

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/AN/3631) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of Angus Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 13 July 2022, in accordance with section 14(2) of the 2000 Act.

The complaints as submitted stated that a planning application was submitted to Angus Council on behalf of a named company. The application was submitted by an agent of the company and the application did not mention that the Respondent is a director of the company. The planning application was granted by a planning officer and was not considered by the Development Standards Committee of Angus Council.

The Standards Commission notes that this 'complaint' does not allege any wrongdoing or identify any breach of the Code by the Respondent.

The Acting ESC nevertheless advised, in his report, that he had investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.21, 3.23, 5.4, 5.5 and 7.4 of the Code, which state:

Paragraph 3.21: You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, ratepayer, tenant, recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action which could lead members of the public to believe that preferential treatment is being sought.

Paragraph 3.23: If you owe a debt to the Council, for example, in relation to rent due for a council house or commercial premises where the Council is the landlord, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision which may create suspicion of a conflict of interest. For example, where you are in arrears of rent for a council house, you must not participate in decisions affecting the levels of rent to be paid by council house tenants.

Paragraph 5.4: Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings. The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with

other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

Paragraph 5.5: Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with (a) your financial interests, (b) your non-financial interests and (c) the interests, financial and nonfinancial, of other persons.

Paragraph 7.4: 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.

In his report, the Acting ESC advised that:

1. He had not found any evidence to support the contention that the Respondent was involved in the submission of the application, that he was aware it had been made, or that he had any dealings (formal or otherwise) with the Council in respect of the planning application that would have required any declarations of interest to be made. The ESC found that the Respondent had included an entry to the effect that that he was a director of the company in his register of interests, as required by the Code.
2. The planning officer who made the decision on the application confirmed that he had not been influenced, in any way, by the Respondent. The Acting ESC concluded, therefore, that there had not been any breach of the Code by the Respondent.

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.

The Standards Commission was satisfied that the Code would apply to the Respondent as the 'complaint' appeared to concern his actions or inaction as an elected member when the planning application was submitted to the Council.

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 failure to declare an interest as required by the Code and / or the seeking of preferential treatment by a councillor could have the potential to bring both the individual councillor and the Council itself into disrepute. 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.

In particular, the Standards Commission noted that the application form submitted by the Respondent's agent was a statutory form, which provided no opportunity for the Respondent's status as a councillor to be disclosed. The Standards Commission further noted that, given its nature, the Respondent was not involved, and could not have been involved, in determining the application. As such there was no requirement, and no opportunity, for him to have declared any interest in it. The Standards Commission was further satisfied that there was no evidence whatsoever to support a contention that the Respondent had attempted to influence the planning officer's decision.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the ethical standards framework, 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 concluded, on the balance of probabilities, that there was no evidence of a breach of the Code. 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.

Having taken into account the above factors, and in particular the fact that it was not satisfied, on the face of it, that there was any evidence of 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.

The Standards Commission noted that the 'complaint' appeared to be based on a misunderstanding of the planning process on the part of the Complainer, who was himself a councillor. The Standards Commission noted that any suggestion that the planning application had been influenced by the Respondent would also involve, by implication, a suggestion that the planning officer may not have followed due process. The Standards Commission wished to reiterate that there was no evidence of this whatsoever.

Date: 18 July 2022



**Lorna Johnston
Executive Director**