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/H/3954) into complaints received in August 2023 concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Highland Council (the Respondent), the ESC referred a report to the Standards Commission on 20 March 2024.

The complaints alleged that the Respondent failed or delayed in updating his Register of Interest to record his appointment as an unremunerated director of a Business Improvement District (the BID).

In his investigation report, the ESC advised that:

- He had found, and it was not in dispute, that the Respondent had been appointed as a director of the BID. Councillors have one month to record any new interest in their Register of interests. It was not in dispute that the Respondent did not register the interest until over four months after his appointment. The ESC advised he had found, therefore, that the Respondent had breached the Code by failing to register the interest timeously.
- He had also considered whether there was any failure to declare the interest at certain Council meetings. The ESC advised he found that the Respondent made transparency statements at the meetings, explaining that while he had a connection to the BID, he did not consider it amounted to a declarable interest in respect of the specific agenda items to be considered. The ESC advised that he did not consider that a member of the public with knowledge of the relevant facts would reasonably regard the Respondent's directorship of the BID as being so significant that it would be considered likely to influence his decision-making on the specific agenda items at the meetings in question.
- Given the Respondent made transparency statements about his connection to the BID, it was evident he was not trying to conceal the interest. The ESC advised that the Respondent had apologised and confirmed the failure to timeously register the interest was inadvertent.

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, in his report, had reached the conclusion that the Respondent had breached the provisions in the Code that require councillors to register unremunerated directorships within a month of their appointment.

Having reviewed the ESC's report, the Standards Commission noted that the Respondent had apologised for the failure to register timeously his directorship of the BID. The Standards Commission was satisfied that the Respondent had not tried to conceal his interest and, therefore, had no reason to doubt the breach of the Code was inadvertent. The Standards Commission further noted that it was of limited duration. 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 complaints.

The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission nevertheless agreed that the Respondent should be reminded of the importance of adhering to provisions in the Code concerning the registration of interests as these allow for transparency and help ensure the public can have confidence that elected members are making decisions in the public interest.

Date: 24 March 2024

Lorna Johnston

Lorna Johnston
Executive Director