

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on 9 November 2020.

Panel Members: Mrs Tricia Stewart, Chair of the Hearing Panel
Ms Ashleigh Dunn
Mr Paul Walker

The Hearing arose in respect of a Report referred by Ms Caroline Anderson, the Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/Fi/3125, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Brian Thomson (the Respondent).

The ESC was represented by Mr Martin Campbell, Director of Investigations and Solicitor to the Commissioner. The Respondent was represented by Ms Layla Zamanpour, Solicitor.

Referral

Following an investigation into a complaint received about the conduct of the Respondent, the ESC referred a report to the Standards Commission for Scotland on 29 June 2020, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 5.3, 5.7 and 5.8. The relevant provisions were:

Objective Test

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:

- (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.*

5.8 As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a councillor. Your membership of statutory Joint Boards or Joint Committees which are composed exclusively of Councillors does not raise any issue of declaration of interest in regard to Council business. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that,

in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.20 of this Code about your legal responsibilities to any limited liability company of which you are a director.

Evidence Presented at the Hearing

Joint Statement of Facts

The Panel noted the terms of a joint statement of facts agreed between the ESC's and Respondent's representatives. The Hearing Panel noted, in particular, that it was not in dispute that the Respondent was a member of the Council's North East Fife Area Committee and had been appointed by the Council as a member of the St Andrews Links Management Committee. The Respondent's membership was recorded, as a non-financial interest, on his Register of Interests.

The Panel noted that the St Andrews Links Trust is a body created under statute to control and manage St Andrews Links. The Trust operates golf courses, including the Old Course at St Andrews. The Panel noted that the governing legislation made provision for a distinct board of trustees and a management committee, both with different powers and responsibilities. The Management Committee, to which the Respondent has been appointed, did not have any decision-making powers regarding the Trust's use of land or property, including in relation to a potential decision to build a rail link on the property. Instead, its areas of responsibilities include regulating play and providing for the order of standing, and promoting and organising golf competitions.

The Panel heard that it was not in dispute that, on 23 January 2019, the Respondent attended a meeting of the Council's North East Fife Area Committee. It was accepted that one of the items being considered at the meeting was an application submitted by the St Andrews Rail Link Campaign (being an organisation which aims to reconnect St Andrews to the railway network), for funding from the local community planning budget, to pay for VAT on a transport feasibility study. The Panel noted that it was accepted that the feasibility study would include considering a potential rail link. The rail link may have to be routed through the grounds of the Old Course Hotel, the golf practice centre and the St Andrews Links Trust's building. It also may require the diversion of holes on two other golf courses operated by the Trust.

The Panel noted that it was accepted that, at the meeting, the Respondent moved a motion to refuse the funding application, which was carried by eight votes to three. The Committee refused the request for funding towards the cost of the VAT on the transport feasibility study on the grounds that it was not an appropriate use of the Local Community Planning Budget. The Committee agreed that the St Andrews Rail Link Campaign organisation should be encouraged to seek funding from alternative sources.

Submissions made by the ESC's Representative

The ESC's representative advised that the Respondent accepted that he should have declared his interest, as a member of the St Andrews Links Management Committee, in the matter before the North East Fife Area Committee at its meeting 23 January 2019. The ESC's representative advised that there was no reason to doubt that the Respondent had made his decision to refuse the funding application objectively and based entirely on its merits. The ESC's representative contended, nevertheless, that having erred on the side of caution and applied the objective test, as he was required to do under paragraph 5.3 of the Code, the Respondent should have realised that a member of the public, with knowledge of his membership of the St Andrews Links Management Committee, would be reasonably entitled to conclude the interest was sufficiently significant as to be likely to prejudice his discussion or decision-making on the funding application. This was because it was unlikely that the St Andrews Links Trust would wish to support any proposal that could have a detrimental impact on its property and golf courses. While the ESC's representative accepted that the St Andrews Links Management Committee did not have any decision-making powers in respect of

the use of the Trust's land, he noted that any proposal to change how the land was used could affect the Trust as a whole. This could include having an impact on the golf competitions that the Management Committee organised and promoted. The ESC's representative argued that as a member of the St Andrews Links Management Committee, the Respondent was likely to be supportive of the St Andrews Links Trust's activities and interests, including the preservation of its golf courses and recreational areas (being an aim that was consistent with its purpose and statutory mandate). As such, a member of the public would reasonably conclude that he would not be likely to support funding for a study that might help facilitate the creation of a rail link that, in turn, could have a detrimental impact on the Trust's golf courses and recreational areas.

