

COMMISSIONER'S REPORT

Under s9 of the Scottish Parliamentary Standards Commissioner Act 2002, as amended ("the Act").

Confidentiality

The Act requires that the investigation process shall be conducted in private.

Case Ref:		MSP/3142
Date:		5 June 2020
Complainer(s):		Finlay McFarlane
COMPLAINT AGAINST		
Respondent:		Sarah Boyack, MSP
	Member for:	Lothian
	Party:	Scottish Labour

Commissioner's conclusion:

The Commissioner has concluded that the respondent has breached the following relevant provisions:

- Section 3(1) of the Interests of Members of the Scottish Parliament Act 2006, as amended ('the 2006 Act');
- Section 1 of the Code of Conduct for Members of the Scottish Parliament, 7th Edition, 1st Revision dated 24 April 2019 ('the Code').

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Executive summary

The conduct complained about can be summarised as follows: the respondent did not include her previous employment within her Register of Interests and did not declare her previous employment as an interest at a meeting of the Local Government and Communities Committee on 11 September 2019.

The Commissioner concluded that the conduct complained of is proved as a matter of fact.

The Commissioner concluded that the respondent's conduct in not registering her previous employment breached the 2006 Act and the Code. In relation to the second aspect of the conduct complained about, the Commissioner did not consider that the respondent had breached a relevant provision in not declaring her previous employment at the meeting on 11 September 2019.

Introduction

The Act established a Commissioner to investigate complaints about the conduct of MSPs and report upon the outcome of such investigations to the Parliament.

The purpose of this document is to report on the outcome of the Commissioner's investigation.

Background

1. The respondent is the MSP for Lothian and first served as an MSP between 1999 and 2016. The respondent returned to Parliament as an MSP following Kezia Dugdale's resignation in July 2019. The respondent is currently a member of the Local Government and Communities Committee.
2. The complainer submitted a complaint dated 29 October 2019 to the Commissioner. The complaint material received is attached as **Appendix 1**.
3. The complaint the Commissioner received can be summarised as follows: the respondent failed to register her previous employment within her register of interests. It is further alleged that the respondent failed to declare her previous employment during a meeting of the Local Government and Communities Committee on 11 September 2019.

The complaint

4. The conduct complained about is as follows:

Complaint 1

1. From July 2019 the respondent did not include her previous employment as the Head of Public Affairs at Scottish Federation of Housing Associations ("SFHA") within her Register of Interests;

Complaint 2

2. On 11 September 2019 the respondent did not declare the previous employment referred to at paragraph 1 during a meeting of the Local Government and Communities Committee.

Admissibility of the complaint

5. Section 6 of the Act requires the Commissioner to complete an assessment of admissibility of the complaint, known as "Stage 1". The 3 tests relate to:
 - relevancy;
 - specific requirements relating to form, content and execution;

- whether the complaint warrants further investigation if it appears after an initial investigation that the evidence is sufficient to suggest the conduct complained about may have taken place.
6. The Commissioner was satisfied that the complaint was admissible at Stage 1 and required to proceed to full investigation, known as “Stage 2”. The Committee were informed of this decision on 12 December 2019.

The investigation

7. The investigation was carried out in terms of the Commissioner’s powers under the Act and the Directions by the Standards Procedures and Public Appointments Committee dated 27 September 2018 (“the Directions”).
8. Witness evidence was obtained from:
- the respondent.
9. Documentary evidence obtained included, but was not limited to:
- minutes of the Local Government and Communities Committee from 2016-2020¹;
 - papers of the Local Government and Communities Committee dated 11 September 2019²;
 - Official Report of the Local Government and Communities Committee dated 11 September 2019³;
 - complaint form dated 29 October 2019 with enclosures (**Appendix 1**);
 - email from the respondent to the Commissioner dated 15 November 2019 with enclosures (**Appendix 2**);
 - respondent’s Register of Interests⁴;
 - website of the Scottish Federation of Housing Associations⁵;
 - website of the Scottish Parliament and Local Government and Communities Committee⁶;
 - website of Scottish Labour ‘Our MSPs’⁷.

¹ www.parliament.scot/parliamentarybusiness/CurrentCommittees/99803.aspx

² www.parliament.scot/S5_Local_Gov/Meeting%20Papers/20190911_PublicPapers.pdf

³ www.parliament.scot/parliamentarybusiness/report.aspx?r=12246

⁴ www.parliament.scot/msps/currentmsps/112520.aspx

⁵ www.sfha.co.uk/

⁶ www.parliament.scot/parliamentarybusiness/CurrentCommittees/local-govt-committee.aspx

⁷ scottishlabour.org.uk/people/msps/

The approach to findings

10. The Commissioner noted the terms of section 9(2)(c) of the Act which requires the Commissioner to detail the facts found in relation to whether the respondent has committed the conduct complained of. The Commissioner also noted section 8(2) which provides that the standard of proof is that applicable to civil proceedings, namely the balance of probabilities, ie whether it is more likely than not that an event occurred.

The analysis of the evidence and findings

11. The Commissioner considered each paragraph of the complaint separately and evaluated the evidence in relation to that part of the complaint in order to make her findings on facts.

Complaint 1

12. In his complaint form, the complainer stated that, prior to her return to Parliament, the respondent worked as the Head of Public Affairs for the SFHA. The complainer described SFHA as a 'key stakeholder' in the Local Government and Communities portfolio that 'regularly' gives evidence to the Committee. The respondent stated that SFHA had 'considerable importance and clout' within the Committee's portfolio. The complainer also described the respondent as 'the Labour spokesperson' for that portfolio.
13. The Commissioner noted that the SFHA describes itself as 'the voice and membership body for housing associations and co-operatives in Scotland'. The SFHA's stated ambition is 'that everyone has a good home in a successful community, with a range of high quality, affordable, safe and accessible homes that meet people's changing needs and aspirations throughout their lives.'⁸ The Commissioner also noted that the remit of the Local Government and Communities Committee is to, 'consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters...'⁹
14. The Scottish Parliament website hosts biographies for current MSPs¹⁰. The Commissioner noted that the respondent's Register of Interests within her biography does not refer to previous employment with SFHA. However, it is mentioned within the 'Personal Information' section of the respondent's biography that the respondent 'worked for [SFHA] as Head of Public Affairs from 2017 until returning to the Scottish Parliament in July 2019.'
15. The Commissioner reviewed the minutes of the Local Government and Communities Committee between 2016 and 2020. The Commissioner noted that the Committee took evidence regularly and from a wide variety of stakeholders. The Commissioner noted that SFHA last gave evidence at the Committee on 28 November 2018. In 2017 SFHA gave evidence at 5 of the 32 meetings held by

⁸ www.sfha.co.uk/who-we-are

⁹ www.parliament.scot/parliamentarybusiness/CurrentCommittees/99807.aspx

¹⁰ www.parliament.scot/msps/currentmsps/sarah-boyack-msp.aspx

the Committee however that year appears to be an outlier. Between 2016 and 2020 SFHA gave evidence at 8 of the 126 meetings of the Committee.

