

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/NL/3557), concerning an alleged contravention of the July 2018 version of the Councillors' Code of Conduct, being the version of the Councillors' Code in place at the time (the Code), by a councillor of North Lanarkshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 13 June 2022, in accordance with Section 14(2) of the 2000 Act.

The complaint concerned a visit by the Respondent to a redevelopment site on 12 May 2021. At the visit, the Respondent's photograph was taken with the managing director of a building company. On 14 May 2021, a news release on the Council's website (incorporating the photograph and a quote attributed to the Respondent) stated that the redevelopment of the site would be carried out by that building company. The Respondent tweeted the news release on 15 May 2021, and an article on the redevelopment appeared in a national newspaper on 18 May 2021. At a meeting on 19 May 2021, the Council's Housing and Regeneration Committee awarded a contract to the building company for works at the site.

The Complainer alleged that by attending the site, appearing in the photograph and re-tweeting the news release before the Committee meeting, the Respondent had breached paragraphs 6.1, 7.3 and 7.11 of the Code. The applicable paragraphs of the Code are outlined below.

6.1: In order for the Council to fulfil its commitment to being open, accessible, and responsive to the needs of the public, it needs to encourage appropriate participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Council conducts its business.

7.3: In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudice, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.11: If you propose to take part in the decision-making process you must not give grounds to doubt your impartiality. You must not make public statements about a pending decision, to ensure that you are not seen to be prejudging a decision which will be made at the meeting where it can be anticipated that the information required to take a decision will be available. You must not indicate or imply your support or opposition to a

proposal, or declare your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

The ESC undertook an investigation into the complaint. In his investigation report, the Acting ESC advised that:

1. While it was accepted that the Respondent attended the site and that her photo was taken with the managing director of the building company, there was no evidence that the Respondent was lobbied or otherwise influenced in a way that impacted on her subsequent vote. The Acting ESC further advised that the visit had been arranged by council officers and, other than for the purpose of the photoshoot, the Respondent did not meet with the managing director (or any other contractor). As such, the Acting ESC concluded that he did not consider that the Respondent had breached paragraph 6.1 of the Code.
2. The quote attributed to the Respondent did not directly relate to the development in question or outline the Respondent's position in advance of the Committee meeting. The Acting ESC further advised that the Council's Monitoring Officer had confirmed the Council's news release was issued early as a result of an error on the part of a council officer. The Acting ESC concluded, therefore, that the Respondent had not prejudged or demonstrated bias before the meeting, and could not reasonably have been perceived as doing so. As such, the Acting ESC concluded that he did not consider that the Respondent had breached paragraph 7.3 of the Code.
3. The Respondent's appearance in, and subsequent circulation of, the photograph could not be interpreted as her pre-judging or indicating support or opposition to an application before the Committee meeting, given that the photograph alone did not confirm anything more than the existence of the development. As such, the Acting ESC concluded that he did not consider that the Respondent had breached paragraph 7.11 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 lobbying or fairness and impartiality provisions in the Code could bring the Council's committee system, and the Council itself into disrepute and put it at risk of a successful 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 Respondent's 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 there was no evidence of a breach of the Code on the part of the Respondent. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

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.

The Standards Commission determined, for the reasons outline above, that that no further action should be taken on the complaint.

Date: 20 June 2022



**Lorna Johnston
Executive Director**