OMBUDSMEN ACT INVESTIGATION

COMPLAINT BY THE HUBBARD SUPPORT TEAM AND OTHERS CONCERNING A RECOMMENDATION FOR STATUTORY MANAGEMENT MADE BY THE SECURITIES COMMISSION TO THE MINISTER OF COMMERCE ON 19 JUNE 2010

APRIL 2011

Pursuant to rule 2(1)(b) of the Ombudsmen Rules 1989, I present the report of an investigation into a recommendation for statutory management made by the Securities Commission to the Minister of Commerce on 19 June 2010.

Beverley A Wakem
Chief Ombudsman

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1. THE COMPLAINT

In July 2010, I received a complaint from members of the Hubbard Support Team and others concerning a recommendation that was made by the Securities Commission (Commission), acting by division, to the Minister of Commerce (Minister) on 19 June 2010.

The Commission's recommendation, made pursuant to s 38 of the Corporations (Investigation and Management) Act 1989, was that Aorangi Securities Limited (Aorangi), seven unregistered charitable trusts, and Mr Allan and Mrs Margaret (Jean) Hubbard should be placed under statutory management.

The Minister accepted the recommendation on 20 June 2010, and by Order in Council the Governor-General declared Aorangi, the charitable trusts and Mr and Mrs Hubbard to be subject to statutory management.

The complaint that I received alleged that a member of the Commission involved in the making of the recommendation, Mr Simon Botherway, had an undisclosed conflict of interest, or *"potential conflict of interest"*, on account of his brother's previous business connection with South Canterbury Finance Limited (SCF). Until 28 May 2010, Mr Hubbard had been a director of SCF and effectively owned SCF via another entity, Southbury Corporation Limited.

2. THE PARTIES CONCERNED

The Commission is an independent Crown entity established under the Securities Act 1978. It is, at the time of writing, New Zealand's main regulator of investments.

Mr Simon Botherway is a Commission member. He was a member of the division (see 6.1.2 below) of the Commission which made the recommendation to the Minister on 19 June 2010.

His brother, Mr Jonathan Botherway, was the sole director and shareholder in Merivale Ale House Limited (Merivale). Merivale was put into receivership by a company (not SCF) in June 2009. Subsequently, SCF, as a secured creditor, appointed its own receivers and soon after placed the remainder of Mr Jonathan Botherway's businesses into receivership. At the time, SCF was, in aggregate, owed approximately $7.8 million. Mr Jonathan Botherway was adjudicated bankrupt on 14 June 2010. SCF did not serve a bankruptcy notice on him, although it was a supporting creditor. According to the Commission, SCF had been working with him on a creditors' proposal up to the time of his adjudication.

Mr Allan Hubbard is a well-known businessman who has a number of business interests. He and his wife were declared subject to statutory management on 20 June 2010.

3. THE FOCUS OF THE INVESTIGATION

I investigated whether the Commission's decision to recommend statutory management might have been affected by any undisclosed potential conflict of interest on Mr Simon Botherway's part.

Although it was suggested to me that my investigation should encompass other matters, such as the perceived treatment of Mr and Mrs Hubbard, an Ombudsman's investigation cannot affect the statutory management that is currently in place. The processes that are already in train should establish the factual position with respect to Mr and Mrs Hubbard, as well as the entities that are subject to statutory management, and, consequently, whether or not their supporters' concerns are justified.

4. THE FRAMING OF THE INVESTIGATION

The manner in which my investigation was framed was influenced by the fact that the Commission had been reported in the media as stating that Mr Botherway had declared *"a potential conflict of interest"* in relation to SCF.

During the course of the investigation, the Commission clarified that there had in fact been no formal declaration of a conflict of interest, potential or otherwise, and that the reference to a *"potential conflict of interest"* appeared to have been attributable to the fact that its staff were familiar with the term in the context of the *"potential conflicts list"* which the Commission maintains (see 6.1.2 below).

I agreed with the Commission that the use of the term was unhelpful and inaccurate. In hindsight, I would have omitted the word *"potential"* when notifying the Commission and the complainants of my proposed investigation.

5. THE OUTCOME OF THE INVESTIGATION

On the information available to me:

- I considered the Commission's policy and procedures relating to the management of conflicts of interest to be robust and to have been applied appropriately in this case.

