

Decision of the Standards Commission for Scotland

On receipt of a referral 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.

Referral to the Standards Commission

Following his investigation into a complaint received on 2 May 2023 (reference LA/R/3886) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by two elected members of Renfrewshire Council (the Respondents), the ESC referred the matter to the Standards Commission on 20 December 2023.

The complaint alleged that the Respondents had breached the confidentiality provisions of the Code by disclosing to a member of the public (Mr B) that the Complainer had reported his neighbour (Mr A) to the planning department in relation to a business Mr A was operating from his garden.

The ESC reported that:

1. It was not disputed that, in late March 2023, Mr B approached the Respondents in a pub. The ESC advised that both Respondents confirmed that, having established Mr B wished to discuss a ward matter with Respondent 1, Respondent 2 had left. The ESC further advised that Mr B sent a follow up email to Respondent 1 only. The ESC noted that the Complainer had not provided any evidence to support the contention that Respondent 2 had spoken to Mr B about the matter. The ESC advised that, as such, he was not satisfied that Respondent 2 provided Mr B with information, in breach of the Code.
2. At the time Respondent 1 spoke to Mr B in the pub, no report had been submitted by the Complainer, or in his name, to the planning department about the business allegedly being run by Mr A. In addition, the Complainer was not mentioned by name in any emails between Respondent 1 and the council's planning department, or in a subsequent email sent by Respondent 1 to Mr B. The ESC further reported that there was no evidence that council officers had shared the name of any individual complaining or reporting about Mr A's business with Respondent 1. The ESC also advised that the Council's Monitoring Officer had confirmed that elected members were not able to access the system where any information about who had made such a report would be stored. The ESC concluded, therefore, that there was also no evidence to support the contention that Respondent 1 had breached the Code.

Reasons for Decision

Having considered the terms of his referral, 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 of and integrity of the Council and to bring the role of a councillor into disrepute. 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 and, therefore, there could 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.

In considering proportionality, the Standards Commission noted that the ESC, in his referral, 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.

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 evidence of a potential breach of the Code by either Respondent, 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: 3 January 2024



**Lorna Johnston
Executive Director**