

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 (reference LA/AC/3639) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member of Aberdeen City Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 1 December 2022.

The complaint was that, when taking part in meetings of the Council's Licensing Board on 25 November 2020, 8 December 2020, 2 February 2021, 17 August 2021 and 5 October 2021, the Respondent failed to apply the objective test and declare an interest in respect of 17 licensing applications that concerned Aberdeen Business Improvement District levy payers.

In his report, the Acting ESC advised that:

1. The complaint concerned a failure on the part of the Respondent to declare interests when acting as an elected member during Licensing Board meetings, so there was no dispute that he was acting as councillor at the time of the events in question. As such, the Code applied.
2. The Respondent was employed by Aberdeen Inspired Business Improvement District (BID) as a Senior Project Manager. His role was to provide advice and assistance to the Chief Executive in respect of developing and nurturing key partnerships and strategies of importance to the BID.
3. The applications being considered by the Licensing Board on the dates in question related to businesses that were located within Aberdeen Inspired BID. Five of the applications concerned premises within the Bon Accord Centre and Union Square, the Managers of which (a Mr A and Mr B) were also Vice-Chairs of the board of Aberdeen Inspired.
4. He had found that the Respondent was not a member of the board of Aberdeen Inspired and had confirmed that he was rarely in contact with Mr A or Mr B when working as an employee of Aberdeen Inspired. The ESC was therefore of the view that the Respondent's relationship with Mr A and Mr B was not one which could reasonably be described as a 'close associate'.
5. The matters before the Licensing Board concerned the seeking of premises licences, the review of licensing conditions or applications to vary licence conditions. The Acting ESC advised that some of the applications may have affected the rateable value of the property and subsequently any levy collected and passed on to Aberdeen Inspired. The Acting ESC nevertheless advised that, having considered each

matter individually, he was satisfied that none could be said to be so clear and significant as to fall within the objective test, which is:

whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the councillor's discussion or decision-making.

The Acting ESC confirmed that this was the case, both in respect of the Respondent's employment and in respect of the financial interest of Aberdeen Inspired, as his employer. As such, there was no requirement for the Respondent to have declared interests in the applications in question.

6. He had found no evidence of pre-judgement, bias, or occasion for suspicion or improper conduct demonstrated by the Respondent in consideration of the various applications.

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 provisions in the Code regarding the requirement to declare certain interests and to refrain from taking part in discussions and decision-making which could have the potential to bring the role of a councillor, the Council's committee system and the Council itself into disrepute. It could also leave the Council open to the 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 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. This was because the Standards Commission agreed with the Acting ESC that it did not appear that the objective test had been met, in respect of the various matters before the Licensing Board and, as such, the Respondent would not have been required to declare an interest at the meetings in question.

Having taken into account the above factors, and in particular the fact that it is not satisfied, on the face of it, that the conduct as established could 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: 7 December 2022



**Lorna Johnston
Executive Director**