16. In her response to the complaint, the respondent accepted that she was previously employed by SFHA as the Head of Public Affairs. The respondent explained that this employment ended before she returned to Parliament in July 2019. The respondent further explained that, as part of her consideration around declarations, she had a meeting with the Standards Clerks and it was not suggested to her that she should register an interest in relation to her previous employment. The respondent stated she has had 'no ties or interest in SFHA as an organisation' since she left their employment and returned to Parliament.

The respondent's interview

17. At interview, the respondent stated that she took up employment with SFHA in March 2017, initially working part time. In April 2017, the respondent started working full time. The respondent resigned in May or June 2019 and her last working day was towards the end of June 2019. The respondent described the SFHA as the representative organisation for Registered Social Landlords in Scotland. The respondent explained that SFHA is a not for profit organisation funded mainly by membership fees. Additional funding may come from sponsorship of events held by SFHA, such as conferences. The respondent stated that SFHA have around 30 employees. In terms of her role as Head of Public Affairs, the respondent stated she was a member of the executive team and reported to the Chief Executive. The respondent stated she had line management responsibility for 8 or 9 employees. The respondent stated that 'anything to do with press, publicity, policy...' fell within her remit as the respondent's role was to manage the work of the team that ran those areas. The respondent described that a large part of role was managing a 'Rural Network' which involved organising conferences, providing regular updates on issues and visiting remote housing associations.
18. The respondent described having different views from SFHA on a number of issues and that returning to Parliament was an opportunity to air her own views. The respondent gave examples of issues where, as an employee of SFHA, she had to set aside her personal views relating to the Planning Bill and Freedom of Information. The respondent described meeting the Standards Clerks in September 2019 to discuss her Register of Interests. The respondent didn't think about the SFHA when completing her Register of Interests because she had stopped working for them and had no relationship once she had left. The respondent accepted that the onus was on her to consider whether matters should be declared on the Register of Interests.
19. The respondent was asked whether she had had any engagement with SFHA since she returned to Parliament. The respondent described attending an event held by an MSP to launch a housing policy. An employee of SFHA was also in attendance. The respondent stated there was no engagement beyond being in the same room and saying 'Hello, good to see you.' The respondent described the only other 'contact' she has had with SFHA is receiving a SFHA publication 'Housing Scotland' via a mailshot.

20. The respondent described a degree of confusion on returning to Parliament. The respondent stated it was unclear whether she would return to Parliament in September 2019 or earlier. The context the respondent described included the departure of Kezia Dugdale, there being no office available for the respondent and a high number of Parliamentary staff being on annual leave at the time. The respondent stated that she attended a number of induction meetings from late July onwards but wasn't able to ask Parliamentary questions or put motions down until she had formally taken the oath, which happened in early September 2019.

SFHA as a 'key stakeholder' of the Local Government and Communities Committee

21. The respondent was asked about the complainer's contention that SFHA are a 'key stakeholder in the Local Government and Communities' portfolio. The respondent stated that SFHA were one of many key stakeholders but that there are a lot of key stakeholders. The respondent contrasted this with what she described as the 'huge remit' of the Local Government and Communities Committee. The respondent described dealing with a range of issues since her work with the Committee started including non-domestic rates, period poverty, local elections budget, community engagement, climate change and revisions to the Planning Act.

The respondent as 'spokesperson' for Local Government and Communities within Scottish Labour

22. The respondent was asked about the complainer's statement that she is the spokesperson for the Local Government and Communities portfolio. The respondent explained that she was the spokesperson for Local Government but a colleague was responsible for housing. This appeared to be consistent with information available from Scottish Labour's website which indicates that the Cabinet portfolio of Communities and Local Government, which is currently held by Aileen Campbell MSP and includes housing, is managed differently within the Shadow Cabinet. The respondent is identified as the Shadow Cabinet Secretary for Local Government whereas her colleague, Pauline McNeill MSP, is identified as the Shadow Cabinet Secretary for Communities.

Conclusions

23. The Commissioner accepted the respondent's evidence about the nature and extent of her role with SFHA, including her evidence about holding views that may differ from her former employer. The Commissioner noted the respondent's seniority within SFHA. The Commissioner also accepted the respondent's evidence about a lack of any substantive engagement with SFHA since she left their employment. The Commissioner was satisfied that there was a period of around 2 months between the respondent finishing her work with SFHA and undertaking her full parliamentary duties. The Commissioner was also satisfied that the respondent had not sought to conceal her past employment with SFHA, which was included within her biography hosted on the Scottish Parliament's website. The Commissioner was satisfied that SFHA is a relevant stakeholder of the Local Government and Communities Committee but did not accept that SFHA could be singled out as a 'key stakeholder' given the scope of the Committee's work and the variety of stakeholders who have an interest in that work.

24. The Commissioner considered the above facts of relevance to the overall context and application of the facts to the Code. However, the Commissioner noted that the duty placed on her under section 9(2)(c) of the Act is to make findings as to whether the respondent has 'committed the conduct complained about'. The Commissioner was satisfied from the evidence that the respondent was previously employed by SFHA as the Head of Public Affairs and that this was not included with the respondent's Register of Interest. Accordingly, the Commissioner was satisfied that the conduct complained of was committed by the respondent, with further consideration of the relevant facts, and whether the respondent has breached the Code, to be considered at the next stage of this report.

Complaint 2

25. In his complaint form, the complainer referred to 'the first session of [the respondent's] membership [of the Local Government and Communities Committee]' and stated that the respondent did not make a declaration in relation to her previous employment with SFHA.

26. The Agenda for the meeting confirmed that, insofar as relevant, the business of the Committee on 11 September 2019 was to consider the Non-Domestic Rates (Scotland) Bill. The Bill relates to the partial funding of local authorities from business rates. The Official Report relating to the session confirms that the Non-Domestic Rates (Scotland) Bill was the Committee's focus. The Commissioner noted that the respondent's declaration of interest was restricted to her trade union memberships. The Commissioner noted that the respondent intervened 4 times during the discussion. The respondent asked two questions about a backlog of appeals, one about provisions relating to parks and made a general statement about guidance to supplement the Bill.

