



Public Standards Commissioner for Scotland

REPORT

**Complaint number LA/Mi/1278
concerning an alleged contravention of
the Councillors' Code of Conduct
by
Councillor Lisa Beattie and former Councillor Colin Beattie
of
Midlothian Council**

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1.0 Introduction

- 1.1 Complaint number LA/Mi/1278 alleges contraventions 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 2003¹. A revised edition of the Code was issued on 21 December 2010².
- 1.2 The complaint has been lodged by Councillor Derek Milligan ("the complainant") who alleges contraventions of the Code by Councillor Lisa Beattie ("the first respondent") and former Councillor Colin Beattie ("the second respondent"). The first respondent is a member of Midlothian Council ("the Council"). The second respondent, who is the husband of the first respondent, was a member of Midlothian Council until May 2012 when he demitted office, having been elected in May 2011 as a Member of the Scottish Parliament.
- 1.3 It is alleged that during the 2007-12 Council term both respondents have contravened the Councillors' Code of Conduct, and, in particular, the key principles of Selflessness, Openness, Honesty and Leadership set out in section 2; the provisions on Registration of Interests set out in section 4; and on Declaration of Interests set out in section 5. The period cited by the complainant spans the original Code of Conduct which took effect from May 2003, and the revised edition issued in December 2010. For ease of reference the applicable provisions of the 2010 Code are reproduced within the body of this text. Where the wording of the revised Code differs from the original the relevant change is explained within footnotes.
- 1.4 The key principles cited by the complainant read as follows:

Selflessness

You have a duty to take decisions solely in terms of the public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

¹ <http://www.scotland.gov.uk/Publications/2002/04/14492/2559>

² <http://www.scotland.gov.uk/Publications/2010/12/10145144/0>

Leadership

You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Council and its councillors in conducting public business.

1.5 With regard to Registration of Interests, section 4 of the Code states:

4.1 The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registrable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. **The register should cover the period commencing from 12 months prior to and including your current term of office³.**

4.2 Regulations 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 registrable interest where you receive remuneration by virtue of being:

- (i) employed;
- (ii) self-employed;
- (iii) the holder of an office;
- (iv) a director of an undertaking;
- (v) a partner in a firm; or
- (vi) undertaking a trade, profession or vocation, or any other work.

4.4 You do not have a registrable interest simply because you are a councillor or a member of a joint board, a joint committee or of COSLA.

4.5 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two "Related Undertakings".

³ The original Code did not include the last sentence.

4.6 If you receive any allowances in relation to membership of any organisation the fact that you receive such an allowance must be registered.

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.

4.8 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

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 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.

4.10 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and detail the nature of its business.

4.11 Registration of a pension is not required as this falls outside the scope of the category.

Category Five: Houses, Land and Buildings

4.18 You have a registrable interest where you own or have any other right or interest in houses, land and buildings, such as being an owner or a tenant, including Council tenant.

4.19 You are required to give the address of the property, or otherwise give a description sufficient to identify it.

Guidance issued by the Standards Commission for Scotland following the release of the 2010 revised Code states that "In relation to paragraph 4.19 of the Code there is no requirement to register residences outwith Scotland. In exceptional circumstances where such an interest may affect a matter before the Council, it will be for individual councillors to declare that interest in terms of the requirements of the Code."

1.6 With regard to Declaration of Interests, section 5 of the Code states:

5.1 The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at meetings which you attend. The rules on declaration of interest, along with rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

5.2 It is your responsibility to make decisions as to whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussion 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*⁴.

5.4 Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings. The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

Interests which Require Declaration

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registerable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

Your Financial Interests

5.6 You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registrable under any of the categories prescribed in Section 4 of this Code and any interest as defined in a specific exclusion defined in paragraph 5.18).

There is no need to declare:-

(i) an interest where a general exclusion, as defined in paragraph 5.18, 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.

⁴ Amended from the original Code.

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 test⁵.

