

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on 17 December 2020.

Panel Members: Mr Paul Walker, Chair of the Hearing Panel
Professor Kevin Dunion
Mr Mike McCormick

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/SI/3305, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Ryan Thomson (the Respondent).

The Ethical Standards Commissioner was represented by Dr Kirsty Hood, QC. The Respondent represented himself.

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 8 October 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 concerning the registration of certain interests. The relevant provisions in the current version of the Code are as follows:

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.*

4.2 *Regulations made by Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a councillor must register their registerable interests within 1 month of becoming a councillor, and register any changes to those interests within 1 month of those changes having occurred. It is your personal responsibility to comply with these regulations, and you should review regularly and at least once a year your personal circumstances to ensure that your registration of interests is up to date.*

Category One: Remuneration

4.4 *You have a registrable interest where you receive remuneration by virtue of being:*

- *employed;*
- *self-employed;*
- *the holder of an office;*
- *a director of an undertaking;*
- *a partner in a firm; or*
- *undertaking a trade, profession or vocation, or any other work.*

4.11 *When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and detail the nature of its business.*

Category Six: Interest in Shares and Securities

4.21 *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.

Evidence Presented at the Hearing

Joint Statement of Facts

The Hearing Panel noted that a joint statement had been agreed by the ESC's Senior Investigating Officer and the Respondent, confirming that neither the facts of the matter, nor the alleged breach, as outlined in the ESC's report, were in dispute.

The Panel noted that the Respondent accepted that he had failed to include the company R & L Thomson (Trading) Shetland Limited in his register of interests, despite receiving remuneration from it and being a director of the company. The Panel further noted that the Respondent accepted that he failed to register his shareholding in the company, from 9 May 2018.

Submissions made by the ESC's Representative

The ESC's representative advised that when the Respondent was elected in May 2017, he had registered that he was a director of, and received remuneration from, a company called 'Shetland Convenience Stores Limited', trading as 'Tagon Stores'. The ESC's representative advised that the company changed its registered name to R & L Thomson (Trading) Shetland Limited on 9 May 2018. The ESC's representative noted that although the Respondent continued to receive remuneration until 9 August 2019, and continued to be a director of the company, he had failed to record the change of company name in his Register of Interests. The ESC's position was that this was despite the Respondent having asked officers of Shetland Island Council, on 2 March 2020, to update his Register by removing references to Shetland Convenience Stores Limited from 29 November 2019 onwards. The ESC's representative advised that the Respondent had only registered the correct company name in March 2020, on receipt of a reminder from Council officers to elected members prompting them to ensure their Registers of Interests were up to date. The ESC's representative further advised that the Respondent had failed to register his shareholding in the company, despite the nominal value of the shares being greater than 1% of the issued share capital.

The ESC's representative noted that as the events in question both pre- and post-dated the introduction of the current version of the Code in July 2008, both it and the previous version (being the one introduced in 2010) were engaged. The ESC's representative noted that there was no substantive difference between the provisions in the two versions of the Code in respect of the requirement to register certain interests.

The ESC's representative advised that the ESC accepted that the breach was technical in nature. In response to questions from the Panel, the ESC's representative advised that the investigation had not uncovered any evidence that the failure to register either the shareholding or the new company name was deliberate or had any practical impact of note.

Submissions made by the Respondent

The Respondent advised that he accepted he should have registered the company's new name and his shareholding and apologised unreservedly for his failure to do so. The Respondent confirmed that the company was the same as the one he had initially registered; it was simply the name that had changed. The Respondent further confirmed that he accepted that his failure to change the company's name on his Register of Interests, and to register the shareholding, amounted to a breach of the Code. The Respondent advised that his failure to register the interest in the company as required was inadvertent and the result of forgetfulness. The Respondent advised that while he accepted it was not an excuse, he had been trying to keep the business afloat at the same time as trying to fulfil his new role and to meet his responsibilities as an elected member.

The Respondent advised that he understood the importance of registering interests and of complying with the Code. The Respondent apologised to the Panel and complainer for his failure to do so and stressed that he fully understood why the complainer had raised concerns. The Respondent further advised that he had

received full training on the Code from the Council and, as such, wished to stress that the failure was entirely his own responsibility.

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 4.1, 4.2, 4.4, 4.11 and 4.21 of the Councillors' Code of Conduct dated July 2018, which concern the registration of certain interests. The failure to register the interests pre-dated the introduction of the current version of the Code. The Panel found, therefore, that the Respondent had also breached the corresponding paragraphs in the version of the Code that was in place before July 2018; being paragraphs 4.1, 4.2, 4.3, 4.10 and 4.20.

Reasons for Decision

The Panel noted that councillors were, and are, required to provide the registered name of any company for which they receive remuneration and hold a directorship, under both the version of the Code in place in May 2018 (when the Respondent's company name changed) and the current version, which was effective from that July. The Panel was satisfied that the Respondent had failed to ensure the new name of the new company was recorded, as required, despite continuing to receive remuneration from it until 9 August 2019, and despite continuing to be one of its directors.

The Panel noted that it was not in dispute that the Respondent held more than 1% of the issued share capital of the company, but that this was not recorded in his Register of Interests from when the name of the company was changed in May 2018. The Panel noted that councillors were, and are, obliged to register any shareholding where the nominal value of the shares held is greater than 1% of the issued share capital of the company, under both the version of the Code in place in May 2018 (when the company name changed) and the current version. The Panel concluded, therefore, that the Respondent had also failed to ensure his shareholding was properly recorded, as required.

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 that the Respondent had co-operated fully with the investigative and Hearing processes and had offered an unreserved apology to both the Panel and complainer in respect of the failure to register the interests. The Panel had no reason to doubt that the Respondent's submission that the failure to comply with the Code was inadvertent and an oversight.

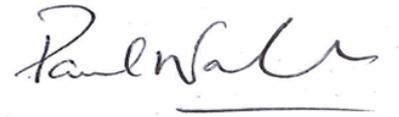
The Panel emphasised, however, that the requirement for councillors to register certain interests is a fundamental requirement of the Code. A failure to ensure a register is kept up to date, as required, removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether the councillor's interests may or may not influence their discussion and decision-making.

The Panel was 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.

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: 18 December 2020



**Mr Paul Walker
Chair of the Hearing Panel**