

**Commissioner for Ethical Standards in Public Life** in Scotland

Thistle House 91 Haymarket Terrace Edinburgh **EH12 5HE** 

#### 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/3291 25 August 2021 Date:

Complainer(s):	Mr Jo Lo

### COMPLAINT AGAINST Alison Harris MSP **Respondent:** Member for: Central Scotland (Region) Party: Scottish Conservative and Unionist Party

#### 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'), when that is read in conjunction with section 4 of the same Act. Section 4 gives the Scottish Parliament the power to determine the form and content of the written statement and did so in the "Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2016" and the subsequent 2017 version;  Section 2 paragraphs 2.7.1, 2.7.2, 2.7.4 and 2.7.11 of the Code of Conduct for Members of the Scottish Parliament, 6<sup>th</sup> Edition, dated 29<sup>th</sup> April 2016 and equivalent paragraphs in subsequent editions ('the Code').

## **Contents**

Executive summary	4
Introduction	5
Background	5
The complaint	5
Admissibility of the complaint	5
The investigation	9
The approach to findings	11
The analysis of the evidence and findings	11
Overall determination of the conduct complained about	13
Relevant provision(s)	13
Draft report and the respondent's representations	16
Extracts from the relevant provisions	17
Appendix One – Completed Complaint Form	21
Appendix Two – Report to Crown Office and Procurator Fiscal Service	22
Breach Report under reference MSP/3291	22
Background	22
Appendix Three – representations by the respondent	68
Appendix Four – Acting Commissioner's response to representations	77
Appendix Five – further representations by the respondent	89
Appendix Six – Response to further representations by the respondent	96

#### **Executive summary**

The conduct complained about can be summarised as follows:

The MSP concerned has not registered her shareholding in Georgian Finance Company Limited, a property investment company, appropriately in the Register of Interests in accordance with the Code of Conduct, in that she has registered her shares at a market value of £1.

The MSP has a majority shareholding of 6,667 shares in the company which has £10,000 issued share capital, assets of circa £1.5 m and net assets of circa £0.4/0.5m. The MSP is not a director of the company but has the power to appoint or remove a director. This was the case at the point of the MSP's return in May 2016. In her original register of interests the respondent gave the market value of each share as £1. The Commissioner asked the respondent for an accurate valuation of the company's shares on two occasions. The respondent has insisted that there was no market value for the shares and the nominal value remained at £1 per share throughout the relevant period. It is the Commissioner's view that the MSP has relied on a clause within the Articles of Association in arriving at the £1 share valuation, that clause requiring approval by the directors prior to disposal of company shares. The Commissioner understands that this reliance is inappropriate and does not act to render market value as equivalent to nominal value, despite registered details to this effect.

Section 2 paragraphs 2.7.1, 2.7.2, 2.7.4 and 2.7.11 of the Code of Conduct for Members of the Scottish Parliament, 6<sup>th</sup> Edition, dated 29<sup>th</sup> April 2016 and equivalent paragraphs in subsequent editions ('the Code') relating to "Categories of Registrable Interests", requires that if the market value of the shareholding exceeds 50% of the MSP's salary, then it must be registered on the basis of market value when first returned, with a new valuation being obtained on each subsequent 5th April (see also the schedule to the Interests of Members of the Scottish Parliament Act 2006). This would be the Code's requirement for the MSP concerned if the market value of each of the 6,667 shares was just under £5 from May 2016 onwards. The MSP was asked to provide annual market valuations for these shares to the Commissioner and did not do so on the basis that "there is no market in which I am able to trade these shares". A letter from the MSP's accountant was provided in support of this assertion.

On the basis of a share valuation performed on the Commissioner's behalf by an independent accountant, using publicly available information regarding the company, the market value appears to be significantly in excess of the figure of £5 throughout the material time.

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 shares at true market value breached the 2006 Act and the Code as is detailed above.

#### Introduction

The Act established a Commissioner to investigate complaints about the conduct of MSPs and report upon the outcome of such investigations to the Scottish 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 Central Scotland (Region) and was first returned in May 2016. The respondent is currently a member of the following Committees:
  - Economy, Energy and Fair Work Committee (Member)
  - Education and Skills Committee (Substitute Member)
  - o Equalities and Human Rights Committee (Member).
- 2. The complainer submitted a complaint dated 5 June 2020 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 interest in the Georgian Finance Company Ltd within her register of interests at its true market value.

#### The complaint

4. The conduct complained about is as follows:

#### Complaint

1. From May 2016, the respondent did not include on her register of interests the true market value of the shares that she held in the Georgian Finance Company Ltd. Instead, the respondent included in her register of interests entry a nominal value of the shares at £1 each. In her original entry in the register, £1 was given as the market value. The complainer advised that he had first been made aware of this in May 2020, the breach of the Code, if proven, having been recurring since the date of the respondent's return.

#### 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 required to conduct an initial investigation at stage 1 to assess whether the evidence was sufficient to suggest that the conduct complained about had taken place. The relevant Code of Conduct paragraphs that the Commissioner considered were set out in the 6<sup>th</sup> edition dated 29 April 2016. Whilst the respondent's shares had been registered after her return, the market value provided for them was £1. The Commissioner considered the relevant Code provisions at that time:
  - "2.7.2 Registration is required where the nominal value of the shares at the relevant date is or was greater than 1% of the total nominal value of the issued share capital of the company or other body; or where the market value of the shares at the relevant date exceeds 50% of a member's salary at the start of the current parliamentary session (rounded down to the nearest £10 currently £30,340). Members are not required to register interests in shares which do not exceed either of the value thresholds; however, members may register these in the voluntary category if they wish."
  - "2.7.4 A member considering whether registration of an existing share-holding at the date of return is required on the basis of market value must ascertain its value at that date. If it exceeds 50% of a member's salary at the start of the current parliamentary session the shareholding must be registered. Likewise, a member considering whether registration of an existing share-holding at the date of return is required on the basis of the nominal value of the shares must ascertain whether this value is greater than 1% of the total nominal value of the issued share capital of the company or other body at that date. In either case the member must then obtain a new valuation on each subsequent 5th April that the member continues to have the interest in shares. If the value continues to exceed the relevant threshold, then the shares should continue to be registered. If they fall under that threshold then the member may have the interest removed from the Register as a ceased interest (see Section 1.2.21 of Volume 2 of this Code). Members who have a portfolio of shares must continue to track the value of shares as at each relevant date to ensure that all holdings continue to fall under the threshold for registration. Where a shareholding later exceeds that threshold, the share-holding must be registered as if it was an interest acquired after the date of the member's return and on the relevant date on which the value exceeded the threshold."
  - "2.7.11 For shares registered on the basis of market value, members must provide a valuation on the relevant date. For shares registered on the basis of a proportion of nominal value, members must provide the percentage of the issued share capital of the company that the member holds. Where shares could be registered on the basis of both market value and nominal value the market value should also be provided as well as the percentage of overall share capital."

Equivalent provisions were included in subsequent Codes.

7. The Commissioner wrote to the respondent on 29 June to request her responses to the issues raised by the complainer. The Commissioner asked at the same time

for copies of the annual market valuations of the shareholdings from 2016 onwards, which the Commissioner advised the respondent was a requirement of the Code.

- The Commissioner also reviewed the current entry on the respondent's register of interests and also the publicly available information about the company on the companies house website: (https://beta.companieshouse.gov.uk/company/SC032890).
- 9. The respondent's entry on the register of interests at the date of the review 10 July 2020 showed that she had included the following:

#### "Interest in shares:

I own 66.67% of ordinary shares in the Georgian Finance Company Ltd, a property rental company. The market value of the shares is £1 per share. I resigned as managing director of this company on 10 May 2016. I received no remuneration from this company."

The publicly available information on the respondent's interest in the Georgian Finance Company Ltd on the date of the review showed the following in the company's accounts year ending 31/03/17 (the relevant year of the respondent's return):

"Directors: George Harris [new this year in comparison with the prior year], Marion Etta Jack

Tangible fixed assets: £1,417,623 Net current liabilities: £1,088,698

Cash at bank: £223.241

Total assets less current liabilities: £328,925

Heritable property valuation [new this year]: £1,417,000

Note to accounts [new this year in comparison with the prior year]: The ultimate controlling party is Mrs Alison Ada Harris"

10. The respondent replied to the Commissioner on 2<sup>nd</sup> July by email, stating that:

"It is only now, with hindsight, that I believe I mistakenly used the work "market" instead of "nominal" to describe my shareholdings and their value. My Register of Interest should be amended to say "the Nominal value....". This was a genuine error and at no stage was it my intention to deliberately mislead the public as to my shareholding or its value..."

and

"The reality is that, while I own 66.67% of the shares, there is no market in which I am able to trade with these shares. I am bound by the Article of Association which prohibits me from selling or transferring these shares without the prior written consent of the Directors. I have included a letter from the Company's Accountants confirming this position. (LM01)."

11. The respondent also advised that she had both discussed her original registration with the Standards Clerks and had discussed the need for annual valuations with her accountants each year subsequent to her return:

"On becoming an MSP I met with the standards clerks and had discussions as to how best to accurately record my interests in the Register of Interests. With regards to providing copies of the annual valuations of both shareholdings from 2016 onwards, I discussed these values annually with the Companies' accountant and confirmed these values had not changed. There was no market value for the shares and the nominal value remained at £1 per share."

12. The letter from the company's accountants stated:

"The Georgian Finance Company Limited has a share capital of £10,000, comprising 10,000 Ordinary Shares of £1 each. 6,667 of these shares are held by Alison Harris with a nominal value of £6,667.

The company was incorporated on 27 February 1958 and, being a private company, there is no ready market in its shares. Furthermore, Clause 8 of the Articles of Association of the company gives the directors the right to veto any share transfer to an outside third party, thus inhibiting any value which might be attributed to the shares."

- 13. To summarise the response of 2<sup>nd</sup> July, the respondent did not provide a valuation of the shares, as had been requested by the Commissioner, in her letter of response or in any of the attachments.
- 14. The Commissioner then requested a copy of the full articles of association of the company to verify the assertions made by the respondent and the company accountant.
- 15. The respondent replied on 13 July by email, attaching the articles of association in pdf format and another letter, referring to article 8. This verified that "Unless with the prior written consent of the Directors no shares shall be transferred to a person who is not a member of the company".
- 16. In the absence of the disclosure of a valuation of the shares concerned, the Commissioner wrote to the respondent again on 16 July, referring to a transfer of shares that had taken place and that had been referred to in the annual return of the company, available from its entry on the companies house website, dated 24 July 2014. The Commissioner asked the respondent to provide the share valuation details pertaining to this transfer which, whilst historic, would be of assistance in her ongoing assessment of this complaint.
- 17. The respondent replied on the same day as follows and having sought advice from the company's accountant:

"the transaction to which you refer took place on 15th October 2013. The number of shares transferred from Marion Jack was 280 shares, nominal value £1.00 each. These shares were gifted by her to George Harris (140 shares, nominal value £1.00 each) and Rebecca Harris (140 shares, nominal value £1.00 each). The stock transfer form showed consideration money to be nil value."

18. Having received this response, the Commissioner commissioned an independent evaluation by an accountant of the market value of the shares held by the respondent at the time of her return. This was with the intention of establishing

whether that value exceeded the threshold set by the Code of Conduct for the initial registration of the market value of the shares concerned, i.e. 50% of the MSP's salary, as well as the Code's requirement for an annual valuation of such shares.

- 19. The Commissioner wrote to the Standards, Procedures and Public Appointments Committee (SPPA Committee), the complainer and the respondent on 5 August to confirm that she had been unable to complete her investigation on admissibility within the two months specified as required by section 7(11) of the <a href="Scottish Parliamentary Standards Commissioner Act 2002">Standards Commissioner Act 2002</a> (the 2002 Act).
- 20. The independent accountant's valuation of the shares was received on 7 August and confirmed, by reference to the annual accounts relevant at the time of the respondent's return, that the value of each share exceeded £5 and that, as a consequence, the market value of the respondent's overall shareholding exceeded the threshold for registration.
- 21. The Commissioner considered the material provided by the respondent, the relevant provisions of the Code and the share valuation provided by the independent accountant and concluded that the complaint was admissible for the purposes of the 2002 Act and that she was required to proceed to stage 2 "Investigation of an admissible complaint" in accordance with section 8 of the 2002 Act. The SPPA Committee, the complainer and the respondent were issued with letters to that effect on 2 September 2020.
- 22. On 3 September the respondent replied to ask for an explanation of stage 2, to advise that she had sought Counsel's opinion and to request a two week delay before the Commissioner entered into stage 2 to allow her time to seek this opinion.
- 23. The Commissioner responded on 7 September setting out the relevant provisions of the 2002 Act (sections 7 and 8) and explaining that stage 2 was already engaged.
- 24. Having concluded that the complaint was admissible, the Commissioner went on to consider the provisions of the <a href="Interests of Members of the Scottish Parliament Act 2006">Interests of Members of the Scottish Parliament</a> Act 2006 (the 2006 Act). The Commissioner concluded that the 2006 Act was engaged and that the case should be referred to the Crown Office and Procurator Fiscal Service (COPFS) in accordance with the Directions issued to her by the Scottish Parliament under section 4 of the 2002 Act.

#### The investigation

25. The Directions issued under section 4 of the 2002 Act make it clear that the Commissioner is to suspend her investigation if she is satisfied that the conduct would, if proved, constitute a criminal offence:

#### "Criminal offences

- (15) If the Commissioner is 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, the Commissioner shall—
- (a) suspend investigation and consideration of the complaint;
- (b) submit a report to the Procurator Fiscal; and
- (c) notify the Committee."

- 26. The Commissioner prepared a report, setting out all of the material that she had reviewed during the admissibility stage of her investigation, and provided this to COPFS on 7 October 2020. The report referred to the relevant provisions of the 2006 Act and the Code and included the following attachments:
  - o correspondence between the Commissioner and the respondent
  - o information provided to the independent accountant for purposes of the valuation
  - o the response from the independent accountant
  - the results of a company registry search.

The report and attachments are included in appendix two.

- 27. The SPPA Committee was advised that a report had been made to the COPFS, in keeping with the Directions (see above), on 19 October.
- 28. The Commissioner wrote also to the respondent on this date and by reference to a letter received from her solicitors on 12 October. The Commissioner confirmed that the case had been referred to the COPFS and that the SPPA Committee had been advised accordingly. The Commissioner confirmed also that the identity of the respondent had not been provided to the Committee and that, as the case had been referred to the COPFS, she was unable to provide a timescale for completion of the investigation.
- 29. On 6 November, COPFS replied to the Commissioner's report of 7 October. The substantive text from the letter indicated that the respondent may be in breach of the Code but not the 2006 Act:

"It does appear that the MSP may be in breach of the Code of Conduct by not complying with paragraph 93 of the Code. Since the MSP's shares could have been registered on the basis of both market value and nominal value, paragraph 93 states that the MSP should have provided both the market value and the percentage of overall share capital in the Register, which the MSP has not done in the present circumstances."

"Having considered the Interests of Members of the Scottish Parliament Act 2006, however, I am satisfied that the conduct reported does not amount to a criminal offence under the Act. Although the requirement to provide both the market and nominal values is set out in the Code of Conduct, no such requirement exists under the Interests of Members of the Scottish Parliament Act 2006. Section 3 of that Act requires the member only to register any registrable financial interest. (The Schedule to the Act sets out the circumstances in which a member has a registrable financial interest; Paragraph 9 of the Schedule sets out the position regarding interests in shares.) Section 3 does not require the member to provide any further information."

"The MSP has registered her interest in the company by providing in the Register of Interests the percentage of the shares that she holds and thus she has complied with her obligations under section 3 of the Act."

"Accordingly, as there does not appear to be a basis for the Crown to conduct any further enquiries into this matter, I would now refer it back to your office to consider any potential breach of the Code of Conduct."

30. The Commissioner responded on 20 November, referring COPFS to section 4 of the 2006 Act and seeking clarification on their position:

"I would find it helpful to understand what consideration was given to section 4 of the 2006 Act in reaching the conclusion that you have. Section 4 clarifies what form the written statement required by section 3(3) of the Act should take, I reproduce the relevant text below for your reference.

#### "4 Written statement

- (1) A written statement shall be in such form as the Parliament may determine.
- (2) A written statement shall contain such information about the interest or relating to it as the Parliament may determine."
- 31. COPFS acknowledged this correspondence on 25 November and provided a more substantive response on 23 December. Having considered the relevant provisions of the legislation, **COPFS confirmed** that they shared the Commissioner's view that "there is potential criminality here, in that the value of the shares was not declared (albeit the existence of the shares was declared)". The COPFS asked if the Commissioner had interviewed either the clerks to the Standards Committee or the respondent's accountants (see paragraph 11).
- 32. The Commissioner wrote to COPFS on 11 January to confirm that she had not conducted interviews on the basis that she had been required by the Directions to suspend her investigation.
- 33. This was acknowledged by COPFS on 13 January. On 20 January, COFS confirmed that they were reporting the matter to Crown Counsel for instructions on whether or not to instruct a police investigation. The COPFS undertook to revert to the Commissioner once they had instructions.
- 34. On 3 February, COPFS wrote to the Commissioner to confirm that Crown Counsel had instructed that there should be no criminal proceedings and, by reference to the Directions, to advise that it was now open to the Commissioner to resume her investigation. The Commissioner wrote to COPFS to acknowledge this and to ask if they had conducted any interviews or ingathered any new information. The COPFS responded on the 8 February to confirm that they had not.

#### The approach to findings

35. 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, i.e. whether it is more likely than not that an event occurred.

#### The analysis of the evidence and findings

36. The Commissioner considered the complaint and evaluated the evidence in relation to it in order to make her findings on facts.

#### The Complaint

37. In his complaint form, the complainer stated that,

"on the register of interests, Alison Harris says the market value of her shares in Georgian Finance Company is £1 per share.