27. The Commissioner was satisfied that the Agenda and Official Report provided accurate details of the Committee's business on 11 September 2019 and the respondent's input. The Commissioner considered that the Committee dealt with matters unrelated to the interests of SFHA, on that occasion. The Commissioner considered the facts around the Committee's business and the respondent's input of relevance to the overall context and application of the facts to the Code. In terms of the conduct complained about, the Commissioner was satisfied from the evidence that the respondent did not declare her previous employment at the meeting of 11 September 2019. Accordingly, the Commissioner was satisfied that the conduct complained of was committed by the respondent, with further consideration of the relevant facts and whether the respondent has breached the Code, to be considered at the next stage of this report.

Overall determination of the conduct complained about

28. Based on the above, the Commissioner has determined the complaint as follows:

<u>Complaint 1</u>

1. From July 2019 the respondent did not include her previous employment as the Head of Public Affairs at Scottish Federation of Housing Associations ("SFHA") within her Register of Interests); **Sufficient evidence to find proved**

Complaint 2

2. On 11 September 2019 the respondent did not declare the previous employment referred to at paragraph 1 during a meeting of the Local Government and Communities Committee. **Sufficient evidence to find proved**

Relevant provision(s)

29. The Commissioner went on to consider whether, on the basis of the facts that could be proved, the respondent had breached a relevant provision or provisions.
30. 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. For the purpose of considering this complaint, the relevant edition of the Code is the 7th Edition, 1st Revision dated 24 April 2019. In addition, the Commissioner considered relevant provisions of the 2006 Act. Extracts from the relevant provisions are set out at the end of this report.
31. The Commissioner also considered the Guidance on the Code of Conduct for Members of the Scottish Parliament, 7th Edition ('the Guidance') although, in the circumstances of this complaint, it was not necessary to refer to specific passages of the Guidance within this report.

Complaint 1

32. Both the Schedule to the 2006 Act and Section 2 of the Code make provision for Categories of Registerable Interest, including past employment.
33. Section 1 of the Code makes provision regarding Registration of Interests. Section 1, paragraph 17 and Section 2 paragraph 6 both provide that the Register of Interests must also include past interests if they meet the prejudice test. The prejudice test is found both in the 2006 Act and Paragraph 18 of the Code. The test states that:

 'An interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.
34. Section 1, paragraph 19 of the Code provides that an MSP:

 '...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.'

35. The Commissioner reminded herself of the circumstances identified at paragraph 23. The Commissioner was satisfied that the respondent's actual ability to participate in a disinterested manner was not compromised, having regard to her lack of current involvement with her previous employer and having accepted the respondent's evidence that she held different views from that of her former employer. However, the Commissioner was satisfied that a fair minded and impartial observer would consider that the respondent's previous employment could give the *appearance* of prejudicing her ability to participate in a disinterested manner in certain proceedings before the Committee. In reaching this decision, the Commissioner had particular regard to: the senior role the respondent held at SFHA and her contribution to SFHA policy; the respondent's employment with SFHA had only recently ended and; the work of SFHA overlaps with the work of the Committee, as evidenced by SFHA's attendances at the Committee from time to time.

36. Accordingly, the Commissioner reached the conclusion that the respondent breached section 3(1) of the 2006 Act and Section 1 of the Code.

Complaint 2

37. Sections 12 and 13 of the 2006 Act and Section 3 of the Code make provision for Declarations of Interest. Section 12 of the 2006 Act and Section 3, paragraph 3 of the Code makes clear that a declarable interest relates to a matter that an MSP has a registerable interest in relation to. The Commissioner has concluded that the respondent's previous employment did amount to a registerable interest.

38. However, the Commissioner noted that Section 3, paragraph 4 of the Code makes clear that the requirement to declare an interest would only apply when the interest related to 'the particular matter being addressed' in the proceedings. Section 3, paragraph 8 makes a similar point in different language. With reference to paragraph 27 of this report, the Commissioner found that the matter being addressed by the Committee on 11 September 2019 was not related to the work of SFHA.

39. Accordingly, the Commissioner reached the conclusion that the respondent did not breach the relevant provisions under the 2006 Act or the Code.

REPORT CONTINUED BELOW

Draft report and the respondent's representations

40. In accordance with section 9(3) of the Act, a draft report was sent to the respondent on 21 April 2020 and the respondent was provided an opportunity to make representations.
41. The respondent provided representations which were considered before this report was finalised. The respondent made 'tracked changes' to the electronic version of the draft report that was sent to her. These representations have been compiled into a standalone document and are annexed to this report **Appendix 3**.

For and on behalf of

Caroline Anderson F.C.A.
Commissioner

END OF REPORT

Interests of Members of the Scottish Parliament Act 2006 ('the 2006 Act')

Section 2 – Registrable interests

- (1) In this Act, a “registrable interest” means a registrable financial interest.
- (2) The schedule sets out the circumstances in which a member has, or had, a registrable financial interest.

Section 3 – Initial registration of registrable interests

- (1) Each member shall register—
...
(b) any registrable interest which that member had before that date but which that member no longer had on that date, if that interest meets the prejudice test, or declare that the member had no such interest.
- (2) An interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

Section 12 – Declarable interests

- (1) In this Act, a “declarable interest” means a declarable financial interest.
- (2) A member has a declarable financial interest in any matter if that member has, or had, a registrable financial interest in that matter which is registered in the entry relating to that member.
- (3) A member has a financial interest for the purposes of paragraph (b) of section 39(2) of the 1998 Act if that member has a declarable financial interest.

Section 13 – Declaration of interests

- (1) 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.

Section 19 – Interpretation

- (1) In this Act—
- “remuneration” includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind;

SCHEDULE

Registrable financial interests

- 1 A member has, or had, a registrable financial interest in the circumstances set

out in the following paragraphs.

Remuneration

2 (A1) Where the circumstances are as described in sub-paragraph (1) or (1A).

(1) Where a member receives, or has received, remuneration by virtue of—

(a) being employed;

The Code of Conduct for Members of the Scottish Parliament, 7th Edition, 1st Revision dated 24 April 2019 ('the Code')

SECTION 1: REGISTRATION OF INTERESTS

2. The Interests of Members of the Scottish Parliament Act 2006 ("the Act") sets out the statutory requirements that apply to the registration and declaration of members' interests.

3. 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).

