

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 13 March 2023 (reference NB/NHS/NS/3784) concerning an alleged contravention of the Code of Conduct for Members of NHS National Services Scotland dated September 2014 (the Code) by a board member of NHS National Services Scotland (the Respondent), the ESC referred a report to the Standards Commission on 26 July 2023.

The complaint concerned an allegation that the Respondent breached the confidentiality provisions in the Code by disclosing the identity of an individual, by stating that the individual (a) was known to him from another organisation and (b) had a long criminal record.

In his report, the ESC advised that:

1. While he had established that the Respondent made reference at an event to a 'young person' he was aware of, whose paper record of police checks was 'about six foot long', the Respondent had not named the individual. The Respondent had also not disclosed any personal information relating to the individual or any information about any convictions they may have incurred. As such, the ESC considered it was unlikely that the individual could be identified from the information disclosed by the Respondent.
2. In any event, the information disclosed about the individual did not relate to the work of the Respondent's public body, nor had it been obtained by him in his capacity as a board member.

The ESC therefore recommended that the Respondent's conduct did not amount to a breach of the Code.

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 confidentiality provisions in the Code could have the potential to damage the reputation and integrity of a public body, and to bring the position of a board member into disrepute. 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 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 ESC, in his report, had reached the conclusion that the Respondent's conduct did not amount to a breach of the Code. Having reviewed the complaint, the Standards Commission found no reason to depart from that conclusion. This was because the Standards Commission noted it was evident from the complaint itself, as described in the ESC's report, that the Respondent stated he had obtained the information from another organisation. As such, there was no evidence or suggestion the information was provided to the Respondent, had emanated from, or related to the work of NHS National Services Scotland. The Standards Commission was satisfied, therefore, that there was no question that the Respondent had disclosed information that was confidential to NHS National Services Scotland.

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 could ever amount to a breach of NHS National Services Scotland's Code of Conduct, 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: 31 July 2023



**Lorna Johnston
Executive Director**