The 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 firm⁶;
- (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;
- (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.

⁵ Amended from the original Code

⁶ Amended from the original Code

Making a Declaration

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

Frequent Declarations of Interest

5.15 Public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings of a particular committee or in respect of any role which you are asked to discharge as a councillor, you should not accept a role or appointment with that attendant consequence. Similarly, if any Council appointment or nomination to another body would give rise to objective concern because of your existing personal involvements or affiliations, you should not accept the appointment or nomination.⁷

- 1.7 In May 2007 both respondents signed declarations 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 respondents undertook to meet the requirements of the Councillors' Code of Conduct in the performance of their functions in that office. In May 2012 the first respondent, who had been re-elected, signed a further declaration of acceptance of office in regard to the current Council term. The second respondent did not stand for election in 2012.
- 1.8 For the purpose of this investigation, I was assisted by Mr Jon Miller, Investigating Officer.
- 1.9 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**. Minor amendments have also been made.

2.0 Outline of the Complaint and the Responses

The Complaint

- 2.1 The complaint is set out in letters from the complainant, dated 13 July and 15 August 2012, which are attached as **Appendix A**. The complaint alleges firstly, that during the currency of their service as elected members of Midlothian Council, Councillor Lisa Beattie ("the first respondent") and former Councillor Colin Beattie ("the second respondent") failed to register as interests their ownership of properties in

⁷ This paragraph has been renumbered from 5.15 in the original Code

Edinburgh, Fife and Angus and their receipt of remuneration derived from that source; and secondly, that they failed to declare their interests as registered landlords and owners of properties in multiple occupation when participating in relevant Council business.

The Responses

- 2.2 The responses are set out in correspondence from the respondents Councillor Lisa Beattie and former Councillor Colin Beattie which are attached as **Appendix B1 and B2** respectively. The respondents state that they were advised on taking office by the Council's Monitoring Officer that registration of their ownership of properties outwith Midlothian was not a requirement of the Code, and that they acted accordingly. The respondents deny that they failed to declare relevant property interests or their landlord status in the course of Council business.

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 documentary evidence, the Investigating Officer proceeded individually to interview the complainant, the respondents and relevant witnesses. The interviews took place on 13 and 18 September and 12 October 2012. A list of those interviewed is attached as **Appendix C**.

4.0 Consideration of the Evidence

- 4.1 The first respondent, Councillor Lisa Beattie, has been a councillor for five years, and represents the Midlothian East ward as a member of the SNP group. On 22 May 2012 she was appointed as Leader of the Council, but resigned from that office on 26 June 2012. Councillor Beattie is Cabinet member for Education and Communities, and also sits on the Planning, General Purposes and Audit Committees.
- 4.2 The second respondent, former Councillor Colin Beattie, served as a member of Midlothian Council from May 2007 to May 2012. In May 2011 he was elected to the Scottish Parliament as SNP member for Midlothian North and Musselburgh. As a councillor he represented the Midlothian South ward as a member of the SNP group. He chaired the General Purposes Committee, and was a member of the Planning Committee, and Performance Review and Scrutiny Committee.
- 4.3 The complainant, Councillor Derek Milligan, has been a councillor for twelve years, and represents the Bonnyrigg ward as a member of the Labour group. He is currently a member of the Planning, General Purposes and Audit Committees, and served as Leader of the Council until the change of Administration in May 2012.
- 4.4 On 21 June 2012 the Scotsman newspaper published a report on its website (reproduced in Appendix A) that the respondents were the joint owners of a flat in Edinburgh, and had applied to renew the House in Multiple Occupation licence applying to that property. The complainant

became aware of this report and on checking the respondents' registers of interests found that neither had made any reference to their ownership of this property. Reference to the second respondent's Parliamentary register of interests established that he had registered ownership of two flats in Edinburgh and 50% shares in two commercial properties in Angus and Fife. He derived rental income from all four properties.