But this is not the market value. This is the nominal value. Nominal value is just an arbitrary value stemming from historical accident which has no relation to actual value. Whereas market value is what the shares are worth on the market. In emails to me, Harris has confirmed that she has been using nominal value and market value interchangeably. This gives the public a misleading picture of the reality."

#### The Response

38. In response to the complaint, the respondent asserted that she should have used the term nominal value instead of market value and that the shares had no market value. The latter assertion was based on the fact that shares could not be sold without the permission of the directors, according to the company's articles of association.

#### The Facts

- 39. At the point of her return and original registration, the respondent had a majority shareholding of 6,667 shares in a property investment company which has £10,000 issued share capital, assets of circa £1.5 m and net assets of circa £0.4/0.5m. The respondent is not a director of the company but is identified in the company accounts as the ultimate controlling party with the power to appoint or remove a director. That has been the case since her original return and registration.
- 40. In her original register of interests the respondent gave the market value of each share as £1. The Commissioner asked the respondent for an accurate valuation of the company's shares on two occasions. The respondent has insisted that there was no market value for the shares and the nominal value remained at £1 per share throughout the relevant period. It is the Commissioner's view that the MSP has relied on a clause within the Articles of Association in arriving at the £1 share valuation, that clause requiring approval by the directors prior to disposal of company shares.
- 41. Under Section 2 of the Code. "Categories of Registrable Interests", Paragraph 86. requires that if the market value of the shareholding exceeds 50% of the MSP's salary, then it must be registered on the basis of market value when first returned, with a new valuation being obtained on each subsequent 5th April. This would be the case for the MSP concerned if the market value of each of the 6,667 shares was just under £5 from May 2016 onwards. The Code in force at the time of the original return and declaration (6th edition, April 2016) contained the same provision.
- 42.On the basis of a share valuation recently performed on behalf of the Commissioner by an independent accountant, using publicly available information

regarding the company, the market value of the company's shares appeared to be significantly in excess of the figure of £5 throughout the material time.

#### The Commissioner's conclusion

- 43. The Commissioner notes and accepts that the articles of association of the company concerned preclude the sale of shares without the approval of its directors. The Commissioner does not however accept that this is an absolute exclusion to the effect that the shares in the company cannot be sold and therefore have no market value. In this context, the Commissioner also takes cognisance of the fact that the respondent is the ultimate controlling party of the property holding company in question. The Commissioner has concluded that the shares are capable of being sold.
- 44. As to the value of the shares, were they to be sold, the Commissioner is content that the independent valuation of them is as accurate as possible in the absence of more information being forthcoming from either the respondent or her accountants and that the value of each share held exceeded at least £5 at the point of registration (that is, a minimum of £33,335). As the publicly available information attests, the company has assets of circa £1.5 m and net assets of circa £0.4/0.5m.
- 45. The Commissioner considered the above facts of relevance to the overall context and application of the facts to the Code. 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 is satisfied from the evidence that she has considered that the respondent failed to register the company's shares at their true market value.

#### Overall determination of the conduct complained about

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

#### Complaint

1. From May 2016, the respondent did not include on her register of interests the true market value of the shares that she held in the Georgian Finance Company Ltd. Instead, the respondent included in her register of interests entry a nominal value of the shares at £1 each. In her original entry in the register, £1 was given as the market value. This was not the true market value of the shares at the time of the respondent's return or in subsequent years; Sufficient evidence to find proved

#### Relevant provision(s)

- 47. 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.
- 48. 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 editions of the Code are the 6<sup>th</sup> Edition, dated 29 April 2016 and the subsequent editions up to the 7<sup>th</sup> Edition, 2<sup>nd</sup> revision, dated 7 January 2020. 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. For the purposes of this report, the provisions of the 6<sup>th</sup> Edition of the Code, dated 29 April 2016 have been referred to although subsequent Codes contained the same provisions with different paragraph numbers.

49. The Commissioner also considered the Guidance on the Code of Conduct for Members of the Scottish Parliament, ('the Guidance') although, in the circumstances of this complaint, it was not necessary to refer to specific passages of the Guidance within this report.

#### The Complaint assessed against the provisions

- 50. Both the Schedule to the 2006 Act and Section 2 of the subsequent applicable Codes make provision for Categories of Registerable Interest.
- 51. Section 1 of the applicable Codes make provision regarding Registration of Interests. Code Section 1, paragraphs 1.1.6, 1.1.4 and 1.1.7 and Section 2 paragraph 2.1.1 provide that the Register of Interests must be completed and the form that the written statement must take.
- 52. Section 2 paragraphs 2.7.1, 2.7.2, 2.7.4 and 2.7.11 set out those provisions relating to the obligations placed on members when registering an interest in shares.
- 53. Section 2, paragraph 2.7.11 of the Code provides that:

"For shares registered on the basis of market value, members must provide a valuation on the relevant date. For shares registered on the basis of a proportion of nominal value, members must provide the percentage of the issued share capital of the company that the member holds. Where shares could be registered on the basis of both market value and nominal value the market value should also be provided as well as the percentage of overall share capital."

- 54. The Commissioner also considered sections 2, 3 and 4 of the 2006 Act, as well as the Schedule to the Act, these in combination not only requiring the registration of shares exceeding the threshold but also the form and content of such registrations. Section 4 gives the Scottish Parliament the power to determine the form and content of the written statement and did so in the "Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2016" and the subsequent 2017 version.
- 55. The Commissioner reminded herself of the circumstances identified at paragraphs 39. To 42. of this report. The Commissioner was satisfied that the respondent had not complied fully with the relevant provisions.
- 56. Accordingly, the Commissioner reached the conclusion that the respondent breached Section 3(1) of the Interests of Members of the Scottish Parliament Act

2006, as amended ('the 2006 Act'), when that is read in conjunction with section 4 of the same Act. Section 4 gives the Scottish Parliament the power to determine the form and content of the written statement and did so in the "Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2016" and the subsequent 2017 version. The Commissioner has concluded that section 2 paragraphs 2.7.1, 2.7.2, 2.7.4 and 2.7.11 of the Code of Conduct for Members of the Scottish Parliament, 6th Edition, dated 29th April 2016 and equivalent paragraphs in subsequent editions ('the Code') were also breached.

#### REPORT CONTINUED BELOW

#### Draft report and the respondent's representations

- 57. In accordance with section 9(3) of the Act, a draft report was sent to the respondent on 23 March 2021 and the respondent was provided an opportunity to make representations.
- 58. The respondent provided representations which are annexed to this report (**Appendix 3**).
- 59. Due to the absence of the Commissioner. the Acting Commissioner responded to the representations and the questions set out therein and provided the respondent with an opportunity to make further representations: (**Appendix 4**).
- 60. The respondent took up the opportunity to provide further representations: **(Appendix 5)**.

This report for and on behalf of Caroline Anderson F.C.A., Commissioner

Correspondence and further representations (Appendices 4 and 5) for and on behalf of Ian Bruce, Acting Commissioner.

Ian Bruce Acting Commissioner

**END OF REPORT** 

#### **Extracts from the relevant provisions**

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

#### Section 2 – Registerable 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—
- (a) any registrable interest which that member had on the date on which that member was returned;

#### Section 4 – Written statement

- (1) A written statement shall be in such form as the Parliament may determine.
- (2) A written statement shall contain such information about the interest or relating to it as the Parliament may determine.

#### SCHEDULE

#### Registrable financial interests

1 A member has, or had, a registrable financial interest in the circumstances set out in the following paragraphs.

#### Interest in shares

- 9 (1) Where a member has, or had, an interest in shares, whether that interest is, or was, held by the member or by a relevant person, and sub-paragraph (2) applies.
- (2) This sub-paragraph applies where either—
- (a)the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body; or
- (b) the market value of the shares at the relevant date exceeds, or exceeded, the specified limit.
- (3) Sub-paragraph (1) applies to an interest in shares, whether that interest is, or was, held by a member (or a relevant person)—
- (a) solely in the name of the member (or relevant person);
- (b) jointly with any other person or body;

. .

- (6) Where a member had an interest in shares at the date on which the member was returned as a member, the relevant date is—
- (a) that date; and
- (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

. . .

(8) In this paragraph—

"current parliamentary session" means the parliamentary session which begins immediately after, or in which, the member is returned;

an "interest in shares" means an interest in shares comprised in the share capital of a company or other body;

"relevant person" is a person who is subject to the control or direction of a member in respect of an interest in shares;

"specified limit" means 50% of a member's salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.

# The Code of Conduct for Members of the Scottish Parliament, 6<sup>th</sup> Edition dated 29 April 2016 ('the Code')

#### **SECTION 1: REGISTRATION OF INTERESTS**

- 1.1.1 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 with effect from 4 April 2007. Section 1 of the Act provides for a Register of Interests of Members of the Scottish Parliament ("the Register") in which information about certain financial interests of members must be registered. 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). The Act, its schedule, together with its explanatory notes and determinations made under it, are attached in Volume 4 to this Code. Where appropriate, this Section of the Code will direct the reader to the relevant determination or provision of the Act.
- 1.1.4 The schedule to the Act sets out the circumstances in which financial interests must be registered. In the Code and in the Act these interests are referred to as "registrable interests" and there are six categories of interests. These registrable interests are described in detail in Section 2 of the Code. Penalties and criminal sanctions apply in the event of non-compliance with the requirements for registration. If a member is uncertain about any aspect of the operation of the Act or the Code, the Standards clerks may be asked for advice. However, it is the responsibility of each member to ensure that the provisions of the Act are complied with and members may additionally wish to seek independent legal and other professional advice prior to registration.
- 1.2.7 Members must register interests by lodging written statements with the Standards clerks. The Interests of Members of the Scottish Parliament Act 2006 (Form and Content of Written Statement) Determination 2016 sets out the form of the statement that must be used. Members must register all registrable financial interests held by them on the date they were returned or which they have acquired on that date or since that date by completing such a statement (sections 3 and 5 of the Act)...

#### SECTION 2: CATEGORIES OF REGISTRABLE INTERESTS

2.1.1 The Schedule to the Act sets out the categories of registrable financial interests which a member must register. These are set out below with reference to the relevant provision in the Act and with explanatory notes designed to help members when registering their interests under any particular category. Members should refer to Section 1 (Volume 2) of this Code for the general requirements in

relation to registration. The form of written statement which members must complete when registering an interest (see Volume 4) contains key definitions and terms in relation to each category of interest.

#### Guidance on interest in shares

- 2.7.1 A member is required to register an interest in shares which the member or a "relevant person" (meaning a person subject to the control or direction of the member in respect of that interest) has or had. A relevant person can be a relative (such as a spouse or civil partner) or some other individual or body. Such a person may nominally own or hold the shares but can be said to be controlled or directed where, for example, only the member may authorise disposal of the shares or where the member ultimately benefits from any income or gain on disposal.
- 2.7.2 Registration is required where the nominal value of the shares at the relevant date is or was greater than 1% of the total nominal value of the issued share capital of the company or other body; or where the market value of the shares at the relevant date exceeds 50% of a member's salary at the start of the current parliamentary session (rounded down to the nearest £10 currently £30,340). Members are not required to register interests in shares which do not exceed either of the value thresholds; however, members may register these in the voluntary category if they wish.
- 2.7.4 A member considering whether registration of an existing share-holding at the date of return is required on the basis of market value must ascertain its value at that date. If it exceeds 50% of a member's salary at the start of the current parliamentary session the shareholding must be registered. Likewise, a member considering whether registration of an existing share-holding at the date of return is required on the basis of the nominal value of the shares must ascertain whether this value is greater than 1% of the total nominal value of the issued share capital of the company or other body at that date. In either case the member must then obtain a new valuation on each subsequent 5th April that the member continues to have the interest in shares. If the value continues to exceed the relevant threshold, then the shares should continue to be registered. If they fall under that threshold then the member may have the interest removed from the Register as a ceased interest (see Section 1.2.21 of Volume 2 of this Code). Members who have a portfolio of shares must continue to track the value of shares as at each relevant date to ensure that all holdings continue to fall under the threshold for registration. Where a shareholding later exceeds that threshold, the share-holding must be registered as if it was an interest acquired after the date of the member's return and on the relevant date on which the value exceeded the threshold.
- 2.7.11 For shares registered on the basis of market value, members must provide a valuation on the relevant date. For shares registered on the basis of a proportion of nominal value, members must provide the percentage of the issued share capital of the company that the member holds. Where shares could be registered on the basis of both market value and nominal value the market value should also be provided as well as the percentage of overall share capital.
- 2.8.1 Responsibility for ensuring compliance with the requirements of the Act for registration of interests lies with the individual member. If a member is uncertain about how the rules apply, the Standards clerks may be asked for advice. A member may also choose to consult a personal legal adviser and, on detailed financial and

commercial matters, a member may wish to seek advice from other relevant professionals. As explained in Section 1.2.31-33 of Volume 2, failure to comply with the requirements of registration will constitute a breach of the requirements of the Act and may be a criminal offence. It could also lead to sanctions being imposed on a member by the Parliament. Enforcement of the Rules in the Code is explained in Volume 2, Section 9 and in Volume 3, Section 9 of the Code.

#### Appendix One – Completed Complaint Form

From:	info@ethicalstandards.org.uk on behalf of Ethical Standards Commissioner <info@ethicalstandards.org.uk> 05 June 2020 13:47 info Webform submission from: Make a complaint</info@ethicalstandards.org.uk>
Sent: To: Subject:	

Complaint first created on Fri, 06/05/2020 - 12:37

Submitted on Fri, 06/05/2020 - 12:47

Submitted by:

Submitted values are:

## Who the complaint is about

**Complaint type** 

**MSP** 

Name of MSP(s)

Alison Harris

## **Details of the complaint**

#### What's your complaint about?

On the register of interests, Alison Harris says the market value of her shares in Georgian Finance Company is £1 per share.

But this is not the market value. This is the nominal value. Nominal value is just an arbitrary value stemming from historical accident which has no relation to actual value. Whereas market value is what the shares are worth on the market.

In emails to me, Harris has confirmed that she has been using nominal value and market value interchangeably. This gives the public a misleading picture of the reality.

When I wrote a media article about this issue, this point was made to me by an Emeritus Professor of Accounting called Prem Sikka. He said: ""I have never across a company whose value is determined by the nominal price of its shares." He said that net assets is a more common way of valuing shares.

https://theferret.scot/alison-harris-msp-property-scottish-parliament/

#### Date(s) incident occurred

I found out about it in May 2020. It occurred on 24 May 2016.

## **Complainer's details**

Complainer

I am the Complainer

Title

Mr

Full name

Joe Lo

**Address** 

Phone number

**Email** 

## **Signature and Declaration**

**Digital Signature box** 

Yes

#### Appendix Two – Report to Crown Office and Procurator Fiscal Service

#### Text of report

Lindsey Miller Deputy Crown Agent Serious Casework Crown Office and Procurator Fiscal Service

#### Sent by email to:

7 October 2020

Dear Ms Miller

#### **Breach Report under reference MSP/3291**

As Commissioner, I understand that I have reporting requirements in respect of your office in those circumstances outlined in paragraph 15 of the Directions by the Standards, Procedures and Public Appointments Committee (under the Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act), dated 27 September 2018.

On this basis I now wish to refer a matter for your attention under paragraph 15 (b) of these directions. Please note that, to date, I have completed my initial assessment under Stage 1 of the 2002 Act and on this basis am persuaded that the conduct complained of did occur and would, if proved, amount to a criminal offence under the Interests of Members of the Scottish Parliament Act 2006 (the 2006 Act). I have hence suspended my investigatory work at the commencement of Stage 2 and have summarised my Stage 1 findings below.

The conduct complained about is as follows:

The MSP concerned has not declared her shareholding in Georgian Finance Limited in the Register of Interest in accordance with the Code of Conduct, in that she has used a £1 nominal value as being equivalent to market value.

#### Background

The MSP has a majority shareholding of 6667 shares in a property investment company which has £10,000 issued share capital, assets of circa £1.5 m and net assets of circa £0.4/0.5m. The MSP is not a director of the company but has the power to appoint or remove a director. The MSP has relied on a clause within the Articles of Association in arriving at the £1 share valuation, that clause requiring approval by the directors prior to disposal of company shares. Some small parcels of shares were redistributed in 2012 and 2013, appearing to be between family members, but details of any valuations provided to HMRC at that time have not been forthcoming from the MSP.

Under Section 2 of the Code. "Categories of Registrable Interests", Paragraph 86. requires that if the market value of the shareholding exceeds 50% of the MSP's salary, then it must be registered on the basis of market value when first returned, with a new valuation being obtained on each subsequent 5th April (see also the schedule to the 2006 Act). This would be the case for the MSP concerned if the market value of each of the 6667 shares was just under £5 from May 2016 onwards. On the basis of a share valuation recently performed on my behalf by an independent accountant, using publicly available information regarding the company, the market value appears to be significantly in excess of the figure of £5 throughout the material time.

I attach the following documents for your further information:

- Results of a company registry search
- Information provided to the independent accountant for purposes of the valuation
- Response from the independent accountant
- Correspondence between my office and the MSP concerned

A link to the current Register of Interests for this MSP is provided for your ease of reference:

https://www.parliament.scot/msps/currentmsps/99223.aspx.

The clerks of the Standards, Procedures and Public Appointments Committee (SPPAC) can access historic entries in the Register of Interest for the MSP concerned and can be contacted at SPPACommittee@parliament.scot.

As I will notify SPPAC of this COPFS referral under the above case reference only, without disclosure of the MSP's name, please ensure that you quote this case reference in any correspondence with the clerks.

Additionally, I will notify the MSP concerned that I have reported the matter to your office in accordance with paragraph 15 of the aforementioned directions if I do not hear from you within the next 5 working days with a request to the contrary.

I look forward to hearing from you under paragraph 16 of the directions concerned in due course.

Please do not hesitate to contact me if I can be of any assistance regarding this matter.

