

Decision of the Standards Commission for Scotland

Following an investigation into a complaint (reference LA/CES/2214) received concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor [REDACTED] (the Respondent), the Commissioner for Ethical Standards in Public Life in Scotland (the ESC), referred a report to the Standards Commission for Scotland, on 16 January 2020, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The ESC reported that the Respondent had failed to declare an interest at a full Council meeting on 3 October 2017 when a report from the Council's Sustainable Development Committee, recommending that the Council authorised its Chief Executive to conclude the financial arrangements to implement the sale or lease amendments for a property, in which relatives of the Respondent had an interest, was considered. The ESC reported that while the Respondent was a member of the Committee, he had not been present at the meeting when the recommendation was made.

The ESC reported that the Respondent had declared an interest and left the room while an item concerning the property was considered by the Council's Policy and Resources Committee on 2 October 2018. The ESC reported that the Respondent had also then declared an interest (for the same reason) at a full Council meeting the same day, when the Policy and Resources Committee's recommendation that a decision on matters concerning the tenancy be deferred, was considered and approved. The ESC advised, however, that the Respondent had not withdrawn from the room.

The ESC further reported that between 5 May 2017 (when he was first elected as a councillor), and 21 May 2019, the Respondent had failed to register a shareholding in a company, albeit he had registered that he was a director of it.

The ESC advised that she had concluded that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 4.20, 5.2, 5.3 and 5.10 of the version that was effective from 21 December 2010, and paragraphs 4.21 and 5.10 of the version effective from 9 July 2018.

The Standards Commission decided, on 20 January 2020, to hold a Hearing. The Hearing was scheduled to take place on 18 March 2020 at the Council Headquarters in Stornoway. The Hearing Panel determined on 17 March 2020, however, that it was unable to proceed with the Hearing due to the restrictions on travelling and meeting with others arising from the Coronavirus outbreak.

The Standards Commission noted that there was public interest in the matter and, in particular, in the determination of the question of whether a councillor should have to declare an interest and leave the room, at full Council, when the Council was only being asked to approve a report from a Committee without debate, but which included a matter on which the councillor had declared an interest.

The Standards Commission therefore would normally reschedule any Hearing that it had not been able to convene (for example, if a Panel Member or party had been unable to attend due to ill health).

The Standards Commission recognised, however, that rescheduling the Hearing in the current circumstances would give rise to issues of fairness and proportionality. This was because it was unlikely that one could be convened before July 2020, at the earliest, due to the current guidance against travel and public gatherings associated with the ongoing Coronavirus epidemic and the requirement for the Standards Commission to give the parties proper and sufficient notice of any Hearing date. Furthermore, the Standards Commission was concerned that the ongoing issues arising from the Coronavirus outbreak could easily result in further delays, particularly given the uncertainty of the situation and the real risk that any convened Hearing may have to be cancelled again.

The Panel considered that a virtual Hearing was not feasible, for a range of practical reasons, in the current circumstances.

The Standards Commission noted that the complaint had been made to the ESC in October 2018 and the Respondent had been informed that the investigation had been completed in early Autumn 2019. The Standards Commission noted, however, that the ESC's final report had not been issued and sent to the Standards Commission until 16 January 2020, meaning that the matter had been outstanding against the Respondent for some 17 months. The Standards Commission noted the submissions from the Respondent and the Chief Executive concerning the stress this had caused the Respondent. The Standards Commission noted that the alleged breaches of the Code were of a technical nature (as to when and to what extent an interest had to be registered and declared). There was no suggestion in the ESC report that the Respondent had been attempting to conceal the interest nor any suggestion of any adverse consequences as a result.

In the circumstances, the Standards Commission considered that it was no longer fair, proportionate and in the public interest to proceed with a Hearing. The Standards Commission determined, therefore, to take no further action on the referral.

Date: 23 March 2020



**Lorna Johnston
Executive director**