- I was not aware of any grounds for considering that Mr Botherway had, or could be perceived as having had, a conflict of interest in terms of s 62 of the Crown Entities Act 2004, or of any material to suggest that he was otherwise biased or motivated by malice.

- It followed from this that I saw no necessity for Mr Botherway to have raised the matter of his brother's business affairs. That he did so out of caution did not, in my view, provide grounds for criticism. It also followed that I saw no detriment arising from the fact that he raised the matter after the recommendation had been made to the Minister.

Nothing in the information I have examined would have led me to a conclusion that the Commission's decision to make the recommendation was affected by any undisclosed conflict of interest, potential or otherwise, on Mr Botherway's part, I formed the opinion that the complaint could not be sustained.

The factors that I considered in forming my opinion are outlined below.

6. THE MATTERS CONSIDERED DURING THE INVESTIGATION

The following matters were considered in the course of my investigation:

- The Commission's policy and procedures relating to conflicts of interest.
- The procedures that were followed in this case, and the steps that the Commission took on being apprised by Mr Botherway of his brother's past business dealings with SCF.
- Whether the applicable law and the facts suggested that a conflict of interest existed.
- Whether there could have been a perception that a conflict of interest, and/or bias, was involved.

6.1 The Commission's policy and procedures relating to conflicts of interest

6.1.1 The Commission's policy

The Commission's conflicts of interest policy is set out in a document dated June 2008, *"Conflicts of Interest: Policy and Procedures for Commission Members"*. The document discusses the conflict of interest disclosure rules set out in the Crown Entities Act and states that members should avoid participating in matters in which they are interested, as well as matters where their participation may give rise to a perception of bias. I consider the document to be consistent with the requirements of the Crown Entities Act.

In my view, the document is a sound and robust statement of what constitutes a conflict of interest and how Commission members should act in circumstances where such a conflict arises.

6.1.2 The Commission's procedures

The Commission informed me that members are, on appointment, provided with the conflicts of interest policy document, as well as a memorandum from the Commission's general counsel regarding conflicts of interest, and guidelines prepared by a Queen's Counsel. The memorandum and guidelines discuss not only the requirements of the Crown Entities Act but also those of the common law.

The Commission advised that it takes a proactive approach to avoiding conflicts of interest by maintaining an informal *"potential conflicts list"*. This list records the interests held by each member and the matters before the Commission in respect of which members are not to be sent papers, having regard to the potential for their interests to conflict with the matters in question. Moreover, prior to the compilation of the Commission's monthly meeting papers, the list of previously reported disclosures is emailed to the relevant member for review and updating where relevant. The updated list is then provided again to that member in the

package dispatched with the meeting papers for confirmation at the meeting. Any further updates are also sought at the meeting. This informal list is separate from the formal interests register which the Commission keeps in accordance with the requirements of the Crown Entities Act.

Further, the Securities Act authorises the Commission to exercise its powers in divisions, consisting of at least three members. Where a division is appointed, it is only those members appointed to the division who have any ability or responsibility to act in relation to the matter under consideration. Where a member is not appointed to the division considering a matter, any connection that the member may have with the matter does not give rise to a conflict of interest because he or she has no function in relation to the matter.

I consider the Commission's procedures for managing conflicts of interest to be a robust means of minimising the risk of such conflicts occurring.

6.2 The procedures that were followed in this case, and the steps that the Commission took on being apprised by Mr Botherway of his brother's past business dealings with SCF

6.2.1 The procedures that were followed in forming the division of which Mr Botherway was a member, and the matters that the division considered

On 4 June 2010, a division of the Commission was formed to consider whether approval should be given to investigators to carry out an inspection of Aorangi pursuant to the Securities Act. SCF did not come within the scope of that matter.

The officer responsible for forming the division checked the *"potential conflicts list"* and concluded that there were no apparent conflicts that would prevent Mr Botherway from being appointed to the division. The officer then approached the proposed members of the division and asked them whether they had any interest that would prevent them from considering the matter. On being approached, Mr Botherway indicated that he did not have a conflict of interest. The Commission informed me that he drew no link at the time between the matter before the Commission – namely, whether investigators should be approved to conduct an investigation of Aorangi under the Securities Act – and his brother's business affairs.

A division of three members was duly formed to consider the matter.