4.5 Councillor Milligan noted the apparent disparity between the press report and the properties detailed in the Parliamentary register of interests by former Councillor Colin Beattie (the second respondent) with the apparent absence of such particulars in the respondents' respective past and current Council registers of interest. Based on the press coverage, Councillor Milligan lodged the present complaint. He also alleged that the ownership of rental flats constituted a declarable interest for the respondents when considering, as members of the Council's General Purposes Committee, matters relating to the registration of landlords and licensing of properties in multiple occupation, and, in relation the second respondent only, his participation in the Council's response to Scottish Government consultation on the licensing of houses in multiple occupation.

4.6 In response to the Investigating Officer's request the respondents provided the following information on properties which they own in addition to their residence at 14 Glenesk Crescent, Dalkeith.

4.6.1 The First Respondent (Councillor Lisa Beattie):

Flat 1f1, 96 Viewforth, Edinburgh, EH10 4LG. Originally acquired jointly with Colin Beattie in November 1993, but transferred in entirety to Lisa Beattie with effect from 14 September 2000.

Flat 242/1 Canongate, Edinburgh, EH8 8AB. Originally acquired jointly with Colin Beattie, but transferred in entirety to Lisa Beattie with effect from 5 August 1999.

Flat 3f2, 45 Thirlstane Road, Edinburgh, EH9 1AP. Originally acquired jointly with Colin Beattie in December 1993, but transferred in entirety to Lisa Beattie with effect from 16 April 1995.

4.6.2 The Second Respondent (former Councillor Colin Beattie):

Flat 1f2 29 Albert Street, Edinburgh, EH7 5LH. Exclusively owned since August 2000.

Flat 1f1, 62 Thistle Street, Edinburgh, EH2 1EN: Exclusively owned since October 2009.

4.6.3 Jointly owned by both respondents:

Retail shop at 38 Castle Street, Forfar, DD8 3AB: Each respondent having 50% shares since June 2004.

Bank premises at 16 St Catherine Street, Cupar, KY15 4HH: Each respondent having 50% shares since April 2005.

- 4.7 The position as at May 2007 when the respondents both took office as councillors, and which still pertains, was therefore as follows:

The First Respondent (Councillor Lisa Beattie): Full ownership of three flats at Viewforth, Canongate and Thirlstane Road, Edinburgh, and 50% ownership with her spouse of commercial properties in Forfar and Cupar.

The Second Respondent (former Councillor Colin Beattie): Full ownership of two flats at Albert Street and Thistle Street, Edinburgh, and 50% ownership with his spouse of commercial properties in Forfar and Cupar.

- 4.8 On 8 May 2007 the Council's then Monitoring Officer took both respondents through their declarations of acceptance of office and the completion of their registration of interest forms. At that point the respondents asked whether there was a requirement to register property which was situated outwith Midlothian. On 10 May 2007 the Monitoring Officer informed them that he had checked the Code and, other than the exclusion of residences outside Scotland, they should register all property in which they held an interest.
- 4.9 The Monitoring Officer's file note (**Appendix D**) records that the respondents stated they did not wish to register property situated outwith Midlothian as this could give political advantage to their opponents even though not creating conflicts of interest. The Monitoring Officer advised that he could not force them to register but that it was a requirement of the Code and the safest thing to do. He added that if a conflicting issue arose in the course of Council business they must declare their interest or withdraw.
- 4.10 The respective registers of interest applying to the respondents during the 2007-12 Council term includes all the interests declared by them during that term. In May 2012 Councillor Lisa Beattie submitted two further notices of interests in relation to her 2012 election expenses, and on 30 August 2012, a further notice applicable to this complaint as detailed in paragraph 4.12 below.
- 4.11 **The First Respondent (Councillor Lisa Beattie):**
Remuneration On 28 May 2008 Councillor Lisa Beattie registered remuneration of £2,900 arising from her appointment as Vice-Convenor of Lothian Valuation Joint Board. This was the only remunerated interest registered by her under Category One during the 2007-12 Council term. No mention was made of rental income derived from the ownership of properties.
Houses, Land and Buildings On 21 August 2007 Councillor Lisa Beattie registered co-ownership, since 1 May 2007, of her residence, 14 Glenesk Crescent, Dalkeith. This was the only entry made under Category Five.
- 4.12 On 30 August 2012, following notification of the present complaint by Councillor Milligan and on advice from the Monitoring Officer, Councillor Lisa Beattie submitted a revision to her register of interests, listing under Category Five the properties detailed in paragraph 4.6.1 and 4.6.3 above.

