

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/E/3651) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member of Edinburgh City Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 16 November 2022.

The complaint concerned an allegation that the Respondent, during a meeting of the Council's Transport and Environment Committee (of which she was Convener), failed to follow legal advice in relation to two other councillors' entitlement to participate in the decision-making process at the meeting.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of the requirements in the Code regarding declaring interests and making decisions of a quasi-judicial or regulatory nature.

In his investigation report, the Acting ESC advised that:

1. At the meeting, two councillors on the committee declared a non-financial interest in an agenda item relating to Traffic Regulation Orders (TROs), which are quasi-judicial in nature. The Acting ESC further advised that despite each having declared an interest, both councillors participated in the decision-making process in relation to the TROs. The Acting ESC noted that the Respondent did not have an interest to declare.
2. He did not consider the facts of the complaint to be proven. The Acting ESC stated that this was because the complaint was that the Respondent did not acknowledge all advice provided. The Acting ESC found, however, that the Respondent did not have to recuse herself from the Committee meeting as she did not have a declarable interest. The Acting ESC further found that the two councillors in question had a personal responsibility to comply with the Code. While the Acting ESC acknowledged that the Respondent was the Convener of the Committee, he noted that the Code did not place any responsibility on Committee Conveners or Chairs to ensure that the councillors who declared interests then recused themselves from the meeting.

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 regarding declarations of interest, fairness and impartiality in the Code could have the potential to bring the role of a councillor, the Council's committee system 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's conduct could not amount to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. This was because it was a councillor's personal responsibility to comply with the Code. There were no specific provisions in the Code that required councillors to accept advice from officers in this regard, or to take any action to ensure other councillors complied with its requirements.

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 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.

Date: 21 November 2022



**Lorna Johnston
Executive Director**