On 18 June 2010, the same three members, as well as an additional member who had not been available on 4 June 2010, met in division to consider whether Aorangi and various entities and associated persons should be placed under statutory management. As the original three members had only been appointed a fortnight earlier, the conflicts checking exercise was not repeated in respect of those members.

Although SCF was not an entity in respect of which statutory management was contemplated, some consideration was given to the possible *"knock on"* effects that any statutory management might have on the company. The Commission

informed me that although reference was made to SCF in the course of the meeting, Mr Botherway did not make any connection between the matter under consideration and his brother's business affairs.

On 19 June 2010, the Commission, acting by division, recommended to the Minister that Aorangi, seven unregistered charitable trusts, and Mr and Mrs Hubbard should be declared subject to statutory management. The Commission's recommendation was accepted by the Minister on 20 June 2010.

6.2.2 Mr Botherway's raising of the matter of his brother's business dealings

The Commission advised me that Mr Botherway, of his own initiative and out of caution, raised the matter of his brother's previous business connection with SCF at a full Commission meeting on 24 June 2010, five days after the recommendation had been made to the Minister. In raising the matter, he queried whether it could give rise to any possible conflict of interest.

In its report to my Office, the Commission clarified that despite its statement (as reported in the media) that Mr Botherway had declared *"a potential conflict of interest"* in relation to SCF, no formal declaration of a conflict of interest, potential or otherwise, had in fact been made as neither he nor the Commission considered the circumstances to have disclosed any *"interest"* that was required to be disclosed by s 62 of the Crown Entities Act. In other words, no declaration was made as no conflict of interest was considered to exist.

It had been suggested by some complainants that Mr Botherway only raised the matter after the Commission received a media inquiry in this regard from a named journalist. As part of my investigation, the Commission provided me with a copy of the minutes of the meeting of 24 June 2010 which recorded the meeting as having concluded at 12:20pm. I also saw a copy of an email which the Commission received at 2:38pm that day from the journalist concerned regarding Mr Botherway's involvement in the recommendation and his brother's business affairs. In response to inquiries by my Office, the journalist was unable to recall whether there had been any earlier contact with the Commission about those matters. The Commission, for its part, confirmed that it had no record of any earlier contact regarding those matters by the journalist concerned or by any other journalist. Furthermore, in response to a query by a Commission member, Mr Botherway confirmed on 26 June 2010 that he had no knowledge of the reporter's inquiry.

6.2.3 The steps taken by the Commission on being apprised of the matter

The information provided to me discloses that after raising the issue of his brother's previous business connections with SCF, Mr Botherway supplied the Commission with material that he considered relevant to enable a determination to be made as to whether a conflict of interest existed. The material included information provided by his brother's solicitors regarding the circumstances of the brother's bankruptcy.

The Commission advised me that Mr Botherway had offered to swear an affidavit to confirm the information that he had supplied. It stated that it had considered his offer, but felt that it could properly rely on the supplied information for the following reasons:

- It judged him to have been forthcoming and proactive in providing any information that might be relevant.

- It already held a list of his interests (the *"potential conflicts list"*) which had been regularly updated and which was consistent with his statement that he derived no financial benefit from the matter before the division. That list showed that he had no ties, directorships or shareholdings in any related entities.

- No information was brought to its attention which contradicted his explanation.

Although the usual conflicts checking process had been followed when the division was formed, and although the Commission, on the above basis, considered no conflict of interest to be involved, it nevertheless decided, in view of the importance of the issue, to seek legal advice on whether there was a conflict of interest or any appearance of bias.

The two opinions that the Commission obtained – the first from its general counsel, the second from an independent Queen's Counsel – stated that neither a real nor a perceived conflict of interest was involved.

6.3 Whether the applicable law and the facts suggested that a conflict of interest existed

6.3.1 The complainants' concern

The complainants considered that the fact of his brother's previous business connection with SCF should have been sufficient for Mr Botherway to have disqualified himself from participating as a division member on the grounds that he was at least at risk of not bringing an impartial mind to the matters before the Commission.

6.3.2 The Crown Entities Act

While the sibling relationship was viewed by some as providing sufficient grounds to warrant Mr Botherway's non-participation in the division, such a perception needs to be tested against the provisions of the Crown Entities Act.

