

EAST AYRSHIRE COUNCIL

COUNCIL – 8TH OCTOBER, 2009

**STANDARDS COMMISSION FOR SCOTLAND'S DECISION
IN RESPECT OF COMPLAINT LA/EA/833**

Report By Monitoring Officer

1 PURPOSE OF REPORT

- 1.1 To invite Council to consider the written decision of the Standards Commission in respect of a complaint made to them concerning Councillor Helen Coffey.

2. BACKGROUND INFORMATION

- 2.1 A complaint was made in a letter to the Standards Commission of 3rd February, 2009 from a member of the public against Councillor Helen Coffey. The substance of the complaint was that Councillor Helen Coffey had failed to register a registerable interest in the form of remunerated employment.
- 2.2 The complaint was formally investigated by the Chief Investigating Officer (hereinafter referred to as "the CIO") on behalf of the Standards Commission and his final report on the matter is attached as Appendix 1 to this report.

3 CHIEF INVESTIGATING OFFICER'S FINDINGS

- 3.1 The CIO's report confirms that Councillor Helen Coffey commenced remunerated employment in a private capacity on 23rd July, 2007. This change of circumstance required to be registered within one month of that date, but was not in fact registered by Councillor Helen Coffey until 4th December, 2008, which constitutes a breach of the statutory Code of Conduct for Councillors.
- 3.2 The CIO also noted that Councillor Helen Coffey had accepted from the outset of his investigation that there had been a failure on her part to register this interest which failure constituted a breach of the Code for which she accepted full responsibility. He also found that there was no evidence that Councillor Helen Coffey's failure to disclose the relevant interest constituted a deliberate course of conduct on her part – i.e. that there was any wilful or deliberate concealment of the employment in question – but rather that the failure to register occurred through inadvertence.

4. STANDARDS COMMISSION'S FINDINGS

- 4.1 Notwithstanding Councillor Helen Coffey's acceptance of the CIO's findings, the CIO's report on the complaint still required to be subject to consideration by the Standards Commission itself, and this led to a formal hearing being convened in Kilmarnock on 25th August, 2009.
- 4.2 The written decision of the Standards Commission following that hearing is attached as Appendix 2 to this report.
- 4.3 The Standards Commission formally determined that there had been a breach of the Code (which was never actually in dispute) and thereafter decided that the appropriate sanction to be applied was that of censure, which effectively constitutes a formal warning.
- 4.4 The reasons given by the Standards Commission for applying this particular sanction are stated as follows:-
- In failing to register properly and timeously her remunerated employment Councillor Helen Coffey did not demonstrate the openness and transparency required by the Code and as such did not adhere to key principles of ethical standards
 - Councillor Helen Coffey accepted full personal responsibility for the fact that she had failed to register a financial interest properly within the timescale and therefore failed to meet her fundamental obligations
 - The Panel accepted that there was no concealment of the fact that Councillor Helen Coffey had taken up this employment
 - The Panel also accepted that there was no evidence that there had been deliberate concealment of the fact that the employment was remunerated. Nevertheless, the failure to register timeously the remunerated nature of that employment was a serious and material breach of the Code

5 DISCUSSION

- 5.1 In terms of Section 18 of the Ethical Standards in Public Life, etc (Scotland) Act 2000 (hereinafter referred to as "the 2000 Act") and Rule 10.9 of the Standards Commission's Hearing Rules, the Council requires to give formal consideration to the Standards Commission's written decision within three months of the date of issue (being 2nd September, 2009). Section 18(3) of the 2000 Act specifically provides that this consideration cannot be undertaken solely by a Committee, Sub-Committee or officers of the Council, i.e. it must be considered by full Council.

- 5.2 Council is accordingly invited to consider the terms of the Standards Commission's written decision as set out in Appendix 2 and thereafter consider whether there are any actions or decisions which ought to be taken by the Council in view of the Standards Commission's findings and/or applied sanction. Any such action or decision will require to be intimated to the Standards Commission by no later than 2nd December, 2009.
- 5.3 Such consideration might also reasonably cover not just the specifics of the complaint but also whether there are any broader implications for the Council in respect of such matters as our current governance arrangements relative to Members' registration and/or declaration of interests or the provision of appropriate training, advice or guidance to Members on such issues.

6 FINANCIAL/LEGAL/PERSONNEL/POLICY/COMMUNITY PLANNING/RISK MANAGEMENT IMPLICATIONS

- 6.1 None arising directly from this report.

