

## **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 16 November 2021 (reference LA/E/3653) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by six elected members of City of Edinburgh Council (the Respondents), the ESC referred a report to the Standards Commission, which was received on 14 April 2023.

The complaint concerned an allegation that one (or more) of the Respondents leaked, to the media, a confidential letter from a law firm, in contravention of the Code. Information contained in the letter was then quoted in a news article.

In his investigation report, the ESC advised that:

1. The Complainer was "unaware who leaked the... letter (or its contents) to the media. However, she believed it must be one of the Respondents. The Complainer said her own group leader, Respondent 4, told her about the letter and that it was sent to all the group leaders. However, she said she has not seen the letter, other than what was quoted in the media."
2. He had sought information by writing to all the Respondents, certain members of their staff, the journalist responsible for the article and council officers. The ESC further advised that there was no evidence to indicate, or prove, who was responsible for the leak (whether this be one of the Respondents or anyone else). As such, he was unable to establish, on the balance of probabilities, that any one or more of the Respondents were responsible for the disclosure of the confidential information, in breach of the Code. The ESC concluded, therefore, that the facts of the complaint had not been proven.

### **Reasons for Decision**

Having considered the terms of his report, the Standards Commission did not consider that it was appropriate to direct the ESC to undertake any further investigation into the matter. This was because the Standards Commission was satisfied that the ESC's investigation appeared to have been thorough in nature, with all key potential sources of evidence having been explored.

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 confidentiality provisions in the Code could have the potential to bring the individual responsible for any disclosure and the Council itself into disrepute. Such a disclosure of confidential information could also potentially put the Council at risk of legal proceedings. In this case, however, the Standards Commission was unclear as to why the Complainer considered that one of the Respondents was responsible for the disclosure and noted that this did not appear to have been addressed in the ESC's report. In any event, the Standards Commission was of the view that there was no clear evidence to support the contention that one of the Respondents was responsible for disclosing the confidential information in 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 Respondents' 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 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 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 ESC's investigation and the fact that numerous witnesses (including the journalist), council officers, all six Respondents and some of their staff 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 factors outlined above and, in particular:

- the fact that the ESC had not found any evidence of a breach of the Code; and
- its view that it was unlikely that any further evidence would emerge (given the extent of the investigation already undertaken),

the Standards Commission concluded that it was not proportionate, despite some residual public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission nevertheless wishes to emphasise that the requirement for councillors to refrain from sharing confidential information is an essential requirement of the Code, given the potential damage that the unauthorised disclosure of confidential material can do to the standing, reputation and integrity of a Council, its elected members and its staff.

**Date: 18 April 2023**



**Lorna Johnston  
Executive Director**