Yours sincerely



Caroline Anderson FCA
Ethical Standards Commissioner

## Attachments included with report

- 1. Results of a company registry search:
- 2. Information provided to the independent accountant for purposes of the valuation
- 3. Response from the independent accountant
- 4. Correspondence between [the Commissioner's] office and the MSP concerned

#### Additional material reviewed in the case of MSP 3291

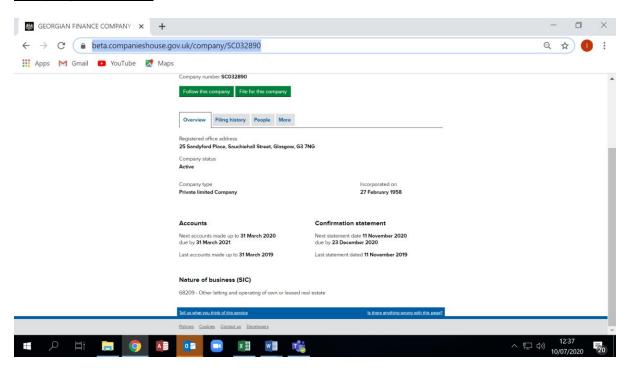
#### **Admissibility**

A search of companies house records was conducted on 10 July 2020 to review the accounts and other company information pertaining to the period under examination in this case, i.e., from 2015 to the current time.

#### The Georgian Finance Company Ltd.

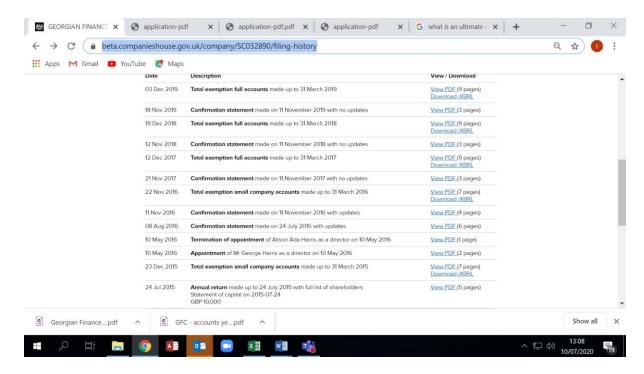
https://beta.companieshouse.gov.uk/company/SC032890

#### Company information



#### Filing history

https://beta.companieshouse.gov.uk/company/SC032890/filing-history



Link to accounts year ended 31/03/15:

Company accounts - downloaded from companies house\Georgian Finance Co - accounts year ended 31 March 2015.pdf

Key information:

Directors: Alison Ada Harris, Marion Etta Jack

Tangible fixed assets: £1,636,166 Net current liabilities: £1,139,184

Cash at bank: £196,144

Total assets less current liabilities: £496,982

Link to accounts year ended 31/03/16:

Company accounts - downloaded from companies house\Georgian Finance Co - accounts year ended 31 March 2016.pdf

Key information:

Directors: Alison Harris, Marion Etta Jack

Tangible fixed assets: £1,417,089 Net current liabilities: £1,080,187

Cash at bank: £196,144

Total assets less current liabilities: £555,902

Link to accounts year ended 31/03/17:

Company accounts - downloaded from companies house\Georgian Finance Co - accounts year ended 31 March 2017.pdf

Key information:

Directors: George Harris [new this year], Marion Etta Jack

Tangible fixed assets: £1,417,623 Net current liabilities: £1,088,698

Cash at bank: £223,241

Total assets less current liabilities: £328,925

Heritable property valuation [new this year]: £1,417,000

Note to accounts [new this year]: The ultimate controlling party is Mrs Alison Ada Harris

Link to accounts year ended 31/03/18:

Company accounts - downloaded from companies house\Georgian Finance Co - accounts year ended 31 March 2018.pdf

Key information:

Directors: George Harris, Marion Etta Jack

Tangible fixed assets: £1,477,561 Net current liabilities: £1,079,168

Cash at bank: £90,521

Total assets less current liabilities: £398,393 Heritable property valuation: £1,477,000

Note to accounts: The ultimate controlling party is Mrs Alison Ada Harris

Link to accounts year ended 31/03/19:

Company accounts - downloaded from companies house\Georgian Finance Co - accounts year ended 31 March 2019.pdf

Key information:

Directors: George Harris, Marion Etta Jack

Tangible fixed assets: £1,477,505 Net current liabilities: £1,005,749

Cash at bank: £174,093

Total assets less current liabilities: £471,756 Heritable property valuation: £1,477,000

Note to accounts: The ultimate controlling party is Mrs Alison Ada Harris

#### **GEORGIAN FINANCE LIMITED**

Articles of association paragraph 8: "no shares shall be transferred to a person who is not a member of the co without consent of directors "

Letter from accountants 2/7/20 points out that "clause 8 of AA inhibits any value that might be attributed to the shares"

Per accounts "Heritable property" (ie. Land and buildings) revalued in 2018 at £1,477,000 – note says performed by directors not professional valuers (Historical cost £1.7m)

Retained earnings £462 plus 10k share capital = Shareholders funds £472k

Ultimate controlling party = MSP (individual who controls the company)
Directors per 31.3.17 – 19 accounts: Marion Etta Jack and George Harris
Directors per 31.3.16 accounts; Marion Etta Jack and MSP (resigned as director 10/16)

#### Movement in shares

	24/7/15	15/10/13	11/10/12
ME Jack	2073	-280	-250
AA Harris	6667		
R Harris	630	+140	+125
G Harris	630	+140	+125

Any related valuation lodged with HMRC for these 2012 and 2013 redistributions may be informative.

#### Application of code to the situation as complained of

Section 2, paragraph 86. if mv> 50% of MSP salary – register on basis of mv

Date	MSP salary for year commencing on that date £	Share price minimum market value to exceed limit requiring declaration £ (based on holding 6667 shares)
1.4.16	60685	4.55
1.4.17	61778	4.63
1.4.18	62149	4.66
1.4.19	63579	4.77
1.4.20	64470	4.84

Subject:

FW: Advice re property company share valuation. STRICTLY CONFIDENTIAL

From: REDACTED

Sent: 07 August 2020 15:35

**To:** Karen Elder ; Caroline Anderson

Subject: Advice re property company share valuation. STRICTLY CONFIDENTIAL

Dear Caroline,

I refer to the above & our conversation via screens on Tuesday 4 August , also with Karen. I have studied the information Karen sent but I have also accessed a lot of information on the company at Companies House. I will refer to the individual only as Z to anonymise this text.

May 2016 appears to be the relevant date. At that time the most relevant company accounts were for the year ended 31 March 2016 which were signed on 15 November 2016. It is correct to say that the available accounts might have been for the prior year but that is not particularly relevant as I will explain in due course. At 31 March 2016 the company had net assets per the balance sheet amounting to £555,902.

The valuation of shares in a property investment company is usually easier to calculate than some other different types of companies. The main over-riding principle in a property company is the value of the properties & hence the net assets. Simplistically one divides the net asset valuation by the number of shares in issue & you get the value of one share. This is on the basis that you have the full open market values in the balance sheet. If not one gets the properties valued, add the other assets such as debtors & bank & deduct the liabilities to get the true net assets figure. Other factors do have to be taken into account especially in private limited companies the like of which you have asked me to comment on. The main factor is the size of the holding being valued. A valuation exercise is often carried out for Inheritance Tax (IHT) purposes but others can be the buy out of another shareholder. If one wants to purchase shares in a publicly listed property company one simply looks up the Financial Times or asks a stockbroker & one finds the price whether one is buying 100 or 100,000 shares. The same does not apply in private companies as a discount is applied depending on the size of the holding. If one was buying 100% of the shares one would use the full net assets share price calculation. If one was buying 10% of the shares then the value would be significantly lower. The reasons for this are that with such a small holding one has no control , influence or input & the majority shareholders or controlling directors can do as they please (within the law) to diminish any return one might hope to gain.

Z controls 67% of the company in question. The other shares are owned by direct relatives namely the mother of Z & what appear to be the son & daughter of Z. Z is not a director but Z has the power to appoint or remove a director. Z & the children own over 75% although I accept one could dissent but in such a close company I think all appointments would be by mutual consent.

An initial valuation of the shares held by Z at 31 March 2016 even after discounting would produce a valuation well in excess of the £5 figure you have mentioned.

However it could feasibly be argued that post balance sheet events should be taken into account. The obvious one of these which is addressed in the company's 2017 accounts is a reduction in the valuation of the company's properties. Following a revaluation by the directors & not by professional valuers the net assets of the properties is reduced by £299,895. No other specific matters are referred to in the public accounts explaining this matter so it has to be accepted as presented. One can only assume market factors & forces relevant to where the company's properties are located are the reason/cause. I consider this a material & relevant factor. The arithmetic then becomes £555,902 less £299,895 = £256,007 of net assets. On this lower net asset figure & applying the same valuation method still produces a share valuation in excess of the £5 you have referred to.

The company was incorporated in 1958 some 62 years ago. You have provided a copy of the Articles of Association. I have been unable to obtain any other documentation from Companies House due to Covid-19 restrictions to their service which might suggest further amendments to the Articles. In the absence of anything else I have assumed there have been no other changes. You have advised that the company's accountants have suggested that Clause 8 of the Articles inhibits the valuation of shares. Clause 8 is a common standard clause which is designed to discourage an outside shareholder acquiring shares in a close company & would discourage an outsider or dissenting member of the family selling to an outsider with aims in mind which are against the majority views held by the others. Such resistance to register a share transfer would most likely depress the value an outsider might be interested in paying but we are not dealing with any outsiders at all. I believe although I can't quote a case but this could be argued as

detrimental action by majority interests against minority interests which is a legal position a Court in some circumstances might look favourably upon. In this case I don't think the content of Clause 8 makes any difference or impact in a valuation exercise. I don't think HMRC would entertain such an argument in an IHT case. This company has a number of properties which makes the valuation position much more definite. We are not attempting to value goodwill which ranges can vary enormously. There is a high degree of certainty here. We are looking at a company that has been in the same family possession & control for 62 years. No outsider is ever going to be involved unless there is a full disposal by the family at some point in the future. A buyout by the company (not an outsider) of an existing shareholder is likely in my view to have unpleasant personal Income Tax consequences for the seller, not Capital Gains Tax.

You have advised & it is obvious from Annual Returns & Confirmation Statements at Companies House that the mother of Z has transferred over 4 successive tax years shares to the children of Z. You have attempted to calculate what share price has been used given the availability of the annual Capital Gains Tax exemption. I follow your logic & it may be sound to a degree but we are not privy to the actual computation submitted to HMRC. I suspect that a figure lower than you have tried to calculate might have been relevant using my valuation technique above. I only mention this in passing as I don't think it should be relied upon as we don't have details. I doubt you have the authority to ask about the tax affairs of the mother of Z. Successive disposals from the one holding to the same parties have further restrictions in the potential discounting process.

One other point which you have not asked about but which is obvious from a review of the company's annual accounts is the very significant loans (my description) to the company contained within creditors due within one year. These are recently regularly in excess of £1M. The identity of the lenders might be relevant. I can't comment as there is absolutely no information in the published accounts as to the identity of such person or persons. The loan(s) to the company constitute a financial interest in my view. You will have your own regulations in this respect which may well over-ride anything I have said above.

I trust I have provided a full response but please let me know if you need further comment or clarification on any of the matters discussed above. I'm aware you are about to depart on leave but I will be available next week if Karen needs to get in touch.

Kind regards.

Yours sincerely

**REDACTED** 

From: Ian Bruce

29 June 2020 09:26 Sent:

To:

Subject: Our ref: MSP 3291

**Attachments:** 2020-06-05 - LoJ(C) Initial Complaint Redacted.pdf; 2020-06-29 - FINAL Letter ESC

to Harris, A (MSP) (Notification of Complaint Received).pdf

#### Dear Ms Harris

Please find attached correspondence from the Ethical Standards Commissioner for Scotland.

Please note I am currently working remotely. The best way to contact me is by email.

#### Kind regards, lan

Ian Bruce **Public Appointments Manager Ethical Standards Commissioner** Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Tel: 0131 347 3897

www.ethicalstandards.org.uk

#### COVID-19

The Commissioner recognises the unprecedented challenges we are all facing during the Coronavirus (COVID-19) pandemic.

Our aim is to provide as unbroken a service as possible during the COVID-19 crisis. However, we understand that COVID-19 may be having a significant impact on you. In the case of organisations, we understand that resources may be diverted to other business areas. In the case of individuals, we understand you may face personal or technical difficulties which make it difficult to provide the assistance you normally would.

Where we have asked for information within a certain timeframe, we understand there may be delays in responding to us. If you consider COVID-19 may impact your ability to respond within the timeframe we have suggested then please do not hesitate to contact us and let us know when you consider you will be able to respond.

For the latest information about our approach during the COVID-19 crisis please visit: www.ethicalstandards.org.uk/#covid-

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. To find out more about how we treat your personal data please go to: http://www.ethicalstandards.org.uk/privacy-policy/ contactSCOTLAND-BSL

From: info@ethicalstandards.org.uk on behalf of Ethical Standards Commissioner

<info@ethicalstandards.org.uk>

**Sent:** 05 June 2020 13:47

To: info

**Subject:** Webform submission from: Make a complaint

Complaint first created on Fri, 06/05/2020 - 12:37

Submitted on Fri, 06/05/2020 - 12:47

Submitted by:

Submitted values are:

## Who the complaint is about

**Complaint type** 

**MSP** 

Name of MSP(s)

Alison Harris

## **Details of the complaint**

#### What's your complaint about?

On the register of interests, Alison Harris says the market value of her shares in Georgian Finance Company is £1 per share.

But this is not the market value. This is the nominal value. Nominal value is just an arbitrary value stemming from historical accident which has no relation to actual value. Whereas market value is what the shares are worth on the market.

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https://theferret.scot/alison-harris-msp-property-scottish-parliament/

#### Date(s) incident occurred

I found out about it in May 2020. It occurred on 24 May 2016.

## Complainer's details

#### Complainer

I am the Complainer

Title

Mr

**Full name** 

Joe Lo

**Address** 



**Phone number** 

**Email** 

## **Signature and Declaration**

**Digital Signature box** 

Yes



Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Ms Alison Harris MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Reference: MSP/3291

29 June 2020

#### Sent by email to:

Dear Ms Harris

# Public Standards Code of Conduct for Members of the Scottish Parliament Complaint by Mr Joe Lo

I am writing to advise that I have received a complaint (copy attached) about you from Mr Joe Lo ("the complainer") relating to the Code of Conduct for MSPs (the Code).

The complaint alleges a potential failure on your part to register appropriately your shareholdings. I have referred to your current register of interests entry on the Scottish Parliament's website as at today's date, which I reproduce here for reference:

#### "Interest in shares:

I own 66.67% of ordinary shares in the Georgian Finance Company Ltd, a property rental company. The market value of the shares is £1 per share. I resigned as managing director of this company on 10 May 2016. I received no remuneration from this company.

I own 50% of ordinary shares in the Georgian Heritable Company Ltd, a property development company (which is currently dormant). The market value of the shares is £1 per share. I resigned as managing director of this company on 10 May 2016. I received no remuneration from this company."

I am currently considering whether the complaint is admissible and I should be grateful to receive any comments you would care to make on the complaint; it would be helpful if you could address each of the issues raised by the complainer.

I would ask also that you provide copies of the the annual market valuations of both shareholdings from 2016 onwards which you were required to obtain under the Code.

It would be appreciated if I could receive the valuations and your comments by 13 July 2020.

ESC E: info@ethicalstandards.org.uk T: 0300 011 0550 W: www.ethicalstandards.org.uk



Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

#### Confidentiality

This process is conducted under the Act. I would draw your attention to the confidential nature of my investigation and would request your full cooperation in this regard.

For information about how we process data we collect, including how we process personal data, please see our privacy policy at <a href="https://www.ethicalstandards.org.uk/privacy-policy">www.ethicalstandards.org.uk/privacy-policy</a>.

Should you have any queries please contact my office on the following telephone number 0300 011 0550 or email investigations@ethicalstandards.org.uk.

Yours sincerely



Caroline Anderson FCA
Ethical Standards Commissioner

Enc: Redacted complaint dated 5 June 2020

From: Ian Bruce

02 July 2020 15:01 Sent:

To:

Subject: RE: Our ref: MSP 3291

#### Dear Ms Harris

I understand that you left a voicemail message requesting a telephone discussion with the Commissioner about our case with reference MSP 3291.

Given that this is an investigation being conducted under the Scottish Parliamentary Standards Commissioner Act 2002, and in the interests of transparency, the Commissioner would be happy to consider and where possible respond to any questions you may have if you are able to submit those in writing. You may reply to me with any questions or send them to info@ethicalstandards.org.uk.

#### I am currently working remotely. The best way to contact me is via email.

#### Kind regards, lan

Ian Bruce **Public Appointments Manager Ethical Standards Commissioner** Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Tel: 0131 347 3897

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Where we have asked for information within a certain timeframe, we understand there may be delays in responding to us. If you consider COVID-19 may impact your ability to respond within the timeframe we have suggested then please do not hesitate to contact us and let us know when you consider you will be able to respond.

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From: Harris A (Alison), MSP Sent: 02 July 2020 15:33 To: lan Bruce		
Subject:	Re: Our ref: MSP 3291	
Dear Mr Bruce		
I wanted to enquire whether response sent to your office	·	cient or if you would have preferred a hard copy of my
Kind regards		
Alison Harris		

Sent from my iPhone

From: Ian Bruce

Sent: 02 July 2020 15:37 To: 'Harris A (Alison), MSP' **Subject:** RE: Our ref: MSP 3291

Dear Ms Harris

Thank you for your email and enquiry.

An email from your parliamentary email address would suffice for our records.

I am currently working remotely. The best way to contact me is via email.

## Kind regards, lan

Ian Bruce **Public Appointments Manager Ethical Standards Commissioner** Thistle House 91 Haymarket Terrace Edinburgh **EH12 5HE** Tel: 0131 347 3897

www.ethicalstandards.org.uk

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From: Harris A (Alison), MSP

**Sent:** 02 July 2020 18:25

To: lan Bruce

**Subject:** Your Ref: MSP 3291

Attachments: Alison Harris MSP response to Ethical Standards Commissioner.docx; Joe Lo email &

respone 12&13 May 2020 (Doc JL01).pdf; Joe Lo email response 13th May 2020 (Doc JL02).pdf; Joe Lo email and response a5th 18th May 2020 (Doc JL03).pdf;

LM01 Letter.pdf

Dear Mr Bruce

Further to your email of 29<sup>th</sup> June 2020 please find attached my response along with other relevant information.