7. RECOMMENDATIONS

- 7.1 It is recommended that Council:-
- (i) considers the terms of the Standards Commission's written decision as contained in Appendix 2 to this report;
 - (ii) considers whether there is any further action or decision requiring to be taken by the Council in respect of this matter; and
 - (iii) remits to the Monitoring Officer to advise the Standards Commission of the outcome of Council's consideration of this matter

David Mitchell
Monitoring Officer

25th September, 2009
DM/SM

LIST OF APPENDICES

1. Report by the CIO in respect of complaint no. LA/EA/833 dated 2nd June, 2009.
2. Written decision of Standards Commission for Scotland in respect of complaint no. LA/EA/833 dated 31st August, 2009 (issued 2nd September, 2009)

Any person wishing information about this report please contact David Mitchell, Monitoring Officer on telephone extension 576061

ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER

Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

REPORT

**Complaint no. LA/EA/833
concerning an alleged contravention of
the Councillors' Code of Conduct
by
Councillor Helen Coffey
of
East Ayrshire Council**

The Ethical Standards in Public Life etc. (Scotland) Act 2000, Section 9(2), provides the Chief Investigating Officer has the function of investigating and reporting to the Standards Commission for Scotland on cases in which a councillor or member of a devolved public body may have contravened the councillors' or, as the case may be, the members' code of conduct.

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Note

Appendices A to D and Annex A and B are not enclosed as the report summarises fully the information contained within these documents. However, any Member wishing a copy of these documents should contact the Council's Monitoring Officer.

1.0 Introduction

1.1 Complaint number LA/EA/833 alleges a contravention of the Councillors' Code of Conduct ("the Code"). The Code was issued by the Scottish Ministers in terms of section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act") and came into effect on 1 May 2003.

1.2 The complaint has been lodged by Mr David J Meechan ("the complainant") who alleges a contravention of the Code by Councillor Helen Coffey ("the respondent"). The respondent is an elected member of East Ayrshire Council ("the Council").

1.3 It is alleged that the respondent has contravened the Councillors' Code of Conduct, and, in particular, paragraphs 4.2, 4.3, 4.7 and 4.9 (**Registration of Interests: Remuneration**), which are as follows:-

"4.2 Regulations¹ made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.

Category One: Remuneration

4.3 You have a registerable 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.

4.7 When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

4.9 Where you otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For

¹ For the purposes of this complaint, the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 as amended apply. They prescribe that it is the duty of any councillor to submit details of registerable interests within one month of having made the declaration of acceptance of office and to submit any amendments to these registerable interests to the relevant council officer within one month of any change to the information.

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- example, if you write for a newspaper, you must give the name of the publication and the frequency of articles for which you are paid.”
- 1.4 The respondent has signed a declaration of acceptance of the office of councillor under the Local Authorities (Councillors) (Declaration of Acceptance of Office) (Scotland) Order 1990, as amended, in terms of which the respondent has undertaken to meet the requirements of the Councillors’ Code of Conduct in the performance of her functions in that office. The declaration is dated 4 May 2007.
 - 1.5 For the purpose of this investigation, I was assisted by Mr Douglas Winchester, Investigating Officer.
 - 1.6 This report has been prepared for submission to the Standards Commission for Scotland in terms of section 14(2) of the 2000 Act. The report was submitted in draft form to the respondent for any representations. Details of the representations received and the extent to which the representations have been accepted or otherwise are set out in Annexes A and B. No material amendments have been made to the report as its contents have been accepted in their entirety by the respondent.

2.0 Outline of the Complaint and the Response

The Complaint

- 2.1 The complaint is set out in a letter from the complainant which is attached as **Appendix A**. The complainant alleges that the respondent failed to declare a registerable interest in that she has received remuneration from employment as a Parliamentary Assistant to her brother Willie Coffey MSP. He further alleges that such a failure on her part has compromised her position as an elected representative.

The Response

- 2.2 The response is set out in two letters from the respondent and is attached as **Appendix B**. The respondent alleges that as soon as the matter was drawn to her attention she made the appropriate declaration. She considers the complaint to be politically motivated.

3.0 The Investigation

- 3.1 To establish the background to the complaint, the Investigating Officer sought and received information from the Council.
- 3.2 Having considered the clear documentary evidence and the written submissions made, the Investigating Officer took the view that the facts of the matter were not in any material dispute. He interviewed the respondent on 27 April 2009.

