

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 received on 11 November 2021 (reference LA/Fi/3646) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a former elected member of Fife Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 23 January 2023.

The complaint related to the Respondent's conduct at a meeting of the Council's North East Planning Committee in October 2021. The Complainer alleged that the Respondent failed to declare an interest and withdraw from the consideration of a planning application at the meeting, despite being friends with at least one of the objectors and despite knowing the applicant.

In his report, the Acting ESC advised that:

1. Despite repeated requests from the Acting ESC's Office, the Complainer had not provided any details as to the Respondent's knowledge of the applicant. The Acting ESC noted that, having been asked to do so, the applicant also failed to respond to a request for details of her knowledge of the Respondent, and that the Respondent advised that he did not know the applicant. The Acting ESC concluded, therefore, that the Complainer's allegation that the Respondent knew the applicant was not proven.
2. The Complainer also failed to identify which of the objectors with whom he believed the Respondent was friends. Having questioned the Respondent and the objectors on their knowledge of one another, the Acting ESC concluded that the Respondent was acquainted with four of the ten objectors, but that there was no evidence of any friendship or close association that would necessitate a declaration of interest. The Acting ESC was of the view, therefore, that there was no evidence to support the Complainer's contention that the Code had been breached.

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 requirements contained in the Code to declare interests and to act fairly and impartially 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 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 there was no evidence to support the Complainer's contention that the Code had been breached. Having reviewed the Acting ESC's report, the Standards Commission found no reason to depart from that conclusion. The Standards Commission was of the view that, given the extent of the Acting ESC's investigation and the fact that the applicant and all objectors involved had been questioned, it was unlikely that any further material evidence would come to light either before or at a Hearing.

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 the Acting ESC had not found any evidence of a breach of the Code, and that it was unlikely that any further evidence would emerge, 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: 25 January 2023



**Lorna Johnston
Executive Director**