

**Standards Commission for Scotland ("The Commission")
Decision of the Hearing Panel of the Commission following the
Hearing held at the Beardmore Hotel, Clydebank, on 2nd August
2006**

Panel Members: Mr Peter Donaldson, Chairman
Mrs Wendy Goldstraw
Mr Okain McLennan

In respect of a Report by D Stuart Allan, Chief Investigating Officer ("the CIO") further to Complaint No. LAWD/366 ("the Complaint") concerning an alleged contravention of the Councillors' Code of Conduct ("the Code") by Councillor Connie O'Sullivan of West Dunbartonshire Council ("the Respondent").

The Respondent did not attend the Hearing. The Office of the CIO was represented by Mr David Sillars Senior Investigating Officer with Investigating Officer Mrs Anne Mahoney.

The Complaint

The Complainant was Mr John Robins, a Campaigns Consultant for Animal Concern. The Complaint relates to an allegation that the respondent failed to declare a non-financial interest in a Zoo licence application and participated in a meeting of West Dunbartonshire Licensing Committee at which the application was approved.

The Councillors' Code of Conduct, sections 4 & 5 sets out respectively Registration of Interests and Declaration of Interests. The relevant sections are:

Section 4: Registration of Interests

- 4.1 Sets out the categories of interests, financial and otherwise, which Councillors have to register. These are "Registerable interests" and Councillors must ensure that they are Registered when elected and whenever circumstances change.
- 4.2 States that Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It further states that it is a Councillor's personal responsibility to comply with these regulations and they should review them regularly and at least once a year review their personal circumstances.

Category Seven: Non-Financial Interests

- 4.21 Describes how 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 Councillors actions, speeches or votes in the Council.

Section 5: Declaration of Interests

- 5.1 Describes how the rules on declaration of interest along with the rules which require registration of interests are intended to produce transparency in regard to interests which might influence or be thought to, influence a Councillor's actions.
- 5.2 Describes how it is the Councillor's responsibility to make decisions about whether they have to declare an interest or make a judgement as to whether a declared interest prevents them from taking part in any discussion or voting.
- 5.3 Describes that a Councillor may feel able to state truthfully that an interest would not influence their role in discussion or decision making, but that they must keep in mind that the test is whether a member of the public, acting reasonably would think that a particular interest could influence their role as a Councillor.

- 5.4** Describes that the principles relating to declaration of interests must be applied no less scrupulously in dealings with Council Officers, other Councillors, meetings of Joint Boards and any other meeting where they are representing their Council.

Interests which require Declaration

- 5.5** Describes that interests which require to be declared may be financial or non-financial.
- 5.9** Describes if a Councillor has registered a non-financial interest under category seven of Section 4 they will have recognised that it is a significant non-financial interest. There is therefore a very strong presumption that this interest would be the subject of declaration in any context where there is any link between a matter which requires their attention as a Councillor and the registered interest.
- 5.10** Describes how as a Councillor they may serve on other bodies as a result of express nomination or appointment. In relation to service on the boards and management committees of limited companies, public bodies, societies and other organisations, they must decide whether to declare a non-financial interest. Only if they believe that in the particular circumstances the nature of the interest is irrelevant or without significance should it not be declared. Councillors must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body.

Effect of Declaration

- 5.17** Describes the effect of declaration of a non-financial interest. This involves a further exercise of judgement on the Councillor's part. They must consider the relationship between the interest which has been declared and the particular matter to be considered and relevant individual circumstances surrounding the particular matter.
- 5.18** Describes that in the final analysis the conclusive test is whether, in the particular circumstances of the item of business, and knowing all the relevant facts, a member of the public acting reasonably would consider that the Councillor might be influenced by the interest in their role as a Councillor and that it would

therefore be wrong to take part in any discussion or decision making.

The CIO's Report ("The Report") (in full at appendix 1) was submitted to the Commission in accordance with Section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("The Act"). The Code came into effect on 01 May 2003 and the Commission accordingly had jurisdiction to hear the complaint, as the alleged breach of the Code occurred after the Code came into operation.

The CIO's findings that Councillor O'Sullivan contravened the provisions of the Code relate to the allegation that Councillor O'Sullivan failed to register timeously in her Register of Interests her non-financial interest as a Director of Scottish Enterprise Dunbartonshire and therefore breached paragraphs 4.1, 4.2 and 4.21 of the Code. The findings also relate to the allegation that Councillor O'Sullivan failed to declare a non-financial interest in a Zoo licence application and participated in a meeting of West Dunbartonshire Licensing Committee at which the application was approved and therefore breached paragraphs 5.1, 5.3, 5.9, 5.17, and 5.18 of the Code.

