

Report

Report to: **South Lanarkshire Council**
Date of Meeting: **23 September 2020**
Report by: **Chief Executive**

Subject: **Standards Commission's Hearing Outcome**

1. Purpose of Report

1.1. The purpose of the report is to: -

- Advise the Council of the decision of the Standards Commission of Scotland following the Hearing into a complaint against Councillor Gerry Convery held on 23 July 2020.

2. Recommendation(s)

2.1. The Council is asked to approve the following recommendation(s): -

- (1) that the decision of the Hearing Panel of the Standards Commission for Scotland that Councillor Gerry Convery had breached paragraphs 5.2,5.3,5.10 and 5.12 of the Councillors' Code of Conduct be noted; and
- (2) that the decision of the Hearing Panel to censure Councillor Convery be noted.

3. Background

3.1. A complaint was received by the Commissioner for Ethical Standards in Public Life in Scotland (ESC) that on 6 February 2019, during a special meeting of the Housing and Technical Resources Committee, Councillor Convery had not declared an interest in a report proposing a budget saving arising from a redesign of the Housing Repairs Standby (Out of Hours) Service in which his son had a financial interest as he participated in the Standby Service as part of his employment and also a non -financial interest as a local representative of a trade union that represented other employees who participated in the service. Also, that Councillor Convery participated in the debate on this item and voted in support of an amendment put forward by the Independent Group.

3.2. Following an investigation, the ESC referred the complaint to the Standards Commission for Scotland on the basis that Councillor Convery had failed to comply with the provisions of the Councillors' Code of Conduct and that, in particular, he had contravened paragraphs 5.2, 5.3, 5.10 and 5.12 of the Code which are as follows:

5.2 It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources

which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.

- 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.*

The Financial Interests of Other Persons

- 5.10 *The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.*

You must declare if it is known to you ANY FINANCIAL INTEREST of:

- (i) a spouse, a civil partner or a co-habitee;*
- (ii) a close relative, close friend or close associate;*
- (iii) an employer or a partner in a firm;*
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;*
- (v) a person from whom you have received a registrable gift or registrable hospitality; or*
- (vi) a person from whom you have received registrable election expenses. There is no need to declare an interest if it 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 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.*

The Non-Financial Interests of other persons

- 5.12 *You must declare if it is known to you ANY NON-FINANCIAL INTEREST of:*
- (i) a spouse, a civil partner or a co-habitee;*
 - (ii) a close relative, close friend or close associate;*
 - (iii) an employer or a partner in a firm;*
 - (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;*
 - (v) a person from whom you have received a registrable gift or registrable hospitality; or*
 - (vi) a person from whom you have received registrable election expenses. There is no need to declare the interest unless it is clear and substantial. There is only a need to withdraw from the meeting if the interest is clear and substantial.*

4. Hearing Panel Decision

- 4.1. The Hearing called by the Standards Commission took place in Hamilton on 23 July 2020. As a joint statement of facts had been agreed in advance of the hearing, no witnesses were called.

- 4.2. The Hearing Panel considered the submissions given orally at the Hearing and in writing and found that the Councillors' Code of Conduct applied to Councillor Convery and that he had breached paragraphs 5.2, 5.3, 5.10 and 5.12 of the Code.
- 4.3. The Hearing Panel considered how the objective test should be applied in determining whether to declare an interest and confirmed that ,in interpreting and applying the objective test, councillors did not have to worry that one member of the public might be unduly suspicious and consider, without any good reason, that a remote or insignificant interest could affect their decision-making. The objective test requires the member of the public to be in possession of the relevant facts and to make a reasonable judgement.
- 4.4. The Hearing Panel accepted that in this case they had no reason to doubt Councillor Convery's position that his decision- making and voting had not been influenced by his son's interests in the item. The Panel were however of the view that the Councillor, after applying the objective test, should have concluded that his son's financial and non-financial interest would not be perceived by a member of the public as so remote and insignificant or unclear and unsubstantial that it could not influence him. They concluded that a member of the public would be reasonably entitled to conclude that the Councillor would be unlikely to support a proposal that would have a detrimental impact on his son's earning capacity. The Panel took the decision to censure Councillor Convery under section 19 (1) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.
- 4.5. In reaching its decision on sanction, the Panel considered and weighed up all relevant mitigating factors. The Panel noted that the Councillor had fully cooperated with the investigation and hearing process .They emphasised that the requirement for councillors to declare certain interests is a fundamental requirement of the Code and a failure to do so removes the opportunity for openness and transparency in a councillor's role. In particular, it denies the public the opportunity to consider whether a councillor's interests influence their discussion, voting and decision-making.
- 4.5. The Panel emphasised that 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 and that Councillor Convery had failed to correctly apply the objective test as required by the Code.
- 4.6. The Panel was of the view that a more severe sanction was not warranted because there was no evidence of personal gain or that he had attempted to conceal his son's employment or connection to the matter.
- 4.7. The full decision is available on the Standards Commission for Scotland website.

5. Employee Implications

- 5.1. There are no employee implications arising from this report.

6. Financial Implications

- 6.1. There are no financial implications arising from this report.

7. Climate Change, Sustainability and Environmental Implications

- 7.1. There were no Climate Change, Sustainability and Environmental Implications in terms of the information contained within this report.

7. Other Implications

- 7.1. Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act requires a Council receiving a copy of a Hearing Decision to consider the findings within three months of receipt of the decision.

8. Equalities Impact Assessment and Consultation Arrangements

- 8.1. This report does not introduce a new policy, function or strategy and therefore no Equality Impact Assessment is required.
- 8.2. There was no requirement for consultation in terms of the information contained in this report.

Cleland Sneddon
Chief Executive

24 August 2020

Link(s) to Council Values/Improvement Themes/Objectives

- ◆ Accountable, effective, efficient and transparent
- ◆ Focused on people and their needs

Previous References

- ◆ None.

List of Background Papers

- ◆ None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact: -

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