4.0 Consideration of the Evidence

- 4.1 Councillor Helen Coffey (SNP) has been a Councillor since a by-election in May 2006. She was re-elected following the local government elections on 3 May 2007. She is currently one of the elected representatives in the North Kilmarnock multi-member ward. The political composition of the Council consists of SNP (14), Labour (14), Conservative (3) and Independent (1). The SNP Group on the Council currently forms a minority Administration.
- 4.2 Following the May 2007 election, the respondent completed her first notice of interests for the Council's Register of Interests on 30 May 2007 which is shown as **Appendix C**. Under the category "Remuneration", she stated she had no such interest.
- 4.3 In or around November 2008, there was some media publicity about the fact that a number of Members of the Scottish Parliament employed family members as Parliamentary/Political Assistants for which they were paid. The respondent was reported as being employed by her brother, Mr Willie Coffey MSP. (Mr Coffey is also an elected councillor for East Ayrshire Council in the same North Kilmarnock multi-member ward as the respondent.)
- 4.4 On 4 December 2008, the respondent amended her original notice in the Register of Interests of 30 May 2007 by a further notice in the form of an e-mail to declare her employment. The amended entry by way of a further notice is made under the category "Remuneration" and states "Parliamentary Assistant with the Scottish Parliament for Willie Coffey MSP"; the further notice is attached as **Appendix D**.
- 4.5 The respondent has confirmed that her employment by her brother commenced on 23 July 2007. The employment is part-time as an office assistant for 25 hours per week and is remunerated. In terms of the Regulations, this employment should have been registered within one month of taking up the post. She advises that the circumstances of her amending the Register of Interests on 4 December 2008 arose as a result of an informal conversation with several colleagues when it occurred to her that her Register of Interests did not contain any record of her employment.
- 4.6 The Council's Monitoring Officer has confirmed that as part of the Council's training arrangements for elected members following the election in May 2007, all councillors were invited to a training session on the Code. The respondent did not attend. (He has also advised that following the respondent's election in 2006, it had been planned to offer individual training to her on the Code and other matters but there is no record of this having been done.) He has advised that the respondent has from time to time sought advice on various aspects of the Code (e.g. planning matters) and in such instances has always demonstrated a general willingness to conduct herself in full compliance. It is his considered assessment that this matter has arisen through simple inadvertence on the respondent's part. The interest represented her first and only employment registerable interest so she had no prior experience of the procedure. He also considers that the respondent did not deliberately seek to conceal that she provided administrative support to her brother as an MSP as it was generally known this was the case. (The

Monitoring Officer indicates, however, that he did not know this took the form of paid employment.)

5.0 Findings and Conclusion

- 5.1 The complainant alleges that Councillor Helen Coffey contravened the Councillors' Code of Conduct, as outlined in paragraphs 1.3 and 2.1 of this Report.
- 5.2 The complaint alleges that the respondent failed to declare a registerable interest in that she has received remuneration from employment as a Parliamentary Assistant to her brother Willie Coffey MSP. The complaint further alleges that such a failure on the respondent's part has compromised her position as an elected representative.
- 5.3 There is no material dispute about the facts of this matter. The respondent is an elected member of East Ayrshire Council having been re-elected in the May 2007 local government elections. She signed her declaration of acceptance of office on 4 May 2007 and submitted her first notice of her registerable interests on 30 May 2007; no interests were recorded under the category "Remuneration". The respondent commenced remunerated employment as a Parliamentary Assistant to her brother Willie Coffey MSP on 23 July 2007. In terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, as amended, information (of the nature and detail prescribed in paragraphs 4.3 to 4.11 of the Code) in relation to the respondent's employment fell to be registered within one month of the changing circumstances relating to remuneration, that is, no later than 24 August 2007. Until 4 December 2008, the respondent's Register of Interests kept by the Council and publicly available did not disclose that she had any remunerated employment. There was therefore a time lag of some fifteen months between commencing that employment and declaring it. As a consequence, the respondent was in breach of paragraphs 4.2 and 4.3 of the Councillors' Code of Conduct and of regulation 5 of the 2003 Regulations by failing timeously to give a further notice to the proper officer of the Council setting out the details in the change of her registerable interests relating to remuneration.
- 5.4 The matter of registration of interests is a central component of the Code and was a key consideration by the Scottish Parliament in setting up the ethical standards framework to seek to maintain high standards in public life. The Code makes clear that the obligation to register employment interests is a fundamental obligation on all councillors.
- 5.5 As regards the suggestion by the complainant that the respondent, by being in the paid employment of her brother has compromised her position as an elected representative to properly represent her constituents' interests, the Monitoring Officer of the Council is clear that there was no deliberate concealment of the fact that she provided assistance to her brother. In addition it has to be noted that the respondent and her brother are both councillors representing the same political party with a mutuality of interest in promoting the interests of the same Council

ward. Nevertheless, she did fail to disclose the fact that her position in her brother's office was remunerated.

