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Standards, Procedures and Public Appointments Committee

Complaint against Jackson Carlaw MSP



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Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (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;
 - (d) matters relating to public appointments in Scotland; and
 - (e) matters relating to the regulation of lobbying.
 - (f) matters relating to local government elections, Scottish general elections, implementation of the Referendums (Scotland Act) 2020 and Freedom of Information and open government falling within the responsibility of the Minister for Parliamentary Business.
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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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Introduction

1. The Standards, Procedures and Public Appointments Committee (“the Committee”) met on 8 December, 15 December and 22 December 2022 to consider a complaint from Hugh Humphries about Jackson Carlaw MSP.
2. The Commissioner for Ethical Standards in Public Life in Scotland has reported to the Committee on the complaint and the Committee has considered his report. Annexe B to this report contains the Commissioner's full report and appendices.

The complaint

3. The complaint was that Jackson Carlaw MSP failed to declare a registered financial interest prior to the commencement of scrutiny of Public Petition PE1879 by the Citizen Participation and Public Petitions Committee on 6 October 2021.
4. The Committee received representations in writing from Jackson Carlaw MSP (see Annexe B) as well as hearing from him in person at a meeting of the Committee on 15 December 2022.

Background: requirements for MSPs to register and declare interests

5. The Code of Conduct for MSPs states that: “The types of financial interest which must be registered are those which might be thought to influence a member’s actions, speeches or votes in the Parliament (and in some circumstances, interests which are in connection with political activities).”¹
6. If a member is uncertain about how the rules in the Code of Conduct apply, the Code directs them to seek advice from the Standards Clerks for advice.
7. Under Section 2, paragraph 59 of the Code, “A member is required to register and provide details of a visit outside the United Kingdom in certain circumstances. Firstly, members must register overseas visits where the visit meets the prejudice test. Secondly, members must register overseas visits for political activities, over the value of £1,500 (the prejudice test does not apply to such visits).”²
8. Section 1, paragraph 17 of the Code states that, “Any interest held before the date on which the member was returned but which is no longer held must also be registered if it meets the prejudice test.” Thus, an interest first registered in a previous session remains registrable if the member considers that it meets the prejudice test.
9. Section 13(1) of the [Interests of Members of the Scottish Parliament Act 2006](#) (“the 2006 Act”) requires any member who has a declarable interest in any matter to declare that interest before taking part in any proceedings of the Parliament relating to that matter. A member has a “declarable interest” in any matter if that member has, or had, a registrable financial interest in that matter which is registered in their Register of Interests.
10. Section 3 of the Code sets out the requirements in relation to the declaration of interests, restating the 2006 Act provisions. This includes Section 3, paragraph 4 of the Code of Conduct which sets out the requirements of Section 13(1) of that Act, “Before taking part in any proceedings of the Parliament a member should consider whether they have a ‘declarable interest’ in relation to the particular matter being addressed in those proceedings.”³ The Code also states that, “The onus is on individual members to decide.”
11. Section 3, paragraphs 6-8 of the Code relate to oral declarations, requiring a member to make an oral declaration of a declarable interest before speaking in any meeting of the Parliament relating to that matter. This includes a Parliamentary committee meeting when a member wishes to take part in the meeting in any way, other than simply attending or voting. It is also made clear that a member is not required to make an oral declaration where the member simply attends or votes at the meeting but does nothing else.
12. The Guidance on the Code of Conduct sets out that “Responsibility for ensuring compliance with the rules on declaration of interests lies with the individual member.” It also includes guidance on how a declaration should be made, stating, “A declaration should be brief but sufficiently informative to enable a listener to

understand the nature of the member's interest. It is not necessary to rehearse all the details of an interest which may appear in the member's entry in the Register of Interests if this is more than is required to explain the nature of the interest.”