17. Additionally, 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 (set out in section 3(2) of the Act and restated below). A member must decide whether any interest meets that test.

18. An interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

19. 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

SECTION 2: CATEGORIES OF REGISTRABLE INTERESTS

6. Remuneration received prior to the date of return as an MSP must also be registered if it meets the prejudice test. In terms of section 3(2) of the Act, an interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

SECTION 3: DECLARATION OF INTERESTS

3. Under the statutory requirements, a member has a 'declarable interest' in relation to any matter if that member has a registrable financial interest relating to

it. Registrable financial interests are those which must be registered under one of the categories set out in the schedule to the Act. These categories are explained in Section 2 of the Code.

4. 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. The onus is on individual members to decide.

6. Where a member has a declarable interest in any matter, the member must make an oral declaration of that interest before speaking in any meeting of the Parliament relating to that matter. This includes initiating, contributing to or intervening in any debate whether—

- during a meeting of the Parliament; or
- during a meeting of a Parliamentary committee (or a joint committee meeting or sub-committee meeting)

8. A member must declare an interest when speaking or intervening in a debate where that interest relates to the subject being debated. The Act requires that only such interests as actually appear in the member's entry in the Register must be declared (section 12(2)). Following the lodging of a written statement of an interest with the Standards Clerks (in relation to initial registration, newly acquired interests, or late registrations), there could be a period of up to 30 days before the statement actually appears on the Register and so becomes publicly known. In this situation, members are encouraged to make a declaration of that interest (either orally or in writing as appropriate to the proceedings) in order to avoid the suggestion of undue influence of which only they will be aware prior to the registration being published.

From: info@ethicalstandards.org.uk on behalf of Ethical Standards Commissioner
 <info@ethicalstandards.org.uk>
Sent: 29 October 2019 20:57
To: info
Subject: Webform submission from: Make a complaint

Complaint first created on Tue, 10/29/2019 - 20:54

Submitted on Tue, 10/29/2019 - 20:57

Submitted by: [REDACTED]

Submitted values are:

Who the complaint is about

Complaint type

MSP

Name of MSP(s)

Sarah Boyack

Details of the complaint

What's your complaint about?

I believe Sarah Boyack MSP may have breached the MSP's Code of Conduct.

As you will know, interests which are not on-going at the date of an MSP's return to parliament need only be registered if they meet the prejudice test. Paragraph 17 of the Code of Conduct states "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... A member must decide whether any interest meets that test."

The prejudice test states (paras 18, 19 Code of Conduct) that "An interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament."

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.

Until Sarah Boyack's return to parliament she worked as Head of Public Affairs for Scottish Federation of Housing Associations (SFHA), a key stakeholder in the Local Government and Communities portfolio. Ms Boyack is now the Labour spokesperson for that portfolio. The organisation also regularly gives evidence at the Local Government and Communities Committee of the Scottish Parliament (see 8th February 2017 for one example), of which Ms Boyack is now Vice Convener.

Currently, Ms Boyack's register of interest makes no mention of this role and, in the first session of her membership of the Committee, she did not declare SFHA as a registerable interest.

On the basis of the organisations considerable importance and clout within the above mentioned portfolio, it appears that Ms Boyack should have considered the role to meet the prejudice test for the below reasons and therefore registered it.

The first limb of the test concerns actual impartiality. It is not unreasonable to think that if the organisation is giving evidence at a future Committee meeting, Ms Boyack's prior role as an employee could be "reasonably considered to prejudice... the ability of the member to participate in a disinterested manner". Her knowledge of the organisation and her ties to it would likely make that very difficult indeed.

The second limb of the test concerns the appearance of impartiality, using the test of a "fair minded and impartial observer". If such an observer was aware that Ms Boyack worked for this organisation, they would likely take into account this fact if she was discussing its work in any proceedings of parliament, a not unforeseeable occurrence given her brief.

The fact that Ms Boyack used to work for an organisation whose work is so intertwined with her current parliamentary role and the nature of the prejudice test above appears, to me, to lead to the conclusion that the interest should have been registered on her MSP's register of interest.

On 19th September, Ms Boyack asked a parliamentary question relating to an apparent housing crisis in Edinburgh. This is an issue that Ms Boyack discussed extensively when working for SHFA, including in an October 2018 article in The Times (available here: <https://www.sfha.co.uk/news/news-category/sfha-news/news-article/housing-crisis-not-a-short-term-issue>). This appears to be just one example of how the connection between this role and her current work is at least sufficient to put a fair-minded observer on notice of the potential for a lack of impartiality, thus fulfilling the prejudice test.

I look forward to your consideration of this complaint.

Date(s) incident occurred

This complaint is on-going.

Complainer's details

Complainer

I am the Complainer

Title

Mr

Full name

Finlay McFarlane

Address

████████████████████
████████████████████
████████████████████

Phone number

████████████████

Email

██

Signature and Declaration

Digital Signature box

Yes



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19 Oct 2018



What can the planning system do to deliver more affordable homes and better places?

POSTED IN

SFHA News / News

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A comment piece by Sarah Boyack, SFHA Head of Public Affairs, featured in the HousingScot supplement of The Times Scotland newspaper on 18 October 2018. The piece is available in full below.

There is a housing crisis in Scotland. In the past few years, housing has become unaffordable for many, while as a nation we are not building enough homes to meet need. This crisis affects all parts of the housing system.

There is a shortage of housing for social rent: a 2015 study by SFHA and partners found that, in order to meet outstanding need, 60,000 new homes for social rent were needed over the next 5 years.



low to average incomes the housing ladder is broken meaning they cannot access the housing they need.

The housing crisis is not a short-term issue – population projections show that the need for housing will only increase as people live longer and the number of single person households increases. The ageing population also has implications for the homes we need to build – they need to be suitable for older people and people with disabilities.

The current Scottish Government has responded to the housing crisis by setting a target to build 50,000 new affordable homes over the term of the current parliament, and has backed this with £3bn in funds. This is commendable. Longer term, however, we need to think about reform to our land, planning and housing systems if we are to meet need and provide enough affordable homes.

The current Planning Bill was set in train when the Scottish Government set up an Independent Review of Planning in 2015. The review was set up to address the fact that Scotland isn't building enough homes to meet need and demand.

SFHA consulted widely with housing associations – the principle providers of new build affordable housing - before responding first to the Planning Review and then to the draft Planning Bill. A number of challenges emerged:

- The cost and availability of land to develop for affordable housing;
- Funding the infrastructure needed to support housing development, whether physical infrastructure, such as roads and utilities, or social infrastructure, such as schools;
- A weak link between projections of housing need and the land allocated for housing; and
- Sites being allocated for housing, yet lying empty for years.

