

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/Fi/3544) concerning alleged contraventions of the Councillors' Code of Conduct (the Code) in place at the time, being the version dated July 2018, by three councillors of Fife Council (the Respondents), the Acting ESC referred a report to the Standards Commission, on 6 April 2022, in accordance with section 14(2) of the 2000 Act.

Two issues of complaint were investigated. The first issue of complaint was that the Respondents failed to declare an interest in relation to a planning application at a planning committee meeting, the alleged interest being that they were from the same political party as one of the objectors to the planning application. The second issue of complaint was that two of the Respondents carried out an unofficial site visit that did not comply with the Council's policies on site visits.

In his report, the Acting ESC investigated whether the Respondents' conduct would amount to a contravention of paragraphs 5.7, 7.4 and 7.23 of the Code.

Paragraph 5.7 of the Code stated:

You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code;*
- or*
- (ii) that interest would fall within the terms of the objective test.*

There is no need to declare:

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or*
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.*

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances. There is no need to withdraw in the case of:

- (i) an interest covered by a general exclusion or a specific exclusion; or*
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.*

Paragraph 7.4 of the Code stated:

To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

Paragraph 7.23 of the Code stated:

As a councillor, you may be asked to attend site visits in connection with a pending planning application or review. If you do so, you should follow the procedures for such visits set out by your authority; for local reviews there are details about site visits in the relevant regulations. These procedures should be consistent with the provisions of this Code.

In his investigation report, the Acting ESC advised that:

1. In relation to the first issue of complaint, it was not in dispute that the Respondents did not declare an interest in the planning application, and that they participated in its consideration. Nor was it in dispute that one of the objectors to the planning application was a well-known member of the same political party as the Respondents.
2. Aside from being members of the same political party as the objector in question, the Acting ESC found no evidence that any of the Respondents appeared to have a close relationship with the objector. As such, the Acting ESC concluded that it could not be said that any interest they had in the matter was sufficiently close and significant as to meet objective test under paragraph 5.7 of the Code. Further, upon investigation, the Acting ESC had not found any evidence of impropriety in the decision-making process, in breach of paragraph 7.4 of the Code.
3. In relation to the second issue of complaint, the Respondents who conducted the unofficial site visit adhered to the procedures set out by the Council's Site Visits and Inspections Guidelines, and as such had acted in accordance with paragraph 7.23 of the Code.

Having considered the various factors of the complaint and the evidence gathered, the Acting ESC concluded 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 Acting 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 fairness and impartiality provisions in the Code could bring the Council's decision-making into disrepute and could leave the Council open to 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 Acting ESC, in his report, had reached the conclusion that the Respondent's 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. In particular, having reviewed the complaint form submitted by the Complainer, the Standards Commission noted that there was no suggestion by the Complainer that the alleged connection between the Respondents and the objector amounted to anything more than their being members of the same political party. There was no suggestion or evidence of any relationship, close or otherwise, beyond this.

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 unnecessary 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 was not satisfied, on the face of it, that the conduct as established would amount to 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.

Date: 12 April 2022



**Lorna Johnston
Executive Director**