



The Scottish Parliament
Pàrlamaid na h-Alba

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2nd Report, 2016 (Session 5)

Web

Standards, Procedures and Public Appointments Committee

Complaints against Neil Findlay MSP



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Standards, Procedures and Public Appointments Committee

1. The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—
 - a. the practice and procedures of the Parliament in relation to its business;
 - b. whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
 - c. the adoption, amendment and application of any Code of Conduct for members; and
 - d. matters relating to public appointments in Scotland.
2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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Scottish Conservative
and Unionist Party



Alexander Stewart
Scottish Conservative
and Unionist Party

Report

1. The Committee met on 8 and 22 September 2016 to consider a complaint from Colin Beattie MSP about Neil Findlay MSP. The complaint is that Neil Findlay made a statement to the press about his intention to make a complaint to the Scottish Parliament's Corporate Body against Colin Beattie to the effect that Mr Beattie was in breach of the Code by virtue of "his campaign team offering a Holyrood for a £250 donation to his re-election bid". The complaint against Mr Beattie was concluded and found that Mr Beattie had not breached the Code.¹
2. The Commissioner for Ethical Standards in Public Life in Scotland investigated Mr Beattie's complaint and found that, in disclosing to the press his intention to make a complaint, Neil Findlay was in breach of the relevant provisions of the Code of Conduct. The Commissioner's full report is at annexe B.
3. The procedures followed by the Commissioner, and the Committee, in considering complaints are set out in full in volume 3, section 9 of the Code of Conduct.²

Decisions of the Committee

4. The Committee is unanimous in the decisions reached on the complaint. Firstly, it agrees with the findings in fact and conclusion of the Commissioner. Secondly, it does not consider that the breach in question justifies any sanctions being imposed on Neil Findlay. In reaching the decision on sanctions, the Committee was mindful of the fact that Neil Findlay took personal responsibility for the breach.

Conclusion

5. The Committee takes all breaches of the Code seriously. The Rule covering disclosure is important because it allows investigations by the Commissioner and the Committee to be concluded in the absence of external partisan comment.
6. During Session 4 of the Parliament a similar breach of the Code occurred and the previous Committee issued an email to all members reminding them of the Rule that members must not disclose, communicate or discuss any complaints or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1 and 2 of the procedure for dealing with complaints (as set out in Volume 3, Guidance; Section 9).

7. This Committee regrets that lessons do not appear to have been learned since this reminder was issued and we intend to issue a letter by way of further reminder to all business managers asking them to remind members of the rules regarding disclosure of complaints.
8. Repeated breaches of the rule on disclosure of complaints are a matter of regret to the Committee and we deplore the misuse of the complaints process by MSPs as a means of exchanging public criticism.

¹ Minute of The Scottish Parliamentary Corporate Body (SPCB) Meeting held on Wednesday 3 February 2016 http://www.scottish.parliament.uk/SPCB/Jan-Jun2016/SPCB-16-02-M_03.02.16.pdf

² Code of Conduct of the Scottish Parliament. Volume 3, Section 9. Available at: <http://www.scottish.parliament.uk/msps/42841.aspx>

Annexe A – Extract from Minutes

3rd Meeting, 2016 (Session 5), Thursday 8 September 2016

Decision on taking business in private: The Committee agreed to take item 4 in private.

Decision on taking business in private: The Committee agreed to take future consideration of reports from the Commissioner for Ethical Standards in Public Life in Scotland, and its own draft reports on the complaints, in private at future meetings. The Committee also agreed to take future consideration of a draft report and draft Standing Order rule changes on mandatory committees' remits in private at future meetings.

Complaints (in private): The Committee considered reports from the Commissioner for Ethical Standards in Public Life in Scotland.

5th Meeting, 2016 (Session 5), Thursday 22 September 2016

Complaints (in private): The Committee continued its consideration of reports from the Commissioner for Ethical Standards in Public Life in Scotland.

Complaints: The Committee announced its decision at Stage 3 on reports from the Commissioner for Ethical Standards in Public Life in Scotland.

Complaints (in private): The Committee agreed its draft reports.