Joint Statement of Facts

No essential matters had been agreed between the CIO and Councillor O'Sullivan. The Panel noted that in Councillor O'Sullivan's letter to the CIO dated 26th July 2006 she did not dispute parts 1, 2, and 3 of the CIO's report, but that parts 4 and 5 of his report were disputed.

The Decision

The Hearing Panel considered all the evidence, submissions given in writing and orally at the hearing, and found as follows:

1. The Councillors' Code of Conduct applied to the Respondent.
2. The Respondent was in breach of paragraphs 4.1, 4.2, and 4.21 of the Councillors Code of Conduct and of the regulations in that she failed to register timeously a relevant interest, being her Directorship of Scottish Enterprise Dunbartonshire in her Register of Interests.

- INTEGRITY IN PUBLIC LIFE
3. The Respondent should have been aware that her interest as a Director of Scottish Enterprise Dunbartonshire was such as to preclude her taking part, as she had an interest that could reasonably be seen by a member of the public as influencing her role on the Licensing Committee. Instead she not only participated in the Licensing Committee Meeting of 28th September 2005 but did so without declaring the interest.
 4. The Respondent did contravene The Councillors Code of Conduct as set out in paragraphs 5.1, 5.3, 5.9, 5.17, and 5.18 by her failure to declare the interest and her participation in, and failure to leave, the meeting

Sanction

The Panel decided to suspend for 6 weeks Councillor O'Sullivan's entitlement to attend meetings of West Dunbartonshire Council and of any committee and sub-committee thereof and of any other body of which she is a representative or nominee of the Council. This sanction is made under the terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 Section 19(1)(c). The date on which the period of suspension will commence will be 2nd August 2006.

Reasons for Decision and Sanction

In reaching their decision, the Panel had considered:

1. That the actions of the Respondent constituted serious breaches of the Code.
2. The importance of high standards of conduct as outlined in the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Panel concluded that those serious breaches of the Code brought West Dunbartonshire Council, local government generally and, potentially Scottish Enterprise Dunbartonshire into disrepute.
3. The relevant events described in the report submitted by the CIO were supported by the evidence submitted to the Panel and by the evidence given by witnesses.

4. That the Code of Conduct clearly covers the position of the Nomination of Councillors by the Council to other organisations and draws Councillors' attention to the requirement to consider the Registration and/or declaration of interests. This is intended to produce transparency in regard to interests, which might influence or be thought to influence actions as a Councillor. These principles are covered in detail by paragraphs 3.19, 4.1, 4.2, 4.21, 5.1, 5.3, 5.9, 5.10, 5.17, and 5.18 of the Councillors' Code of Conduct.
5. That Councillor O'Sullivan failed to register her Directorship of Scottish Enterprise Dunbartonshire timeously despite having instruction and training in the Code and regular reminders to update her Register of Interests.
6. That Councillor O'Sullivan's assertion that she did not declare an interest at the Licensing Committee because Merlin Entertainments Ltd was the applicant for a licence, and not Scottish Enterprise Dunbartonshire, was not credible. Neither was her further assertion that the connection between Scottish Enterprise Dunbartonshire and Merlin Entertainments Ltd was "at best tenuous".

Scottish Enterprise Dunbartonshire was central to the creation of Drumkinnon Tower. It (Scottish Enterprise Dunbartonshire) proposed to invest £3.4M converting it to an Aquatic Zoo before arranging to lease it through Scottish Enterprise Dunbartonshire on a commercial basis to Merlin Entertainments Ltd.

Although Scottish Enterprise Dunbartonshire was not itself an applicant for the licence they had a material and substantial interest in the funding and future of the proposed Aquatic Zoo which was the subject of the licence application by Merlin Entertainments Ltd. Indeed the granting of the licence was essential to the proposal and the Panel were therefore satisfied that there was a very strong and significant relationship between Scottish Enterprise Dunbartonshire and Merlin Entertainments Ltd.

7. That Councillor O'Sullivan should have concluded that her interest as a Director of Scottish Enterprise Dunbartonshire was such as to preclude her from taking part in the Licensing Committee as she had an interest that could reasonably be seen as influencing her role. Instead she not only did not declare an interest but took part in the Licensing Committee meeting.

8. That Councillor O'Sullivan did not accept the conclusions reached in the CIO's report and did not accept that she had breached the Code.

Conclusion

The attention of the Respondent is drawn to Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which details the Right of Appeal in respect of this Decision.

The Panel determined that there be no award of expenses under Rule 13(1) of the Commission's Hearing Rules.

Date: 12th August, 2006

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Peter Donaldson
Chairman of the Hearing Panel