A copy of the first respondent's register of interests for 2007-12, and the subsequent amendments to the date of this Report, is attached as **Appendix E**.

- 4.13 **The Second Respondent (former Councillor Colin Beattie): Remuneration** On 5 December 2008 the second respondent registered as his sole Category One entry a £100 payment received for carrying out a test.
- Houses, Land and Buildings** On 21 August 2007 the second respondent registered co-ownership, since 1 May 2007, of his residence, 14 Glenesk Crescent, Dalkeith. This was the only entry made under Category Five. A copy of the second respondent's register of interests for 2007-12 is attached as **Appendix F**.
- 4.14 On taking office as a Member of the Scottish Parliament, following his election for the Midlothian North and Musselburgh constituency on 5 May 2011, the second respondent registered, in compliance with Parliamentary requirements, heritable property interests and remuneration derived therefrom as follows:
- 50% share in a commercial property in Angus generating gross annual income between £10,001 and £15,000 of which he received 50%.
- 50% share in a commercial property in Fife generating gross annual income between £10,001 and £15,000 of which he received 50%.
- Two flats in Edinburgh from which he received gross annual income between £5,001 and £10,000.
- 4.15 The respondents state that they are registered landlords with Edinburgh City Council, and that the three flats owned by the first respondent, Councillor Lisa Beattie, are licensed as houses in multiple occupation. All the properties are managed by the respondents personally, with ownership being registered in their own names rather than through a corporate structure.
- 4.16 When elected to Midlothian Council in 2007 the respondents attended, with other members, an induction briefing on their responsibilities under the Code of Conduct. The respondents state that at this session a question was asked about the registration of property held outwith the Council area. They recalled that the answer, given, they thought, by the Monitoring Officer, was that registration of such properties was not required.
- 4.17 When the Monitoring Officer, Mr Norman Grieve, (who has since retired) took the respondents through the Acceptance of Office procedure on 8 May 2007 they state that they remained uncertain as to whether properties located outwith Midlothian were required to be listed as registered interests. The Monitoring Officer's file note confirms that they requested clarification on this point. As the handwritten original (Appendix D) is difficult to read, the wording is reproduced below:

'8/5/07 Took their Declars-Acpce-Office and took them through the Registration Forms, saying not sure whether only property in Midlothian (and I'd check) but property in Midlothian not likely to cause conflict.

10/5/07 Told them I'd checked Code (& Apart from specific exception for residences outwith Scotland) no restriction on location of property, so should register any and all. They don't want to register property outwith Midlothian, as they've already been criticised by Councillor Boyes and others for being 'champagne soc'ts / politicians' from Mayfield, and would give political ammunition to opponents, even tho' won't create conflict of interest (pension fund).

I said I couldn't force them to register but Code requires it & safest thing to do. If don't but (unexpectedly) an item comes up where potential conflict involving property, must declare it then, or at least leave & not take part / vote.'