Part 2 of the Crown Entities Act sets out the conflict of interest disclosure rules applicable to members of Crown entities such as the Commission. Section 62 of that Act specifies when interests must be disclosed. Subsection (2) of that section provides that a person is *"interested"* in a matter if he or she:

> *(a) may derive a financial benefit from the matter; or*
> *(b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or*

(c) may have a financial interest in a person to whom the matter relates; or
(d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
(e) may be interested in the matter because the entity's Act so provides; or
(f) is otherwise directly or indirectly interested in the matter.

6.3.3 My consideration of the facts of the case

Having considered the information that was available to me, I reached the following conclusions:

- A sibling relationship does not give rise to a conflict of interest in terms of s 62(2) of the Crown Entities Act even if the sibling were to benefit from the matter in question. Accordingly, unless there was information to suggest that Mr Botherway had an interest of a kind described in s 62(2), he could not be said to have been *"interested"* in the matter before the Commission.

- There did not appear to be any information to suggest that Mr Botherway, any entity associated with him, or his brother had an interest of a kind described in s 62(2).

- Even if the brother's previous business connection with SCF could be characterised as creating some other form of benefit or interest (that is, of a kind not described in s 62(2)), any such benefit or interest did not appear to have been either close enough, or sufficiently strong, to have given rise to a conflict of interest as SCF's affairs was not the matter that was before the Commission.

- Mr Hubbard's association with the entities would only have been relevant in the context of an allegation that Mr Botherway had been biased or motivated by malice.

6.3.3.1 Whether a sibling relationship gave rise to a conflict of interest in this case

As a sibling relationship does not give rise to a conflict of interest in terms of s 62 of the Crown Entities Act, I did not see the relationship between Jonathan and Simon Botherway, of itself, as providing grounds for the view that the latter might have considered the matters that were before the Commission other than on their merits.

In a small country like New Zealand, it is not unlikely that those holding key public sector positions may, at some stage, deal with a matter that has some connection with a person or entity known to them. The public expectation is that office holders will, in such circumstances, perform their functions professionally and with integrity, without fear or favour, and in accordance with any statutory provisions governing such situations. In this regard, the Supreme Court recently observed in *Saxmere Co Ltd v Wool Board Disestablishment Co* [2010] 1 NZLR

35 (SC) that *" … judges should not automatically disqualify themselves in response to litigants' suggestions that there is an appearance of lack of impartiality. Judges allocated to sit in a case have a duty to do so unless they are disqualified."*

I saw this observation as applying equally to members of entities such as the Commission, whose own experience has shown this to be a real concern. The Commission is effectively a *"commission of the market"* in that its members must be chosen for their experience in industry, commerce, economics, law, accountancy, public administration or securities. For this reason, it is not uncommon for some members to have connections with matters that may come before the Commission. The Commission informed me that it is mindful of the potential for conflicts of interest to arise and that its policy and procedures are designed to manage such risks.

While it would be desirable for perceptions to be managed in a way that does not undermine confidence in the Commission's work, I agreed with the Commission that such confidence could equally be undermined if its members were to be seen to shrink from their duties on the basis of asserted concerns or tenuous commercial connections that did not amount to a conflict of interest or apparent bias. I was therefore not persuaded that the fact that Mr Botherway's brother had had past dealings with SCF would automatically have led to a conflict of interest for Mr Botherway.

6.3.3.2 Whether the provisions of s 62(2) of the Crown Entities Act were applicable in this case

While my investigation was concerned with whether the Commission's decision to recommend statutory management may have been affected by any undisclosed potential conflict of interest on Mr Botherway's part – namely, his brother's previous business relationship with SCF – I considered there to be a public interest in establishing that the Commission's policies and procedures relating to conflicts of interest are robust and were applied appropriately in this case.

Although the sibling relationship did not, in my view, give rise to a conflict of interest in this case, the Commission had informed me that there were no other grounds for suggesting that a conflict of interest may have arisen, noting that there was no information to suggest that Mr Botherway, any entity associated with him, or his brother derived any benefit from the decision to recommend statutory management, or were directly or indirectly interested in the matters before the Commission.

In order to be satisfied on these points, I asked to see the material in reliance upon which the Commission had reached those conclusions.

