

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 complaints, from the same Complainer, received on 24 June 2022 (reference LA/R/3770) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by two elected members of Renfrewshire Council (the Respondents), the ESC referred a report to the Standards Commission on 3 May 2023.

The first complaint concerned the alleged behaviour by the first Respondent at an online board meeting of Shopmobility. The other complaint was that the second Respondent failed to record, on her Register of Interests, receipt of a sum of £2,000 to undertake work for Shopmobility.

In his report, the ESC advised that:

1. In respect of the first complaint, he did not consider the first Respondent was acting as a councillor, or could reasonably be perceived to be acting as a councillor while at the meeting in question. This was because while other board members and staff were aware that the first Respondent was a councillor, and he had referred to himself as such two years before the meeting when writing on Shopmobility headed paper:
 - he was not appointed to the Shopmobility board by the Council;
 - he was not referred to as a "councillor" (either by himself or by any other attendees), and no mention was made of his constituents, or of Renfrewshire Council, during this meeting; and
 - only Shopmobility business was discussed at the meeting in question and the first Respondent put forward a motion in his capacity as a director of its board.

The ESC concluded, therefore, that the code did not apply to the first Respondent at the time of the events in question.

2. Both the second Respondent and the Complainer confirmed that a sum paid for work undertaken for Shopmobility was paid to the second Respondent's business account, which was for a private limited company. The second Respondent had recorded her directorship of that company on her Register of Interests. The ESC noted that the Code did not require a councillor to register payments made to any business or company in which they held a directorship. As such, the ESC concluded that the Code had not been breached.

Reasons for Decision

Having considered the terms of the ESC's report, the Standards Commission did not consider that it was necessary or appropriate to direct that further investigation be undertaken.

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 considering the public interest and proportionality in respect of the first complaint, the Standards Commission noted that the ESC had concluded that the Code did not apply to the first Respondent at the time of the events in question. Having reviewed the ESC's report and the reasons as outlined above, the Standards Commission found no reason to depart from that conclusion.

The Standards Commission was satisfied that the Code applied to the second Respondent given the complaint alleges a failure, as a councillor, to record a payment on her Council Register of Interests. In assessing both the public interest and proportionality in respect of the second complaint, the Standards Commission noted that a breach of the requirements in the Code to register interests could prevent transparency and erode public confidence in a council and its decision-making processes. 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 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, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing on either complaint. The Standards Commission determined, therefore, to take no action on the referral.

Date: 5 May 2023



**Lorna Johnston
Executive Director**