- 4.18 The retired Monitoring Officer has confirmed that this note reflects his recollection of the advice given to the respondents, and their response to it. The respondents however are less clear on their recollection of the advice, or the clarity with which it was delivered. Councillor Lisa Beattie states that if the advice had been explicit she would not have disregarded it. Former Councillor Colin Beattie described it at interview as 'a bit obscure' and an assertion of 'good practice but not a firm requirement to register properties outwith Midlothian.'
- 4.19 The first respondent states that her husband pressed the Monitoring Officer to confirm in writing that there was no requirement to declare property interests outwith Midlothian. She has been unable to trace any such confirmation although she believes that one was received by e-mail. The (now retired) Monitoring Officer does not recall giving written confirmation to either respondent. The second respondent recalled only one meeting with the Monitoring Officer, presumably the one on 8 May 2007, and the officer is uncertain as to the circumstances in which he relayed his advice on the registration requirement two days later.
- 4.20 Both respondents explained at interview that they were concerned that the registration of their rental properties might impact adversely on the privacy of their tenants. Councillor Lisa Beattie stated that she was worried that her tenants might be visited under some pretence as a result of the ownership details being publicly known, and that they were entitled to their privacy. Asked about the reference in the file note to 'champagne socialists', she recalled that it was made during the meeting with the Monitoring Officer within the context of 'mischief-making' directed at the respondents by political opponents, including the complainant, which had resulted in adverse media attention. Former Councillor Colin Beattie stated that the value of the properties was not an issue, and he had no recollection of using the term 'champagne socialists' as recorded within the Monitoring Officer's note.
- 4.21 In her written response to the complaint Councillor Lisa Beattie stated that she acted appropriately in taking advice from the Monitoring Officer, and that she made a judgement in keeping with that advice. Former Councillor Colin Beattie, in his written response, stated that in his

judgement 'no reasonable resident of Midlothian in full possession of the facts' would consider that owning the properties could have affected his judgement or actions as a councillor in Midlothian. He also made the point that his full registration of property interests to meet Parliamentary requirements indicated his readiness to comply with the rules on registration.

- 4.22 It was noted by the Investigating Officer that both respondents in their written responses, and at interview, used the word 'declare' in the context of registration. The impression was given of confusion between the separate requirements of registration and declaration under the Code.
- 4.23 The respondents do not dispute that they receive rental payments arising from the ownership of their respective properties. Their position is that the rentals represent investment income rather than remuneration within the meaning of the Code. In their response letters of 2 August the respondents draw attention to the Inland Revenue definition of rental payments as investment income.
- 4.24 The second strand of Councillor Milligan's complaint alleges that the respondents, when participating in meetings of the General Purposes Committee and considering matters relating to the licensing of houses in multiple occupation, should have declared their status as landlords. The complainant also alleges that this interest should have debarred the second respondent from contributing to a Scottish Government consultation exercise on the licensing of houses in multiple occupation.
- 4.25 In response to this allegation the second respondent states that neither of the two flats owned by him are in fact licensed as houses in multiple occupation, and that as such the complaint is based on a false premise. However it is noted that the three flats owned by Councillor Lisa Beattie, his spouse, are so licensed.
- 4.26 Finally the complainant alleges that the second respondent's status as a landlord raised the possibility that frequent declarations of interest would have been necessary. Having regard to the terms of paragraph 5.15 of the Code a perception might have arisen that the member's decision-making could have been substantially influenced by the interest declared. It is the contention of the complainant that had he been aware of the second respondent's ownership of rental properties he would not have supported his appointment as Chair of the General Purposes Committee due to the apparent conflict of interest.
- 4.27 The General Purposes Committee remit is wide, and includes the determination of all licences and permits under the Civic Government (Scotland) Act 1982, which includes the licensing of houses in multiple occupation; the Marriage (Scotland) Act 1977, and other statutory provisions not dealt with by the Licensing Board or other committees; the administration of trusts and charitable funds, including those arising from open-cast mining sites; town-twinning partnerships; and other unspecified appropriate matters. During the 2007-12 Council term Councillor Lisa Beattie sat as a member of the Committee, which was chaired by her husband, former Councillor Colin Beattie.

4.28 A scrutiny of the minutes of the 22 meetings of the General Purposes Committee from January 2010 to March 2012 shows that business relating to multiple occupation licences and the registration of landlords were considered on 11 occasions.

