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 (reference LA/An/3884) into a complaint received on 27 April 2023, concerning an alleged contravention of the Councillors' Code of Conduct by an elected member of Angus Council (the Respondent), the ESC referred a report to the Standards Commission on 2 July 2024.

The complaint alleged that despite making a transparency statement in which he said he had a lengthy friendship with the applicant's family, and despite being Facebook friends with the applicant's father, the Respondent failed to declare an interest and took part in the consideration of a planning application at a meeting of the Council's Development Standards Committee in February 2023. The Complainer also questioned whether the Respondent may have assisted the Applicant with the application.

The ESC reported that:

- He had found, from the webcast recording and minutes of the meeting, that the Respondent did not state he had a lengthy friendship, as alleged. Instead, the Respondent indicated that he had known the Applicant for many years. The Respondent had since confirmed that he had meant to refer to the Applicant's father, not the Applicant.
- Both the Respondent and Applicant's father have confirmed that while they studied together some 30-40 years ago, they did not have a friendship, had not met socially in at least 30 years and never had any business dealings.
- Based on all the evidence available, he was of the view that members of the public, with knowledge of the relevant facts, would not regard the Respondent's connection to the Applicant's father as being so significant that it would be likely to impact on his discussion or decision-making at the meeting. As such, the ESC concluded the objective test was not met and that the Respondent did not have a declarable interest.
- Both the Applicant and Respondent deny knowing each other. They also deny having had any contact before the meeting and advise that the Respondent did not provide any assistance with the application. The ESC reported that he had not found any evidence to suggest that the Respondent behaved in any way improperly prior to the meeting that would imply bias in relation to the application.
- The ESC concluded that the complaint had not been established and that there was no evidence of 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 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.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code and, therefore, there could be some limited public interest in holding a Hearing. The Standards Commission noted, however, 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 administrative or legal processes in cases that did not, on balance, warrant such action.

In considering proportionality, the Standards Commission noted that the ESC had reached the conclusion that there was no evidence that the Respondent had breached the Code. Having reviewed the report, the Standards Commission had no reason to depart from this conclusion.

In the circumstances, and having taken into account the above factors, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing in respect of the complaint. The Standards Commission determined, therefore, to take no action on the referral.

Date: 5 July 2024

Lorna Johnston
Executive Director