

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 11 May 2023 (reference NPA/LLT/3892) concerning an alleged contravention of the Code of Conduct for Board Members of Loch Lomond and The Trossachs National Park Authority (the Code) dated June 2022, by one former and two current members of Loch Lomond and The Trossachs National Park Authority (the Respondents), the ESC referred a report to the Standards Commission on 7 February 2024.

The complaint concerned a planning application to be determined by the National Park Authority's Board. It was alleged that during a site visit in early October 2022, Respondent 1 allowed officers from the National Park Authority to provide an unfair and inaccurate view of the proposed development and Respondent 3 provided inaccurate information about it. It was further alleged that Respondent 1 did not competently chair the meeting held on 31 October 2022, when the planning application was decided, and that Respondents 2 and 3 failed to act in accordance with the Code at that meeting.

In his investigation report, the ESC advised that:

- The Code did not cover the alleged conduct of Respondents 1 and 3 in relation to the site visit, nor the alleged conduct of any of the Respondents at the meeting of 31 October 2022.
- He had considered the Respondents' alleged conduct both in terms of the Standards Commission's Guidance on the Model Code of Conduct for Members of Devolved Public Bodies and the National Park Authority's Standing Orders. The ESC advised that he had not found the Respondents' alleged conduct to be noncompliant with any of the provisions they contained.

The ESC concluded, therefore, that there had not been any breach of the Code by any of the Respondents.

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 Respondents' alleged conduct was not covered by the Code, as it did not contain any provisions concerning how quasi-judicial and regulatory decisions (including ones on planning applications) are dealt with and made. Having reviewed the ESC's factual findings and reasoning, the Standards Commission found no reason to depart from his conclusions. The Standards Commission noted that, unlike the Councillors' Code of Conduct, the Model Code of Conduct for Members of Devolved Public Bodies (on which the Code of Conduct for Board Members of Loch Lomond and The Trossachs National Park Authority is based) does not currently contain a section outlining how Members must conduct themselves when undertaking site visits and when they are taking part in meetings where planning applications are being considered and determined.

The Standards Commission noted, in any event, that the fact that an applicant or member of the public may disagree with a decision would not, in itself, be evidence of any poor conduct. A distinction should be drawn between, on the one hand, the performance of a member in exercising their discretion when discharging their decision-making responsibilities and, on the other, a situation where they acted improperly and demonstrated bias (for example if they were biased in favour of one of the parties to the application or participated in decision-making even though they had a personal interest in the matter).

In the circumstances and for the reasons outlined above, 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: 12 February 2024



**Lorna Johnston
Executive Director**