4.29 In regard to longer papers and consultation responses which have a bearing on this complaint, the Committee noted without dissent the following:

On 5 October 2010 a report from the Director, Corporate Services, on the licensing of houses in multiple occupation. This function had originally been undertaken under the Civic Government (Scotland) Act and was now to be regulated through the Housing (Scotland) Act 2006.

On 1 February 2011 a report on the registration of private landlords and the procedure for disposal of applications. The recommendation was in line with Scottish Executive guidance that applications should be approved without further scrutiny where no negative information or concerns about the suitability of the applicant were known.

On 1 March 2011 a report by the Director, Corporate Services, who had been delegated responsibility for preparing the Council's response to consultation on the Scottish Government's draft guidance on the regulation of houses in multiple occupation.

On 6 September 2011 a further report by the Director, Corporate Services, on changes to the regulation of houses in multiple occupation, and on 4 October 2011 an update on the licensing regime.

4.30 Both respondents were present at these meetings. The first respondent states that she took no part in the preparation of these reports, and was only party to noting and approving their content. The second respondent states that his involvement was similar, and that in relation to the Council's response to the consultation exercise on houses in multiple occupation his role was restricted to signing-off the paper submitted by the Director.

5.0 Findings and Conclusions

5.1 The complainant alleges that Councillor Lisa Beattie ("the first respondent") and former Councillor Colin Beattie ("the second respondent") have contravened the Councillors' Code of Conduct, as outlined in paragraphs 1.3 and 2.1 of this Report.

5.2 The complaint alleges firstly, that during the currency of their service as elected members of Midlothian Council, Councillor Lisa Beattie ("the first respondent") and former Councillor Colin Beattie ("the second respondent") failed to register as interests their ownership of properties in Edinburgh, Fife and Angus and their receipt of remuneration derived from that source; and secondly, that they failed to declare their interests as registered landlords and owners of properties in multiple occupation when participating in relevant Council business.

- 5.3 **The First Allegation – Registration of Interests.** The allegation that the respondents have failed to register their ownership of property requires me to consider whether they did in fact own, or have an interest in, properties during their term of office as elected members; whether they received remuneration by way of rental payments; and if so, did they include the details within their registers of interest.
- 5.4 There is no material dispute about the facts of this matter. The respondents have been open in admitting that they owned five residential properties in Edinburgh and two commercial properties in Fife and Angus. The dates on which these properties were acquired precede their election to Midlothian Council in May 2007. Ownership was retained throughout the 2007-12 Council term and continues as at the date of this Report.
- 5.5 The respondents have also accepted that they receive rental payments derived from their ownership of their respective properties other than their family home. They have advanced a view that, having regard to the taxation treatment of such payments, these should be regarded as investment income. The Code however does not make such a distinction, and defines remuneration as including 'any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind.' It will thus be seen that any form of remuneration received by a councillor gives rise to a registration requirement.
- 5.6 In terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, as amended in 2010, information (of the nature and detail prescribed in paragraphs 4.3 to 4.11 of the Code) in relation to the respondents' remuneration and property interests fell to be registered within one month of taking office or a change occurring. For the entirety of the May 2007 to May 2012 Council term, and from re-election until the date of this Report, the first respondent's Register of Interests kept by the Council and publicly available has not disclosed that she derives any remuneration arising from her property interests. The properties which she owns, or in which she has an interest, were omitted from her Register of Interests during the whole of the May 2007 to May 2012 Council term, and continued to be omitted until 30 August 2012 when she amended her interests on the advice of the Monitoring Officer. The second respondent likewise, during the entirety of his term of office as a councillor, from May 2007 to May 2012, omitted to register as remuneration any income derived from rental properties. He also failed to register the details of the properties which he owned, or in which he had an interest, during that period.
- 5.7 The 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 interests is a fundamental obligation on all councillors.

5.8 The First Respondent (Councillor Lisa Beattie) In regard to the first allegation I make the following findings of fact:

That the first respondent held office as an elected member of Midlothian Council between May 2007 and May 2012, was re-elected in May 2012 and continues to hold office as an elected member.