- 5.6 It should be noted that the respondent has, in her letter of 19 May 2009 (Annex A), accepted in full my report on this matter. She has cooperated with my investigations to the fullest extent and there is no evidence before me that her failure to declare the necessary interest constituted a deliberate course of conduct on her part. In her letter she invites the Commission to dispense with a full public hearing and to decide the matter by written submissions. The disposal of the case is entirely in the discretion of the Commission; whilst I consider a hearing should be held, if the Commission were minded to consider a hearing by written submissions I, for my interests, would be content to consent.
- 5.7 In relation to complaint no. LA/EA/833 alleging that that the respondent failed to declare a registerable interest in that she has received remuneration from employment, I have come to the conclusion that, having regard to the findings in section 5 and in particular paragraphs 5.3 to 5.5 of this Report, Councillor Helen Coffey has contravened the Councillors' Code of Conduct.

D Stuart Allan
Chief Investigating Officer

Forsyth House
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2 June 2009

**Standards Commission for Scotland (“The Commission”)
Decision of the Hearing Panel of the Commission following the
Hearing held at the Park Hotel, Kilmarnock on 25 August 2009**

Panel Members: Mrs Wendy Goldstraw, Chairman
Mr John Dowson
Mr Okain McLennan

In respect of a Report by D Stuart Allan, Chief Investigating Officer (“the CIO”) further to Complaint No. LA/EA/833 (“the Complaint”) concerning an alleged contravention of the Councillors’ Code of Conduct (“the Code”) by Councillor Helen Coffey (“the Respondent”) of East Ayrshire Council.

The CIO presented his case. The Respondent was present at the Hearing and represented herself.

The Complaint

The Complainant was Mr David Meechan. The Complainant alleged that the Respondent breached the provisions of the Councillors’ Code of Conduct by failing to register a registerable interest within the prescribed timescale in that she had not registered that she received remuneration from employment. Accordingly, it was alleged that the Respondent breached:

- paragraphs 4.2 and 4.3, which are contained in Section 4 of the Code which deals with the Registration of Interests, including financial interests.

and

- Regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act (Registration of Interests) Regulations 2003 which requires the registration of changes to registerable interests within one month.

Registration of Interests

Para 4.2 Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It is your responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when you register your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate

to you. It is not necessary to register the interests of your spouse, or cohabitee.

Category One – Remuneration

Para 4.3 You have a registerable interest where you receive remuneration by virtue of being:

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

The CIO's Report ("the Report") (in full at Appendix I) 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 breaches of the Code occurred after the Code came into operation.

The CIO's findings were that Councillor Coffey contravened the provisions of the Code and the Regulations by:

- failing to register properly within the prescribed timescale her remunerated employment working as a part-time (25 hours per week) office assistant for her brother Mr Willie Coffey MSP (Mr Coffey is also an elected member of East Ayrshire Council).

Joint Statement of Facts

The Chief Investigating Officer and the Respondent lodged as a production a Joint Statement of Facts signed on 16 July 2009 and 27 July 2009 respectively. In the agreed Joint Statement of Facts, the totality of the CIO's report was accepted as not being in dispute. All the Appendices and Annexes to the report were agreed as being as an accurate record of the matters they purport to record.

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. By delaying the registration of remunerated employment for a period of 16 months, the Respondent failed to declare a registerable interest within the prescribed time limit. As such she was in breach of paragraphs 4.2 and 4.3 (Registration of Interests and Remuneration) of the Councillors' Code of Conduct and Regulation 5 of the 2003 Regulations.

Sanction

The Panel decided to censure Councillor Coffey under the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 Section 19 (1) (a).

Reasons for Sanction

In reaching their decision, the Panel had taken into account:

1. In failing to register properly and timeously her remunerated employment by her brother, Councillor Coffey did not demonstrate the openness and transparency required by the Code and as such did not adhere to key principles of ethical standards.
2. Councillor Coffey accepted full personal responsibility for the fact that she had failed to register a financial interest properly within the timescale and therefore failed to meet her fundamental obligations.
3. The Panel accepted that there was no concealment of the fact that Councillor Coffey provided assistance to her brother.
4. The Panel accepted that there was no evidence that there had been deliberate concealment of the fact that the assistance she provided was remunerated. Nevertheless, the failure to register timeously the remunerated nature of that assistance was a serious and material breach of 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: 31 August 2009

..... Wendy Goldstraw

Wendy Goldstraw
Chairman of the Hearing Panel