

## **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 31 January and 10 March 2022 (reference LA/E/3708 & 3724) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by an elected member of Edinburgh City Council (the Respondent), the ESC referred a report to the Standards Commission on 9 May 2023.

The complaint concerned an allegation that the Respondent campaigned against the Complainer's planning application and influenced council planning officers. It also concerned an allegation that the Respondent helped the Complainer's neighbours to submit comments opposing the planning application by providing a template response they could use.

In his investigation report, the ESC advised that:

1. The Investigating Officer had obtained a large volume of email correspondence from the Respondent, the Complainer, council officers and other witnesses. While the Respondent had received correspondence from members of the public, including people the Complainer knew, who were concerned about the application, there was no evidence to suggest that the Respondent organised or took part in any campaign against the application. The ESC advised that he had found that the Respondent simply provided advice to the public on the process and responded to queries about the application process. The ESC further advised that he had found no evidence to support the Complainer's contention that the Respondent influenced or tried to influence planning officers.
2. He had found no evidence to suggest that the Respondent circulated a template response to help people oppose the application and none of the witnesses who responded to the Investigating Officer, including those who opposed the application, said that they had received any assistance from the Respondent.

The ESC advised, therefore, that he did not consider the facts of either issue of complaint to be proven. The ESC concluded that there was no evidence of a breach of the Code.

### **Reasons for Decision**

Having considered the terms of his report and, in particular the amount of evidence sought and obtained, the Standards Commission did not consider that it was necessary or appropriate to direct the 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 considering proportionality, the Standards Commission noted that Section 7 of the Code specifically allows councillors to organise support for, or opposition to, a planning application. This is provided they then declare an interest in the matter and withdraw from any meeting they are involved in where the application is being considered. The Standards Commission noted, in any event, that the ESC had not found the facts of either issue of complaint to be proven. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

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 Respondents' conduct amounted to a breach of the Code. There could, therefore, be some limited public interest in holding a Hearing. The Standards Commission noted, however, 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 there was 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. The Standards Commission determined, therefore, to take no action on the referral.

**Date: 12 May 2023**



**Lorna Johnston  
Executive Director**