Annexe B – Report from the Commissioner for Ethical Standards in Public Life in Scotland



Commissioner for Ethical Standards in Public Life in Scotland

CONDUCT of MEMBERS of the SCOTTISH PARLIAMENT

Report by

the Commissioner for Ethical Standards in Public Life in Scotland

on

complaint no. MSP/1870/15-16/21

Complainant:- Mr Colin Beattie, MSP

Respondent:- Mr Neil Findlay, MSP

2 June 2016

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CONDUCT of MEMBERS of the SCOTTISH PARLIAMENT

Report on complaint no. MSP/1870/15-16/21 to the Scottish Parliament

Complainant: - Mr Colin Beattie, MSP

Respondent: - Mr Neil Findlay, MSP

1.0 Introduction

- 1.1 The Code of Conduct for Members of the Scottish Parliament ("the Code") has been approved by the Scottish Parliament under its Standing Orders to provide a set of principles and standards for its Members.
- 1.2 Other relevant provisions relating to the conduct of MSPs include: the Scotland Act 1998 - "the 1998 Act"; The Scotland Act 2012 - "the 2012 Act"; and The Interests of Members of the Scottish Parliament Act 2006 as amended, ("the 2006 Act").
- 1.3 For the purpose of considering this complaint, the relevant provision is paragraph 9.1.2 of Volume 2 of the Code. The relevant edition of the Code is edition 5 which was approved by the Parliament in April 2011.
- 1.4 Paragraph 9.1.2 is in the following terms:-

Code of Conduct for MSPs Volume 2

Section 9 Enforcement of the Rules

Disclosure

9.1.2 Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1 and 2 of the procedure for dealing with complaints (this procedure is set out in Volume 3, Guidance; Section 9).

- 1.5 The investigation of the complaint has been undertaken in terms of the Scottish Parliamentary Standards Commissioner Act 2002 ("the 2002 Act") and the Directions by the Standards Procedures and Public Appointments Committee dated 1 March 2012.
- 1.6 This Report falls to be submitted to the Parliament in terms of section 9 of the 2002 Act.

2.0 Complaint

- 2.1 The complainant ("the complainant") is Mr Colin Beattie MSP and his complaint is about Mr Neil Findlay MSP ("the respondent").
- 2.2 Mr Findlay is an MSP for Lothian Region and is a member of the Scottish Labour Party.

- 2.3 The complaint alleges that the respondent contributed to a press article on 17 January 2016 in the "Herald Scotland" website commenting on details of a proposed complaint he intended submitting to "the Presiding Officer" to the effect that Mr Beattie was in breach of the Code by virtue of "his campaign team offering a Holyrood tour for a £250 donation to his re-election bid". The complainant submitted that such action by the respondent was a breach of the Code. The complainant also indicated in his correspondence that the respondent had made a complaint to the Scottish Parliament Corporate Body which had now been concluded.
- 2.4 The present complaint was made by letter with attachment dated 10 February and received on 12 February 2016. These are attached as **Appendix 1**.

3.0 Response

- 3.1 The respondent did not reply to my initial notification of the complaint and reminders but submitted a response by email dated 10 March 2015 apologising for not replying sooner and stating his position on the matter. This is attached as **Appendix 2**. He confirmed that he had been unaware that he could not make a public statement in relation to this complaint, confirmed that the "Presiding Officer" had dismissed his complaint and commented on the public perception which he envisaged would arise about the whole matter, namely, that the Presiding Officer had dismissed his complaint about the complainant but in turn the respondent's action in the matter now warranted an investigation by me.

4.0 Admissibility of the complaint and subsequent proceedings

- 4.1 The complaint was clearly stated and referred to supporting information. This information appeared to be a web press article incorporating information on Mr Findlay's position about the issue in question and containing a quotation from Mr Findlay to the effect that "This stinks. I'll be writing to the Presiding Officer asking her to investigate this. Holyrood was supposed to be the people's parliament where MSPs were transparent and accessible, not touting for tours".
- 4.2 Stage 1 of the investigation of a complaint requires an assessment of admissibility. In assessing admissibility, the key tests are whether the complaint is relevant, whether the complaint meets the requirements for form, content and execution and whether the complaint warrants further investigation if it appears after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place.
- 4.3 In view of the respondent's email of 10 March, which confirmed the accuracy of the article in relation to his position on the issue and the action he had taken, I determined that no useful purpose would be served by arranging an interview.