SFHA has actively lobbied and campaigned on these issues, both on our own and as part of an alliance of organisations working in the built environment: the Alliance for People and Places. The group works to create a planning system that is ambitious and holistic, and we recognise the positive role that quality economic development can play in creating a more equal society.



SFHA is calling for a number of changes in the planning system that we believe would support this, including:

- Clear guidance that requires robust measurement of housing need and land allocated in plans to meet that need;
- Housing targets to be set in the National Planning Framework (which sets out Scotland's national development priorities) and in Strategic and Local Plans;
- Provision for the transfer of land at existing use value where the housing is affordable housing to meet an identified shortfall; and
- Land Value Capture: the provision of a mechanism to capture the uplift in land value when planning permission is granted for housing. This value would be used to fund social housing and infrastructure, rather than going to the land owner.

For further information about SFHA's work in this area, please contact SFHA Policy Lead David Stewart at dstewart@sfha.co.uk.



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Company Information

The Scottish Federation of Housing Associations Limited.

Registered in Scotland no: SC59549

VAT Registration no: 593 1359 23

Contact Information

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Sitemap

From: [REDACTED] on behalf of [Boyack S \(Sarah\), MSP](#)
Sent: 15 November 2019 12:39
To: investigations@ethicalstandards.org.uk
Subject: RE: BoyackS | Notification of complaint | Ref: 3142
Attachments: Response to Ethical Standards Commissioner - Sarah Boyack MSP.pdf

Dear Ms Anderson

Please find attached my letter in response to the complaint you sent me from Mr Finlay McFarlane on 5th November. If there are any issues that you would like me to clarify or comment on further I'd be happy to address them.

I have spent time reflecting on the points made by the complainant and have set out my strong view that my past employment does not meet the prejudice test.

Best wishes,
Sarah

Sarah Boyack MSP for Lothian (Labour)

From: investigations@ethicalstandards.org.uk <investigations@ethicalstandards.org.uk>
Sent: 05 November 2019 15:37
To: Boyack S (Sarah), MSP <Sarah.Boyack.MSP@Parliament.scot>
Subject: BoyackS | Notification of complaint | Ref: 3142

Dear Ms Boyack

Please find attached a letter notifying you of a complaint that we have received along with redacted complaint.

Kind regards, [REDACTED]

[REDACTED]
[REDACTED]
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE
Tel: 0131 347 3890
www.ethicalstandards.org.uk

This e-mail comes from the office of the Commissioner for Ethical Standards in Public Life in Scotland, Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE.

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The information in this email may be confidential. If you think you have received this email in error please delete it and do not share its contents.

Caroline Anderson
Commissioner

Dear Ms Anderson

**Public Standards
Code of Conduct for Members of the Scottish Parliament
Complaint by Mr Finlay McFarlane (Reference: MSP/3142/19-20)**

I am writing in response to your letter of 5 November forwarding the complaint from Mr Finlay McFarlane relating to the Code of Conduct for MSPs.

I would like to take the opportunity to set out why I disagree with the complainant and set out my rationale below.

The complaint alleges a potential failure to register an interest in relation to my former post with the Scottish Federation of Housing Associations, where I worked as its Head of Public Affairs until I returned to the Scottish Parliament earlier this year. The complainer contends that this interest should have been registered on the basis of meeting the prejudice test, including in the context of my role as Deputy Convener of the Local Government and Communities Committee.

Response to the Commissioner.

When I returned to the parliament in July 2019, I considered whether there were any declarations I should make and had a meeting with the Standards Clerks. It was not suggested that I should register an interest in relation to my previous employment with SFHA which ended before I returned to the Scottish Parliament.

My Personal Interests entry on the Scottish Parliament website lists my party and trade union membership and membership of Friends of the Earth Scotland and Spokes. It also gives my career history [see below] including my recent role at SFHA:

'Career history

- Sarah was a professional town planner and worked for the London Borough of Brent, Central Regional Council and then as a Lecturer in Planning for Edinburgh College of Art.
- Sarah was elected to the Scottish Parliament in 1999 as MSP for Edinburgh Central. She served in Donald Dewar's first Cabinet as Minister for Planning, Transport and the Environment. She was Convenor of the Environment and Rural Committee in the second term of the Parliament.
- As a Labour MSP for Lothian 2007-2016 Sarah served in Labour's Shadow Cabinet as Environment and Rural Affairs, Local Government and Planning and then Environmental Justice.
- After losing her seat in the Scottish Parliament at the 2016 elections, Sarah lectured at Heriot Watt University, teaching Planning and Environmental Studies in 2016/7, then

worked for the Scottish Federation of Housing Associations as Head of Public Affairs from 2017 until returning to the Scottish Parliament in July 2019.'

My career history underlines my professional experience and deep personal interest in the areas of housing and planning. As an MSP from 1999 to 2016, I did not declare my previous work in local government and higher education, on planning issues, as an 'interest'. However, I believe the experience gave me insights that helped me in my parliamentary work including holding ministerial responsibility over areas I had previously worked in. My past employment has never been raised as an issue until the present complaint. I do not receive remuneration or continue to work for SFHA, therefore, I did not think it necessary to make a declaration of interest about my past employment with them. Future meetings would also be covered by the terms of lobbying legislation.

SFHA is the voice of its member housing associations and cooperatives in Scotland, and is a not for profit voluntary membership organisation. My role as Head of Public Affairs was to manage staff and promote the voice of the sector as a whole, representing the range of views held by our members. Whilst that has given me additional knowledge of the sector, I would want to stress that my job was to ensure the effective communication of our members, not to articulate my own views and beliefs and indeed I was politically restricted during my time in this role.

When I returned as an MSP, I said in the Scottish Parliament Chamber that I had three issues of unfinished business from my previous time as an MSP - Climate Change, tackling poverty and addressing the crisis of affordable housing in Edinburgh. These are longstanding personal interests and passions.

The complaint you have received states that 'The fact that Ms Boyack used to work for an organisation whose work is so intertwined with her current parliamentary role and the nature of the prejudice test above appears, to me, to lead to the conclusion that the interest should have been registered on her MSP's register of interest.' It continues:

'On 19th September, Ms Boyack asked a parliamentary question relating to an apparent housing crisis in Edinburgh. This is an issue that Ms Boyack discussed extensively when working for SHFA, including in an October 2018 article in The Times (available here: <https://www.sfha.co.uk/news/news-category/sfha-news/news-article/housing-crisis-nota-short-term-issue>). This appears to be just one example of how the connection between this role and her current work is at least sufficient to put a fair-minded observer on notice of the potential for a lack of impartiality, thus fulfilling the prejudice test.'