Decision of the Committee

13. The Committee has carefully considered the Commissioner’s report on the complaint made against Jackson Carlaw MSP and is unanimous in the conclusions and decision reached.
14. The Committee is of the view that Jackson Carlaw’s financial interest, registered in the overseas visits section of his register of interests, was relevant to the consideration of Petition PE1879 at the Citizen Participation and Public Petitions Committee meeting on 6 October 2021.
15. The Committee notes that Jackson Carlaw MSP declared an interest at the beginning of the Citizen Participation and Public Petitions Committee on 6 October 2021 as the Convener of the Cross-Party Group on Building Bridges with Israel in the previous parliamentary session. However, the declaration did not refer to the financial interest in the Member’s register which was the £2,200 cost of an overseas visit to Israel and the Palestinian Territories funded by the Embassy of Israel in the United Kingdom. It would therefore appear that Jackson Carlaw MSP did not fully recognise or understand the requirement to declare a relevant financial interest in advance of proceedings relating to that matter.
16. The Committee recognises that Jackson Carlaw MSP took and acted on advice in relation to the consideration of Petition PE1879. In his representations, Jackson Carlaw MSP states that he recused himself “entirely from consideration of the petition and from any determination” and that he cast no vote and advised the petitioner in the usual way and in terms drafted by the committee clerks. The Committee considers that this demonstrated the intent of Jackson Carlaw MSP to address any perceived conflict of interest.
17. The Committee further notes the Commissioner’s findings that the advice given to Jackson Carlaw MSP referred only to him being convener of the CPG and not to his overseas visit and concurs with the Commissioner’s view that it is “unlikely that he [Jackson Carlaw] intentionally withheld information about the overseas visit in an attempt to hide this information”.
18. However, the steps taken by Jackson Carlaw MSP did not meet the requirements of the 2006 Act and the Code of Conduct for MSPs in relation to the declaration of registrable financial interests. For this reason, the Committee must conclude that Jackson Carlaw MSP breached Section 13(1) of the 2006 Act and Section 3, paragraphs 6-8 of the Code of Conduct for MSPs.
19. The Committee therefore agrees with the Commissioner’s findings in fact and conclusion that Jackson Carlaw MSP’s conduct in not declaring a financial interest breached the 2006 Act and the Code.

Conclusion

20. A finding of a breach of the 2006 Act and the Code of Conduct is a serious matter. Acknowledging the efforts made by Jackson Carlaw MSP to act with propriety, the Committee is of the view that its agreement with the Commissioner on the finding of a breach is sanction enough.
21. The Committee intends to write to all Members to remind them of the requirements to declare a financial interest in any matter before taking part in any proceedings of the Parliament relating to that matter. In addition, Members will be reminded that the Standards Clerks can provide advice to them on any matters relating to the registration or declaration of financial interests and that they should seek that advice where any questions arise.

Annexe A - Extracts from Minutes

23rd Meeting, 2022 (Session 6), Thursday, December 8, 2022

Decision on taking business in private: The Committee agreed to take item 3 in private and future consideration of the complaint report from the Commissioner for Ethical Standards in Public Life in Scotland in private.

Complaint (In Private): The Committee considered a report from the Commissioner for Ethical Standards in Public Life in Scotland.

Alexander Stewart MSP was not present for this agenda item. Stephen Kerr MSP joined the meeting for this agenda item only and in his capacity as Committee substitute.

24th Meeting, 2022 (Session 6), Thursday, December 15, 2022

Complaint (In Private): The Committee continued its consideration of a report from the Commissioner for Ethical Standards in Public Life in Scotland.

25th Meeting, 2022 (Session 6), Thursday, December 22, 2022

Complaint (Private): The Committee continued its initial consideration of a report from the Commissioner for Ethical Standards in Public Life in Scotland.

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

Complaint (Private): The Committee considered and agreed its draft report.

Annexe B - Report from the Commissioner for Ethical Standards in Public Life in Scotland and other relevant correspondence

[Link to the report from the Commissioner for Ethical Standards in Public Life in Scotland
an other relevant correspondence.](#)

- 1 Section 1, paragraph 3 of the Code of Conduct for MSPs.
- 2 The prejudice test is set out in Section 1, paragraphs 18 and 19 of the Code of Conduct. The prejudice test states that, “An interest meets the prejudice test if, after taking into account all of the circumstances, that interest is reasonably considered to prejudice, or give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.” It is for a Member to determine whether an interest meets the prejudice test and the Code states, “In making a decision as to whether an interest meets the prejudice test, a member must consider not just whether the member feels influenced by the existence of the interest but whether a fair minded and impartial observer would consider that it could influence a person acting as an MSP or give the appearance of prejudicing that person’s ability to act impartially.”
- 3 Section 13(a) of the 2006 Act states that “Any member who has a declarable interest in any matter shall declare that interest before taking part in any proceedings of the Parliament relating to that matter.”