- 4.4 The respondent's acceptance in the matter enabled me to find that the complaint was admissible. I wrote on 11 March to the complainant, the respondent and to the SPPA Committee to that effect.
- 4.5 In the light of Mr Findlay's acceptance of responsibility, I determined that no further investigation would be required.
- 4.6 I therefore proceeded to conclude Stage 2 of the investigation into the complaint in order to report to the Parliament on whether or not I considered that a breach of the Code of Conduct had taken place.

5.0 Draft Report

- 5.1 Following the investigation I submitted my draft Report to the respondent on 11 May 2016 and invited his representations.
- 5.2 He replied by email on 16 May 2016 and his email and my reply of 27 May 2016 are set out as **Appendix 3**.

6.0 Findings and conclusion

Findings

- 6.1 Having completed the investigation in this case and considered the respondent's representations, I have found that the material facts are:-
- (i) the respondent, Mr Neil Findlay, was first elected as a Member of the Scottish Parliament on 3 May 2011 and has been an MSP since that date. He currently represents the Lothian region;
 - (ii) by letter dated 10 February 2016, Mr Beattie submitted a complaint to me alleging that Mr Findlay had failed in his Code obligation not to make public his intention to submit a complaint to the Presiding Officer and prior to the complaint being investigated and a ruling being made;
 - (iii) on 17 January 2016 a press article published by the "Herald Scotland" website with the headline "SNP MSP's campaign offered Holyrood tours for donations" and reported on the respondent's stated intention to submit a complaint to the Presiding Officer to the effect that Mr Beattie was in breach of the Code by virtue of "his campaign team offering a Holyrood tour for a £250 donation to his re-election bid";
 - (iv) the article also contained a quotation attributed to the respondent which stated: "This stinks. I'll be writing to the Presiding Officer asking her to investigate this. Holyrood was supposed to be the people's parliament where MSPs were transparent and accessible, not touting for tours";
 - (v) the respondent has accepted responsibility for his contribution to the press article and for the statements attributed to him.

Conclusion

- 6.2 I have concluded that the respondent thereby breached paragraph 9.1.2 of Volume 2 of the Code by disclosing or communicating to the press his intention to make a complaint.

Bill Thomson
Commissioner

2 June 2016

Appendix 1	The Complaint
Appendix 2	The Response
Appendix 3	Response to the Draft Report

12 FEB 2016

Our ref: CB/GH

OFFICE OF PSCS

10/02/2016



The Scottish Parliament
Pàrlamaid na h-Alba



Colin Beattie MSP
Midlothian North
& Musselburgh

PRIVATE AND CONFIDENTIAL

Commissioner for Ethical Standards in Public Life in Scotland
Thistle House
91 Haymarket Terrace
Edinburgh EH12 5HE

Dear Commissioner,

Neil Findlay MSP recently made a complaint against me to the Scottish Parliament Corporate Body. This complaint has now been concluded. On reviewing his actions I note that Mr Findlay publicly stated on 17th January 2016, through the media of The Sunday Herald, that he intended to write to the Presiding Officer asking for the complaint to be investigated. This took place prior to his actually making the complaint and prior to the complaint being investigated and a ruling being made.

I consider that Mr Findlay breached the code of conduct - specifically the undermentioned clause on Disclosure.

Disclosure

9.1.2 Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1 and 2 of the procedure for dealing with complaints (this procedure is set out in Volume 3, Guidance; Section 9).

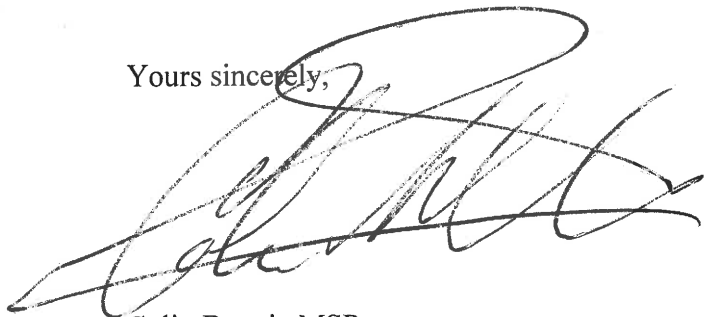
9.1.3 In relation to Excluded Complaints (which are not always subject to the four stage process set out in the guidance notes), this restriction applies until the Standards, Procedures and Public Appointments Committee has confirmed that the Ethical Standards Commissioner will not be carrying out an investigation or, where such an investigation has been carried out, that the Ethical Standards Commissioner will not be carrying out any further investigation.