Submissions made by the Respondent's Representative

The Respondent's representative advised that the Respondent now accepted that he should have erred on the side of caution and declared his membership of the St Andrews Links Management Committee at the meeting on 23 January 2019. The Respondent's representative advised that the Respondent sincerely apologised for failing to do so.

The Respondent's representative explained that, at the time of the meeting, it had not been apparent to the Respondent that he was required to declare an interest. This was because the funding was being sought for an overall transport feasibility study (as opposed to one on a rail link only), and the St Andrews Links Management Committee had not been asked to comment on the matter.

The Respondent's representative confirmed that the Respondent's decision-making at the meeting was based solely on his belief that any proposal to re-introduce a rail link was speculative, unfeasible and would not bring any direct and tangible benefit for residents in North East Fife. The Respondent had further considered it was possible that the VAT costs of the transport study could be recovered from the Scottish Government. As such, the Respondent did not consider the application met the criteria for funding from the local community planning budget.

The Respondent's representative advised that when, after the meeting, the Respondent became aware of online comments being posted about his participation, that he had sought advice from a senior Council officer as to whether the objective test had been met and whether he should have declared an interest. The Respondent's representative contended that this demonstrated that the Respondent had taken the matter seriously and understood the importance of adhering to, and being seen to be adhering to, the Code.

In response to questions from the Panel, the Respondent's representative confirmed that the fact that another elected member of the Committee had declared an interest in the matter at the meeting had not prompted the Respondent to do so. The Respondent's representative indicated that this was because the other elected member's interest, as an office bearer of the St Andrews Rail Link Campaign was far more direct and significant.

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 Thomson.
2. The Respondent had breached paragraphs 5.3, 5.7 and 5.8 of the Code.

Reasons for Decision

The Panel noted that paragraph 5.3 of the Councillors' Code of Conduct requires councillors to consider the objective test, being:

whether a member of the public, with knowledge of the relevant facts, would reasonably regard an interest they have as so significant that it would be likely to prejudice their discussion or decision making, when

determining whether or not they were required to declare an interest and refrain from taking part in any discussion or voting.

The Panel further noted that paragraph 5.7 of the Code states that councillors must declare any non-financial interest and withdraw from the meeting room unless an interest is so remote or insignificant that it could not reasonably be taken to fall within the objective test. Paragraph 5.8 states, in respect of whether they have to declare an interest as a member of a management committee of a society or other organisation, that councillors must consider the particular circumstances and should remember the public interest points towards transparency.

In this case, the Panel considered that, having applied the objective test under paragraph 5.3, the Respondent should have reached the view, in terms of paragraphs 5.7 and 5.8, that his non-financial interest as a member of the St Andrews Links Management Committee would not be perceived as being so remote and insignificant that it could not influence his potential discussion and decision-making on the funding application under consideration. This was because the Panel considered that a member of the public, with knowledge of the membership, would reasonably regard it as an interest that was sufficiently significant to be likely to prejudice his discussion and decision-making on an application for funding in respect of a feasibility study that could help facilitate the creation of a rail link, being something that could have a detrimental impact on the golf courses and recreational areas run by the St Andrews Links Trust.

The Hearing Panel concluded, therefore, that the Respondent's failure to declare his interest at the meeting in question amounted to a contravention of paragraphs of 5.3, 5.7 and 5.8 of the Code.