In response, the Commission provided me with its records of the interests held by Mr Botherway. Those records confirmed the Commission's advice to me that Mr Botherway had no ties, directorships or shareholdings in any affected entities. His interests were also independently checked by a Queen's Counsel's office for the purpose of establishing the corporate structure of his brother's and Mr Hubbard's respective businesses. That search did not disclose any additional interests.

In summary, there was nothing in the information before me to suggest that Mr Botherway, any entity associated with him, or his brother stood to derive any benefit or potential benefit – either by way of pecuniary consequence or personal advantage – from the decision to recommend statutory management, or that he, any entity associated with him, or his brother had any financial interest in the outcome of the recommendation. Further, I did not see that the actions taken by the Commission could have influenced his brother's business relationship with SCF.

Accordingly, I was not persuaded that Mr Botherway could be said to have been *"interested"*, within the meaning of s 62(2), in the matter that was before the Commission.

6.3.3.3 Whether any "advantage" that might be said to have arisen from Mr Jonathan Botherway's past dealings with SCF gave rise to a conflict of interest

Even if his brother's past business connection with SCF (a company in respect of which statutory management was not being considered) could be characterised as creating some form of *"advantage"*, I did not see that advantage as being either close enough or sufficiently strong to have given rise to a conflict of interest for Mr Botherway.

On being apprised by Mr Botherway of his brother's past dealings with SCF, the Commission took the view that the link between the matters before it, and those dealings, was tenuous and did not amount to a conflict of interest – a view that was supported by the legal advice it obtained. In my view, the Commission acted reasonably and responsibly in seeking such advice. Further, as a general proposition, it is not unreasonable for an agency or a person to act in reliance on legal advice where that advice is directly on point.

Having had regard to my own general counsel's consideration of that advice, and the provisions of s 62(2), I saw no reason to take a different view.

The matter that was initially before the Commission was the affairs of Aorangi, and not those of SCF. At the relevant time, Mr Botherway did not draw a link between the matter that the Commission was considering (namely, whether investigators should be approved to carry out an inspection of Aorangi pursuant to the Securities Act) and his brother's business affairs. I saw no reason for him to have viewed the two matters as being related and as possibly giving rise to a conflict of interest for him.

Subsequently, the Commission also considered the affairs of other Hubbard entities other than SCF. As noted earlier, in deciding whether to recommend that Aorangi, those other entities and Mr and Mrs Hubbard should be placed under statutory management, the Commission considered the *"knock on"* effect that such management might have on SCF. Mr Botherway did not, at that stage, perceive a link between that matter and his brother's situation. Again, I viewed any connection between what the Commission was considering, and Mr Botherway's brother's situation, as being insufficiently close to raise conflict of interest issues.

The link, such as it was, was said to have first occurred to Mr Botherway at the Commission's meeting on 24 June 2010, after the statutory management recommendation had been made to the Minister.

While some may argue that it would have been desirable for Mr Botherway to have raised the matter of his brother's business affairs sooner than he did, I considered the connection between that matter, and the matters before the Commission, to have been of a tenuous nature only and, consequently, I saw no necessity for him to have raised it. That he did so out of caution did not, in my view, provide grounds for criticism. It followed that I saw no detriment arising from the fact that he raised the matter after the statutory management recommendation had been made.

6.3.3.4 Whether Mr Hubbard's association with the entities was the critical factor

Although Mr Hubbard was associated with the entities affected by the statutory management recommendation, as well as with SCF, SCF was a separate legal entity in respect of which statutory management was not being considered.

While some complainants appeared to see this as being of little relevance, and to view Mr Hubbard's association with the entities as being the critical factor, the Commission was required, in performing its functions, to distinguish between the separate legal entities that were to be made subject to the recommendation, and any other separate legal entities, such as SCF, that were not to be made subject.

It seemed to me that Mr Hubbard's roles in SCF and Aorangi would only have been relevant in the context of an allegation that Mr Botherway had been biased or motivated by malice. In the course of my investigation, I saw no material to support such an allegation.

6.3.3.5 Comment

In short, there did not appear to be information to suggest that Mr Botherway, any entity associated with him, or his brother had an interest of a kind described in s 62 of the Crown Entities Act, or that any disclosure on his part was therefore required.

It followed that I saw no detriment arising from the fact that Mr Botherway raised the matter of his brother's past business dealings after the recommendation had been made to the Minister.