That regulation 4(3)(b) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, as amended, requires the registration of information as detailed in paragraphs 4.3, 4.18 and 4.19 of the Councillors' Code of Conduct.

That the first respondent omitted to include within her register of interests applicable to her period of office as a councillor from May 2007 to May 2012, and from her re-election in May 2012 to 30 August 2012, information sufficient to identify her ownership, or interest in, the properties detailed in paragraphs 4.6.1 and 4.6.3 of this Report.

That the first respondent was advised by the Council's Monitoring Officer to include her ownership or interest in the above-mentioned properties within her register of interests, in compliance with the statutory requirements.

That the first respondent omitted to include within the register of interests applicable to her period of office as a councillor from May 2007 to May 2012, and from her re-election in May 2012 to the date of this Report, that she received remuneration being rental income derived by way of business from the properties detailed in paragraphs 4.6.1 and 4.6.3 of this Report.

5.9 The Second Respondent (former Councillor Colin Beattie) In regard to the first allegation I make the following findings of fact:

That the second respondent held office as an elected member of Midlothian Council between May 2007 and May 2012.

That regulation 4(3)(b) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, as amended, requires the registration of information as detailed in paragraphs 4.3, 4.18 and 4.19 of the Councillors' Code of Conduct.

That the second respondent omitted to include within the register of interests applicable to his period of office as a councillor from May 2007 to May 2012 information sufficient to identify his ownership, or interest in, the properties detailed in paragraphs 4.6.2 and 4.6.3 of this Report.

That the second respondent was advised by the Council's Monitoring Officer to include his ownership or interest in the above-mentioned properties within his register of interests in compliance with the statutory requirements.

That the second respondent omitted to include within the register of interests applicable to his period of office as a councillor from May 2007 to May 2012 that he received remuneration being rental income derived by

way of business from the properties detailed in paragraphs 4.6.2 and 4.6.3 of this Report.

Both respondents

- 5.10 It therefore follows that the requirements of paragraphs 4.1, 4.3, 4.18 and 4.19 of the Code have not been observed and I have, accordingly, concluded that the respondents have breached these provisions.
- 5.11 I note an apparent reluctance or resistance by the respondents to register their respective properties in anticipation of criticism from their political opponents and potential invasion of their tenants' privacy. The Code however is specific in its terms and allows no discretion to limit the requirement to the registration of properties located within the area of the Council to which members have been elected. The overriding aim of the Code is to deliver transparency in public office and thus provide a means of external oversight of factors which might affect the judgement of elected members. This does not appear to have entered sufficiently, if at all, in the respondents' consideration of their obligations under the Code. The respondents' judgement in deciding to disregard the advice of the relevant senior Council officer was flawed.
- 5.12 In mitigation I note that the first respondent, Councillor Lisa Beattie, albeit following notification of this complaint, reconsidered the position and has now included her property ownership within the register of interests for the current Council term. She has not however entered as remuneration the fact that she derives rental income from that source. The second respondent, the now former Councillor Colin Beattie, complied with the Parliamentary registration requirements when elected as a Member of the Scottish Parliament in May 2011. In general terms this identified his property interests, although not to the extent required by the Councillors' Code of Conduct. It is a matter of regret that he did not at that date review his Midlothian Council registered interests given that he continued in office as a councillor for a further year while simultaneously holding office as an MSP.
- 5.13 **The Second Allegation – Declaration of Interest.** The second allegation relates to the respondents' participation as members, and in the case of the second respondent also as Chair, of the Council's General Purposes Committee, when that body considered matters relating to the licensing of houses in multiple occupation and landlord registration. The complainant's view is that both respondents were actively engaged as owners and operators of such properties, and that their status as landlords of houses in multiple occupation (albeit erroneously in the case of the second respondent) conflicted with their membership of the Committee.
- 5.14 On the face of it such an assertion may have a degree of substance but the requirement for declaration in terms of paragraph 5.2 of the Code is dependent on an exercise of individual judgement by the member concerned. That judgement will take into account the nature of the business under consideration, and its relationship and relevance to the member's personal circumstances. The complainant in this case takes a view that the respondents' status as landlords would constitute a