I look forward to hearing from you at your earliest convenience.

Kind regards

**Alison Harris** 

ALISON HARRIS MSP Central Scotland Region M2.21 Scottish Parliament, Edinburgh, EH99 1SP | 0131 348 6153

ffwww.facebook.com/AlisonHarrisMSP

@alisonharris

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ALISON HARRIS MSP
Member of the Scottish Parliament for Central Scotland Region
M2.21 Scottish Parliament, Edinburgh, EH99 1SP | 0131 348 6153

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200 alisonharris

## **COVID** information:

\*\*Due to the Covid-19 situation, email is preferred method of communication to ensure response. Emails with specific and individual matters of importance will take preference over emails from mass surveys or lobby wesbites which I cannot guarantee a response to. Priority support must be given those who need it most at the current time. As staff members are working remotely please be patient on our standard response times\*\* If your email concerns case work please send your name, address and post code so I can check that I am able to assist due to protocol. I am only able to assist in accordance with parliamentary protocol and it is normal for only one member of parliament to assist in any given situation, so if you mass mail multiple members please advise if others are working on your case already to avoid duplication and conflict.

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\*

Ms Caroline Anderson FCA
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

2<sup>nd</sup> July 2020

#### Dear Ms Anderson

Further to your letter of 29<sup>th</sup> June 2020, I wish to address the complaint as follows. Firstly I think it is important for context that you are made aware of the e-mail exchanges that took place between myself and Joe Lo (freelance journalist with "The Ferret") on 12<sup>th</sup>, 13<sup>th</sup> and 15<sup>th</sup> May 2020. I have included his e-mails and my responses for your attention (Doc JL01; JL02 and JL03).

It may be worth mentioning that I have also had exchanges with Mr Lo in my capacity as Chair of the Fund Trustees of the Scottish Parliament Pension Scheme.

In the e-mail dated 12<sup>th</sup> May 2020, Mr Lo alleged that

- my shareholding of the Georgian Finance Company Ltd is worth more than half of my MSP Salary.
- He stated the gross asset value saying that I own two thirds of it.
- He also claimed that I am entitled to two thirds of the "retained earnings" annually.

His assertions are based on my shareholding of 66.67% of the Company's share capital

It is only now, with hindsight, that I believe I mistakenly used the work "market" instead of "nominal" to describe my shareholdings and their value. My Register of Interest should be amended to say "the Nominal value.....". This was a genuine error and at no stage was it my intention to deliberately mislead the public as to my shareholding or its value.

With reference to the comment included from the Emeritus Professor of Accounting, Prem Sikka, this comment has been taken out of context in an attempt to say that the "value" of my shareholdings should be based on the net assets of the Company.

There are many ways of valuing a company and valuations depend on various factors. Professor Sikka has made a generic statement about valuing a company and its shares without any knowledge of this Company – its history, assets, potential property values and potential future income stream etc, or indeed the Article of Association.

The reality is that, while I own 66.67% of the shares, there is no market in which I am able to trade with these shares. I am bound by the Article of Association which prohibits me from selling or transferring these shares without the prior written consent of the Directors. I have included a letter from the Company's Accountants confirming this position. (LM01). With regard to the Georgian Heritable Company Ltd – it has 2 shares and £27 of retained profit which has been carried forwards for many years (£29 net assets). This Company has been dormant for several years. Please see the letter from the Companies' accountant.

On becoming an MSP in 2016, I resigned as Managing Director of the Georgian Finance Company Ltd (and the Georgian Heritable Company Ltd). As of May 2016 I was no longer an officer of either Company and I was no longer involved in the day to day running or decision making of the Company. I was no longer involved in decisions in relation to the assets of the Company etc.

I have always taken my duty as an MSP very seriously. I believe that I acted in good faith; I have been open and transparent in my Register of Interests. On becoming an MSP I met with the standards clerks and had discussions as to how best to accurately record my interests in the Register of Interests.

With regards to providing copies of the annual valuations of both shareholdings from 2016 onwards, I discussed these values annually with the Companies' accountant and confirmed these values had not changed. There was no market value for the shares and the nominal value remained at £1 per share.

In conclusion, I believe that I made an error in using the word "market" and it should say "nominal" in my register, otherwise, my shareholding in both Companies remain as stated in the register.

Yours sincerely

Alison A Harris MSP

From: Joe Lo

**Sent:** 12 May 2020 14:49 **To:** Harris A (Alison), MSP

**Subject:** Media - Stake in Georgian Finance Company

Hi Alison,

I'm a journalist from The Ferret website. I'm looking at the register of MSPs' interests and had a few questions about Georgian Finance Company.

I notice you don't say what the value of your share in the company is. My understanding is that MSPs are supposed to declare the value of their shares if the value is more than half an MSPs salary. With an MSPs salary of £64,470, that threshold is therefore £32,235. Is that correct in your understanding?

I note that Georgian Finance Company is a property rental company with assets of £1.47m and that you own two-thirds of it. I assume these assets are properties? Would you be able to tell me how many properties? And where they are? Other MSPs declare properties they own through companies in the 'heritable company' secion. Glven the value of these assets, is the value of your stake really less than £32,235?

I also note that you say you receive no remuneration from Georgian Finance Company. My understanding is that you receive no income from the company. But the 'retained earnings' of the company increase by about £70,000 a year. Is that rental income? And as 2/3 owner, you are entitled to 2/3 of that £70,000 every year. Is that correct?

I am planning to publish an article on this on Friday and so would appreciate any response before then. Earlier the better for me - although I appreciate now is a busy time helping constituents.

Best wishes

Joe Lo

Dear Joe

Further to your email yesterday please see my response.

## 1. Shareholding

My share interest in Georgian Finance Company Ltd is noted in the register of MSP interests, as you have observed. Due to the restrictions placed on the sale of these shares, and the fact that as a 66% shareholder I am unable to realise the asset value from the company, the market value of the shares has been deemed to be equivalent to the nominal value and this holding has been noted in the register of interests as "market value". At £6,667, this is less than 50% of an MSP's salary.

## 2. Gross Assets of Company vs Net Assets

I note your observation regarding the Tangible Assets of the company, stated at £1.47m in the financial statements. These tangible assets should not be confused with the Net Asset position of the company, as you seem to be inferring. The Net Assets of the company at 31/3/19 were £471k. As I am not a director or an officer of the company I do not have the authority to provide you with details in relation to the underlying property interests of the company.

## 3. Declaration of Heritable Company

As noted, I am the owner of 66% of the issued share capital of the company and therefore have no ability to realise the underlying asset value. I think you will find that this distinguishes my situation from those that you have noted regarding other MSP's.

#### 4. Remuneration and Dividends

You are quite correct in your observation that I am not in receipt of any remuneration from the company. I do however receive a nominal dividend annually. I have confirmed with Standards on the requirement to declare this dividend in the register of interests and I can confirm that I am not required to do so.

#### 5. Entitlement to Profit Share

Shareholders have no automatic entitlement to any participation in the Retained Earnings of a company. Distributions are determined in all cases by a company's directors. Directors have a statutory duty to base the assessment of what is distributable on the company working capital, debt servicing and

asset replacement/repair requirements. It would therefore not be accurate to assert any entitlement to profit share, as you have in your email.
This should address your questions.
Regards
Alison
ALISON HARRIS MSP
Member of the Scottish Parliament for Central Scotland Region
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*****************

From: Joe Lo

Date: 15 May 2020 at 10:56:46 am BST

To: "Harris A (Alison), MSP"

**Subject: Re: Response** 

Hi Alison

Understand you've said you do not want to provide any further information but I have to ask I'm afraid:

Does the article of incorporation of Georgian Finance Company state that shares cannot be sold without the approval of directors?

Best wishes

Joe

From: "Harris A (Alison), MSP"

**Date:** 18 May 2020 at 3:37:00 pm BST

To:

**Subject: Response** 

Hi Joe,

The answer to this was provided in my first email. I've given you as much information as I'm able to, and this is now our third full email exchange.

From now on, I'm going to have to ask you go through our press office – you can reach Adam Morris on – as I don't have the time at the moment to continue a back and forth like this.

Regards

Alison

ALISON HARRIS MSP Central Scotland Region

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TO WHOM IT MAY CONCERN

LM/LD/G49

2 July 2020

# MRS ALISON HARRIS THE GEORGIAN FINANCE COMPANY LIMITED THE GEORGIAN HERITABLE COMPANY LIMITED

We have acted for the above two companies for many years.

The Georgian Finance Company Limited has a share capital of £10,000, comprising 10,000 Ordinary Shares of £1 each. 6,667 of these shares are held by Alison Harris with a nominal value of £6,667.

The company was incorporated on 27 February 1958 and, being a private company, there is no ready market in its shares. Furthermore, Clause 8 of the Articles of Association of the company gives the directors the right to veto any share transfer to an outside third party, thus inhibiting any value which might be attributed to the shares.

The Georgian Heritable Company Limited was incorporated on 3 October 2002. The company has an issued share capital of £2, net assets of £29, and has been dormant for several years.

Stevenson & Kyles
Chartered Accountants

 Sent:
 03 July 2020 09:07

 To:
 'Harris A (Alison), MSP'

 Subject:
 RE: Your Ref: MSP 3291

#### Dear Ms Harris

Thank you for your email and attached documentation, which I will pass to the Commissioner today. I am currently working remotely. The best way to contact me is via email.

## Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Tel: 0131 347 3897

www.ethicalstandards.org.uk

#### COVID-19

The Commissioner recognises the unprecedented challenges we are all facing during the Coronavirus (COVID-19) pandemic.

Our aim is to provide as unbroken a service as possible during the COVID-19 crisis. However, we understand that COVID-19 may be having a significant impact on you. In the case of organisations, we understand that resources may be diverted to other business areas. In the case of individuals, we understand you may face personal or technical difficulties which make it difficult to provide the assistance you normally would.

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For the latest information about our approach during the COVID-19 crisis please visit: <a href="www.ethicalstandards.org.uk/#covid-19">www.ethicalstandards.org.uk/#covid-19</a>

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**Sent:** 10 July 2020 16:54

To:

**Subject:** Our ref: MSP 3291

**Attachments:** 2020-07-10 - FINAL 2nd Letter ESC to Harris, A (MSP) (Further information

required).pdf

## Dear Ms Harris

Please find attached correspondence from the Ethical Standards Commissioner for Scotland.

Please note I am currently working remotely. The best way to contact me is by email.

## Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
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Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Ms Alison Harris MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Reference: MSP/3291

10 July 2020

Sent by email to:

Dear Ms Harris

# Public Standards Code of Conduct for Members of the Scottish Parliament Complaint by Mr Joe Lo

Thank you for your email of 2<sup>nd</sup> July inclusive of copies of your correspondence with the complainer in this case and your letter of response to the issues raised by his complaint.

I still have the complaint under consideration and in that context would be grateful if you could provide a copy of the full Articles of Association of the Georgian Finance Company Ltd, which you made reference to in your letter to me.

It would be appreciated if I could receive the copy by 24 July 2020.

## Confidentiality

This process is conducted under the Act. I would draw your attention to the confidential nature of my investigation and would request your full cooperation in this regard.

For information about how we process data we collect, including how we process personal data, please see our privacy policy at <a href="https://www.ethicalstandards.org.uk/privacy-policy">www.ethicalstandards.org.uk/privacy-policy</a>.

Should you have any queries please contact my office on the following telephone number 0300 011 0550 or email <a href="mailto:investigations@ethicalstandards.org.uk">investigations@ethicalstandards.org.uk</a>.

Yours sincerely

Caroline Anderson FCA
Ethical Standards Commissioner

From: Harris A (Alison), MSP Sent: 13 July 2020 10:30

To: lan Bruce

**Subject:** FW: Our ref: MSP 3291

Attachments: ARTICLES OF ASSOCIATION.pdf; Alison Harris MSP additional response to Ethical

Standards Commissioner.docx

Dear Mr Bruce

Please find attached the relevant information as requested.

Kind regards

Alison Harris

ALISON HARRIS MSP
Central Scotland Region
M2.21 Scottish Parliament, Edinburgh, EH99 1SP | 0131 348 6153

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@alisonharris

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COMPANY LIMITED BY SHARES.

## Articles of Association

OF

## The Georgian Finance Company Limited.

#### PRELIMINARY.

- 1. The regulations contained in Part I, of Table A in the First Schedule to the Comapnies Act. 1948 (such Table being hereinafter called "Table A") ,shall apply to the Company save in so far as they are excluded or varied hereby: that is to say, Clauses 7, 23, 24, 53, 75, 79 and 136 in Part I, of Table A shall not apply to the Company, but in lieu thereof, and in addition to the remaining Clauses in Part I, of Table A, the following shall be the Regulations of the Company.
- 2. The Company is a private company and the clauses in Part II. of Table A shall also apply to the Company.

#### SHARE CAPITAL AND SHARES.

- 3. The original Share Capital of the Company is £20,000 divided into 20,000 Shares of One Pound each.
- 4. Save as provided by any agreement, shares shall be issued and allotted by the Directors to such persons on such terms and conditions, and either at a premium or at par and at such times as the Directors think fit, and, in particular, the Directors may by agreement give to any person the right or option of requiring at a future date that an allotment shall be made to him of any shares at par or at such premium as may be agreed.
- 5. The lien conferred by Clause II in Part I, of Table A shall attach to fully paid up shares, and to all shares registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders.
- 6. In Clause 15 in Part I of Table A the words "provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceeding call" shall be omitted.

7. Subject to the provisions of Section 58 of The Companies Act, 1948, any preference shares may with the sanction of a Special Resolution be issued upon the terms that they are or at the option of the Company are liable to be redeemed.

### TRANSFER OF SHARES.

8. Unless with the prior written consent of the Directors no share shall be transferred to a person who is not a member of the Company.

## GENERAL MEETINGS.

- 9. Every notice convening a General Meeting shall comply with the provisions of Section 136 (2) of the Companies Act, 1948, as to giving information to members in regard to their right to appoint proxies; and notices of and other communications relating to any General Meeting which any member is entitled to receive shall be sent to the Auditor for the time being of the Company.
- 10. Clause 52 in Part I, of Table A shall be read and construed as if the words "the appointment of and" were omitted therefrom.
- 11. Clause 54 in Part 1, of Table A shall be read and construed as if the words "Meeting shall be disolved" were substituted for the words "Members present shall be a quorum."

#### DIRECTORS.

- 12. Unless and until the Company in General Meeting shall otherwise determine the number of Directors shall be not less than two nor more than five,
- 13. The following persons shall be the first Directors of the Company:—George Cupples Jack and Ian Anderson Dickson.
- 14. The Directors may raise or borrow for the purpose of the Company's business such sum or sums of money as they think fit. The Directors may secure the repayment of or raise any such sum or sums as aforesaid by mortgage or charge upon the whole or any part of the property and assets of the Company, present or future, including its uncalled or unissued Capital, or by the issue, at such price as they may think fit of bonds or debentures, either charged upon the whole or any part of the property and assets of the Company or not so charged, or in such other ways as the Directors may think expedient.
- 15. A Director may vote as a Director in regard to any contract or arrangement in which he is interested or upon any matter arising thereout, and if he shall so vote his vote shall be counted and he shall be reckoned in estimating a querum when any such contract or arrangement is under consideration; and Clause 84 in Part I, of Table A shall be modified accordingly.
- 16. Clause 78 in Part I, of Table A shall be read and construed as if the words "in General Meeting" were inserted after the words "unless the Company."
- 17. In Clause 86 in Part I. of Table A the words "and every Director present at any meeting of Directors or Committee of Directors shall sign his name in a book to be kept for that purpose" shall be omitted.

#### ROTATION OF DIRECTORS.

18. Clause 92 in Part I, of Table A shall be read and construed as if the words "if willing to continue in office" were substituted for the words "if offering himself for re-election."

#### MANAGING DIRECTOR.

19. Clause 108 in Part I. of Table A shall be read and construed as if the words "subject to the provision of any contracts between him and the Company" were inserted before the words "A Managing Director."

## ALTERNATE DIRECTOR.

- 20. (a) Each Director shall have power to nominate any person, approved for that purpose by a majority of the other Directors, to act or attend as alternate Director in his place during his absence from the United Kingdom or inability to act as such Director, and at his discretion to remove such alternate Director by notice in writing to the Company; and on such appointment being made, the alternate Director shall (except as regards remuneration) be subject in all respects to the terms and conditions existing with reference to the other Directors, and each alternate Director, while acting in the place of an absent Director, shall enjoy all the rights of and exercise and discharge all the duties of the Director he represents.
  - (b) An instrument appointing an alternate Director shall be delivered to and retained by the Company, and shall, as nearly as circumstances will admit, be in the form or to the effect following:—

THE GEORGIAN FINANCE COMPANY, LIMITED.

I, , a Director of the Georgian Finance Company, Limited in pursuance of the power in that behalf contained in the Articles of Association of the Company, hereby moninate

01

as alternate Director in

my place and to exercise and discharge all my duties as a Director of the Company during my absence from the United Kingdom or my inability to act as a Director (as the case may be).

As Witness my hand this

day of 19

(c) If the Director making such appointment as aforesaid shall cease to be a Director otherwise than by resigning at and being re-elected at one and the same meeting, the person appointed by him shall thereupon cease to have any power or authority to act as an alternate Director.

## WINDING UP.

21. If the Company shall be wound up the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall first be applied in repaying to the members the amounts paid or credited as paid on the shares held by them respectively, and the balance (if any) shall be distributed among the members in proportion to the number of shares held by them respectively: Provided always that the provisions hereof shall be subject to the rights of the holders of shares (if any) issued upon special conditions.

