
SECTION 16 Policy

1. INTRODUCTION

- 1.1 Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended, outlines the options available to the Standards Commission on receipt of a report from the Commissioner for Ethical Standards in Public Life in Scotland (the ESC). This Policy aims to ensure there is transparency in how the Standards Commission makes decisions on the options available under Section 16.
- 1.2 The options available are to direct the ESC to carry out further investigations, to hold a Hearing or to do neither. Section 16 is reproduced below.

S.16 Action on receipt of reports

On receiving a report from the ESC, the Commission may—

- (a) direct the ESC to carry out further investigations;
- (b) hold a hearing; or
- (c) do neither,

and, where it acts under paragraph (a) or (b) above, may do so at any time.

- 1.3 The purpose of this policy is to outline the factors the Standards Commission will consider in making a determination under Section 16.
- 1.4 The policy is intended as a guide and the list of considerations outlined below is not exhaustive. The decision will depend on the individual and particular circumstances of each case. The Standards Commission may exercise its discretion to invoke the different options under Section 16, for reasons other than for those stated in this Policy.
- 1.5 The Standards Commission can remake any determination it has made under Section 16 if new and material information comes to light. Examples of when it might do so are listed below. It should be noted, however, that these are illustrative and do not form an exhaustive list:
- having made a decision to hold a Hearing, the Standards Commission can later decide to take the option to 'do neither' under Section 16(c), if the Respondent passes away or there is evidence that they have become long-term incapacitated.
 - having made a decision to direct that further investigation be undertaken under Section 16(a), the Standards Commission can later decide to hold a Hearing if it is satisfied that further investigation has been undertaken and that, on the face of it, there is now evidence of a contravention of the Code of Conduct.
 - having made a decision to hold a Hearing, the Standards Commission can later decide to take the option to 'do neither' under Section 16(c), if new and material information emerges that

leads the Standards Commission to determine that the reasons for holding a Hearing no longer apply (i.e. it is no longer in the public interest and proportionate to do so).

2. FURTHER INVESTIGATION

2.1 Following receipt of a report from the ESC, the Standards Commission may consider if it has sufficient information to enable it to decide whether or not a Hearing should be held. The Standards Commission may choose to invoke Section 16(a) and direct the ESC to carry out further investigation in the following circumstances:

- If it is unclear from the report as to what the ESC's findings or conclusions are, including which sections of the Codes of Conduct the ESC considers may have been contravened and why;
- If the Standards Commission considers there are any material facts that have not been sufficiently explored or that insufficient attempts have been made to obtain and analyse evidence that appears to have a direct bearing on the question of whether there has been a contravention.

2.2 Where the Standards Commission directs the ESC to carry out further investigation, it will write to the ESC within seven days of reviewing the report to confirm this decision and to explain the reasons behind it. The Standards Commission will ask the ESC to provide, within seven days of such notification, a timescale for the likely completion of the further investigation.

2.3 The Standards Commission will advise the Respondent(s) and complainant(s) of its decision to invoke Section 16(a) within seven days of reviewing the report and will explain the reasons behind it.

3. DECISION TO HOLD A HEARING

3.1 Where the Standards Commission concludes there is sufficient information to enable it to decide whether a Hearing should be held, it will proceed to make such a decision.

3.2 If, on the face of it, there is evidence of a contravention of the Code of Conduct, the Standards Commission will in normal circumstances decide to hold a Hearing, in accordance with Section 16(b). In making such a decision, the Standards Commission will take into account:

- The Public Interest; and
- Proportionality.

3.3 Public Interest:

In assessing the public interest, the Standards Commission will consider the following questions. These questions seek to provide guidance and clarity to the decision-making process. They are not exhaustive, however, and not all the questions may be relevant in every case. The weight to be attached to any of the questions, and the factors identified, will also vary according to the facts and merits of each case.

- What is the alleged impact / consequence or potential impact / consequence of the breach?
- Will holding a Hearing (and the associated publicity) promote the provisions of the Codes of Conduct?

3.4 If the ESC has concluded there is a breach, the Standards Commission will start from the position that it is likely to be in the public interest to hold a Hearing. This is because the Standards

Commission considers the public are entitled to trust that those in public life will be meeting the highest standards of ethical behaviour and are entitled to expect that where it appears that a councillor or member of a devolved public body may have contravened the Codes of Conduct, their behaviour will be scrutinised at a Hearing. The Standards Commission further considers that the councillor or member of a devolved public body is entitled to be heard and/or represented at a Hearing. If the ESC has concluded that there has not been a breach, the Standards Commission may nevertheless decide, having considered the questions above, that it is in the public interest to hold a Hearing if it is of the view that, on the face of it:

- The facts or evidence, as outlined or found by the ESC and described in her report, potentially support a finding of a breach of the Code.

3.5 **Proportionality:** The Standards Commission may also consider whether holding a Hearing or directing further investigation is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The alleged breach is insignificant with little or no practical consequence.
- The breach was of a technical, minor nature only and a full admission of the breach has been proffered by the councillor or member.
- Whether there is evidence that the councillor or member is incapacitated to the extent they would be unlikely to be able to respond to the allegations and/or remain in office.
- It is intended to ensure that neither the legislation, nor the Standards Commission, is brought into disrepute by spending public funds on unnecessary administrative or legal processes in cases which do not warrant such action?

4. DECISION TO 'DO NEITHER' UNDER SECTION 16(C)

4.1 The Standards Commission may choose this option if it concludes that further information is not required and that it may not be in the public interest or proportionate to hold a Hearing. The Standards Commission may do so because:

- It is not satisfied that, on the face of it, there is evidence of a contravention of the Code of Conduct; or
- It is satisfied that the breach of a Code forming the basis of the referral is minor, technical and inadvertent in nature and that there is evidence that the Respondent admits / accepts that it was a contravention.

4.2 When a decision to do neither is made under Section 16(c), the Standards Commission will advise the councillor or member, the ESC, the Council or Devolved Public Body Chief Executive and the complainant(s) in writing and provide an explanation, before the case is closed. The Standards Commission will publish a brief summary of its decision on its website.

4.3 Where it deems it appropriate to do so, the Standards Commission may also decide to issue a reminder to the councillor or member of his/her obligations under their respective Code of Conduct and /or advise the councillor or member to undertake training on their respective Code of Conduct. The Standards Commission may include information to this effect in its published decision.



SECTION 16 POLICY – INDICATIVE MILESTONE DATES

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
27/07/16	LJ	N/A	V1.0	Implementation of Policy
06/03/2019	EM	V1.0	2019 V1.0	Change reference to CESPLS to read ESC
28/05/2020	LJ	V1.0	2020 V1.0	Amendments made after review to make it clear Standards Commission can remake a Section 16 decision if new and material information comes to light.
12/11/2020	LJ	2020 V1.0	2020 V2.0	Amendments made to reflect that the Standards Commission makes a Section 16 decision on all cases, whether the ESC has found a breach or not.