I've read the prejudice test again as a result of this complaint and it has made me reflect on whether an interest meets the prejudice test. Not just whether the member feels influenced by 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.

In my old role within SFHA I had to put aside my own personal opinions and act within my remit as an employee. In my view, as I am no longer within the employee-employer relationship

I can act completely freely and without prejudice either for or against SFHA and its members. I do not think political interest and beliefs should be confused with a conflict of interest. Therefore, even though I am strongly supportive of social housing both through housing associations and local authorities I have had no ties or interest in SFHA as an organisation since I left before returning to the Scottish Parliament.

When I was an MSP from 1999 to 2016, I regularly had to make strong representations to housing associations about issues where my constituents considered that they had been let down by the housing association that they rented their home from. Since I have returned, I have again had cases where my constituents have not had good service and I have not been satisfied with the response I've had from their social landlord. My job is to stand up for my constituents, and the fact that I have worked for the SFHA will not make me lessen potential criticism or step back from addressing issues that people have brought to me when they are looking for my help.

The complaint cites a parliamentary question tabled by me on 19 September. This question was prompted by the experiences of constituents who have asked me for help with homelessness since I returned to the Scottish Parliament. He describes the issue as an 'apparent housing crisis in Edinburgh'. I feel very strongly that the situation has significantly worsened for my constituents in recent years due to the rising cost of land, the gentrification of housing, lack of resource for local authorities, the growth in short term lets and the cumulative lack of housing for people on modest or low incomes. In the 2011-2016 term of the Scottish Parliament, I campaigned very strongly in relation to party flats and the need for more Scottish Government investment in Edinburgh to enable council investment in new homes.

The complaint also cites an article I wrote for the Times when I worked for SFHA as evidence of a lack of impartiality/connection with SFHA. The article on the housing crisis was written by me as SFHA Head of Public Affairs reflecting the views of the organisation and its members. As an SFHA employee, however, I was not able to articulate my own personal or political views, on issues such as planning policy and local government funding even where I may have wanted to, something which happened throughout my time with SFHA. I would, therefore, argue that this article, though written by me, should not be seen to represent my personal views, but as a piece of work undertaken in an impartial, professional capacity.

When the opportunity to return to the Scottish Parliament arose, my thought was that by becoming an MSP again, I could follow my own political views. I now have that freedom and as a Lothian list member for Labour, I have both a geographic and political perspective that is not the same as that of SFHA which is both Scotland-wide and politically neutral.

I realise that this is a lengthy response to the complaint that you are investigating but wanted to share my perspective and why I did not think that registering my work for my former employer was necessary or appropriate. I have in no way tried to hide my previous employment and honestly believe that it adds to my experience, rather than representing an ongoing relationship or interest.

Since receiving the complaint, I have spent time thinking about whether I've got the issue right. For me, the chance to be a Lothians MSP and work again on Local Government, Planning and

Community empowerment is a real privilege and the chance to make a difference to my constituents' lives and to continue the work I had previously carried out for constituents between 1999 and 2016.

Finally, to be clear of my position on this matter, as I ended my employment with SFHA before I returned to the Scottish Parliament as a list member for Lothian in July, I did not think it necessary to make a declaration of interest about my past employment with the organisation. I did list it in my Previous Employment page, alongside other previous employment on my Scottish Parliament website page for information. I do not believe that my period of employment with SFHA will compromise my judgement or contribution to my work as Deputy Convener of the Local Government and Communities Committee.

Yours sincerely,

Sarah Boyack MSP.

Appendix 3: The respondent's representations to the draft report

As set out in paragraph [41] of this report, the respondent provided representations which were considered before this report was finalised. The respondent provided her representations on the draft report in the form of tracked changes to paragraphs 17, 19-22, and 35 within the draft report. Having considered the respondent's representations, the original report remains unaltered. However, for completeness and ease of reference, the respondent's representations in tracked changes are extracted and shown below in red:

...

17. At interview, the respondent stated that she took up employment with SFHA in ~~March~~ February 2017, initially working part time. In ~~April~~ March 2017, the respondent started working full time. The respondent verbally resigned in May ~~or~~ and formally in June 2019 and her last actual working day was ~~towards the end~~ on the 28th of June 2019. The respondent described the SFHA as the representative organisation for Registered Social Landlords in Scotland. The respondent explained that SFHA is a not for profit organisation funded mainly by membership fees. Additional funding may come from sponsorship of events held by SFHA, such as conferences. The respondent stated that SFHA have around 30 employees. In terms of her role as Head of Public Affairs, the respondent stated she was a member of the executive team and reported to the Chief Executive. The respondent stated she had line management responsibility for 8 or 9 employees. The respondent stated that 'anything to do with press, publicity, policy...' fell within her remit as the respondent's role was to manage the work of the team that ran those areas. The respondent described that a large part of role was managing a 'Rural Network' which involved organising conferences, providing regular updates on issues and visiting remote housing associations.

...

19. The respondent was asked whether she had had any engagement with SFHA since she returned to Parliament. The respondent described attending an event held by an MSP to launch the Scottish Labour's Housing Commission's a housing ~~policy~~ report. An employee of SFHA was also in attendance. The respondent stated there was no personal engagement beyond being in the same room and saying 'Hello, good to see you.' The respondent described the only other 'contact' she has had with SFHA is receiving a SFHA publication 'Housing Scotland' via a mailshot.
20. The respondent described a degree of some confusion over working arrangements on returning to Parliament. The respondent stated it was initially unclear ~~whether she would return~~ what her status was on her return to Parliament. ~~in September 2019 or earlier.~~ The context the respondent described included the departure of Kezia Dugdale, there being no office available for the respondent and a high number of Parliamentary staff being on annual leave at the time. The respondent stated that she attended a number of induction meetings from late July onwards but although she was able to start work for example in dealing with

constituents' casework, she wasn't able to ask Parliamentary questions or put motions down until she had formally taken the oath, which happened in-early on 3rd September 2019.

SFHA as a 'key stakeholder' of the Local Government and Communities Committee

21. The respondent was asked about the complainer's contention that SFHA are a 'key stakeholder in the Local Government and Communities' portfolio. The respondent stated that SFHA were one of many key stakeholders but that there are a lot of key stakeholders. The respondent contrasted this with what she described as the 'huge remit' of the Local Government and Communities Committee. The respondent described dealing with a range of issues since her work with the Committee started including non-domestic rates, period poverty, local elections, the Scottish Government's budget, community engagement, climate change and revisions to the Planning Act.

