



HOUSE OF LORDS

Report from the Commissioner for Standards

# The conduct of Lord Smith of Kelvin

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### *Commissioner for Standards*

The independent Commissioner for Standards is responsible for considering any alleged breaches of the Codes of Conduct.

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### *Code of Conduct for Members, Guide to the Code of Conduct and Code of Conduct for Members' Staff*

The present Code of Conduct for Members of the House of Lords was agreed on 30 November 2009. Amendments to it were agreed by the House on 30 March 2010, 12 June 2014, 25 February 2016, 9 February 2017, 3 April 2017, 30 April 2019 and 18 July 2019.

The Guide to the Code of Conduct was proposed by the Committee for Privileges (2nd Report, Session 2009–10, HL Paper 81) and agreed by the House on 16 March 2010. The Guide was amended on 9 November 2011, 6 March 2014, 13 May 2014, 24 March 2015, 25 February 2016, 9 February 2017, 3 April 2017, 30 April 2019 and 18 July 2019.

The Code of Conduct for House of Lords Members' Staff was agreed on 13 May 2014. Amendments to it were agreed on 24 March 2015, 30 April 2019 and 18 July 2019.

The Codes and Guide are kept under review by the Conduct Committee.

### *Advice*

The Registrar of Lords' Interests advises members of the House and their staff on their obligations under the Codes of Conduct.

Address: Registrar of Lords' Interests, House of Lords, London SW1A 0PW

Email: [lordsregistrar@parliament.uk](mailto:lordsregistrar@parliament.uk)

Telephone: 020 7219 3112/3120

### *Registers of Interests*

A list of interests of members and their staff can be found online: [www.parliament.uk/hlregister](http://www.parliament.uk/hlregister)

### *Parliamentary helplines*

Independent Bullying & Harassment Reporting Helpline: 0800 028 2439 or [disclosure@healthassured.co.uk](mailto:disclosure@healthassured.co.uk)

Independent Sexual Misconduct Advisory Service: 0800 1124 318 or [isma@solacchub.org](mailto:isma@solacchub.org)

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# The conduct of Lord Smith of Kelvin

## Summary of complaint and investigation

1. On 1 May 2020 I received an email from a member of the public, W F Hunter. The email read:

“I note that Lord Robert Smith is Listed as managing director for Otter Ports ltd which has connections to the Cayman Islands.

This is not in the register of interests and does it have any tax avoidance potential given the connection to the Cayman Islands?”
2. I conducted a preliminary assessment of the two aspects of this complaint. I considered that:
  - the reference to tax avoidance was outside the remit of the Code of Conduct—I therefore dismissed this element of the complaint; and
  - a failure to include a directorship in the Register of Lords’ Interests would engage the Code.
3. I therefore wrote to Lord Smith launching an investigation and asking for his written response (see Appendix 1).
4. I also noted that Companies House listed Lord Smith as:
  - a Director of Otter Ports Ltd;
  - a Director of Otter Ports I Ltd,
  - a Director of Otter Ports II Ltd, and
  - a Director of Forth Ports Finance Plc.
5. As none of these roles appeared on his entry in the Register of Interests, I also asked him to provide a response explaining their absence as well as dealing with the complaint.

## *Relevant aspects of the Code*

6. Paragraphs 34 and 35 of the *Code of Conduct* say:

“34. Under the Code, members are required to register in the Register of Lords’ Interests all relevant interests. The compilation and maintenance of the Register is undertaken by the Registrar of Lords’ Interests.

35. The purpose of the Register is to assist in openness and accountability by enabling members to make clear what are the interests that might be thought by a reasonable member of the public to influence their actions, speeches or votes in Parliament, or actions taken in their capacity as members of the House of Lords. The registration form specifies 10 categories of registrable interest, which are described below.”

7. Paragraphs 49–51 of the *Guide to the Code of Conduct* provide details of directorships that must be registered—category 1 interests. This category covers “Remunerated directorships in public and private companies, including non-executive directorships, and including directorships which are not directly remunerated, but where remuneration is paid through another company in the same group”.

### Lord Smith’s response to the complaint

8. On 8 May 2020, Lord Smith provided me with a detailed written response (see Appendix 2) and a letter from the Company Secretary of Forth Ports Ltd (see Appendix 3). I replied to confirm my understanding of his response (Appendix 4), to which he quickly responded (Appendix 5).
9. In brief, his response explained that he is Chair of Forth Ports Ltd. As Chair of that group he is also a director of its subsidiaries. He had therefore considered the requirements of the Code to have been met by his entry as Chair of Forth Ports Ltd.
10. He also noted that as Chair of Forth Ports Ltd he is also a non-executive director of Otter Ports Holdings Ltd and Otter Ports Group Holdings Ltd.