Evidence in Mitigation

The Respondent's representative confirmed that the Respondent fully accepted the Panel's decision and advised that he deeply and sincerely regretted not erring on the side of caution and declaring his membership of the St Andrews Links Management Committee at the meeting.

The Respondent's representative asked the Panel to note that the failure was an isolated incident and that the Respondent had been acting in good faith. There was no suggestion of any intent to conceal the interest (given it had been recorded in the Respondent's register of interests), or of any personal gain. The Respondent's representative further asked the Panel to note that the Respondent has co-operated fully with both the investigative and adjudicatory processes, and advised that he took full responsibility for his actions and for abiding by the provisions in the Code.

The Respondent's representative argued that given the vote to reject the funding application was made by a majority of eight to three, it was unlikely that the Respondent's failure to declare the interest and withdraw had any impact on the outcome and overall decision, and advised that the St Andrews Rail Link Campaign subsequently secured funding from another source.

The Respondent's representative asked the Panel to note the written statements submitted from several individuals, attesting to the Respondent's good character and conduct. These confirmed that he was a staunch advocate for, and supporter of, his local community.

Witness Evidence

The Respondent's representative led evidence from the Respondent who confirmed he fully accepted that he should have declared an interest. The Respondent apologised for the failure to do so. The Respondent reiterated that, at no time before or during the meeting, had he considered that he was required to declare an interest in the funding application. This was because funding was only being sought for the VAT on the overall transport study, being a matter that the St Andrews Links Management Committee had not been asked to comment upon. The Respondent advised that as he considered the prospect of a rail link to be so

unfeasible, he had not given any consideration to whether his membership of the Committee could be relevant in any way. The Respondent advised that he was supportive of sustainable transport options and that his decision-making on the application had been based solely on whether it met the funding criteria. The Respondent noted that he had breached the declarations of interest provisions in the Code in 2015 and advised that, since then, he had taken great care to err on the side of caution and declare any potential interests. The Respondent referred the Panel, in this regard, to his record for declaring interests, which he considered supported his position that the new breach was entirely inadvertent in nature.

The Respondent's representative led evidence from three other witnesses, being a fellow councillor and two individuals who knew the Respondent through his work on community projects and issues. All three gave evidence to the effect that the Respondent was known and respected as someone who was approachable, and who actively engaged with his constituents and was committed to representing their interests. The witnesses advised that the Respondent took his responsibilities as a councillor very seriously and was an excellent local representative. All three witnesses attested to the Respondent's integrity and decency, and confirmed that he was committed to, and passionate about, working diligently in the interests of his community and constituents. The witnesses described a number of local improvement initiatives that the Respondent had led or had otherwise been involved in. The witnesses further confirmed that the Respondent was known as being someone who took adherence to the Code very seriously and as someone who was very careful to declare any possible interest.

SANCTION

The decision of the Hearing Panel was to censure the Respondent, Councillor Thomson.

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

Reasons for Sanction

In reaching its decision on sanction, the Hearing Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes and had offered a sincere and unreserved apology in respect of the failure to declare the interest. Notwithstanding that the Respondent had previously been found, in 2015, to have breached the declaration provisions in the Code, the Panel heard that the Respondent had been conscientious in declaring interests regularly and, therefore, had demonstrated cognisance of, and respect for, the Code of Conduct. The Panel further noted the positive character references made and submitted on the Respondent's behalf, confirming that he was a committed, diligent and conscientious local representative, who actively sought to assist the communities he served and who worked hard in their interests.

The Panel emphasised, however, that the requirement for councillors to 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 noted it is a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complies with them. In this case, the Panel considered that the Respondent should have erred on the side of caution when applying the objective test and should, therefore, have declared an interest in the matter before the Committee and withdrawn from the room while it was being discussed.

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 his interest or that there was any personal gain. The Panel accepted the Respondent's submission that the failure to comply with the Code was inadvertent and that his decision-making at the committee meeting had been

influenced by a number of factors other than his membership of the St Andrews Links Management Committee.

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: 10 November 2020



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