

## **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 18 April 2022 (reference LA/Fi/3740) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by current and former elected members of Fife Council (the Respondents), the ESC referred a report to the Standards Commission on 22 September 2023.

The complaint related to the conduct of the Respondents at a Licensing Board Hearing on 19 April 2021, at which an application for the variation of a premises licence was considered. The Complainer, an objector to the application, alleged that at the Hearing the Respondents demonstrated bias in favour of the applicant.

In his report, the ESC advised that:

1. the Complainer alleged that one of the Respondents had demonstrated bias by repeatedly interrupting him during the Hearing. The ESC found, however, that the Complainer had been interrupted because he was straying from the terms of his objection letter, which was not permitted in terms of the Council's policy. The ESC found, therefore, the Respondent, as Hearing Convenor, was entitled to interrupt and doing so was neither disrespectful nor demonstrative of bias.
2. the Complainer alleged that another of the Respondents had demonstrated bias by giving evidence in support of the applicant, stating that he had visited and "loved" the venue in question, and that he understood why the application had been submitted. The ESC confirmed the Respondent had done so, but found he was simply expressing a personal opinion about the venue itself. The ESC advised there was no evidence to suggest the Respondent had implied support for the specific application before the Hearing, that he was biased in favour of the applicant, or that he was making representations on the applicant's behalf.
3. a general allegation by the Complainer that all of the Respondents had been hostile or rude to him and to other objectors was found to be not proven, on the basis that there was no other evidence to support the contention.
4. the Complainer had alleged that the Respondents had demonstrated bias by congratulating the manager of the venue's success in dealing with noise nuisance. The ESC advised that while he had found evidence that the Respondents had commended the manager, he had found nothing to suggest that the Respondents had done so before hearing all the evidence relating to the application. The ESC noted that congratulating or commending someone on how they run an establishment was not in itself demonstrative of bias or indicative of any wish for the application to be granted.

Having found no evidence that any of the Respondents had acted disrespectfully, nor any evidence that they had acted unfairly, demonstrated bias or given the impression of such, the ESC recommended that the Respondents' 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 provisions in the Code regarding quasi-judicial and regulatory decision-making could have the potential to bring the role of a councillor, the Council's committee system and the Council itself into disrepute and put it at risk of legal challenge. 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 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 the Respondents' conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

The Standards Commission noted that while councillors must comply with legislation, guidelines and the Code when making quasi-judicial and regulatory decisions, they must also exercise their own judgement. The Standards Commission noted that the fact that a member of the public may disagree with a decision, and may feel that the exercise of such a judgement was flawed, is not itself evidence that the Code had been breached. The Standards Commission further noted that it was important to draw a distinction between, on the one hand, the performance of a councillor in exercising their discretion when discharging their decision-making responsibilities and, on the other, a situation where a councillor acted improperly or demonstrated bias (for example if they were biased in favour of one of the parties to the application or participated even though they had a personal interest in the matter).

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 it is not satisfied, on the face of it, 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.

The Standards Commission nevertheless wishes to remind councillors of the importance of not only being fair and unbiased when making quasi-judicial and regulatory decisions, but also the importance of being perceived as such.

**Date: 27 September 2023**



**Lorna Johnston, Executive Director**