### Finding

11. **As Lord Smith confirmed he holds roles which ought to have been included in his entry in the Register of Interests, it is clear that the Code has been breached.**
12. However, I do not believe that Lord Smith intended to mislead the House or intentionally withhold information from the Register.
13. In the light of this, I considered that the case could be resolved by remedial action. Remedial action usually involves “putting the record straight”, for example by amending the Register of Lords’ Interests, and the member making a formal apology to the Chair of the Conduct Committee.
14. Lord Smith has already taken steps to update his entry in the Register and has written to Lord Mance, the Chair of the Committee (see Appendix 6).
15. The case was therefore resolved by remedial action. I am grateful to Lord Smith for his cooperation with this matter.

### Conclusion

16. As Lord Smith did not take advice from the Registrar of Lords’ Interests before concluding incorrectly that the directorships of the subsidiary companies were covered by the registration in relation to the parent company, I would note that the Registrar of Lords’ Interests is available to provide such advice. The *Code of Conduct* says:

“26. ... The Registrar is available to advise members of the House, and may consult the Committee when necessary.

27. A member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct in that regard. ... A member who realises that he or she has failed to register or declare a relevant interest should contact the Registrar for advice.”

17. I would urge members to seek the Registrar's advice when necessary to avoid inadvertent breaches of the Code.

Lucy Scott-Moncrieff, CBE  
Commissioner for Standards

## **APPENDIX 1: LETTER FROM THE COMMISSIONER FOR STANDARDS TO LORD SMITH OF KELVIN, 5 MAY 2020**

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I am writing because I have received a complaint from a member of the public, Billy Hunter, alleging that you have breached the House of Lords Code of Conduct.

The complaint relates to your apparent role with Otter Ports Ltd. According to Companies House you have been a Director of Otter Ports Ltd since 10 October 2018 but the role does not appear on your entry in the Register of Lords' Interests. Companies House also lists you as a Director of Otter Ports I Ltd, Otter Ports II Ltd and Forth Ports Finance Plc, none of which appear on the Register of Lords' Interests.

A copy of the complaint is enclosed.

I have carried out a preliminary assessment of the complaints. I have decided that there is sufficient prima facie evidence to investigate whether the House of Lords Code of Conduct may have been breached. In particular, I intend to investigate whether the following provisions of the Code of Conduct have been breached:

“11. In order to assist in openness and accountability members shall:

(a) register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions;”

The complainant also asks whether there is any connection between Otter Ports Ltd and tax avoidance. The tax affairs of organisations in which members have interests is not within the scope of the Code and therefore is not something I will address.

I invite you to respond in writing with a full and accurate account of the matters in question; this response may be by email or letter and to whatever length you feel necessary. A response by 18 May would greatly assist me in investigating this matter in a timely fashion. Without limiting what you may wish to include in your response to the complaint, it would be useful if you could include details of whether you sought any advice on the need to include these roles in the Register of Lords' Interests.

I would also wish to draw your attention to paragraph 136 of The Guide to the Code of Conduct:

“From the point that the Commissioner decides to undertake an investigation all evidence and correspondence relating directly to the inquiry is covered by parliamentary privilege. It must remain confidential unless and until it is published. If such evidence or correspondence were to be published or disclosed to anyone else without the agreement of the Conduct Committee or the Commissioner, this would be a contempt of the House. An attempt to obstruct an investigation is a contempt of the House.”

In accordance with paragraph 125 of the Guide to the Code of Conduct a webpage on the parliamentary website will include basic information about the case.

**APPENDIX 2: EMAIL FROM LORD SMITH OF KELVIN TO THE  
COMMISSIONER FOR STANDARDS, 8 MAY 2020**

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I acknowledge receipt of your letter regarding the above complaint.

First, can I apologise for not informing you of the additional subsidiary appointments within Forth Ports Ltd. My understanding was that this was covered in the Register under my Forth Ports Ltd entry.

Secondly, I have asked the General Counsel and Company Secretary at Forth Ports to explain my position as Chair of Forth Ports Ltd and I am attaching a letter which I trust will satisfy the misunderstanding.

Please let me know if you need any further information but I hope that no further action will be necessary.

Again, apologies for not complying with the Code of Conduct to the full.

**APPENDIX 3: LETTER FROM PAMELA SMYTH, GROUP COMPANY  
SECRETARY AND GENERAL COUNSEL, FORTH PORTS LTD, 7 MAY  
2020**

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I am writing to assist with the letter of 5 May 2020 received by you from the Office of the Commissioner for Standards, House of Lords.

The Otter Ports' companies listed in the letter are part of the holding structure for the Forth Ports group. Your role is as the non-executive Chairman of the group and has been since 1 January 2015. There are two companies within the group registered in the Cayman Islands, however these companies are managed and controlled in the UK, thus resident in the UK and liable for UK corporation tax. You take no active part in the management or control of these entities and derive no financial benefit from them. These entities have no interests other than their investment in Forth Ports Limited, your interest as the non-executive Chairman having previously been disclosed.

