

## **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 3 February 2023 (reference LA/As/3852) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Aberdeenshire Council (the Respondent), the ESC referred a report to the Standards Commission on 18 December 2023.

The ESC's report covered two issues of complaint; being that the Respondent:

1. Failed to register her interest in a property she owned, and her residence in another property.
2. Failed to make an entry on her Register of Interests relating to election expenses received.

In his investigation report, the ESC advised that:

- In respect of issue 1, he had found, and it was not in dispute, that the Respondent failed to register her interest in a property she owned between her election in May 2022 and when the property was sold in August 2022. The ESC advised that he had further found that the Respondent failed to register a property in which she resided between August and November 2022. The ESC concluded, therefore, that the Respondent had breached the requirement in the Code for councillors to register timeously any interest they have in any houses, land and buildings in Scotland.
- In relation to issue 2, he had found that "the Respondent received two donations of 'notional spending' each in excess of £50 towards her election expenses and did not register these sums on her Register of Interests". The ESC noted that "the donations were 'notional spending' and therefore no money would have been received by the Respondent, but per Electoral Commission Guidance, these are to be treated as donations and therefore fall to be registered." The ESC concluded that, as such, the Respondent had breached the requirement under paragraph 4.17 of the Code for councillors to register any single donation of more than £50, or any donations from the same source that together amount to more than £50, towards election expenses received by them, or on their behalf within the period commencing from 12 months prior to, and including, their current term of office.

### **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>.

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 report, had reached the conclusion that the Respondent had breached provisions in the Code that requires councillors to register certain interests.

Having reviewed the ESC's report, the Standards Commission was not satisfied that the allegations regarding the Respondent's conduct in respect of issue two would amount to a breach of the Code. This was because the Standards Commission considered that the obligation contained in the Code to register election expenses related to monetary donations only. The Standards Commission noted that while paragraph 4.17 of the Code referred to donations, it considered it was evident from the use of the word "donation", in tandem with the stated pecuniary limit, that the obligation to register election expenses only covers monetary donations. In support of this view, the Standards Commission notes that if the paragraph was also intended to cover non-monetary donations, councillors would need to register all types of assistance, including donations of time (such as a friend helping hand out leaflets) or petrol costs associated with canvassing. The Standards Commission considered this was not the intention of the Code, given the differences in interpretation that could arise, and how onerous and disproportionate such a requirement would be.

The Standards Commission noted that the ESC had reported that the donations were 'notional spending' and, as such "no money would have been received by the Respondent". The Standards Commission noted that the ESC had referred to Electoral Commission Guidance that stated notional spending was to be treated as donations. The Standards Commission was of the view, however, that the requirement to register a donation under paragraph 4.17 of the Councillors' Code is unconnected to, and not dependent upon, any Electoral Commission guidance or associated legislative provisions. It was not the case, therefore, that any non-monetary donations required to be registered under the Code. In the circumstances, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to consider issue two at a Hearing.

In respect of issue one, the Standards Commission noted that the Respondent had apologised for the failure to register timeously her interest in the properties. The Standards Commission noted that it had been provided with information to indicate that this failure was inadvertent and resulted from the Respondent's personal circumstances at the time. It was satisfied, therefore, that there was no evidence of any intention by the Respondent to hide her interests in the properties in question. The Standards Commission was also provided with information about the Respondent's ongoing personal circumstances and difficulties she was facing. In the circumstances, and having taken into account the above factors, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing in respect of issue one.

The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission nevertheless agreed that the Respondent should be reminded of the importance of adhering to provisions in the Code concerning the registration of interests as these allow for transparency and ensure the public can have confidence that elected members are making decisions in the public interest.

**Date: 8 January 2024**



**Lorna Johnston  
Executive Director**