

Agenda Item	16
Report No	HC/20/20

THE HIGHLAND COUNCIL

Committee: Highland Council

Date: 30 July 2020

Report Title: Decision of Standards Commission for Scotland - Hearing

Report By: Head of Corporate Governance / Monitoring Officer

1. Purpose/Executive Summary

- 1.1 The purpose of this report is to fulfil the statutory duty placed on the Council under Section 18 of the Ethical Standards in Public Life etc (Scotland) Act 2000, following a Hearing.

2. Recommendations

- 2.1 Council is asked to consider and note the decision of the Standards Commission of Scotland.

3. Implications

- 3.1 There are no Resource, Community (Equality, Poverty, Rural and Island), Climate Change/ Carbon Clever, Risk or Gaelic implications.
- 3.2 There are no legal implications arising as the sanction decided is one of censure and therefore the Council, having considered this report, is not required to take any further legal action.

4. Complaint against Councillor Henderson

- 4.1 A complaint was made to the Commissioner for Ethical Standards in Public Life in Scotland alleging that Councillor Henderson had contravened the Councillors' Code of Conduct.
- 4.2 The complaint was investigated by the Commissioner and it concluded that Councillor Henderson had contravened the following aspects of the Code:

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.

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.

5.18 The following paragraphs refer to General Exclusions and Specific Exclusions. (2) The Specific Exclusions The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:

- 4.3 The Standards Commission for Scotland subsequently convened a Hearing on 8 July 2020. The Hearing Panel concluded that:
1. The Councillors’ Code of Conduct applied to the Respondent, Councillor Henderson.
 2. The Respondent had breached paragraphs 5.3, 5.7 and 5.18(2)(ii) of the Code.
- 4.4 The Hearing Panel determined:

The Panel noted that paragraph 5.7 of the Code states that councillors must declare any non-financial interest even if the interest is not so remote or insignificant that it could not reasonably be taken to fall within the objective test. 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 paragraph 5.7, that his interest in HITRANS, as a member of the Working Group, would not be perceived as being so remote and insignificant that it could not influence him. This was because the Panel agreed with the ESC’s representative that a member of the public would be reasonably entitled to conclude that, as Chair of HITRANS, the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, his interest could influence his discussion and decision-making on the matters under consideration.

The Panel noted the terms of the specific exclusion under paragraph 5.18 of the Code that allowed councillors who were members of regional transport partnerships, such as HITRANS, to take part in the consideration and discussion of, and to vote upon, a matter relating to that regional transport partnership. The Panel noted however, that the specific exclusion only applies if the councillor declares his or her interest at all meetings where such matters are to be discussed. In this case, despite confirming to the Panel that he was aware of the specific exclusion, the Respondent failed to declare

an interest at the Committee meeting on 16 May 2019 before taking part in the discussion and decision-making.

The Panel concluded, therefore, that the Respondent's failure to declare his interest in HITRANS at the meeting in question amounted to a contravention of paragraphs 5.3, 5.7 and 5.18 of the Code.

- 4.5 The Panel decided to censure Councillor Henderson. This sanction is made under the terms of section 19 of the Ethical Standards in Public Life etc (Scotland) Act 2000.
- 4.6 A full copy of the decision of the Standards Commission can be found at www.standardscommission.org.uk

5. Consideration of the Decision

- 5.1 The Council provides training on the Code of Conduct as part of its induction for Councillors and refresher training is also provided. Councillors are also kept informed of changes and developments through circulation of the Standards Commission's regular newsletter. Training on the Code of Conduct will continue to be part of the Council's ongoing training programme.

Designation: Head of Corporate Governance/Monitoring Officer

Date: 16 July 2020

Author: Stewart Fraser, Head of Corporate Governance / Monitoring Officer