turbines, the two were so inter-connected that members of the public could not reasonably be expected to make such a distinction.

The ESC's representative argued that a member of the public, with knowledge of the relevant facts, being the Respondent's:

- Former membership of an organisation whose aim was to raise issues about the use of wind turbines;
- Continuing association with the organisation as an administrator of its Facebook page after her election as a councillor in May 2017; and
- public statements about the proliferation of wind farms both before and after her election;

would conclude that she had a significant interest that was likely to prejudice her discussion or decision-making on the application to be considered. The ESC's representative argued that, as such, the Respondent should have erred on the side of caution, declared an interest in the item and withdrawn from the meeting while it was being considered. The ESC's representative contended that the Respondent's failure to declare an interest in the item being considered amounted to a breach of paragraphs 5.3, 5.7 (ii) and 5.9 of the Code.

### **Submissions made by the Respondent's Representative**

The Respondent's representative advised that the Respondent accepted she should have registered her interest as a former member of SAS when she was elected, but reiterated her position that the failure to do so was an honest mistake, based on her erroneous belief that only interests that existed in the six-month period before the election required to be disclosed. The Respondent's representative asked the Panel to note that there was no evidence or suggestion that the Respondent had sought to conceal the interest.

The Respondent's representative argued that the Respondent had not breached paragraph 4.23 of the Code, as any public statements she had made in the 12-month period prior to the election were confined to the consequences of energy policies associated with the proliferation of windfarms. As such, the Respondent's representative argued that members of the public would not reasonably consider that any interest she had previously had in SAS could influence her discussion or decision-making on any specific planning application.

In respect of whether the Respondent should have declared an interest at the meeting on 30 May 2018, the Respondent's representative referred to Lord Hope's judgement in the Supreme Court case of *Magill v Porter [2001] UKHL 67* and noted that he had stated that, in determining whether a decision should be set aside, the question is whether a fair-minded and informed observer would conclude in all the circumstances, that there was a real possibility, or a real danger, of the Tribunal being biased. The Respondent's representative noted that, in this case, the application under consideration at the meeting was for an existing planning permission for a single wind turbine generator to be renewed. The Respondent's representative argued that the Respondent's prior involvement with SAS and any views she had expressed about wind policies did not disclose a predisposition towards any specific wind turbine application. As such, it could not be said that any fair-minded and informed observer would conclude there was any real possibility or real danger of the Respondent being biased.

The Respondent's representative further argued that there was no evidence of such a predisposition or that any prejudice had occurred as it was evident from the minutes of the meeting that the Respondent's concerns about the application were based on concerns that a full assessment of the visual impact and cumulative visual impact of the turbine had not been undertaken, as opposed to any general view on wind energy or wind farms. The Respondent's representative advised that she

had considered the application before the Committee on 30 May 2018 on its merits only, with regard to the impact its (already determined) location may have had. The Respondent's representative noted that when the Respondent's motion to refuse the application failed to attract support, she accepted the Committee's democratic decision to grant renewal of the planning consent.

The Respondent's representative further argued, in any event, that by the time of the meeting the Respondent's prior involvement with SAS was historical and therefore too remote to be of any relevance or significance to any deliberations and decision-making.

### **DECISION**

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Holt.
2. The Respondent had breached paragraphs 4.1, 4.23, 5.3, 5.7 (ii) and 5.9 of the Code.

### **Reasons for Decision**

The Panel noted that the Respondent had been a spokesperson for SAS before resigning from the organisation in October 2016, some six months before the election. The Panel noted that the Respondent further accepted that she had remained an administrator for SAS's Facebook page and that a screenshot taken on 17 October 2018 described her as the page's administrator and moderator. The Panel noted the Respondent's position was that after her resignation as spokesperson, she had simply remained the nominal owner of the Facebook page and, as such, any role or association she had with SAS after October 2016 was entirely passive. The Panel noted, however, that the Respondent was named on the Facebook page as an administrator and that, by her own account, she had occasionally accepted members to it. The Panel further noted that the Respondent had described not having formally withdrawn completely from the Facebook page until the complaint was drawn to her attention.

The Panel noted that the Respondent had further accepted that, on 31 May 2017, the Scotsman newspaper had published a letter she submitted, in which she had designated herself as a councillor and indicated strong views about issues relating to wind farms.

In respect of the failure to register an interest in SAS, the Panel noted that paragraphs 4.1 and 4.23 of the Councillors' Code of Conduct oblige elected members to register any significant non-financial interests, such as membership or holding office in an organisation or body, where members of the public might reasonably think the interest could influence their actions, speeches or votes in the Council. The register should cover all relevant interests that existed in the period commencing 12 months before the current term of office and any interests that exist during the term of office.