declarable interest (he does not go so far as to demand withdrawal). However in the specific circumstances applying here neither respondent owned rental property within the Midlothian Council area, and the second respondent did not in fact own any properties in multiple occupation as asserted. I find accordingly that neither of the respondents has breached the terms of paragraph 5.2 and 5.3 of the Code.

- 5.15 Had the properties in multiple occupation owned by the first respondent been subject to licensing by Midlothian Council I consider that declaration by the first respondent as owner, and the second respondent due to his spouse's interest, would have been appropriate. Indeed this would also have been the case if either were registered as private landlords within Midlothian. However to suggest that the ownership of rental properties located in another Council area might influence the respondents' consideration of similar matters in Midlothian is remote, and I do not consider that it would conflict with a proper consideration of the objective test. An analogy might be drawn with a member of the Licensing Board being the holder of a liquor licence. Clearly it would be inappropriate for such an individual to consider licensing applications within the area in which their own premises were located, but no objection could be taken if these were situated in another Council area operating under a separate licensing regime and with no commercial interest in the approval or rejection of the application under consideration. I find accordingly that neither of the respondents have breached the terms of paragraph 5.6 of the original Code, or as revised in the 2010 edition.
- 5.16 The complainant has suggested that the ownership of rental properties would have been incompatible with the respondents' membership of the General Purposes Committee in that they would be required to make frequent declarations of interest. Having already found that a requirement to make such declarations did not arise, consideration of this point is redundant. However I have noted that matters relating to the registration of landlords and licensing of multiple occupation properties was not the principal or predominant business dealt with by that Committee. Having examined the minutes of the meetings over a two year period I am satisfied that the proportion of business of that nature was not such as to warrant repeated declarations to the extent that this would significantly impact on the work of the Committee. I find that the respondents' membership of the General Purposes Committee was not in conflict with the terms of paragraph 5.15 of the Code.
- 5.17 The complainant has also raised the issue of the second respondent's involvement in contributing to the Council's response to a Scottish Government consultation document on the licensing of houses in multiple occupation. The complainant has not specified the manner in which he feels that the second respondent's oversight of this process was inappropriate, and I am informed that the work was in fact undertaken by professional officers of the Council. Having read the response I can see no evidence of bias which might be indicative of improper influence having been applied by an owner of such property (it might indeed be regarded as entirely appropriate that a member with personal knowledge of issues relating to the ownership of rental property should have had an input) and accordingly I find that there was no obligation on the second respondent to exclude himself from the limited role that he took in this exercise.

Summary of conclusions

- 5.18 In regard to complaint reference LA/Mi/1278 I have come to the following conclusions:

Councillor Lisa Beattie

The First Allegation – Registration of Interest: Having regard to the findings in section 5, and in particular paragraphs 5.8 and 5.10 of this Report, Councillor Lisa Beattie has contravened the Councillors' Code of Conduct.

The Second Allegation – Declaration of Interest: Having regard to the findings in paragraph 5.14 to 5.16 of this Report, Councillor Lisa Beattie has not contravened the Councillors' Code of Conduct.

Former Councillor Colin Beattie

The First Allegation – Registration of Interest: Having regard to the findings in section 5, and in particular paragraphs 5.9 and 5.10 of this Report, former Councillor Colin Beattie has contravened the Councillors' Code of Conduct.

The Second Allegation – Declaration of Interest: Having regard to the findings in paragraph 5.14 to 5.17 of this Report, former Councillor Colin Beattie has not contravened the Councillors' Code of Conduct.

D Stuart Allan
Public Standards Commissioner for Scotland

39 Drumsheugh Gardens
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28 February 2013