There was a change in ownership in October 2018 when the Public Sector Pension Investment Board of Canada, an existing shareholder, became the majority owner of the Forth Ports group. PSP arranged for the non-executive directors on Forth Ports Limited to be added as directors of the Otter Ports' entities. You are not the Managing Director of any of the Otter Ports' companies. The reference to Managing Director on the paperwork submitted for PSP at Companies House in October 2018 is incorrect and we will look to have this amended at the earliest opportunity.

Forth Ports Finance PLC is also a member of the Forth Ports group and acts as issuer of loan notes on the US private placement market in Forth Ports Limited and is required to have the same directors as Forth Ports Limited. Again in this context your role is as an independent non-executive director with no management responsibility or control and you derive no financial benefit from this company .

Whilst I understand that the changes for the Otter Ports' entities and Forth Ports Finance PLC should have been added previously to the Register of Lords' Interests, this appears to have been an administrative oversight and due to the fact these companies are part of the same group, the interest in which was already disclosed. There has been no change in substance to your involvement in the group which is to act as its non-executive Chairman.

We would hope that in the circumstances the Commissioner will look favourably on this matter and be satisfied with the position without the need for further action.

## APPENDIX 4: LETTER FROM THE COMMISSIONER FOR STANDARDS TO LORD SMITH OF KELVIN, 14 MAY 2020

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Thank you for your email of 8 May.

Having read the letter from Ms Smyth, I should be grateful if you confirm my understanding of your positions:

- (1) As well as Chairman of Forth Ports Ltd, you are a non-executive director of:
  - Otter Ports Ltd,
  - Otter Ports I Ltd,
  - Otter Ports II Ltd, and
  - Forth Ports Finance Plc.
- (2) Though for some of these entities Companies House lists you as Managing Director, this is incorrect.
- (3) The absence of these non-executive director roles from the Register was an oversight and you had not taken advice from the Registrar of Lords' Interests on this matter.

If my understanding is correct, the failure to include the four roles associated with your chairmanship of Forth Ports Ltd would constitute a breach of the Code. However, I would accept that this failure was not intentional and therefore the breach could be resolved by remedial action.

The Guide to the Code of Conduct describes remedial action as follows:

“Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the member concerned. In cases other than those involving bullying, harassment or sexual misconduct, remedial action involves “putting the record straight”, for instance by making an amendment to the Register; the member will also normally be expected to make a formal apology in writing to the chairman of the Conduct Committee. In those cases, if the Commissioner and member agree remedial action, the Commissioner explains the circumstances and remedial action in her report on the case.”

If you are content to resolve this complaint by remedial action, I would ask that you contact the Registrar of Lords' Interests as soon as possible to update your entry in the Register. He can be contacted on [lordsregistrar@parliament.uk](mailto:lordsregistrar@parliament.uk).

I would also ask that you write a formal apology to the Chairman of the Conduct Committee, Lord Mance, and provide me with a copy of that letter.

Once those actions are completed I will prepare a report for publication on my pages on the parliamentary website and the matter will be closed.

**APPENDIX 5: EMAIL FROM SMITH OF KELVIN TO THE  
COMMISSIONER FOR STANDARDS, 21 MAY 2020**

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I refer to your letter of 18 *[sic]* May 2020. Thank you for your pragmatic approach to this matter.

I confirm that the position outlined in points 1, 2 and 3 of your letter is correct. As noted previously I am also a non-executive director of Otter Ports Holdings Ltd and Otter Ports Group Holdings Limited.

I have advised the Registrar of Lord's Interests of the updates for the Register.

A hard copy letter has been sent direct to Lord Mance on this matter.

**APPENDIX 6: LETTER FROM LORD SMITH OF KELVIN TO LORD  
MANCE, CHAIR OF THE CONDUCT COMMITTEE, 19 MAY 2020**

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I am writing to you following correspondence with the Office of the Commissioner for Standards, House of Lords.

As disclosed in the Register of Lords' Interests, I am the non-executive Chairman of Forth Ports Limited. There are a number of companies within the Forth Ports' group and following a change in ownership and financing, I became a non-executive director of a small number of companies within this group (6 in total). I take no active part in their management nor do I derive any financial benefit from them. It simply became corporate policy that the non-executive directors were the same on these companies as on Forth Ports Limited. There was no change in substance to my involvement and interests with Forth Ports Limited by reason of these changes. However I understand that these changes should nonetheless have been reported to the Registrar of Lords' Interests and unfortunately were not due to an administrative oversight for which I apologise unreservedly.

I would hope that you will look favourably on this matter in the circumstances. I confirm that the changes have been duly notified to the Registrar.