The respondent as 'spokesperson' for Local Government and Communities within Scottish Labour

22. The respondent was asked about the complainer's statement that she is the spokesperson for the Local Government and Communities portfolio. The respondent explained that she was the spokesperson for Local Government but another colleague was responsible for housing. This appeared to be consistent with information available from Scottish Labour's website which indicates that the Cabinet portfolio of Communities and Local Government, which is currently held by Aileen Campbell MSP and includes housing, is managed differently within the Shadow Cabinet. The respondent is identified as the Shadow Cabinet Secretary for Local Government whereas her colleague, Pauline McNeill MSP, is identified as the Shadow Cabinet Secretary for Communities.

...

35. The Commissioner reminded herself of the circumstances identified at paragraph 23. The Commissioner was satisfied that the respondent's actual ability to participate in a disinterested manner was not compromised, having regard to her lack of current involvement with her previous employer and having accepted the respondent's evidence that she held different views on some key issues from that of her former employer. However, the Commissioner was satisfied that a fair minded and impartial observer would consider that the respondent's previous employment could give the *appearance* of prejudicing her ability to participate in a disinterested manner in certain proceedings before the Committee. In reaching this decision, the Commissioner had particular regard to: the senior role the respondent held at SFHA and her contribution to SFHA policy; the respondent's employment with SFHA had only recently ended and; the work of SFHA overlaps with the work of the Committee, as evidenced by SFHA's attendances at the Committee from time to time.



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

CONFIDENTIAL

By email

Room CG.07
EDINBURGH
EH99 1SP

e-mail: sppacommittee@parliament.scot

29 June 2020

Dear Commissioner,

I am writing to you following the Committee's initial consideration of your report into the complaint against Sarah Boyack MSP. The Committee agreed that there were two points relating to the report that it wished to refer back to you for clarification.

The first point on which the Committee would like clarification is whether you submitted a report to the Procurator Fiscal in relation to this complaint.

Your report concludes that Sarah Boyack MSP has breached section 3(1) of the 2006 Act. In accordance with the [Directions made under the Scottish Parliamentary Standards Commissioner Act 2002](#), you are required to suspend an investigation and consideration of a complaint and submit a report to the Procurator Fiscal if you are "satisfied in relation to any complaint that the member has committed the conduct complained about and that the conduct would, if proved, constitute a criminal offence." Section 4(1) of the Scottish Parliamentary Standards Commissioner Act 2002 provides that you shall, in carrying out the functions of your office, comply with any Directions given by the Parliament.

As you will be aware, section 17 of the Interests of Members of the Scottish Parliament Act 2006 (the 2006 Act) makes the following provision in relation to offences:

17 Offences

(1) Any member who—

- (a) takes part in any proceedings of the Parliament without having complied with, or in contravention of, section 3, 5, 6, 8A (4) and (5) or 13 or a measure taken by the Parliament under section 15 or 16; or
- (b) contravenes section 14, is guilty of an offence.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale

The Committee considered that it was not clear from your report whether you had referred this complaint to the Procurator Fiscal and therefore seeks clarification from you on this point, including any explanation as to why a referral was or was not made, and the outcome of any communication with the Procurator Fiscal.

The second point on which the Committee would like clarification relates to complaint 2 and the reason for identifying this element of the complainant's letter as a discrete complaint which could have involved the breach of a relevant provision.

The Committee would like to clarify the extent to which you took into account Section 3, paragraph 8 of the Code of Conduct, which states that:

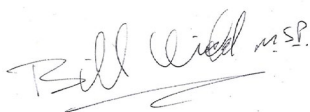
"A member must declare an interest when speaking or intervening in a debate where that interest relates to the subject being debated. The Act requires that only such interests as actually appear in the member's entry in the Register must be declared (section 12(2)). Following the lodging of a written statement of an interest with the Standards Clerks (in relation to initial registration, newly acquired interests, or late registrations), there could be a period of up to 30 days before the statement actually appears on the Register and so becomes publicly known. In this situation, members are encouraged to make a declaration of that interest (either orally or in writing as appropriate to the proceedings) in order to avoid the suggestion of undue influence of which only they will be aware prior to the registration being published."

Further, section 3 of the 2006 Act allows members a period of 30 days after the date on which the member has taken the oath of allegiance or made a solemn affirmation to comply with the requirement to lodge a written statement. Sarah Boyack took the oath on 3 September 2019.

The Committee considered that your discussion of complaint 2 did not appear to take into account the question as to whether an MSP could have breached the requirement to declare an interest when no such interest appeared in the member's Register, and – further – that on 11 September 2019, Sarah Boyack MSP had not yet lodged her written statement with the Standards Clerks (this took place on 17 September 2019). The Committee therefore seeks clarification on this point.

In order for us to plan our work programme, I should be grateful if you could keep me updated as to when you will be able to provide these clarifications.

Yours sincerely

A handwritten signature in blue ink that reads "Bill Kidd MSP". The signature is written in a cursive style with a horizontal line underneath.

Bill Kidd MSP
Convener
Standards, Procedures and Public Appointments Committee

CONFIDENTIAL

Bill Kidd MSP
Convener
Standards, Procedures and Public Appointments Committee
Room CG.07
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By email: sppacommittee@parliament.scot

27 July 2020

Dear Mr Kidd

COMPLAINT AGAINST SARAH BOYACK (REF: MSP3142)

Thank you for your letter dated 29 June in relation to my report regarding a complaint against Sarah Boyack MSP. Your letter requests clarification on certain matters to which I have responded below.

Report to the Crown Office and Procurator Fiscal Service COPFS

A report was submitted to the COPFS in relation to the complaint concerned following receipt of your letter. Please accept this communication as notification of this report having been made. The COPFS considered the matter and concluded that it was not in the public interest to raise proceedings.

In submitting my report to the Committee, I followed legal advice regarding the application of paragraph 15 of the Directions made under the Scottish Parliamentary Standards Commissioner Act 2002. Following receipt of your letter I arranged an urgent review of this advice and regrettably it appears to have been incorrect.

Further, in preparing my report to you, I referred to a previous case of this nature where my predecessor only approached COPFS after submitting a report to the Committee. In this instance the subsequent report to COPFS is said to have been at the Committee's behest. Hence some degree of misunderstanding seems to have existed historically around the correct procedure for implementation of the Directions in this regard. I intend to rectify this situation without delay.