#### INDEMNITY.

22. Every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any

proceedings, whether civil or criminal in which judgement is given in his favour in which he is acquitted or in connection with any application under Section 448 of the Act in which relief is granted to him by the Court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 205 of the Companies Act, 1948.

Names, Addresses and Descriptions of Subscribers.

GEORGE CUPPLES JACK, Farmer,

Dalmacourter,
By Airdrie.

IAN ANDERSON DICKSON, W.S.,

COMMERCIAL BANK BUILDINGS, COATBRIDGE.

Dated this twenty-first day of February, Nineteen hundred and tifty-eight.

Witness to the above signatures:--

EDWARD WILKIE,

COMMERCIAL BANK BUILDINGS,

COATBRIDGE,

Certified Accountant.

Caroline Anderson FCA
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

13 July 2020

## Dear Ms Anderson

Further to your letter of 10 July 2020, please find attached, a copy of the Articles of Association of the Georgian Finance Company Limited. May I draw your attention to Paragraph 8 – Transfer of Shares, to which I referred in my previous letter.

Yours sincerely

Alison A Harris MSP

 Sent:
 13 July 2020 13:07

 To:
 'Harris A (Alison), MSP'

 Subject:
 RE: Our ref: MSP 3291

#### Dear Ms Harris

Thank you for providing this additional information which I have passed to the Commissioner. I am currently working remotely. The best way to contact me is via email.

## Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
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**Sent:** 16 July 2020 08:44

To:

**Subject:** Our ref: MSP 3291

**Attachments:** 2020-07-16 FINAL 3rd Letter ESC to Harris, A (MSP) (Further information

required).pdf

## Dear Ms Harris

Please find attached correspondence from the Ethical Standards Commissioner for Scotland.

Please note I am currently working remotely. The best way to contact me is by email.

## Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
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Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Ms Alison Harris MSP The Scottish Parliament Edinburgh EH99 1SP

Reference: MSP/3291

16 July 2020

Sent by email to:

Dear Ms Harris

## Public Standards Code of Conduct for Members of the Scottish Parliament Complaint by Mr Joe Lo

Thank you for your email of 13<sup>th</sup> July which had attached the copy of the Articles of Association of the Georgian Finance Company Ltd and your covering letter referring me to "paragraph 8" of the Articles.

I note paragraph 8 therein in regards to the marketability of shares. I also note in the letter dated 2<sup>nd</sup> July 2020 from your accountants that this clause is stated as inhibiting the value of your shares.

I further note from a cursory search of the Companies Register that a share transfer – albeit of a minority rather than a majority holding – was referred to in the Annual Return of the Company dated 24 July 2014. Please provide share valuation details pertaining to this transfer which, whilst historic, will be of assistance in my ongoing assessment of this complaint.

It would be appreciated if I could receive this information by 30 July 2020.

## Confidentiality

This process is conducted under the Act. I would draw your attention to the confidential nature of my investigation and would request your full cooperation in this regard.

For information about how we process data we collect, including how we process personal data, please see our privacy policy at <a href="https://www.ethicalstandards.org.uk/privacy-policy">www.ethicalstandards.org.uk/privacy-policy</a>.

Should you have any queries please contact my office on the following telephone number 0300 011 0550 or email <a href="mailto:investigations@ethicalstandards.org.uk">investigations@ethicalstandards.org.uk</a>.

Yours sincerely



Caroline Anderson FCA
Ethical Standards Commissioner

From: Harris A (Alison), MSP

**Sent:** 16 July 2020 12:02

To: lan Bruce

**Subject:** Your ref: MSP 3291

Attachments: Alison Harris MSP third response to Ethical Standards Commissioner.docx

## Dear Mr Bruce

Please find attached additional information as requested.

## Regards

#### Alison Harris

ALISON HARRIS MSP
Central Scotland Region
M2.21 Scottish Parliament, Edinburgh, EH99 1SP | 0131 348 6153
www.facebook.com/AlisonHarrisMSP

@alisonharris

The Office of Alison Harris MSP processes personal data in line with obligations under the General Data Protection Regulation. To request a copy of our privacy notice, contact

Caroline Anderson FCA
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

16 July 2020

Dear Ms Anderson

Further to your letter received by email, dated 16 July 2020.

I spoke with Mr Leon Marshall, the company's accountant at Stevenson & Kyles Chartered Accountants, the transaction to which you refer took place on  $15^{th}$  October 2013. The number of shares transferred from Marion Jack was 280 shares, nominal value £1.00 each. These shares were gifted by her to George Harris (140 shares, nominal value £1.00 each) and Rebecca Harris (140 shares, nominal value £1.00 each). The stock transfer form showed consideration money to be nil value.

Yours sincerely

Alison A Harris MSP

 Sent:
 16 July 2020 14:21

 To:
 'Harris A (Alison), MSP'

 Subject:
 RE: Your ref: MSP 3291

Dear Ms Harris

Thank you for providing this additional information which I have passed to the Commissioner.

## I am currently working remotely. The best way to contact me is via email.

### Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Tel: 0131 347 3897

www.ethicalstandards.org.uk

#### COVID-19

The Commissioner recognises the unprecedented challenges we are all facing during the Coronavirus (COVID-19) pandemic.

Our aim is to provide as unbroken a service as possible during the COVID-19 crisis. However, we understand that COVID-19 may be having a significant impact on you. In the case of organisations, we understand that resources may be diverted to other business areas. In the case of individuals, we understand you may face personal or technical difficulties which make it difficult to provide the assistance you normally would.

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**Sent:** 05 August 2020 11:10

To:

**Subject:** Our reference: MSP/3291

Attachments: 2020-08-05 ESC - Orr, K (SPPAC) - FINAL notification of 2 month unable.pdf

### Dear Ms Harris

For your information, please find attached a copy of a report sent by the Ethical Standards Commissioner for Scotland to the Standards, Procedures and Public Appointments Committee today.

## I am currently working remotely. The best way to contact me is by email.

## Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
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Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Reference: MSP/3291

05 August 2020

Clerk to the Standards, Procedures & Public Appointments Committee The Scottish Parliament Room TGO1 Edinburgh EH99 1SP

Sent by email to: SPPACommittee@parliament.scot



# Public Standards Code of Conduct for Members of the Scottish Parliament Complaint against an MSP

I received a complaint on 5 June 2020 alleging that an MSP has breached certain provisions of the Code of Conduct.

I am writing to the Standards, Procedures and Public Appointments Committee in accordance with section 7(11) of the Scottish Parliamentary Standards Commissioner Act 2002 to report that I have not yet completed my consideration of the admissibility of this complaint. The reason for this is that I am still ingathering information relevant to my decision.

I intend to continue consideration of the matter and may write to you further in due course, subject to my conclusion in this case.

Yours sincerely



Caroline Anderson FCA
Ethical Standards Commissioner

**Sent:** 05 August 2020 11:42

To:

**Subject:** RE: Our reference: MSP/3291

#### Dear Ms Harris

Further to my last message, I should remind you that this process is being conducted under the Act. I would draw your attention to the confidential nature of our investigation and would request your full cooperation in this regard.

For information about how we process data we collect, including how we process personal data, please see our privacy policy at www.ethicalstandards.org.uk/privacy-policy.

Should you have any queries please contact our office on the following telephone number 0300 011 0550 or email investigations@ethicalstandards.org.uk.

## I am currently working remotely. The best way to contact me is by email.

## Kind regards, lan

lan Bruce
Public Appointments Manager
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
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EH12 5HE

Tel: 0131 347 3897

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Sent: 02 September 2020 16:06

To: 'Harris A (Alison), MSP'

Subject: Our ref: MSP 3291

**Attachments:** 2020-09-02 ESC - Harris MSP, A (FINAL admissible letter).pdf

Dear Ms Harris

Please find attached correspondence from the Ethical Standards Commissioner for Scotland.

Please note I am currently working remotely. The best way to contact me is by email.

## Kind regards, lan

Ian Bruce
Public Appointments Manager
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Tel: 0131 347 3897

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#### COVID-19

The Commissioner recognises the unprecedented challenges we are all facing during the Coronavirus (COVID-19) pandemic.

Our aim is to provide as unbroken a service as possible during the COVID-19 crisis. However, we understand that COVID-19 may be having a significant impact on you. In the case of organisations, we understand that resources may be diverted to other business areas. In the case of individuals, we understand you may face personal or technical difficulties which make it difficult to provide the assistance you normally would.

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Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Ms Alison Harris MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Reference: MSP/3291

2 September 2020

Sent by email to:

Dear Ms Harris

# Public Standards Code of Conduct for Members of the Scottish Parliament Complaint by Mr Joe Lo

I refer to our earlier correspondence regarding the complaint about you from Mr Joe Lo.

Having considered the terms of the complaint, I have concluded that, for the purposes of the Scottish Parliamentary Standards Commissioner Act 2002, the complaint is admissible and I therefore intend to proceed to Stage 2 of the investigation into the complaint.

## Confidentiality

This process is conducted under the Act. I would draw your attention to the confidential nature of my investigation and would request your full cooperation in this regard.

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Should you have any queries please contact my office on the following telephone number 0300 011 0550 or email investigations@ethicalstandards.org.uk.

Yours sincerely

Caroline Anderson FCA Ethical Standards Commissioner

## **Appendix Three – representations by the respondent**

Received by email on 21 April 2021.

- 1. Tom Hughes CV
- 2. Letter to the Commissioner dated 19 April 2021
- 3. Letter to the Commissioner dated 29 March 2021

## **GERBER LANDA & GEE**

## Tom Hughes LLB CA CTA

Tom is a Consultant and Statutory Auditor with Gerber Landa & Gee, Chartered Accountants, following a buyout in April 2018 by the management team.

Tom graduated in Law from Glasgow University in 1973 and qualified as a Chartered Accountant in 1975 and as a Chartered Tax Adviser in 1977. He has been a Partner, then Director, then Consultant with Gerber Landa & Gee from 1976 to date.

From that date he has been responsible for a portfolio of audit and accounting clients, combining this with a specialism in Insolvency and related work including forensic opinions and share valuations. He has conducted a number of Judicial Factories for the Law Society of Scotland.

In relation to the Institute of Chartered Accountants of Scotland, Tom is a former member of Council, former Chairman of the North Strathclyde Area committee, a former member of the Finance and General Purposes Committee, former Chairman of the General Practitioners Committee, a former member of the Insolvency Permit Committee, and the Insolvency Technical Committee. Until recently he served as a member of the Institute's Disciplinary Appeals Tribunal.

Tom is a former member of the Actuarial Professional Appeals Tribunal and a former member of the Judicial Panel of the Scottish Football Association.

Over the years he has written several articles on insolvency related matters and was the first editor of the quarterly Scottish Insolvency Review issued by the Institute of Chartered Accountants of Scotland and the Law Society of Scotland. He was also a contributor and editor of the Scottish Insolvency Casebook. He has extensive experience in preparing expert opinions on a wide range of cases and acting as an independent court appointed arbiter.



Pacific House 70 Wellington Street Glasgow G2 6UA

**F**: 0141 307 6857

DX GW 149 Glasgow

www.lemac.co.uk

19 April 2021

lan Bruce
Public Appointments Manager
Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Also by email: <u>investigations@ethicalstandards.org.uk</u>

C.C.

Dear Mr Bruce

Our client: Alison Harris MSP

Your ref: MSP3291

I refer to the Commissioner's letter to my client Alison Harris dated 23 March 2021 in which the Commissioner confirmed that she intended to submit a Report to the Scottish Parliament in respect of the complaint against Ms Harris in her capacity as MSP.

Our client rejects the conclusions of the draft report. Ms Harris did not breach section 3(1) of the Interests of Members of the Scottish Parliament Act 2006 ("the 2006 Act") when read in conjunction with section 4 of the 2006 Act, nor did she breach any part of the Code of Conduct for Members of the Scottish Parliament then in force ("the Code") in respect of her shareholding in the Georgian Finance Company Limited ("the Company").

These representations set out why this is so.

#### **Preliminary Matters**

You sought representations by 31 March but I explained that Ms Harris did face a number of difficulties dealing with matters in the time frame and we also had to seek our own external report.

I note that, despite approaches from the Commissioner on two separate occasions, Crown Counsel considered that there was no breach of section 3(1) of the Interests of Members of the Scottish Parliament Act 2006.

I raise concerns about the Commissioner's actings in dealing with Crown Office and Crown Counsel. On one view the Commissioner appears to have taken the view that there should be a criminal investigation – so far as I am aware the first of its kind in Scotland. That approach is in face of Ms Harris confirming to the Commissioner that she had spoken to both Parliamentary clerks and her Company's accountant as per Paragraphs 11 and 17 of the draft Report. The Commissioner had this information before she made any contact with the Crown Office. That information was crucial to any question of whether Ms Harris had beached the code (which is denied). Given the terms of email to of 23rd December 2020 the significance was evidently clear to Crown Office and should have been to the Commissioner. We have a concern that Commissioner initiated proceedings without affording Ms Harris the opportunity to provide her submissions in the formulation of Lord President Clyde in *Barrs v British Wool Marketing Board* 1957 SC 72. On the face of it the Commissioner's actings afforded an opportunity for injustice to be done namely that Ms Harris being put to the expense and

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inconvenience of responding to a criminal inquiry without any basis in fact or in law. Crown Counsel's approach prevents this. The Commissioner's decision to report Ms Harris to Crown Office is in my view premature and unnecessary. Our subsequent investigations have now vindicated Ms Harris.

I should indicate that if this matter requires to be litigated we would disclose the correspondence between the Commissioner's Office and Crown Office to support submissions directed at the fairness of the process which has been adopted by the Commissioner against Ms Harris.

### The Report

The complaint is framed as follows:-

From May 2016, the respondent did not include on her register of interests the true market value of the shares that she held in the Georgian Finance Company Ltd. Instead, the respondent included in her register of interests entry a nominal value of the shares at £1 each. In her original entry in the register, £1 was given as the market value. The complainer advised that he had first been made aware of this in May 2020, the breach of the Code, if proven, having been recurring since the date of the respondent's return.

The Commissioner concludes that Ms Harris was incorrect in her assessment of the value of the shares at £1 and, relying upon an external report, concludes that they ought to have been assessed in excess of £5. The Commissioner was wrong to rely upon that report and accordingly has misdirected herself. Ms Harris's valuation was appropriate.

Ms Harris submits that she registered her shareholding in Georgian Finance Company Limited, a property investment company, appropriately in the Register of Interests in accordance with the Code of Conduct and she registered her shares at a "market value" of £1. The MSP did hold a majority shareholding of approximately two thirds of the issued share capital of the company. I do not accept the net asset value as portrayed in the Report. The MSP is not a director of the company. She was not a director at the point of the making of the return in May 2016.

Whilst recognising the Commissioner asked the Respondent for an accurate valuation of the company's shares, the Respondent insisted there was (a) no market value for the shares; and (b) that the nominal value remained at £1 per share throughout the relevant period. It is incorrect that the MSP has simply relied upon a clause within the Articles of Association in arriving at the £1 share valuation given that clause required approval by directors prior to disposal of company shares. Whilst the Commissioner may "understand" this reliance is "inappropriate", we have the benefit of an external opinion from a recognised expert that does indicate that market value would become the equivalent to nominal value.

The Commissioner has relied strongly upon an independent accountant who is not named, not identified nor is their experience identified. That accountant asserts that they have used publically available information and from that the accountant discloses that market value would appear to be in excess of the figure of £5 per share throughout the material time. Accordingly, the Commissioner has relied upon a Report which I argue is in error and flawed.

#### Our external Report

I enclose my client's independent external Report. This has been prepared by Tom Hughes, Consultant to Gerber Landa & Gee, Chartered Accountants, Glasgow. I attach his CV and material demonstrating his expertise and long experience as a senior member of the accounting profession regulated by ICAS.

Mr Hughes has reviewed the papers so far made available and the external anonymous accountant's report relied on by the Commissioner and presents his findings.

Mr Hughes has had access to the Accounts of Georgian Finance Company Limited in the years 2016 to 2020 and has had sight of the exchanges between the Commissioner and the anonymous accountant relied upon.

I asked that Mr Hughes review the anonymous accountant's comments in turn, referencing them to the email of 7 August 2020 timed at 15:35 hours and you will see his comments.

In summary, Mr Hughes opines first that small property companies are difficult to value and he expresses the drawbacks which include the following:-

- 1. There could be a lack of liquidity in the market which makes it impossible to sell shares in a property company except at a significantly reduced price;
- 2. Interest rates are historically low but rates can vary widely and have an impact on the property market;
- 3. Costs in delay in selling property can be high;
- 4. The covenant of tenants generally in small property companies is not blue chip. Costs of improvements, dilapidations, void periods must be factored into any evaluation.

Mr Hughes properly identifies that an estimated property valuation and net asset position are only a starting point. A very material discount must be taken into account given the inherent risks identified in the four points above. In particular, Mr Hughes does not agree with the external accountant's statement that "any initial valuation of the shares held by Z at 31 March 2016, even after discounting, would produce a valuation well in excess of the £5 figure you have mentioned".

The second matter Mr Hughes raises is clause 8 of the Articles of Association. That clause restricts the ability of any shareholder to transfer shares for a value. The key issue is the definition of "outsiders".

Adult children, which they are, and other family members are "outsiders". They are not controlled by any one party. Whilst Mr Hughes agrees with the statement made by the anonymous valuer that "no outsider is ever going to be involved unless there is a full disposal by the family at some point in future", he advises that it makes any shares valueless until a trigger event takes place and there has been no evidence of any trigger event during the period 2016 to 2020.

The third issue raised is that the Commissioner has not asked about loans. Mr Hughes is in agreement that loans in excess of £1m and the identity of the lenders are relevant. The existence of loans is crucial to any valuation. Substantial loans are due to adult children with no guarantee whatsoever that an instant demand for payment will not be made. The solvency of the company would be in jeopardy, if susch a demand was made, because the company would not be able to meet its debts as they fall due. This requires a major discount in valuation and it is worth emphasising the company at every stage has net current liabilities.