6.4 Whether there could have been a perception that a conflict of interest, and/or bias, was involved

6.4.1 Saxmere Co Ltd v Wool Board Disestablishment Co [2010] 1 NZLR 35

In *Saxmere*, the Supreme Court considered the question of what constitutes a conflict of interest in a judicial setting and when a perception of such a conflict may be said to arise. The principles, as stated in that case, appeared to me to

apply equally to the Commission's position. In summary, I understand those principles to be:

- Decision-makers should not automatically disqualify themselves in response to suggestions by interested parties that there is an appearance of lack of impartiality. Persons appointed to decide matters have a duty to do so unless they are disqualified.

- A decision-maker should withdraw where a fair-minded and informed lay observer might reasonably apprehend that there was a real, and not remote, possibility that the decision-maker might not bring an impartial mind to the resolution of the question to be decided.

- The fair-minded lay observer is presumed to be intelligent and to view matters objectively, being neither unduly sensitive or suspicious, nor complacent about what may influence the decision-maker's decision. He or she must be taken to be a non-lawyer, but reasonably informed about the workings of the law, as well as about the nature of the issues in the case and about the facts pertaining to the situation which is said to give rise to an appearance or apprehension of bias.

- While the test is one of possibility, not probability, it is not enough that the circumstances create a vague sense of unease or disquiet. It is always for the person who asserts there is a situation giving rise to a reasonable apprehension of bias firmly to establish that is the case.

It is apparent from *Saxmere* that a remote possibility that a decision-maker might be biased does not amount to a conflict of interest; nor does it create a perception of bias that would disqualify a decision-maker from acting. In the present case, it seemed to me that any link between the matters before the Commission, and Mr Botherway's brother's past commercial connection with SCF, was not so direct as to give rise to a reasonable apprehension that Mr Botherway might not have brought an impartial mind to those matters.

As noted earlier, I considered that Mr Hubbard's roles in SCF and Aorangi would only have been relevant in the context of an allegation that Mr Botherway had been biased or motivated by malice because of his brother's past connections with SCF. I saw no material to substantiate such an allegation.

6.4.2 The timing of the Commission's recommendation

The timing of the Commission's recommendation – coming as it did five days after Mr Botherway's brother was adjudicated bankrupt – was viewed by some complainants as suspect.

However, the Court proceedings that led to the bankruptcy, and the process that led to the Commission's recommendation, would have followed their own timetables. The Commission informed me of the sequence of its actions and I saw nothing untoward in the timing of its recommendation.

7. THE OPINION FORMED ON THE COMPLAINT

For the foregoing reasons, I was not persuaded that the facts of the case gave rise to a conflict of interest. In these circumstances, the possibility of there being some possible conflict of interest in the future (in other words, a *"potential"* conflict of interest) would be immaterial. A person either has, or does not have, a conflict of interest. If, on a given set of facts, a person does not have a conflict of interest, there can be no potential for one to arise in respect of those facts. Nor was I persuaded, on the facts and on the basis of *Saxmere*, that a fair-minded lay observer would perceive the existence of any such conflict.
In summary:

- I considered the Commission's policy and procedures relating to the management of conflicts of interest to be robust and to have been applied appropriately in this case.

- I was not aware of any grounds for considering that Mr Botherway had, or could be perceived as having had, a conflict of interest in terms of s 62 of the Crown Entities Act, or of any material to suggest that he was otherwise biased or motivated by malice.

- It followed from this that I saw no necessity for Mr Botherway to have raised the matter of his brother's business affairs. That he did so out of caution did not, in my view, provide grounds for criticism. It also followed that I saw no detriment arising from the fact that he raised the matter after the recommendation had been made to the Minister.

Although some people may hold different views in this regard, the Crown Entities Act specifies when a member of a Crown entity may be said to be *"interested"* in a matter. Further, the Supreme Court has set the threshold for establishing when a perception of a conflict of interest or bias might arise. An Ombudsman is bound to accept the legal tests that have been so established.

I appreciate that the statutory management recommendation has impacted significantly on many people, not least Mr and Mrs Hubbard. However, for the reasons stated in this report, I did not consider there to be any information upon which I could properly have concluded that the Commission's decision to make the recommendation was affected by any undisclosed conflict of interest, potential or otherwise, on Mr Botherway's part. Accordingly, the complaint was not sustained.

Beverley A Wakem
Chief Ombudsman