9.1.4 Where, during the period when the restriction in paragraph 9.1.2 applies, any complaint or intention to make a complaint has been publicised in the press or other media without the involvement of the member who is the subject of the complaint or intended complaint, that member may issue a brief statement. In doing so, the member must, so far as possible, avoid discussing details of the complaint or intended complaint.

I/

I enclose a copy of the media article and request that this breach be investigated.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Colin Beattie', with a large, sweeping flourish above the name.

Colin Beattie MSP
Midlothian North & Musselburgh

SNP MSP's campaign offered Holyrood tours for donations

12:15am Sunday 17th January 2016

Exclusive By Paul Hutcheon

An SNP MSP is facing an investigation after his campaign team offered a Holyrood tour for a £250 donation to his re-election bid.

Party treasurer Colin Beattie's fundraiser promised the "reward" in spite of the Parliament making it clear that its resources cannot be used for political fundraising.

Labour MSP Neil Findlay said he would write to the Presiding Officer to call for a probe.

Beattie was elected as the SNP MSP for Midlothian North and Musselburgh in 2011 after defeating the Labour candidate by 2,996 votes.

As well as representing his constituents, he has a vital role for his party by looking after the SNP purse strings.

The former international banker, who declares full or part ownership of four properties, was re-selected by SNP members and his campaign team created an online fundraiser to attract donations for the May poll.

A target of £2,000 was set and the website listed the "rewards" for supporters who backed his campaign financially.

Some of the incentives were unremarkable – such as supporters getting a "surprise campaign pack" for £100 – but Holyrood facilities were also explicitly linked to the fundraising strategy.

A "pledge" of £150 would result in a "personal tour of the Scottish Parliament", while a £250 contribution would give a supporter the same plus lunch thrown in. The Parliament does not charge a fee for its tours.

Pledge £250

Personal tour of the Scottish Parliament with lunch.

0 backers so far

His campaign's written message to potential donors stated: "We did fantastically well in the Westminster Elections but unless we have an SNP Government in Scotland our MPs in Westminster will have their influence hugely reduced.

"Now we need to start the 2016 election campaign in Midlothian North & Musselburgh Constituency and we are asking for £2000 in order to purchase materials for that purpose."

A video of the MSP making a personal pitch is also included on the crowd-funding website. Nobody took up the offer of a tour.

The Scottish Parliament's Corporate Body (SPCB), which runs Holyrood, states: "All facilities and services which [SPCB] provides, including the Members' Restaurant, are parliamentary resources...Parliamentary resources must not be used for any significant party political purposes, including party political fundraising."

The SPCB has also made clear that MSPs may use Holyrood resources to engage in fundraising to support charities and "other good causes".

However, the governing body offered the caveat that these "activities do not encompass any fundraising for party political purposes".

Other SNP MSPs used their crowd-funding sites to flag up minor gifts for donors.

A £50 pledge to Joan McAlpine's election campaign gets the contributor a canvas bag designed by a pro-independence cartoonist, while the same amount for Nicola Sturgeon gets the donor an SNP badge, pen and 'thank you' pack.

Similarly, giving £100 to Ash Regan Denham's campaign to beat Scottish Labour leader Kezia Dugdale in Edinburgh East results in an invitation to a special donors' event in

May.

Findlay has taken a dim view of the Beattie campaign's use of Holyrood tours and lunches as part of a donation drive.

He said: "This stinks. I'll be writing to the Presiding Officer calling on her to investigate this. Holyrood was supposed to be the people's parliament where MSPs were transparent and accessible, not touting for tours."

An SNP spokesperson said: "The crowdfunding incentives were raised at a campaign meeting and it was made clear that parliamentary resources should not be used. Unfortunately, incorrect information was still featured. The website is no longer accepting donations and there has been no use of parliamentary resources."

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From: [Findlay N \(Neil\). MSP](#)
To: investigations@ethicalstandards.org.uk
Subject: Re: MSP/1870
Date: 10 March 2016 17:02:15
Sensitivity: Confidential

Than you for this - I apologise for not replying sooner.