You will note that with over 40 years of experience in carrying out investigations and providing Opinions as an expert Mr Hughes would hesitate to place any value on shares in this company.

His view is the shares during the relevant period were unsellable and notes that the anonymous valuer appears to concur with his statement in paragraph 4 that "No outsider is every going to be involved unless there is a full disposal by the family at some point in the future."

As far as Mr Hughes is aware, the shareholding was declared and the information relating to the company was always in the public domain. Placing any value on those shares was well nigh impossible. You will also note his comment regarding the definitions relating to the Register of Interests.

#### Submissions

In my submission, the key question is that identified in the penultimate paragraph of Mr Hughes' report: "What is an unsellable asset worth?"

There is a range of reasonable responses to that question. However, to speak of a "market value" for shares in which there is no market is on any view an absurdity. Per Mr Hughes, the shares had no market value. My submission is that it is plain from Mr Hughes' report that the approach taken by the (anonymous) accountant was materially flawed. If the Commissioner accepts this, then patently her draft Report is vitiated and cannot go before Parliament as framed.

Even if the Commissioner does not accept this, however, it does not entitle her to proceed to find Ms Harris guilty of the breaches outlined above. We note that four accountants have commented on the question of valuation — Ms Harris herself, the Company's accountant, the Commissioner's anonymous accountant, and Mr Hughes. The Commissioner in her Report does not at any stage detail the basis upon which she prefers the advice of the accountant instructed by her over the Company's accountant. In our view, the Commissioner ought to have done so, especially as it is not disputed by her that Ms Harris took advice from the Company's accountant before making the declarations in question. We commend to the Commissioner the comments of Lord Drummond-Young in *Mr MacR*, *Petitioner* [2013] CSOH 28 at 18 and 23 regarding the principle of *audi alteram partem*, a key component of natural justice:-

"In order to satisfy basic standards of fairness, two conditions must be fulfilled. First, the petitioner must be given proper notice of the allegations against him. Secondly, he must be given an adequate opportunity to respond to those allegations."

. . .

"The critical point is that a person facing allegations of misconduct must be given an adequate opportunity to respond to them, and if he does not have all of the factual material relied upon and does not know of the precise procedure which is being followed he is denied such an opportunity."

The Commissioner has failed to fulfill the second condition. In the face of a professional opinion from Ms Harris's own accountant, the Commissioner sought her own professional opinion. However whilst seeking such a report was appropriate and reasonable to then prefer that external anonymous accountant's opinion to the one obtained by Miss Harris without setting out proper reasoning violates the principle of *audi alteram partem*. Ms Harris cannot properly respond to the Commissioner's decision to prefer the opinion of one expert over another because the Commissioner has provided no reasoning for the decision beyond a bare *ipse dixit*. Now that the Commissioner is in receipt of a further independent opinion and assessment on the value of shares there is clear evidence which contradicts the report (anonymous) relied upon by her.

#### Conclusion

The Commissioner must distinguish between a situation where no attempt is made to comply with the 2006 Act and the Code and what took place in this instance. This is a case where Ms Harris took professional advice as to the value of her shares and followed that professional advice. In the latter situation, it is obviously unfair to penalise Ms Harris if there is subsequently found to be a difference of opinion among professional people as to the value of the shares.

I invite the Commissioner to reconsider her draft report in light of Mr Hughes' conclusions anent the value of the shares and the criticisms of the process. Ms Harris was entitled to anticipate legitimately a fair process.

In my submission, the Commissioner now has sufficient information to reconsider her draft, to overturn her conclusion and conclude that there was no breach of the 2006 Act nor the Code of Conduct as Ms Harris has always insisted.

My view is that to lay such a Report before Parliament in its present iteration, and with its present conclusions, would constitute material unfairness to Ms Harris and amount to a breach of natural justice. There are remedies available to Ms Harris who is affected by such administrative acts. She is entitled to submit that the investigation and the draft report would violate natural justice, and in the event that the Commissioner is determined to proceed on the basis of the Report in its present form I anticipate instructions to seek those remedies.

I am happy to discuss any of the above further, and hold myself available for a discussion with the Commissioner and/or her staff if they feel that might be of assistance.

Yours faithfully,



William Macreath Levy & McRae Solicitors LLP 29 March 2021



CHARTERED ACCOUNTANTS
CHARTERED TAX ADVISERS

Pavilion 1
Finnieston Business Park
Minerva Way
Glasgow G3 8AU
Telephone (0141) 221 7446
E-Mail mail@gerberlandagee.co.uk
Website www.gerberlandagee.co.uk

Our Ref: TH/IR/L139

Your Ref: HAR032-0001

FAO: William Macreath Levy & McRae Solicitors Pacific house 70 Wellington Street Glasgow G2 6UA

Dear Sirs

#### The Georgian Finance Company Limited Ethics Standards Commissioner's Report

I refer to your letter of instruction dated 26 March 2021, requesting comment on the Ethics Standards Commissioner's Report relating to the above company and one of its shareholders. In particular, you have asked me to review the external anonymised accountant's report. I do not have any information regarding the background qualifications to that report but attach a copy of my own Curriculum Vitae for your information.

I have had access to all of the accounts of the company for the years from 31 March 2016 to 2020. I have also had sight of exchanges between the Ethics Standards Commissioner and the anonymous valuer. The approach I have taken is to highlight comments made by the anonymous valuer and then provide my own opinion. Selecting these comments in turn and referencing them to the anonymous valuer's email dated 7 August 2020 at 15:35, I would make the following observations:-

# 1. Paragraph 2 - "The main overriding principle in a property company is the value of the properties and hence the net assets"

I agree with this assertion. I do not, however, agree with the statement in the previous sentence that "The valuation of shares in a property investment company is usually easier to calculate than some other different types of companies." Small property companies are extremely difficult to value as there are several drawbacks to property investment which include the following:-

- (a) There could be a lack of liquidity in the market which can make property impossible to sell except at a bargain basement price. Major quoted property funds recognise this and restrict sales unilaterally as soon as they sense a difficult market.
- (b) Interest rates have been historically at very low rates. Rates can, however, vary widely and any material rise in interest rates could seriously impact on the property market.



Page 2 29 March 2021 Levy & McRae, Solicitors



#### The Georgian Finance Company Limited Ethics Standards Commissioner's Report

#### 1. (Continued)

- (c) The costs and delay in selling property can be very high.
- (d) Particularly in smaller property companies the covenant of the tenants is not blue-chip. This effectively means that costs of improvement, dilapidations, and void periods must be factored into any valuation.

In summary, the estimated property valuation and the net asset position are only the starting point. A very material discount would be required to take account of the inherent risks as outlined above. In this particular instance I cannot agree with the statement made at the beginning of paragraph 4 that "An initial valuation of the shares held by Z at 31 March 2016 even after discounting would produce a valuation well in excess of the £5 figure you have mentioned."

#### 2. Paragraph 4 - "We are not dealing with any outsiders at all."

In this paragraph the anonymous valuer is mainly referencing clause 8 of the Articles of Association which restrict the ability of shareholders to transfer. The key issue here is the definition of outsiders. My own opinion is that adult children and other family members could be classed as outsiders and it cannot be assumed that they would necessarily be controlled by any one party, whatever the relationship.

In the final part of this paragraph the anonymous valuer appears to be treating outsiders as people who are not involved at all with the company. A statement is made as follows:-

"No outsider is ever going to be involved unless there is a full disposal by the family at some point in the future."

I agree with that statement but arguably it makes any shares valueless until the trigger event takes place. From the information available to me there is no evidence of any trigger event in this category during the period from 2016 to 2020.

#### 3. Penultimate Paragraph - "Very significant loans."

The anonymous valuer points out that the Ethics Standards Commissioner has not asked about these loans. He goes on to emphasize that they are recently regularly in excess of £1M and that the identity of the lenders might be relevant. Again, I am in agreement with this statement. I would go further and take the view that the existence of these loans is crucial to any valuation of the company. Substantial loans are due to adult children and there can be no guarantee whatsoever that circumstances would not occur where a demand for payment was made. If that happened the solvency of the company would be in jeopardy because from the figures available to me the company would not be able to meet its debts as they fell due. This again would require a major discount in any valuation and it is worth emphasising that the company at every stage has net current liabilities.

Page 3 29 March 2021 Levy & McRae, Solicitors



#### The Georgian Finance Company Limited Ethics Standards Commissioner's Report

Even with forty years' experience of carrying out work for the Courts and the Law Society of Scotland, I would hesitate to try to place a value on the shares in this company. In my view the shares at every stage during the relevant period were unsellable. The key question to my mind is, therefore, "what is an unsellable asset worth". The anonymous valuer backs this up with his statement in paragraph 4, "No outsider is every going to be involved unless there is a full disposal by the family at some point in the future."

As far as I am aware the shareholding was declared and the information in relation to the company was always in the public domain. Placing any value on these shares is well-nigh impossible and it may be that the Scottish Government require to revisit the definitions relating to the Register of Interests.

Yours faithfully

Thomas Hughes LLB CA CTA Consultant

Enc

## **Appendix Four – Acting Commissioner's response to representations**

Issued by email on 15 July 2021.

- 1. Letter to the Respondent dated 15 July 2021
- 2. Ian Craig CV
- 3. Letter to the Commissioner dated 16 June 2021



Commissioner for Ethical Standards in Public Life in Scotland

Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE

Alison Harris Reference: MSP/3291

15 July 2021

Sent by email to only to:

cc William Macreath: I

Dear Ms Harris

# Public Standards Conduct of Members of the Scottish Parliament Complaint against Alison Harris, former MSP

I refer to previous correspondence between our office and you and your representatives about this complaint. You will recall that, having concluded her investigation, the Ethical Standards Commissioner for Scotland reached the view that you had breached the Code of Conduct and also the Interests of Members of the Scottish Parliament Act 2006 (the 2006 Act). A draft report was provided to you on 23 March confirming that the Commissioner intended to lay the report in terms of section 9 of the Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act), subject to any representations on its content that you wished to make. These representations were received on 19 April.

#### Questions and observations in the representations

The 2002 Act requires that, prior to sending a report concluding that a member has breached the Code, the Commissioner must provide the member concerned with a copy of the draft report and provide an opportunity for the member to make representations. The 2002 Act also requires that "there shall be annexed to the report made to the Parliament any representations made by that member which are not given effect to in that report".

You decided to make representations and referred to matters set out in the proposed report that you either did not agree with or were concerned about and included a number of questions and observations. In order to decide whether to give effect to your representations in the draft report, I have had to consider each of the issues that you raised. My consideration is set out below.

As per my correspondence with your representative via email of 11 June, I confirm here that I am responding in my capacity as Acting Ethical Standards Commissioner for Scotland given the Commissioner's extended period of absence.

#### **Preliminary matters**

1. Your views on the appropriateness of a referral of this case to the Crown Office and Procurator Fiscal Service COPFS).

The Commissioner is obliged to act in accordance with the provisions of the Scottish Parliamentary Standards Commissioner Act 2002. Section 4 of the 2002 Act "Directions to the Commissioner" includes the following provisions:

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EB.3.2 Page 1

- (1) The Commissioner shall, in carrying out the functions of that office, comply with any directions given by the Parliament.
- (2) Any direction to the Commissioner by the Parliament under this section may, in particular—
- (a)make provision as to the procedure to be followed by the Commissioner when conducting—
- (i)investigations generally into any complaint about the conduct of a member of the Parliament; or
- (ii)investigations into complaints falling within such class or classes as may be specified in the direction (and different provision may be made in relation to different classes of complaint); or
- (b)require the Commissioner to make a report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner as may be specified in the direction.

Here is the relevant extract from the Directions in force at the time at which the Commissioner referred the case to COPFS:

- "(15) If the Commissioner is 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, the Commissioner shall—
- (a) suspend investigation and consideration of the complaint;
- (b) submit a report to the Procurator Fiscal; and
- (c) notify the Committee."
- "(16) The Commissioner shall resume investigation and consideration of a complaint in respect of which investigation and consideration has been suspended under subparagraph (15)(a)—
- (a) at the conclusion of any criminal proceedings instituted in consequence of the report by the Commissioner;
- (b) on receipt of confirmation from the Procurator Fiscal that no such proceedings will be raised; or
- (c) on receipt of confirmation from the Procurator Fiscal that the Commissioner may do so."

I note here that the Scottish Parliament did not, in those Directions, require the Commissioner to notify an MSP that a report would be submitted to COPFS and invite the MSP to make submissions as to whether or not a report should be made to COPFS by the Commissioner.

The Commissioner was satisfied that you had committed the conduct complained about and also that, if proved, it would constitute a criminal offence. The Commissioner was therefore obliged to take this action.

I note your observation that "despite approaches from the Commissioner on two separate occasions, Crown Counsel considered that there was no breach of section 3(1) of the Interests of Members of the Scottish Parliament Act 2006."

I do not agree with this observation. By reference to the Directions set out above, the COPFS advised the Commissioner that no criminal proceedings would be raised. This does not constitute an opinion on the part of the COPFS as to whether a breach had occurred. I clarify here also that in carrying out the Stage 2 investigation, the appropriate standard for the Commissioner making a finding of fact is the civil standard of proof, rather than the higher standard of proof which applies in criminal cases.

I note also that you sought advice from the Clerks to the Committee and from your own accountants. The Commissioner took cognisance of these facts as set out in her report and still

concluded that the Code and 2006 Act had been breached. Such decisions are statutorily a matter for the Commissioner.

I would highlight that amongst the relevant provisions which were reproduced at the end of the draft report para. 1.1.4 of the Code of Conduct confirms that whilst the Standards clerks may be asked for advice, it is the responsibility of the MSP to ensure that the provisions of the Interests of Members of the Scottish Parliament Act 2006 are complied with.

#### The report, your external report and your submission

You have referred to the Commissioner not taking cognisance of your own views as an accountant or those of your own accountant. I note here that the Commissioner is a Chartered Accountant with some twenty-five years of specialist experience in regulation and compliance, gained mainly within professional services environments. Her determinative and investigative roles centred on compliance with Codes of Conduct, including the Disciplinary Tribunal of Chartered Accountants Ireland and the Society of Actuaries in Ireland. Paragraphs 7 – 21 of the draft Report narrate the process which was followed by the Commissioner in seeking and evaluating information, and why she commissioned an independent valuation - which was thereafter considered, along with the other information available, in the Commissioner making her findings in fact and reaching her conclusions.

As you have raised concerns in your representations as to the bona fides of the independent accountant who conducted that valuation, his CV is now included as an additional attachment to the email that this letter has been attached to. In response to the independent report included with your representations, I have also attached a letter from the same accountant. This responds to each of the points made by your accountant in your representations. I refer further to the content below.

As the Commissioner has not seen these latter documents, I am obliged to reach a view on which of the accounts of the share valuation is accurate.

The following is relevant to my further consideration. Your own initial position in your email to the Commissioner of July 2020 was that you thought you had mistakenly stated in the Register of Interests that the shares had a market value of £1, and ought instead to have stated that they had a nominal value of £1 – and that there was no market in which you were able to trade those shares, and they had no market value.

It seems, e.g., to be submitted by your solicitors that you registered your shareholding appropriately in the Register of Interests, registering them at a market value of £1 each. I specifically note that the accountant's letter produced by you when initially responding to the Commissioner was a letter from the Company's accountants, the content of which was terse. It stated that there was no ready market in the Company's shares and that the terms of the Company's Articles of Association inhibited any value which might be attributable to the shares – but no valuation was actually provided to the Commissioner. As the draft Report records, this was part of the context in which the Commissioner sought advice from an independent accountant to provide her with a market valuation of the shares. The independent accountant provided detailed reasoning for his valuation. I do not therefore wholly agree with your solicitors' apparent attempt to frame one of their criticisms as the Commissioner not having adequately explained which of the two accountants' views she preferred.

My view is that you have a vested interest in maintaining your position that the shares have no market value. The advice of the company's accountant was terse in the extreme and supported that view. I note here that he referred to no "ready" market, a statement that appears to be qualified. My only interest in this case, as with the Commissioner, is to determine whether the relevant provisions have been complied with and to report accordingly.

I am now obliged to consider, having received another accountant's view as part of your representations, if that should cause me to reach a different opinion on whether there has been a breach of the relevant provisions.

You will see from the attached that I have commissioned the independent accountant to specifically consider the new opinion of the accountant provided to me and to comment on that opinion. I have carefully considered both documents in order to reach a decision.

In weighing this information up, I am persuaded by the following observations that he has made by reference to your own accountant's report:

- a. There are always difficulties with any share valuation but in this case the company is not a forced seller.
- b. The company has no borrowing costs. The company's post tax and if relevant post dividend performance shows that there is a good rental income and a consistent profitable performance.
- c. The company's financial accounts were prepared under a different financial reporting standard prior to 2017. Thereafter they reported under Financial Reporting Standard 102. The accounts in 2017 and thereafter state that "investment properties are included at fair value". The directors were responsible for the valuation and conducted it to reflect the value of similar properties in the area. In spite of a loss on revaluation of the heritable property in 2017, the value stood at £1,41700.00.
- d. It is a family owned company and there are no outsiders.
- e. There is little or no likelihood of the "significant loans" referred to being called in.
- f. It is untenable to countenance that the shares have no value or are unsellable. HMRC would not accept such an argument in, for example, a case involving inheritance tax.
- g. The company has been disclosing post tax and post dividend (if relevant) profits in excess of an average £66,000.00 per annum for all years from 2015 to 2020. The net asset value per share per annum alone is increasing at more than £5.00 per share.

In respect of points d, e and f above I anticipate that these assertions may be contested in the absence of further verification. If your position is that these matters are contested, and in order to ensure that any report to parliament is properly informed, I would be obliged if you could provide me with:

- the identities of all company directors and their relationship to you
- the details of the loans made to the company; by whom and on what terms
- the details of the company's valuation for inheritance tax purposes.

I am content in any case that the independent accountant commissioned by the Commissioner has provided appropriate and accurate advice on the basis that he was commissioned to proffer a wholly independent view. He has supplemented that advice by responding to the accountant's letter included in your representations. In short, I do not consider it credible that your two-thirds shareholding in a company making annual post tax profits well in excess of £50,000.00 does not exceed the threshold for registration.

