

## Standards Commission Decisions

### Report by Monitoring Officer

#### 1 Purpose of Report

This report seeks to advise the Council of the decisions of the Standards Commission regarding complaints against Councillors Margot Russell and John Hackett and invites the Council to consider those findings as required by section 18 (3) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

#### 2 Background

2.1 Following consideration of complaints received against the above Councillors, the Commissioner for Ethical Standards in Public Life in Scotland referred the complaints to the Standards Commission for Scotland to determine if either Councillor had contravened paragraphs 7.3 and 7.4 of the Councillors' Code of Conduct.

2.2 The relevant paragraphs of the Code of Conduct are as follows:

*7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.*

*7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.*

2.3 After a hearing in the Council Chambers on 9 May 2019, the Standards Commission found that:

- a) Councillors Russell and Hackett had both breached paragraph 7.3 of the Code and
- b) Neither Councillor had breached paragraph 7.4 of the Code.

2.4 Following the findings, the Commission agreed to suspend both Councillors for a period of one month from the Council's Planning Committee effective from 1 June 2019. These sanctions are mandatory and cannot be overturned or varied by the Council.

2.5 It should be noted that the Commission did not feel a longer suspension was warranted as the incident had been a one-off and

there was no suggestion or evidence that there had been any deliberate intent to breach the Code. Furthermore the Commission also accepted that neither Councillor had acted dishonestly or made any attempt to conceal the visits to the objectors' property.

- 2.6** There is a further consequence to this decision. Whilst both Councillors can attend all other meetings of the Council and Committees, hold surgeries, raise constituents' concerns as well as continuing to represent their wards, in terms of section 8 of the of the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014, any member who has been subject to a sanction other than censure is disqualified from sitting on the Integrated Joint Board. Councillor Russell is the nominated substitute for Councillor Milligan on the board and Councillor Hackett is the nominated substitute for Councillor Muirhead. It is recommended that new substitutes be appointed pending resolution of this anomaly.
- 2.7** The Decision in respect of Councillor Russell is attached as Appendix 1 to this report and the Decision in respect of Councillor Hackett is attached as Appendix 2 and members are invited to consider the terms in full.
- 2.8** The Commission concluded that the actions of both Councillors in
- Failing to take advice and undertaking an unaccompanied site visit
  - Visiting the objectors' property and discussing the proposal with one of them;
  - Failing to make any corresponding visit to the applicants' property or any effort to discuss the proposal or any effort to discuss the proposal or any potential changes to it with them and
  - Actively contributing to the discussions which led to an amended planning consent
- would have given a member of the public a reasonable appearance of unfairness and bias to one of the parties.
- 2.9** The crux of the decision would appear to be the requirement in paragraph 7.3 that members "not only act fairly but also be seen as acting fairly" in taking decisions on quasi-judicial or regulatory matters. In particular it is strongly suggested that members do not take part in unaccompanied site visits and if approached by one party in a dispute, the other party is also invited to state their case. There is further guidance on this matter at Note 88 in the Guidance to the Councillors' Code of Conduct and members are referred to this note for its terms.
- 2.10** These decisions should not prevent elected members from meeting with any parties to discuss planning applications. Members must be aware however that not only would they be unable to take part in the decision making process if it was perceived that they had prejudged the issue but also that they would be similarly de-barred if it was considered that they were exhibiting bias but not giving both sides an equal opportunity to discuss matters.
- 2.11** Lorna Johnston, Executive Director of the Standards Commission has volunteered to meet with the Council once the third hearing connected

to this application has been determined and it is recommended that this offer be accepted at that time.

### **3 Report Implications**

#### **3.1 Resource**

No additional resources are required as a result of this report.

#### **3.2 Risk**

The Council has a statutory duty in terms of section 18 (2) of the Ethical Standards in Public Life etc.(Scotland) Act 2001 to consider the terms of the Commission's findings within three months. Failure to do so would not only be a breach of the Act but could also lead to an erosion of public confidence in the Council.

#### **3.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- ☐ Community safety
- ☐ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value
- X None of the above

#### **3.4 Key Priorities within the Single Midlothian Plan**

This report does not impact on the key priorities within the Single Midlothian Plan

#### **3.5 Impact on Performance and Outcomes**

This report does not directly impact on Midlothian Council's performance and outcomes.

#### **3.6 Adopting a Preventative Approach**

This report does not directly impact on actions and plans in place to adopt a preventative approach

#### **3.7 Involving Communities and Other Stakeholders**

This report does not directly relate to involving communities.

#### **3.8 Ensuring Equalities**

This report does not recommend any change to policy or practice and therefore does not require an Equalities Impact Assessment.

#### **3.9 Supporting Sustainable Development**

There are no sustainability issues arising from this report.

#### **3.10 IT Issues**

There are no IT issues arising from this report

#### **4 Recommendations**

The Council is recommended:

- (a) To consider the findings in the Commission's decision letter of 13 May 2019 in respect of Councillor Margot Russell and to advise the Commission of any feedback;
- (b) To consider the findings in the Commission's decision letter of 14 May 2019 in respect of Councillor John Hackett and to advise the Commission of any feedback;
- (c) To note, in particular, the requirement to take into account the need to consider public perception when Members determine whether to declare an interest under paragraph 7.3 of the Code of Conduct;
- (d) To consider whether to invite the Commission to meet the elected members after the final determination of this matter; and
- (e) To appoint new substitute members to represent Councillors Milligan and Muirhead on the Integrated Joint Board.

**Date 11 June 2019**

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**Background Papers:**

Appendix 1 Standards Commission Decision letter dated 13 May 2019  
Appendix 2 Standards Commission Decision letter dated 14 May 2019