I was completely unaware that I could not make a public statement in relation to a complaint. I was genuinely in the dark about this.

I do however find it ironic that the Presiding officer has dismissed my complaint about Mr Beattie seeking to reward party donors with meals and tours around the Parliament but that my complaint about him doing so warrants an investigation by your office.

I believe if this complaint is upheld then it would look utterly ridiculous to the public we serve.

Regards

Neil Findlay MSP Lothian Labour
Tel 01506 873242
neil.findlay.msp@scottish.parliament.uk

On 10 Mar 2016, at 16:28, "investigations@ethicalstandards.org.uk"
<investigations@ethicalstandards.org.uk> wrote:

Dear Mr Findlay

Please see attached letter.

Regards

[REDACTED]

Casework Co-ordinator

Commissioner for Ethical Standards in Public Life in Scotland

Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE
Tel: 0300 011 0550
www.ethicalstandards.org.uk

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Before you print think about the ENVIRONMENT

<Neil Findley (MSP) - reminder - 01AL FINAL 10-03-16.pdf>

<Neil Findley (MSP) - Notification of Complaint received (B 2) Initial - FINAL AL 16-02-16.pdf>

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From: Findlay N (Neil), MSP <Neil.Findlay.msp@parliament.scot>
Sent: 16 May 2016 13:59
To: investigations@ethicalstandards.org.uk
Subject: MSP/1870/15-16/21/DW

Dear Mr Thomson, thank you for your letter ref – MSP/1870/15-16/21/DW

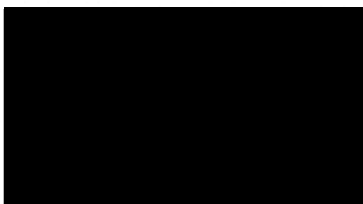
In response to your letter I would comment as follows:-

- 1) Mr Beattie sought to use Parliamentary resources for Party Political financial gain and advertised in a public forum the fact that he intended to do so. This in itself brings the Parliament into disrepute. However this was dismissed by the then Presiding Officer.
- 2) The fact that Mr Beattie's fundraising efforts were wholly unsuccessful and that he never actually used parliamentary resources due to no one actually donating to his campaign is irrelevant. Mr Beattie's intent was made public showing Parliament in a bad light. The irony of this I presume, is that had Mr Beattie been **successful** in fundraising for his election campaign he would have been found guilty.
- 3) The principles of the Parliament proclaim openness and accountability yet when an MSP is open about making a complaint about another MPS they are punished for making that complaint public and informing the voters who we serve. There appears to be a contradiction between the principles of the Parliament and the application of those principles by the authorities.
- 4) I think the public will be puzzled by this case for the following reason – someone attempts to use Parliamentary resources for party political, financial gain, gets caught and is let off. In turn the person who reports this breach of rules is then found guilty because they were open and transparent about making a complaint about it.
- 5) Finally in the article I said "I will be writing to the Presiding officer asking her to investigate this." I made no mention of a complaint and made no mention of the Commissioner or anyone else to the media.

I trust you will take on board these points.

Best wishes

Neil Findlay Lothian (Labour)



Email neil.findlay.msp@parliament.scot



Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Mr Neil Findlay MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Reference: MSP/1870/15-16/21/DW

27 May 2016

Dear Mr Findlay

Public Standards
Code of Conduct for Members of the Scottish Parliament
Complaint by Colin Beattie MSP

Thank you for your email of 16 May 2016 submitting your comments on my draft Report on the complaint by Mr Beattie.

I have noted your representations on the draft Report. I would confirm that I consider my draft Report suitably reflects the situation involved and the conclusion reached in this instance. The final document will narrate my consultation with you on the draft Report and your reply. No additional changes will be made, except to correct any errors of expression in the draft.

In line with my usual practice, I would also confirm that the terms of your email and this response will be set out in full as a separate Appendix to the final Report which I will now conclude.

Yours sincerely

Bill Thomson
Commissioner

Commissioner for Ethical Standards in Public Life in Scotland

Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE

T: 0300 011 0550 E: investigations@ethicalstandards.org.uk W: <http://www.ethicalstandards.org.uk>

E.3. 16-06-11