The provision of erroneous advice together with the precedent in our case files and the absence of any current formal reporting arrangement between this office and the COPFS, (the only memorandum of understanding held by this office is dated 2008) eventuated in the submission of the report to the Committee in these circumstances.

In order to formalise and codify matters moving forward, I have initiated consultation with the COPFS and have drafted a reporting and liaison protocol which is currently under the consideration of their Specialist Casework division. I look forward to early finalisation of this protocol to facilitate clarity in regards to future reporting requirements. I have also arranged for our own investigation and reporting procedures to be updated.

Complaint 2

The Committee sought clarification on two points in relation to Complaint 2 which will be dealt with in turn.

Inclusion of Complaint 2

The Committee has asked about the reason for identifying this element of the complainant's letter as a discrete complaint which could have involved the breach of a relevant provision.

Section 3(1) of the Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act) provides that the function of the Commissioner is to investigate whether the member has committed the conduct complained about and has, as a result of that conduct, breached a relevant provision. Section 6(5) sets out the specific requirements of a complaint which includes that it sets out the facts relevant to the conduct complained about.

Expanding upon what I said in paragraph 25 of the report, the complainant's complaint form stated (emphasis added):

“Ms Boyack's register of interest makes no mention of this role **and**, in the first session of her membership of the Committee, she did not declare SFHA as a registerable interest.”

The 'and' indicated to me that complaint 2 formed part of the conduct being complained about. It is noted that, unlike his approach to complaint 1, the complainant did not indicate specific paragraphs of the Code he considered breached. However, neither section 3(1) or 6(5) places an obligation on a complainant to do so.

Having reached the view that complaint 2 was part of the conduct complained about, I considered I was required to reach a conclusion as to whether this conduct breached a relevant provision.

Extent to which section 3, paragraph 8 of the Code and section 3 of the 2006 Act were considered

The above provisions were considered. However, they did not appear to be material in the circumstances of the complaint. The first part of section 3, paragraph 8 of the Code requires a member to declare an interest that relates to the subject being debated. This provision is similar to section 3, paragraph 4 of the Code. At paragraph 27 of the report I note that the Committee dealt with matters unrelated to the interests of the Scottish Federation of Housing Associations. This point was sufficient to conclude that a breach had not occurred as is detailed at paragraphs 38 and 39.

On the question of whether a member could have breached the requirement to declare an interest when no such interest appeared in the member's register and the impact of the timing of lodging a written statement; these are questions that I would prefer to reach a conclusion on in a complaint where they are live issues. It is not my intention to be evasive on those questions and I hope the Committee understand my reasons in preferring to reach conclusions on those points when it is material to the conclusion. For the reasons above, I did not consider the issue was live in the circumstances of the present complaint.

Thank you for the opportunity to provide these clarifications to the Committee. If there is anything further I can provide do not hesitate to contact me again.

Yours sincerely

A handwritten signature in blue ink that reads "Caroline Anderson". The signature is written in a cursive style with a large initial 'C'.

Caroline Anderson FCA
Ethical Standards Commissioner



The Scottish Parliament
Pàrlamaid na h-Alba

Sarah Boyack MSP • M1.07
The Scottish Parliament • Edinburgh • EH99 1SP



Alastair Macfie,
Senior Assistant Clerk to the Standards, Procedures
and Public Appointments Committee

COMPLAINT - PRIVATE - CONFIDENTIAL

2 September 2020

Dear Alistair,

Thank you for your letter of 20th August offering me the chance to comment on whether I agree with the Commissioner's findings in fact and whether I would like the chance to appear before the committee before it considers the report at its meeting on 17th September.

On whether I agree with the Commissioner's findings in fact or conclusion, the answer is yes and no. I agree with the findings in fact but not with the conclusion. However, I would want to say at the outset when the Commissioner informed me that her view was that my former employment should be registered, I updated my Register of Interests.

You have a copy of the detailed amendments that I wished to make in response to the Commissioner's findings in fact. I appreciated the opportunity to give this feedback before the Commissioner presented her report to the committee. Accordingly, I agree with the findings in fact. I do, however, respectfully disagree with the conclusion the Commissioner reached based on these facts.

I would like to explain briefly why I did not include SFHA in my registration last autumn. I was clear that I had finished my work with the SFHA before I returned to the Parliament. However, I openly listed SFHA alongside other jobs I've held in my personal interests entry on the Parliament website.

The previous employment of all members equips us to bring experience and knowledge to our work in this building and in the support of our constituents.

Moreover, I had campaigned on homelessness and support for tenants in my previous time as an MSP and as a Labour member in relation to preventing homelessness, in the provision of new homes and in numerous representations on behalf of tenants to their landlords.

I was genuinely surprised when the Commissioner found that I had breached the rules.

Although I did not and still do not think I should have registered my former employment I did feel that the Commissioner's view should not be ignored. I was conflicted as to what to do at that point. I certainly did not want to delay weeks or months before registering, awaiting the judgement of the committee in case the committee agreed with her. So, when the Commissioner concluded that I had breached the code in relation to the Parliamentary question I asked on homelessness I felt I had no option but to amend my register of interests.

Since I added my employment at SFHA to my statement on my register of interests I have declared an interest six times during parliamentary proceedings.

On the occasions on which I have made a declaration I have felt uncomfortable, wondering if it was necessary, but have felt given that there was a judgement by the Commissioner, that it was the appropriate thing to do.

Some of the points I made were political as party policy, others were long argued for Edinburgh-specific points and made on behalf of tenants.

I returned to the Parliament over a year ago and have spent a significant amount of time thinking and re-thinking about what would have been the right thing to do last autumn. I like to think I am a conscientious person, thoughtful of my obligations as a member and capable of reaching my own decisions but I have to say that dealing with the complaint has been one of the most stressful experiences of my time in Parliament.

I hope that the committee will appreciate that I have acted in good faith and I still feel that there is no reason for my previous employment to prejudice my political judgement. Whatever the committee's view is, I will of course accept it and respond in line with its recommendations. I also hope this will usefully inform other future MSP registrations of interest.

There may be points I have not made clearly or issues a member feels I have not dealt with at all. I would therefore be keen to have the opportunity to address these at the committee if that were possible.

Yours sincerely,

Sarah

Sarah Boyack
Member of Scottish Parliament
for Lothian Region (Scottish Labour)

Scottish Labour MSP for the Lothian Region
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Sarah.Boyack.MSP@Parliament.Scot