

Decision of the Standards Commission for Scotland

On receipt of a report from the Ethical Standards Commissioner (ESC), the Standards Commission has three options available, in terms of Section 16 of The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act). These are: (a) to direct the ESC to carry out further investigations; (b) to hold a hearing; or (c) to do neither.

In this case, the Standards Commission determined to **do neither**.

Background

The Standards Commission is a statutory body established under the 2000 Act. The 2000 Act created an ethical standards framework, under which councillors and members of devolved public bodies in Scotland are required to comply with Codes of Conduct. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/Mo/3615) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code), which was the version in place at the time of the events in question, by a former councillor of Moray Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 21 September 2022, in accordance with Section 14(2) of the 2000 Act.

The complaint was that the Respondent failed to declare a non-financial interest in the review of a planning application and failed to withdraw from a meeting of the Moray Local Review Body on 25 March 2021. The complaint alleged that this was despite the Respondent being personal friends with two of the directors of the applicant company and despite him being a co-member of a local committee that organised annual festive events with one of the directors.

In his report, the Acting ESC advised that:

1. There was no dispute that the Respondent did not declare an interest and withdraw from the meeting in question, despite having known both the directors for a long time and despite being 'friends' on Facebook with one of them.
2. The Respondent disputed the allegation that he was personal friends with either director. The Acting ESC advised that he had found evidence from the director and other members of the local committee that supported this. The Acting ESC further advised that he had found that the director was not on the same local committee as the Respondent. While the director was involved with a group that was linked to the committee, neither he nor the Respondent and Mr A were co-members of either group.
3. Having considered all the circumstances, he considered that there was no requirement for the Respondent to have declared an interest in the planning application. That was because the ESC was of the view that a member of the public, with knowledge of the relevant facts, would not reasonably regard the interest, (being the Respondent's relationship with either director), as being so significant that it would be likely to prejudice his discussion or decision-making during the planning application review.
4. He had found evidence that the reasons for the decision given by the Respondent at the meeting related to relevant and material considerations. As such, the Acting ESC had not found evidence that, when making the decision on the planning application, the Respondent demonstrated bias or could be reasonably perceived as having done so.

The Acting ESC concluded that a breach of the Code could not be found.

Reasons for Decision

Having considered the terms of his report, the Standards Commission did not consider that it was necessary or appropriate to direct the Acting ESC to undertake any further investigation into the matter.

In making a decision about whether to hold a Hearing, the Standards Commission took into account both public interest and proportionality considerations, in accordance with its policy on Section 16 of the 2000 Act. A copy of the policy can be found at: <https://www.standardscommissionscotland.org.uk/cases>.

In assessing the public interest, the Standards Commission noted that a breach of the provisions in the Code that required councillors to declare an interest and to refrain from taking part in decisions on a planning matter if they had a personal interest (either financial or otherwise) in the application being considered, could have the potential to bring the role of a councillor and the Council itself into disrepute.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code. There could, therefore, be some limited public interest in holding a Hearing. Regardless of this, the Standards Commission was, however, also required to consider whether it would be proportionate to do so.

In considering proportionality, the Standards Commission noted that the Acting ESC, in his report, had found that there was no requirement for the Respondent to have declared an interest in the planning application and, further, that there was no evidence of a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from these conclusions.

The Standards Commission noted that the option to take no action had been included in the 2000 Act to ensure that neither the ethical standards framework, nor the Standards Commission, was brought into disrepute by spending public funds on administrative or legal processes in cases that did not, on balance, warrant such action.

Having taken into account the above factors, and in particular the fact that it was not satisfied that there was evidence of any breach of the Code, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Date: 26 September 2022



Lorna Johnston
Executive Director