As a consequence of the above, my view is that you have committed the conduct complained of, and breached the relevant provisions.

I trust that this is sufficient to address your representative's assertion that the assessment of the facts and various opinions in this case is a "bare ipse dixit".

#### Natural justice

Your representative has also referred to your not being afforded natural justice.

Where there is an obligation to act fairly, fairness depends on context, and an essential feature of that context is the statute which the body is operating under (see South Lanarkshire Council v Scottish

Information Commissioner 2014 SC (UKSC) 1). In terms of the 2002 Act, the Commissioner's function is to investigate complaints and report to the Scottish Parliament (2002 Act, s. 3). The Scottish Parliament is not bound by the Commissioner's findings in fact or by her conclusions, and the Commissioner is not permitted to express a view on sanction (2002 Act, ss 10, 9). The Commissioner is not therefore making a determination on the complaint against you which is final and incapable of being revisited, nor a decision on any penalty. Dealing specifically with opportunities for you to make submissions in this part of the process, the 2002 only obliges the Commissioner to notify the respondent of certain details on receipt of the complaint and notify when she has decided to proceed to Stage 2 (2002 Act, s. 7), and then to provide a copy of the draft Report to the respondent and allow the respondent to make representations (2002 Act, s. 9). This has been done, and further information has also now been disclosed in response to the representations.

In summary, the Commissioner and I have adhered to the statutory functions and associated Directions that determine how this role is to be fulfilled. That extended to offering you an opportunity to make representations before any report is laid with the Scottish Parliament. We have disclosed all of the information that we have reviewed in order to reach our decisions and I am providing further information to you now in response to your representations. My view is that I have considered those representations fully in order to reach my decision. I am also offering you an opportunity to make further representations should you wish to (see below). I am not persuaded that you have been denied natural justice in the circumstances.

#### Your conclusion

In your conclusion, you advise that "The Commissioner must distinguish between a situation where no attempt is made to comply with the 2006 Act and the Code and what took place in this instance. This is a case where Ms Harris took professional advice as to the value of her shares and followed that professional advice. In the latter situation, it is obviously unfair to penalise Ms Harris if there is subsequently found to be a difference of opinion among professional people as to the value of the shares."

As indicated above, my role is set out in the relevant legislation;

- "(1) At the conclusion of an investigation into a complaint at Stage 2, the Commissioner shall make a report to the Parliament upon the outcome of the investigation.
- (2) The report shall include—
- (a) details of the complaint;
- (b) details of the investigation carried out by the Commissioner;
- (c) the facts found by the Commissioner in relation to whether the member of the Parliament concerned (whether or not named in the complaint) has committed the conduct complained about;
- (d) the conclusion reached by the Commissioner as to whether that member has, as a result of that conduct, breached the relevant provision or provisions identified by the Commissioner for the purposes of the first test and the reasons for that view, but shall not express any view upon what sanction would be appropriate for any breach."

Your conclusion attributes an element of discretion in application of the statutory functions relating to the role of Commissioner which is not included in the Act.

The role of the Commissioner is not to take cognisance of the efforts made by a member to comply but simply to reach a view on whether a member has complied. It is for parliament to decide how to act on receipt of any report that I make.

#### My conclusion and your options

I am of the view that a breach of the relevant provisions has occurred and intend to lay the report with which you were previously provided alongside your representations. I will include this correspondence and related attachments as referred to above.

In view of the foregoing it is open to you to make further representations, should you wish to, or simply await the outcome of the Committee's consideration. If you do wish to make further representations, I will of course consider them fully before deciding on how to proceed.

I would be grateful if you could confirm how you would prefer to proceed no later than 30 July 2021. Given that parliament is currently in recess, the Committee will not in any case be in a position to consider a report until September at the earliest.

#### Confidentiality

This process is conducted under the Act. I would draw your attention to the confidential nature of my investigation and would request your full cooperation in this regard.

For information about how we process data we collect, including how we process personal data, please see our privacy policy at www.ethicalstandards.org.uk/privacy-policy.

Should you have any queries please contact my office on the following telephone number 0300 011 0550 or email investigations@ethicalstandards.org.uk.

Yours sincerely

Acting Ethical Standards Commissioner

Enclosed: Accountant's CV; Accountant's response to your accountant's letter

#### Ian D H Craig FCIBS, C.A

Ian Craig is a Statutory Auditor and a Chartered Accountant currently a director of Craig Cleland Limited.

lan qualified as an Associate of the Chartered Institute of Bankers in Scotland in 1978 gaining distinctions in Law and Practice of Banking Part 1 and Management Accounting. He qualified as a Chartered Accountant in 1982. Following qualification he spent a period as financial controller for the company now known as Muller Wiseman Dairies but he did not work for the company at the time of their floatation. He has been a partner and then director in Craig Cleland and its predecessors since 1985. He was admitted as a Fellow of the Chartered Institute of Bankers in Scotland in 2007.

His practical experience has covered a wide variety of clients as found in general practice and the firm has a number of varied clients with interests in all areas of commerce and a reasonable preponderance of property owning businesses of all forms. He has been involved in the accounts preparation and taxation matters including income tax, corporation tax, valued added tax, capital gains tax and inheritance tax for all types of clients including farming, woodland and property owning enterprises. Share valuations of property enterprises have been dealt with including the use of specialist property valuers for inheritance tax and shareholder buyout propositions.



Chartered Accountants | Business Advisors

Mr Ian Bruce Acting Ethical Standards Commissioner Thistle House

Your Ref:

Our Ref:

91 Haymarket Terrace

Date:

Edinburgh

16 June 2021

IC/LT/070015G

EH12 5HE

Dear Mr Bruce

The Georgian Finance Company Limited

I refer to our exchange of emails in connection with the above and the valuation commentary by Mr Hughes of Gerber Landa & Gee Limited in his letter dated 29 March 2021 to Messrs Levy & McRae regarding my comments on the share valuation of the above company. I note the content of Mr Hughes letter and have undertaken some considerable further research on the company and the points he makes. I apologise for responding on occasions at length below & there are other points I wish to make. I respond following the numbering in Mr Hughes' letter as follows:-

#### 1. Paragraph 2

- a) There are always difficulties in any share valuation but in this case we do not have the difficulty which might arise from a disputed or debateable multiple of future maintainable profits. There could be a lack of liquidity in any market at any time but the company is not a forced seller and while there have been limited disposals in the past these have been rare and only taking place in 2003, 2004 and 2014. The company is not a forced seller.
- b) The company has no borrowing costs and I agree we are looking at valuations in a period of historically low rates. These are relevant facts pertinent to the market & values at the time under discussion.
- c) There is no indication of enforced selling and presumably no disposals are countenanced. None are evident from the accounts or notes thereto.
- d) The company's post tax and if relevant post dividend performance shows that there is a good rental income and profit performance therefore I suspect there is considerable doubt about suggesting the tenants covenant may not be blue-chip. They may not be blue-chip public companies but there is a consistent profitable performance.

The company's financial accounts up to and including 31 March 2016 have been prepared under different financial reporting standards but for the year ended 31 March 2017 they reported for the first time under Financial Reporting Standard 102 and note 2 in the accounting policies to the accounts for

Director:

lan D.H. Craig, C.A., FCIBS

Consultant: Nicol M. Cleland C.A. Mr Ian Bruce Page 2 The Georgian Finance Company Limited

the years 31 March 2017 to 2020 state that investment properties are included at fair value with gains or losses and revaluations recognised in the income statement. The 2017 accounts show a loss on revaluation of £299,895.00 and while note 4 to the accounts explains the basis of valuation and that the directors are not qualified valuers they acknowledge they have taken cognisance of other market evidence of transaction prices for similar properties in the location and to the state of the rental market in the areas where the properties are situated. There was undoubtedly a correction in property prices around 2008/09 with a recovery in 2010 and a less obvious decline back in 2011/12 but not below 2010 values. I think the adjustment in the 2017 accounts is the material discount and has taken account of all inherent risks. There have been no such further adjustments in the accounts for 2018 to 2020 but note 4 in the 2020 accounts reiterates the same valuation technique at 31 March 2020.

#### 2. Paragraph 4

This is a family company that has been incorporated for 62 years and has been and is still controlled by related participators. It may be that Mr Hughes has greater information as to the adult children mentioned but the only two I can identify are GH and RH who are the children of the member who is the majority shareholder. If I assume correctly that they are one and the same and they are shareholders and loan holders I disagree they can be classed as outsiders. Certainly their shareholdings are of small amount and these holdings individually could be described as of low value. I also note that GH who was appointed a director has a date of birth of and he acquired 225 shares in 2012

The following year he acquired a further 125 shares and in 2016 he appears to have acquired another 420 shares but this reverted back down to a net holding of 630 shares per form AR01 filed in November 2016. The same details apply to RH although I do not know her age. Clearly there is something wrong with the initial filing but this is neither here nor there in these discussions.

Having looked at the company accounts and the shareholdings and given the longevity of the company's existence the significant close control has allowed the company to prosper as a family affair in long term assets producing a good post tax yield and I would expect that this may well continue into the third generation on the basis of a degree of inheritance tax planning and I continue to believe that no outsiders would be involved. I would think it likely that the company will continue and it may distribute dividends but more likely perhaps repay loans and ultimately there may well be a selling down of assets in an orderly fashion in terms of a members voluntary liquidation at some point in the future. There may however be a plan for continuing longevity. I have no evidence of dividends paid.

I think there is a trigger event and that is the directors revaluation of properties in the accounts for the year ended 31 March 2017 which was required under the terms of Financial Reporting Standard 102. That new accounting standard has concentrated the focus of the directors on the company asset valuations and is a significant event. I am having trouble recognising that the absence of trigger event implies no value. This company and all the shareholders and directors will have received unsolicited enquiries from The Hacking Trust whom I think have written to every single one of our incorporated

property company clients on a regular basis. None of my clients have entertained any of their interest as they do offer below market value which is simply opportunistic. I would expect that the individuals involved with the above company will have received such correspondence and most likely dismissed it out of hand. That would be an event however that would make the directors consider the valuations and while it may not have been a productive matter it is a similar trigger event.

#### Very significant loans

I find this area of continuing interest. I have looked back the history of these in very many old accounts and base my comments on what are described as trade creditors payable within one year. These have been a feature of the company accounts from 1999 to date. There was a significant increase in the year to 31 March 2004 when they increased from approximately £241,000.00 to £820,000.00. The bank balance increased similarly by £794,000.00. There was certainly a disposal of property in that same accounts year but that can't be related to the increase in creditors. I have no doubt that loans were provided by any of the shareholders or others over the years to allow the purchase of further properties and this would be an entirely sensible way of funding the company without subscribing for new Ordinary shares. No information is provided in connection with the terms or covenants of any loan agreements. They may be technically repayable on demand but they have been in existence in material amount form for over 20 years by which time they are acquiring the status of long term loans and not short term repayable within 12 months. There may be no doubt any loan holder could demand repayment but if the loan holders are also shareholders then I would question why they would take such steps to potentially destroy the shareholder value. Mention is made in point 1(a) of Mr Hughes letter that major quoted property funds restrict sales and therefore the company may have to enter into difficult negotiations with a loan holder to deal with delayed settlement for the orderly disposal of properties. I accept that I am at a disadvantage as I do not have all the loan holder details but I think the history of the loans and the transfer of the same to adult children needs to be referenced. If the only adult children involved are G.H. and R.H. the children of the member then they must have received these loans by way of gift given their ages.

when the trade creditors stood at £820,000.00. The member may have no involvement in any of the loans and these may be a matter entirely related to her mother M.E.J. who has made gifts of shares to G.H and R.H but I think disclosure of the loan holders at the relevant material time of May 2016 is part of the Commissioner's enquiries.

I find it untenable that the shares are referred to as unsellable and having no value or that it is impossible to value. The late Mr G.C.J. passed away in early 2006 and his 3334 shares were inherited by the member from his Estate around July 2008. I would have thought that there would have been a valuation of shares for Inheritance Tax purposes in the Estate of the late G.C.J. These shares did not pass to M.E.J. on a spousal exemption. If Mr Hughes was involved in dealing with HMRC for an Inheritance Tax valuation or in another case likely to come across our desk for the terms of a matrimonial contract settlement HMRC or the other side would not accept that no value attached to the shares on the basis that they were unsellable. Everything has its market price all things considered. I think the directors revaluation of properties is realistic and takes account of all market factors suggested by Mr Hughes.

Mr Ian Bruce Page 4 The Georgian Finance Company Limited

To take a reverse logic approach if we assume that a member's gross salary is £64,000.00 and that any financial interest above 50% of that, namely £32,000.00, has to be disclosed. If we assume a share valuation of £5.00 for 6667 shares you get a value of £33,335.00 which breaches the disclosure limit. Multiply that up for the full share capital and you reach a figure of £50,000.00. This company has been disclosing post tax and post dividend (if relevant) profits in excess of an average £66,000.00 for all years from 2015 to 2020 adjusting for the property write down in the 2017 accounts (there is a minor adjustment of £1412.00 in 2020 which is immaterial). There have been no property disposals in any of these years to create gains to artificially boost the profit performance. It is stretching credulity to suggest that a company making annual post tax profits well in excess of £50,000.00 is valued at less than £50,000.00. The net asset value per share is increasing at more than £5.00 per share per annum alone.

Please let me know if you require further comment.

Yours sincerely



I D H Craig Director

## Appendix Five – further representations by the respondent

Received by email on 21 July 2021.

- 1. Letter to the Respondent's solicitors dated 21 July 2021
- 2. Letter to the Commissioner dated 29 July 2021

21 July 2021



CHARTERED ACCOUNTANTS CHARTERED TAX ADVISERS

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Telephone (0141) 221 7446
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Our Ref: TH/IR/L139

Your Ref: HAR032-0001

FAO: William Macreath
Levy & McRae
Solicitors
Pacific house
70 Wellington Street
Glasgow
G2 6UA

**Dear Sirs** 

Alison Harris
The Georgian Finance Company Limited
Ethical Standards Commissioner's Letter, 15/7/21
Valuation Comments, 16/6/21

I am responding further to the updated valuation letter from Mr Ian D H Craig dated 16 June 2021, and the email from the Ethical Standards Commissioner founding at page 4(a)-(g) on this valuation letter.

Before commenting in detail on the specific points, I would make the undernoted comments:-

- (i) Contrary to the suggestions in the penultimate paragraph of Mr Craig's letter, I have had no involvement with Ms Harris or the Company prior to March of this year. For avoidance of doubt, my sole remit is in relation to the valuation for these specific purposes.
- (ii) The International Valuation Standards Definition of fair market value is thus: "a purchaser and seller, at arms length, acting with reasonable knowledge, expressed in cash or cash equivalent terms."
- (iii) The Supreme Court in the "Cordia" case sets out standards for the testimony of expert witnesses.
- (iv) The Company and its shareholders are distinct legal entities. Much of Mr Craig's letter focuses on the Company and not the shareholdings.
- (v) With respect to Mr Craig, many of his comments and are not supported by evidence or For example, in commenting paragraph 4 of my initial letter, at section 2, paragraph 3, he states "I think there is a trigger event and that is the director's revaluation of properties..." He then proceeds to discuss the "Hacking Trust". I am familiar with this Hacking Trust. Their contact is with the Company, not individual shareholder. Likewise, his suggested trigger event is doubtful and would only relate to the Company. There is no evidential backup whatsoever relating to valuation of a shareholding.



Page 2 21 July 2021 Levy & McRae, Solicitors



**Alison Harris** 

The Georgian Finance Company Limited
Ethical Standards Commissioner's Letter, 15/7/21
Valuation Comments, 16/6/21

I now focus on the specific points on page 4 of the Ethical Commissioner's letter in which it is stated "I am persuaded by the following":-

#### (a) Forced Seller

"The Company is not a forced seller." It is not the Company at issue (Sec (iv) above). Shareholders are subject to different considerations, including restrictions in the Articles.

Indeed there is no seller here. For that matter, there is no buyer. The requirements at (ii) and (iii) above come into play.

#### (b) No Borrowing Costs

Again this relates to the Company. There is no reference to the fact that lenders could start to charge interest, and that loans have to be repaid.

#### (c) Financial Reporting Standard

Again this relates to the Company. Of greater concern is the focus on "the value stood at £1,417,000. This is misleading. Net assets at 31 March 2017 were £328,925, but more importantly, net current liabilities were £1,088,698.

The Company could not pay its debts on demand. That seriously impacts shareholder value.

#### (d) "No Outsiders"

This is a bland statement not supported by any evidence whatsoever. The Courts are littered with cases where adult children/parents have completely opposing views. It cannot be assumed that any parent has control.

#### (e) "Significant Loans"

For the reasons at (d) it is not reasonable to assume that repayment will not be requested. The loans are repayable on demand. There are net current liabilities. This has a serious negative impact on shareholder value. (The International Valuation Standard at (ii) above).

#### (f) HMRC

I have had a number of cases over the years where a nil value for shares has been agreed with HMRC. The comments here are irrelevant.

#### (g) Value per Share

Yet again, the references are to the Company. The comment that "net asset value per share per annum alone is increasing at £5.00 per share" bears no relationship to the actual market in the shares. There is no attempt to assess shareholder value according to International Valuation Standards and complying with the "Cordia" rules.

Page 2 21 July 2021 Levy & McRae, Solicitors



**Alison Harris** 

The Georgian Finance Company Limited
Ethical Standards Commissioner's Letter, 15/7/21
Valuation Comments, 16/6/21

I stand by my comments in the final two paragraphs of my letter dated 29 March 2021. I do not think my views are unreasonable in the light of International Valuation Standards and the "Cordia" rules.

The key question is "what purchaser at arms length, acting with reasonable knowledge" would buy these shares?

I would respectfully suggest that Mr Craig revisits his Opinion, and that the Ethical Standards Commissioner should seek Counsel's Opinion, specifically on the issue of valuation.

