

## **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. Under the framework, complaints about breaches of these Codes are investigated by the ESC and adjudicated upon by the Standards Commission.

### **Report to the Standards Commission**

Following his investigation into a complaint (reference LA/AB/3619) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member of Argyll & Bute Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 10 October 2022.

The complaints alleged that firstly, at a meeting of the Council's Bute and Cowal Area Committee held on 31 August 2021 and secondly, at a full council meeting held on 30 September 2021, the Respondent failed to declare an interest in relation to agenda items concerning the future of Gardens in Rothesay. This was despite the Respondent's husband and son both being employed by the Council and allegedly being involved in work relating to the Gardens. As such, the Complainers alleged the Respondent should have declared an interest in relation to her husband and son and should not have taken part in the voting on the agenda items.

The Acting ESC advised that:

1. It was not in dispute that:
  - a. the Respondent, acting in her capacity as a councillor, had taken part in both meetings;
  - b. the Respondent's husband and son are both employed by Argyll & Bute Council; and
  - c. the Respondent had not declared an interest at either meeting and had, at both meetings, taken part in the voting on the agenda items concerning the Gardens.
2. The Respondent's son had no connection to the Gardens in his capacity as an employee of the Council. As such, the Acting ESC was satisfied that there was no requirement for the Respondent to declare an interest in relation to her son's employment.
3. Although a small part of the Respondent's husband's role involved work at the Gardens, he was not directly employed by them and they were not where he was based. The Acting ESC further advised that whether they remained open or closed would not affect the Respondent or her husband either financially or non-financially. As such, the Acting ESC was of the view that a member of the public, with knowledge of the relevant facts, would not reasonably consider that the Respondent's husband's role would influence the Respondent's decisions. The Acting ESC therefore concluded that the Respondent was not required to declare an interest and that her conduct did not amount to a breach of the Code.

### **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 regarding declarations of interest could bring the role of a councillor and the Council itself into disrepute and put it at risk of a successful legal challenge. In this case, however, the Standards Commission was of the view that, on the face of it, there was no evidence of any such breach of the Code.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, if it was found that the Respondent's conduct amounted to a breach 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 reached the conclusion that the Respondent did not require to declare an interest at either meeting and, as such, that her conduct did not amount to a breach of the Code. Having reviewed the evidence before it, the Standards Commission agreed with that conclusion.

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 is not satisfied, on the face of it, that the conduct as established could amount to a breach of the Code, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission would nevertheless remind councillors that, in terms of the 2021 version of the Code now in force, they have the option of making a transparency statement. This is where they state publicly that while they have a connection to a matter, they do not consider it amounts to a declarable interest and explain why that is the case. This can be particularly helpful in situations where councillors know that members of the public are aware that they have a connection, but where they suspect those members of the public may not have knowledge of all the relevant facts.

**Date: 13 October 2022**



**Lorna Johnston  
Executive Director**