

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 15 February 2022 (reference LA/AC/3711) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member and former elected member of Aberdeen City Council (the Respondents), the ESC referred a report to the Standards Commission on 24 July 2023.

The complaint alleged that the Respondents failed to declare an interest in their membership of a trade union and withdraw from consideration of a motion at the Council's City Growth and Resources Committee on 25 August 2021.

In his report, the ESC advised that:

1. there was no dispute that the Respondents were both members of the trade union in question, and that this had been registered appropriately in their Registers of Interests.
2. the Respondents were both present at the committee meeting in question, at which a motion regarding another councillor's (the Complainer) comments to the media was considered. The ESC advised that the motion referred to the trade union.
3. the Code required councillors to declare interests which fall within the terms of an objective test, being whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it would be likely to influence their decision-making on the matter to be considered. The ESC did not consider that the Respondents' membership of the trade union would fall within that test, because the reference to the trade union in the motion was incidental and there was no prospect of the outcome benefiting the Respondents or having any impact whatsoever on the trade union.

The ESC concluded that the Respondents were not required to declare an interest and recommended, therefore, that a breach of the Code could not be found.

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 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 in the Code to declare interests could have the potential to bring the role of a councillor, the Council's committee system and the Council itself into disrepute and, in some cases, expose it to legal challenge. In this case, however, the Standards Commission was of the view that 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 Respondents' conduct amounted to a breach of the Code. There could, therefore, be some limited public interest in holding a Hearing. The Standards Commission further 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.

In considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that the Respondents' conduct did not amount to a breach of the Code. Having reviewed the evidence and reasoning in the report, 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 is 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.

The Standards Commission noted that councillors can choose to make a transparency statement to indicate why, having applied the objective test, they consider that they do not have a declarable interest. This can be particularly helpful if councillors are conscious that other individuals present at or observing a meeting are aware they may have a connection to a matter to be discussed, but suspect those individuals may not have knowledge of all the relevant facts. The Standards Commission wished, nevertheless, to highlight that there is no obligation for councillors to make such transparency statements, and that a failure to do so would not amount to a breach of the Code.

Date: 27 July 2023



**Lorna Johnston
Executive Director**