Yours faithfully

Thomas Hughes LLB CA CTA Consultant



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29 July 2021

Our Reference: WM/JM/HAR032-0001

Ian Bruce
Acting Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Via Email:

Dear Mr Bruce,

## Public Standards - Conduct of Members of the Scottish Parliament Complaint about Alison Harris (formerly an MSP)

I consulted with Miss Harris on your letter of 15<sup>th</sup> July and Mr Craig's further submissions which provided comment upon our own independent expert's report.

As a result of your letter and Mr Craig's comments I sought a further report from our independent expert Tom Hughes LLB CA. His supplementary report is attached.

In your own letter you refer to the Company's chartered accountant's letter as "terse in the extreme".

However the company accountant's comments were accurate and precise, confirming that Miss Harris' correctly declared her interest.

The term "ready market" signifies that Miss Harris could not sell her shares except in terms of the Articles of Association. Your comments regarding "a vested interest" suggests to Miss Harris a preconceived view which is not justified by the facts and circumstances.

Miss Harris used the correct valuation method and your own Standards Rules do not set out how a disclosure should be made. There is a failure on the part of those who drafted the Rules to set out accurately how disclosures should be made in the circumstances which prevail here. The Rules simply make reference to "market and nominal value" without explaining how this should be disclosed. If, by way of example, Miss Harris had been asked to use "the net asset basis as a valuation mechanism" she would have done so. The company has both traded and acted within the law and adheres to approved financial reporting standards. The directors work closely with reputable accountants and solicitors.

Mr Craig's reference to GH and his shareholding goes beyond the remit of Mr Craig as an independent expert and in any event Mr Craig's assertions are inaccurate. To discuss Miss Harris' late father's estate and the mother's shareholding as spousal exemption is also outwith the remit of any independent expert in such a matter relating to whether or not there has been proper disclosure on an interest in a company.

To write off what are legitimate loans because of the length of time they have been outstanding is both in accounting and legal terms wrong. An independent expert must consider the Standards guidance and how it relates to the facts and circumstances that pertained to Miss Harris and Miss Harris alone. Other shareholders

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are not bound to make disclosures. Their obligation is to comply with company law. Only Mr Hughes has identified the key question which relates to the valuation of shares.

In an effort to justify his original opinion, Mr Craig now goes beyond his remit as an independent expert. As Mr Hughes identifies there is an obligation standing Supreme Court Guidance in the "Cordia" case that such experts must be independent and dispassionate. It is not within Miss Harris' power to disclose information which was requested in points D, E, and F and even if she were still a director of the company (which she is not) it would not be appropriate to do so in a disclosure for the purposes of Register of Interests. Miss Harris has been a chartered accountant for some 30 years. She has an unblemished professional career and declared her shareholding in good faith. She attempted to place "a market value" on shares taking into account the nature of the Articles of Association which prevent her from sale of shares outwith a narrow group. This clause in the Articles and its significance has either been ignored or overlooked.

Mr Craig and perhaps you as Acting Commissioner have been "blinded" by the fact that the company makes recurring profits. The use of other valuation methods "**to create**" a market value without considering the terms of the Articles of Association is a flawed analysis.

Market value is not current asset value. Our expert is independent and has taken into account Supreme Court guidance in "Cordia" to determine a valuation of Miss Harris' interests for the specific purposes of disclosure within the register for MSPs.

Mr Hughes submissions answer Mr Craig's supplementary report and your own report concentrating on page 4 (a) – (g). The company and shareholders are distinct legal entities. Mr Craig focusses upon the company but not the shareholdings. Miss Harris considers that Mr Craig's assertions demonstrate a lack of objectivity in his approach and our expert confirms why you should not rely upon Mr Craig's views. Mr Craig offers no sound reasoning and no support for many of his comments about Mr Hughes' opinion and conclusion.

Our independent expert deals with the specific points raised on page 4 of your letter where you advise that you are persuaded by certain factors which allow you to make findings in fact leading to your recommendation.

We comment as follows upon them:

#### a. Forced Seller

Mr Hughes as an independent expert confirms there is no seller and there is no buyer so the requirements at 2 and 3 come into play.

#### b. No Borrowing Costs

Mr Hughes confirms this relates to the company and not Miss Harris. Lenders can seek to charge interest and insist on repayment.

#### c. Financial Reporting Standards

These Standards relate to the company. Net assets in 2017 are overwhelmed by net current liabilities. The company could not meet its debts as they arose with consequent impact on shareholder value.

#### d. No Outsiders

The is no evidence to support your proposition. These are adult children independent of parents and under no person's control and cannot be defined as "a relevant person".

#### e. Significant Loans

You and Mr Craig appear to assume that repayment will not be required. These loans are repayable **on demand and interest is being paid**. There are net current liabilities impacting on shareholder value for the reasons set out by Mr Hughes.

#### f. HMRC

Mr Hughes has had significant experience over the years where nil value has been agreed with HMRC.

#### g. Value per Share

The references by Mr Craig relate to the company and not the individual. Net asset value increasing at £5 per share bears no relationship to "the actual market" in the shares.

The Supreme Court in *Kennedy -v- Cordia* recognised the need to regulate skilled witness evidence which can on occasion as here in the case of Mr Craig be excessively influential. The Court commented upon the responsibility of parties in relation to the leading of such evidence. Skilled witnesses may give both opinion evidence and expert evidence of fact drawing on their knowledge and experience of the subject matter including the work and literature of others but they have to bear in mind the following considerations:

- 1. the proposed skilled evidence should assist the Acting Commissioner with his task;
- 2. does the skilled witness have the required knowledge and experience;
- 3. the skilled witness must be impartial in his presentation and assessment of the evidence in the matter at hand: and
- 4. the skilled witness should provide a reliable body of knowledge and experience to underpin their own report.

Mr Hughes has complied with the considerations above and his evidence is consistent with Miss Harris' position that she complied and there is no breach so far as disclosure is concerned. In Mr Hughes' comments of 29<sup>th</sup> March 2021 he maintained a position that there was no failure on Miss Harris' part. His opinion has not changed despite Mr Craig's further representations. Mr Hughes maintains his position and his views follow international valuation standards.

Mr Hughes recognises that the key question is this:

"What purchaser, operating at arm's length, acting with reasonable knowledge, would have offered for the shares of Miss Harris?"

That question is neither addressed by Mr Craig nor you. Mr Hughes suggests that Mr Craig should reconsider his opinion and it may well be that you should seek Counsel's Opinion on the question of valuation. If you intend, notwithstanding our comments, to refuse to change the terms of your report and recommendation these further submissions together with Mr Hughes' two reports must be tabled for the Committee. It is also significant that where there are competing bodies of opinion the question is how do you prefer one to the other.

We say that Mr Craig has a mistaken or incomplete understanding of the facts, that he has not properly assessed the case in relation to the guidance and there is no logical basis for his opinion.

I should say it is only in a rare case where one is able to discount expert evidence on this basis but proper regard must be had to the role of the expert witness as explained in *Kennedy -v- Cordia (Services) LLP 2016 SC (UK SC) 59 paragraphs 48, 52-54.* You must set out why you prefer Mr Craig's analysis to Mr Hughes and on what basis you discount Mr Hughes' evidence.

Whilst noting that Parliament is in recess and the relevant Committee may not be in a position to consider your report till a date in September, we require to hear from you as to whether nor not you are willing to reconsider your Opinion and to seek the Opinion of Counsel.

We need to advise Miss Harris of other remedies available should you maintain your present recommendation.

Yours sincerely



William Macreath Levy & McRae

#### Appendix Six – Response to further representations by the respondent

Sent by email on 24 August 2021.

Dear Ms Harris

I am writing substantively in response to the email and attachments sent on your behalf by William C Macreath, Chairman of Levy & McRae Solicitors LLP, on 29 July.

I can confirm that I have sought Counsel's opinion on the report and both sets of representations made by you. I note Mr Macreath's statement that:

"If you intend, notwithstanding our comments, to refuse to change the terms of your report and recommendation these further submissions together with Mr Hughes' two reports must be tabled for the Committee."

I have included both sets of representations and correspondence with you and your representative, as well as all attachments provided, in full in annexes to the report, which I do not intend to otherwise alter, and will send a copy to the Standards. Procedures and Public Appointments Committee of the Scottish Parliament tomorrow. The report, inclusive of your representations, is being issued in accordance with section 9(3) of the 2002 Act, which I reproduce for you here for ease of reference:

"(3) No report concluding that a member of the Parliament, who is named in the report, has breached a relevant provision shall be made to the Parliament unless the member concerned has been given a copy of the draft report and an opportunity to make representations on the alleged breach and on the draft report; and there shall be annexed to the report made to the Parliament any representations made by that member which are not given effect to in that report."

You will understand from this that I do not agree with the conclusions and observations of your representative and have not therefore given effect to them in the report. In brief, I view the arguments made by your independent accountant to lack coherence. I note here also that arguments have been made to the effect that the value of the shares is dependent on factors that have not been disclosed to me.

For completeness, I refer to the provisions of the 2002 Act. Your further representations rely heavily on the case of Kennedy v Cordia (Services) LLP 2016 SC(UKSC) 59. Whilst this does contain invaluable observations on expert opinion. one also cannot forget that the context of those observations was that the Supreme Court was giving guidance on when expert evidence should be admissible in a civil court of law. It is of relevance that the ultimate decision in this case will be for the Parliament, which is not bound by the Commissioner's fact-finding nor by the Commissioner's interpretation of the rules (and any consequent decision on breach).

The report will be provided to the Committee in confidence. A copy is attached for your information.

#### Confidentiality

This process is conducted under the 2002 Act. I would draw your attention to the confidential nature of my investigation and would request your full cooperation in this regard.

For information about how we process data we collect, including how we process personal data, please see our privacy policy at <a href="https://www.ethicalstandards.org.uk/privacy-policy">www.ethicalstandards.org.uk/privacy-policy</a>.

Should you have any queries please contact my office on the following telephone number 0300 011 0550 or email <a href="mailto:investigations@ethicalstandards.org.uk">investigations@ethicalstandards.org.uk</a>.

#### Kind regards, lan

I am currently working remotely. The best way to contact me is by email.

Ian Bruce
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91 Haymarket Terrace
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#### **Private and Confidential**

#### For the committee's attention only

Code of conduct

Section 2.7.2

The crux of this complaint is that I did not register the true market value of my shares in the family owned limited company (The Georgian Finance Company Ltd). I believe that I did.

I hold 66.67% of the share capital of the Company.

As a shareholder I am bound by the Articles of Association of the Company and the clause which prohibits me selling my shares without the prior written consent of the directors of the Company.

From the very beginning I followed the code of conduct regarding market value of my shares. The Company's Articles of Association are the legal documents of the Company to which I am required to adhere. They prohibit the sale of any shares without the prior written consent of the directors.

I sought, as suggested in the code of conduct, the professional opinion of the Company's accountant as to the market value of my shareholding. The market value was confirmed as being nil, due to me being unable to freely sell my shares as I am bound by clause 8 in the Articles of Association of the Company.

From the outset the Commissioner has totally disregarded and refused to accept this market value and furthermore, refused to accept or deliberately ignored the importance and relevance of the Articles of Association.

The Commissioner's independent accountants produced a value of £5 per share which was then taken and used as "market value" of my shares.

This value was the "net asset value" per share. This "net asset value" was then called the "market value" of my shares and substituted and used as such. Even in the independent accountant's report dated 16th June 2021 it is highlighted in bold "the net asset value...".

If a valuation were to be made using the net asset basis, then any competent accountant would insist that substantial discounting would be required on the value of the assets of the Company. It would be necessary to consider the many factors which affect the individual properties and ultimately their value — the type of tenant, the length of the lease outstanding, the state of the property, potential repairs, location of the property etc. All these factors and more would need to be included in a valuation of the net assets of the Company, and whilst to value a company you can use whatever method you like; individual shareholdings have their own restrictions. This is not a simple arithmetic calculation based on historic book value figures. With more accurate knowledge of the assets and leases etc the £5 per share value could have been for example £4.45 per share making my share value less than the 50% of a member's salary.

However, nowhere in the code of conduct in Section 2 is it mentioned that you may be able to use another valuation method (e.g., net asset basis) and declare this in your register of interests. If this option had existed in the code of conduct, then of course I would have used this to place a value on my shares. I do not think it is acceptable for the Commissioner to use other valuation methods and substitute this value as" market value" for my shares when the code of conduct guidance that I relied upon to declare my share value in my register of interests uses as the two tests – nominal value and market value.

If there had been reference to another basis of valuation other than market value, in my particular situation, I would then have had the opportunity to apply another valuation method.

I have never denied the existence of the Company, that there are assets and liabilities and other potential bases for valuing my share holdings, but I cannot accept the substitution of "net asset basis" to determine a share value as the" market value" per share.

Net asset basis is not the market value.

The guidance needs to be clearer allowing for all possibilities. Currently the guidance is too vague, it is designed for public quoted companies. The guidance for other entities needs to be reconsidered. Any MSP should be able to follow the guidance, without dubiety, and not find themselves in a situation as I am in, where one side uses other valuation methods by merely substituting their method and the other side follows the guidance and specifically uses market value.

Despite owning 66.67% of the share capital, which is less than the 75% ownership required of share capital to liquidate or sell the Company assets, I did not breach the code of conduct in relation to the section about market value of shares.

Surely to establish a potential breach of the code of conduct - like values must be compared with like values.

I always acted with integrity, and I did not at any stage attempt to hide my shareholding or the existence of the Company.

#### Other Issues

I wish to comment on the following:

Point 16 /17 (page 8 of 29) & letter to the Procurator Fiscal dated 7.10.2020

The Commissioner herself states "some small parcels of shares... But details of any valuations provided to HMRC at that stage are not forthcoming from the MSP"

This is factually incorrect.

Please see my letter to the Commissioner dated 16th July 2020 "the shares where gifted by her to.... The stock transfer form showed consideration money to be Nil value."

The stock transfer form is in fact the valuation form that is returned to HMRC, so for the Commissioner to state in her letter to the Procurator Fiscal (7.10.20) that "details of any valuations provided to HMRC at that time have not been forthcoming from the MSP"- is a basic factual inaccuracy.

I can only presume that the Commissioner has failed to understand the nature of this share transaction and the appropriate forms that are required to be submitted to HMRC.

This inaccuracy must have given a misleading picture to the Procurator Fiscal that I was failing to respond and cooperate with the Commissioner, when in fact, the opposite was the case.

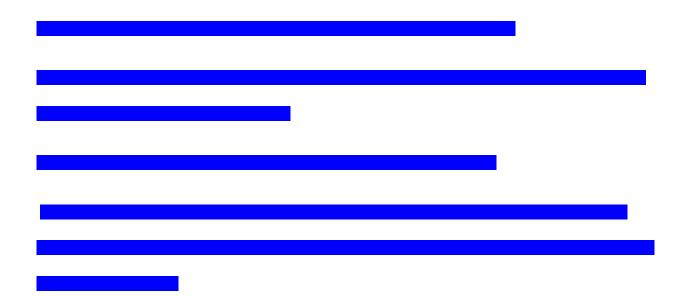
#### Additional material review in the case of MSP 3291

I note the highlighted phrase" new this year"

I resigned as a director on becoming an MSP in May 2016 and I was replaced by George Harris.

#### Heritable property valuation "new this year"

I note this phrase was mentioned by the Commissioner's independent accountant in one of his reports, but no mention was made that this was to adhere to the relevant accounting standards in that year which required the Company directors to revalue the heritable assets in the preparation of the Company accounts. There was no requirement to use independent professional valuators.



#### Email from Mr Bruce dated 24th August 2021

I find it incredible that Mr Bruce takes the view that the arguments made by my independent expert accountant "lack coherence". He dismisses the independent expert accountant's report and professional opinion without justification and reasoning. My independent expert complied with his duties in line with the Supreme Court Guidance in *Kennedy-v-Cordia*. I would draw the Committee's attention to the curriculum vitae of my independent expert.

Also, for Mr Bruce to infer that the "value of the shares is dependent on factors that have not been disclosed to him"- is not correct. I did not respond to the points in Mr Bruce's letter of 15th July 2021 as his three requests did not relate to me personally or my personal share valuation. The information requested related to other individuals, and this information is personal to them and the Company. The Company does not have a valuation for inheritance tax purposes, inheritance tax applies to each individual person, not the Company. The Company is a different legal entity from the shareholders.

Finally, I wish to comment on the overall conduct of the enquiry with reference to the Commissioner,

Caroline Anderson, and her seeming determination to secure a criminal prosecution against me. On

September 7<sup>th</sup> 2020 I was informed that stage 2 of the complaint process was engaged. I heard nothing

more until I asked for an update approximately 6 weeks later when I received an email on 19<sup>th</sup> October 2020 informing me that this case had already been referred to the COPFS on 7<sup>th</sup> October 2020.

This meant I required to engage a firm of solicitors experienced not only in regulatory matters, but also having the necessary expertise in dealing with the COPFS, to act on my behalf. I had no further contact with the Commissioner until I received her initial report on 23<sup>rd</sup> March 2021 which confirmed that no prosecution would take place. It was in this report that I was able to see that the Commissioner not satisfied with the COPFS decision not to prosecute, went back to the COPFS referring them to a specific section. I note that it is highlighted in this report about potential criminality and value of shares. The Commissioner went back a third time to the COPFS resulting in the case being referred to Crown Counsel. Crown Counsel, on 3<sup>rd</sup> February 2021, confirmed that there would be no criminal proceedings – this was not highlighted in this report.

It took another 3 weeks until I had confirmation from the Commissioner that no prosecution would take place.

I am sure you will be able to appreciate that this whole experience has been extremely upsetting and very worrying, not to mention costly and it all revolves around the deemed market value of my shares and the opinion of the Commissioner's Independent accountant. It does not take into account my opinion, bearing in mind I am a qualified chartered accountant with nearly 30 years' experience, the opinion of the Company's accountant or the opinion of my independent expert.

Alison Harris

14<sup>th</sup> September 2021