

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/SB/3654) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member of Scottish Borders Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 20 December 2022.

The complaint was that, when considering two planning applications at a meeting of the Council's Planning & Building Standards Committee the Respondent, as Chair, allowed the Committee members to mislead themselves and make decisions that were capricious. The Complainer (who was the applicant) alleged that, in doing so, the Respondent failed to ensure the decisions were taken properly and failed to act fairly.

In his report, the Acting ESC advised that:

1. He had found that the Respondent spoke in support, and voted in favour, of both planning applications, in accordance with the Council planning officers' recommendations. The Acting ESC advised that he was of the view that this tended to show that the Respondent did not behave unfairly towards the Complainer. The Acting ESC advised that he had found that the Respondent spoke only once during the meeting. The Acting ESC further advised that he had not found any evidence to support the contention that the Respondent had misled other committee members or led them to make improper decisions.
2. He had found, from contemporaneous notes taken by both the Council's Planning Officer and Solicitor who were present at the meeting, and from the meeting minutes, that the issues discussed in respect of the planning applications were relevant and material. As such, the Acting ESC concluded that the Respondent had not allowed the Committee members to mislead themselves and make decisions which were capricious, as alleged.
3. He was not satisfied, on balance, that the facts of the complaint had been established, or that there had been any breach of the Code by the Respondent.

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 require councillors to act fairly, and to be seen to be acting fairly, when making quasi-judicial or regulatory decisions (including decisions on planning applications), could have the potential to bring the role of a councillor, the Council's committee system and the Council itself into disrepute. It could also leave the Council open to the 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, particularly 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 facts of the complaint had not been established and, as such, there had not been a breach of the Code by the Respondent. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

Having taken into account the above factors, and in particular the fact that it was 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.

Date: 21 December 2022



**Lorna Johnston
Executive Director**