



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 23 November 2010

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
13th Meeting 2010, Session 3

CONVENER

*Gil Paterson (West of Scotland) (SNP)

DEPUTY CONVENER

*Marilyn Livingstone (Kirkcaldy) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)

Aileen Campbell (South of Scotland) (SNP)

*Angela Constance (Livingston) (SNP)

Nanette Milne (North East Scotland) (Con)

*Peter Peacock (Highlands and Islands) (Lab)

COMMITTEE SUBSTITUTES

Alasdair Morgan (South of Scotland) (SNP)

Mary Mulligan (Linlithgow) (Lab)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

Elizabeth Smith (Mid Scotland and Fife) (Con)

*attended

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 4

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 23 November 2010

[The Convener opened the meeting at 14:15]

Decision on Taking Business in Private

The Convener (Gil Paterson): I thank everyone for their attendance. Welcome to the 13th meeting this year of the Standards, Procedures and Public Appointments Committee. I have apologies from Nanette Milne and Aileen Campbell.

The first item on the agenda is to decide whether to take agenda items 2, 4, 5 and 6 in private. Do members agree to taking that approach?

Members indicated agreement.

The Convener: Thank you. We now move into private session.

14:15

Meeting continued in private.

14:28

On resuming—

Complaint

The Convener: We resume the public part of our meeting. I ask members of the public to switch off any mobile phones, if they have not already done so.

The purpose of this agenda item is to make public the committee's findings at stage 3 of the complaints process on a complaint against Mr Kenneth Gibson MSP from Mr Ian Gemmell.

Mr Gemmell complained to the Scottish Parliamentary Standards Commissioner that Mr Gibson failed to register in the "Register of Interests of Members of the Scottish Parliament" a property that he has owned since 2008. Mr Gemmell complained that by failing to do so, Mr Gibson breached provisions of the Interests of Members of the Scottish Parliament Act 2006 and of section 2 of volume 2 of the code of conduct for members of the Scottish Parliament.

At stage 1 of the complaints process, the commissioner confirmed that the complaint met all three tests of admissibility, including that it was likely that the conduct that was complained about had taken place and that the complaint therefore warranted further investigation. The commissioner also determined that, if proved, the conduct would constitute a criminal offence under section 17 of the 2006 act. Because of the possibility that a criminal offence had been committed, the commissioner reported the matter to the procurator fiscal in December 2009 and suspended investigation of the complaint. In August 2010, the commissioner received a response that advised him that prosecution in the public interest was not necessary. He then resumed his investigation.

14:30

At stage 2, the commissioner investigates any complaint that has not been dismissed at stage 1. In this case, the commissioner's conclusions were as follows.

First, Mr Gibson was required to register his interests in the property as owner no later than 1 May 2008 and as lessor no later than 1 August 2008, but he did not do so. He did so on 30 October 2009. Accordingly, by failing to register timeously his interests in the property, he was in breach of the relevant provisions of the 2006 act and the code.

Secondly, Mr Gibson, on becoming aware that he had registrable interests in the property that ought to have been registered but had not been,

was required to register his interests in the property in the register of interests within seven days, but he did not do so. He registered his interests in the property on 30 October 2009. Accordingly, by failing to register timeously his interests in the property as a late registration, he was in breach of the relevant provisions of the 2006 act and the code.

At stage 3, the committee's first role is to consider whether it agrees with the commissioner's findings. The committee considered the contents of the commissioner's report at its meeting on 2 November. The committee notes that the commissioner is duty bound to report his conclusions without detailing or considering mitigating circumstances, and thanks him for his thorough and balanced report.

The committee agreed with the findings in fact and the commissioner's conclusions that Mr Gibson had breached the relevant provisions of the 2006 act and the code of conduct. Having agreed that, the committee is required to consider whether the breaches are sufficiently serious for it to recommend to the Parliament that a sanction be imposed on the member. The committee may take into account any mitigating circumstances surrounding the breaches at this stage of the deliberations.

I invite members to comment on whether they consider that sanctions should be imposed on the member.

