

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. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/DG/3514) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by a councillor of Dumfries & Galloway Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 21 February 2022, in accordance with section 14(2) of the 2000 Act. Following a query from the Standards Commission on 21 February 2022, the Acting ESC produced an addendum to the report on 28 February 2022.

In his report, the Acting ESC advised there were two issues of complaint. Following receipt of the addendum to the report, the Standards Commission was satisfied, in respect of the first issue of complaint, that the Respondent was not acting and could not reasonably be perceived as acting as a councillor at the time of the incident covered in the first issue of complaint. The Standards Commission therefore decided it was neither proportionate nor in the public interest to hold a hearing, and determined to take no action in relation to the first issue of complaint.

The second issue of complaint concerned an exchange alleged to have taken place between the Complainer and the Respondent on 19 October 2020.

In his report and addendum, the Acting ESC investigated the Complainer's allegation and found there was insufficient evidence to allow him to conclude, on the balance of probabilities, that the facts of the complaint had been established and, as such, that there had been a breach of the Code.

Reasons for Initial Decision to hold a Hearing

Having considered the terms of his report and addendum, the Standards Commission did not consider that it was necessary or appropriate to direct the Acting ESC to undertake any further investigation into the matter.

Taking into account both public interest and proportionality considerations, and in particular the serious nature of the allegation, the Standards Commission, on 9 March 2022, decided to hold a Hearing into the second issue of complaint. A Hearing was scheduled to take place on 17 May 2022.

Receipt of New Information

Upon making that decision to hold a Hearing, and in accordance with its usual practice, the Standards Commission wrote to all parties (including the Acting ESC) on 9 March 2022 to advise of its decision.

In terms of its Hearing Rules, which can be found [here](#), the Standards Commission requested the Acting ESC to provide any documentation he intended to refer to, or rely on, at the Hearing.

The Acting ESC responded to that request via email on 29 March 2022, providing various documents (the Acting ESC's Productions) which included, amongst other things, the Complainer's complaint form.

On 30 March 2022, in accordance with its usual practice, the Standards Commission shared the Acting ESC's Productions with the Respondent and the Hearing Panel.

On 4 April 2022, the Respondent, as requested by the Standards Commission, provided a response to the questions raised in the Standards Commission's letter to him, dated 9 March 2022. That response was followed up by a telephone call from the Respondent on 5 April 2022, during which the Respondent drew the Standards Commission's attention towards the terms of the Complainer's complaint form.

The Standards Commission noted, upon review of the Complainer's complaint form, that the Complainer had stated the Respondent was acting as a representative of a local development trust during the alleged exchange that was the subject of the second issue of complaint – and not as a councillor. The Complainer further advised that the subject matter of the alleged exchange was the local development trust.

These statements accorded with the Respondent's stance that he was not acting as a councillor during the alleged exchange relating to the local development trust.

Upon receipt of this new information, and in accordance with its Hearing Rules (Rule 1.3), the Standards Commission elected to reconsider its initial decision to hold a Hearing.

Reasons for New Decision

In light of the new information, the Standards Commission determined it to be highly unlikely that a Hearing Panel would find that the Respondent was acting or could reasonably be perceived as acting as a councillor during the alleged exchange.

While the Standards Commission noted it was unfortunate that the new information had only come to light after it had made its initial decision to hold a Hearing, it noted that it had the power to re-make decisions made under s16 in light of such new information.

The Standards Commission further 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 unnecessary administrative or legal processes in cases that did not, on balance, warrant such action.

The Standards Commission considered, in light of its conclusion in respect of the new information, it was unlikely the Code applied to the Respondent at the time of the incident in question. As such, it followed that it was not likely that a breach of the Code would be found at any Hearing. The Standards Commission therefore determined it was neither proportionate nor in the public interest to hold a Hearing, and that a "no action" decision would be more appropriate in the circumstances.

Date: 7 April 2022



**Lorna Johnston
Executive Director**