The Panel noted that the Respondent had been elected on 4 May 2017. The Panel noted that, as such, she had been obliged to register any relevant interests that existed from 5 May 2016 to the end of the term of office. The Panel noted the Respondent's position was that she had understood that only interests that existed six months before election required to be registered. The Panel

noted, however, that the Respondent accepted she had attended an induction and training session on the Code and that the training material from this made it clear that it was a 12-month period that applied. In any event, the Panel considered that the Respondent had a personal responsibility to ensure that she was aware of, and complied with, the terms of the Code.

The Panel was satisfied, on the balance of probabilities, that the Respondent was still actively involved with, and a member of, SAS within the 12-month period prior to her election as a councillor on 4 May 2017. The Panel determined that a member of the public might reasonably think that the Respondent's membership of, or connection with SAS, as a national pressure group, could influence her actions, speeches or votes in the Council. As such, the Panel concluded that the Respondent's membership of SAS was a non-financial interest that had required to be registered.

The Panel concluded, therefore, that the Respondent's failure to register the interest in SAS amounted to a contravention of paragraphs 4.1 and 4.23 of Code.

Turning to the failure to declare an interest at the North East Planning Committee on 30 May 2018, the Panel noted that paragraph 5.2 of the Councillors' Code of Conduct advises councillors to err on the side of caution when determining whether they were required to declare an interest.

The Panel noted that two of the publicly stated aims of SAS were to raise public awareness of what was wrong with wind energy and to help start-up groups fight turbine proposals. The Panel was of the view that a fair minded member of the public with knowledge of the relevant facts being the Respondent's:

- known prior involvement with such a lobbying organisation;
- continuing association with it through her role as an administrator of its Facebook page;
- own publicly stated views in the 12 months prior to the planning committee on wind energy and the proliferation of wind farms;

would reasonably consider that her discussion or decision-making on any matters concerning whether permission should be granted for further wind turbines could be affected. The Panel was not persuaded, in the circumstances, that the Respondent's interest, at the time of the meeting, was too remote or insignificant to require a declaration. While the Panel noted that the Respondent may have believed that she was able to consider the application in question on its merits, it determined that, having applied the objective test before consideration of the item commenced (as she was required to do under paragraph 5.3), the Respondent should have nevertheless concluded that a member of the public would reasonably regard the interest as so significant as being likely to prejudice her discussion and decision-making. The Panel was satisfied that evidence of how the Respondent conducted herself while considering the planning application was not relevant to the application of the objective test, given that the test needs to be applied before consideration of the relevant agenda item commences.

The Panel was further of the view that the Respondent should have erred on the side of caution as advised by paragraph 5.2. It concluded that, having done so, the Respondent should have reached the view, in terms of paragraph 5.7, that her interest in SAS and her publicly stated views on wind farms would not be perceived as being so remote and insignificant, in the context of consideration of the renewal of planning permission for a wind turbine, that it could not fall within the objective test under paragraph 5.3.

The Hearing Panel determined, therefore, that the Respondent's failure to declare the interest in SAS amounted to a contravention of paragraphs 5.3, 5.7 (ii) and 5.9 of the Code.

### **Evidence in Mitigation**

The Respondent's representative advised that, excepting the current matter before the Panel, the Respondent had served as a councillor for over two years without complaint. The Respondent's representative advised that the Respondent was a well-regarded constituency member, who lived in the locality and worked hard to actively represent the interests of her constituents. The Respondent's representative advised that the Respondent's commitment to both the role and public service was demonstrated by the fact that she served some nine community councils. The Respondent's representative invited the Panel to conclude that the breach of the Code at a less serious end of any spectrum, given that no apparent prejudice had been caused by any omission on the part of the Respondent and given it was evident she had not deliberately sought to conceal the interest.

### **SANCTION**

The decision of the Hearing Panel was to suspend, for a period of two months with effect from 1 July 2019, the Respondent, Councillor Holt, from all committees and sub-committees of Fife Council that made decisions on quasi-judicial or regulatory matters.

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

### **Reasons for Sanction**

In reaching their decision, the Hearing Panel noted it was obliged, under the 2000 Act, to impose a sanction where a breach had been found.

The Panel considered the Standards Commission's Policy on the Application of Sanctions. The Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes and had offered an apology in respect of the failure to register the interest. The Panel further noted the Respondent's representative's submissions that the Respondent was a hard-working and committed local councillor and that her failure to comply with the Code was inadvertent.

The Panel emphasised, however, that the requirement for councillors to register and declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a councillor's role and denies 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 further 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. The Respondent had been negligent in this regard. Given that the finding was that the Respondent had failed to both register and declare the interest, the Panel did not consider, in the circumstances, that it was appropriate to impose a censure.

The Panel was nevertheless of the view that the Respondent's conduct did not warrant a more severe sanction. This was because there was no evidence that the Respondent had attempted to conceal her interest or that there was any personal gain. The Panel further noted that while it had found that the Respondent had not applied the objective test correctly in determining whether or not she could take part in the consideration of the item, this did not equate to a conclusion or finding that she had not considered the planning application objectively and on its merits.

**RIGHT OF APPEAL**

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

**Date:** 28 June 2019



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