Robert Brown (Glasgow) (LD): It is relevant that the procurator fiscal took no action. If what happened had been of sufficient severity for the procurator fiscal to have taken action, it would obviously be a different ball game. However, I am satisfied with the personal reasons that have been given for the late registration. In those circumstances, although we should uphold the commissioner's report about the breach, I do not think that sanctions would be appropriate. That said, it might be reasonable to write to Mr Gibson about the importance of registration.

Marilyn Livingstone (Kirkcaldy) (Lab): I agree. It is right and proper that we agree with the commissioner's report, which was balanced. The committee has agreed that a breach has taken place. However, the committee can take into account mitigating circumstances, and it is clear that there were mitigating circumstances in this case. I agree with Robert Brown that we should write to Mr Gibson to give the committee's thoughts on the matter, and that no sanctions should be imposed in this case.

Peter Peacock (Highlands and Islands) (Lab): I agree with Robert Brown and Marilyn Livingstone. There have been clear breaches of the code and the 2006 act—there were two

breaches initially, and there was a failure to meet the late registration requirements. However, as other members have said, we have been made aware of clear mitigating circumstances that relate to the third matter in particular. It would therefore be improper to pursue a sanction.

Angela Constance (Livingston) (SNP): The commissioner, rightly, has investigated the facts and the facts very much speak for themselves. However, it is not in the gift of the commissioner to consider any mitigating circumstances; that is left to this committee. Like other members, I have given the matter a great deal of thought. It is important that the convener writes to Mr Gibson about the matter and that we play an active role in upholding the code of conduct.

I would not support sanctions in this instance because it is clear that the member did not gain in any way from his actions. I agree with other members that the issue of the late registration is entirely explained by the circumstances. I regret that Mr Gibson has had to discuss personal circumstances in correspondence with the committee.

The Convener: I thank members for their contributions. I highlight the point that has already been made about the commissioner and the way in which he has presented the report to the committee. It is a good, thorough report, and we commend his handling of the issue.

I would like to make the following comments on behalf of the committee. The committee takes breaches of the 2006 act and the code seriously. The register of interests plays an important role in ensuring transparency and accountability. It is in place so that details of members' significant financial interests are publicly available, providing sufficient information to members of the public who are seeking to scrutinise the behaviours and motivations of members.

In relation to the initial failure to register property and rental income, the committee notes that the 2006 act and the code, which are issued to all members, make clear the requirements upon members to register ownership of property that is not used by them or a partner as a residential home and which is over the market-value threshold or generates any income.

In addition, the committee notes that on 16 March 2009, Mr Gibson, along with all other members of Parliament, received notification from the Standards, Procedures and Public Appointments Committee clerks of the requirement to reassess the value of any registrable heritable property and income generated from such property for the 2009-10 financial year. Even if Mr Gibson was not initially aware of the need to register, that reminder might

have given him a further opportunity to consider whether he had a registrable interest in that category. The committee will write to Mr Gibson to emphasise the importance of the register of interests and urge him to be more vigilant in keeping his register of interests up to date in future.

The committee accepts, however, that this was an unintentional error on Mr Gibson's part and that there is no reason to think that the member had anything to gain by failing to register the interest. No other failures to register interests have been brought to the committee's attention in relation to the member. The committee does not therefore recommend any sanctions in relation to the initial failure to register the heritable property in question.

In relation to the failure to register as a late registration, the representations made by Mr Gibson, at the committee's invitation, explain the sensitive personal circumstances behind Mr Gibson's failure to register within seven days of becoming aware of the need to do so. The committee regrets that Mr Gibson has had to share such personal information in order to inform the committee's deliberations on the complaint. The committee has no desire to go into further detail in relation to that, beyond noting that it considers that those circumstances entirely explain Mr Gibson's failure to register a late registration within the required seven days. The committee does not therefore recommend any sanctions in relation to the failure to register as a late registration.

The committee will write to the member today detailing its findings, and the committee's report will be published in due course.

14:40

Meeting continued in private until 15:06.

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