
PRE-ELECTION CASE REFERRALS

1. INTRODUCTION

- 1.1 Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) provides that, on receipt of a report from the Ethical Standards Commissioner (ESC) concerning the investigation of a complaint about a councillor or member of a devolved public body, the Standards Commission can decide to:
- direct the ESC to undertake further investigation;
 - hold a Hearing; or
 - do neither (i.e. take no action on the case).
- 1.2 The Local Government Act 1986 (1986 Act) outlines restrictions on communication activities undertaken by local authorities during any pre-election period. While the Standards Commission is not subject to the 1986 Act, it is covered by the usual guidance issued for civil servants working for the Scottish Government, its agencies and national devolved public bodies. The guidance advises public bodies to take care when making public announcements in the three weeks preceding an election.
- 1.3 This document is intended to outline how the Standards Commission will normally proceed when it receives report from the ESC immediately before, and during, a local government pre-election period. It should be noted, however, that decisions will be made on an individual basis, depending on specific timing and the facts and circumstances of each referral. It should also be noted that this document is not intended to cover the period before an individual by-election.

2. SCENARIOS

- 2.1 **To direct the ESC to carry out further investigation:** The Standards Commission will advise the Respondent, Complainer, ESC and Chief Executive of the relevant council / public body of a decision to direct the ESC to undertake further investigation.
- 2.2 It is considered that the announcement of a decision to direct further investigation into a complaint about a councillor would bring the fact that a complaint has been made into the public domain. As the prospect of further investigation into a Respondent's conduct could potentially affect how they were perceived by the electorate, such a decision could be used by an opposition candidate in any local government election campaign. The Standards Commission will, therefore, normally defer announcing any future decision to direct further investigation until after any pre-election period has concluded.
- 2.3 **To hold a Hearing:** The Standards Commission will advise the Respondent, Complainer, ESC, Chief Executive of the relevant council / public body and the media of a decision to hold a Hearing. The Standards Commission also publishes information about the Hearing, including the Respondent's name and council / public body, and the Hearing date and venue on its website.

- 2.4 As the prospect of a Hearing into a Respondent’s conduct could potentially affect how they were perceived by the electorate, such a decision could be used by an opposition candidate in any local government election campaign. The Standards Commission will, therefore, normally defer announcing any future decision to hold a Hearing until after any pre-election period has concluded.
- 2.5 **To ‘do neither’ (i.e. to decide to take no action and close a case):** It is considered that making, issuing and publishing a ‘do neither’ decision during any pre-election period would not amount to a breach of the guidance. On the contrary, it is considered that delaying the making, issuing and publishing of such a decision (particularly in cases where it was evident that the Councillors’ Code of Conduct has not been breached or that the alleged conduct could not amount to a breach of the Code, even if established) could have a bearing, or could be perceived as having a bearing, on a local council election if knowledge of the referral and / or the complaint was already in the public domain. This was because, essentially, the electorate would know that the matter had not been resolved and that the Respondent councillor was still the subject of ongoing complaint proceedings. The Standards Commission will, therefore, normally continue to make and announce any decision to ‘do neither’ during a local government pre-election period.
- 2.6 **Holding a Hearing during the pre-election period:** It is considered that issuing and publishing a decision to find a Respondent in breach of their Code of Conduct at a Hearing held during any local government pre-election period could amount to an announcement that could be used by opposition candidates in any local government election campaign. It is noted, however, that the electorate has a right to know whether their elected representatives have or have not complied with their Code of Conduct, to enable an informed decision to be made. As such, and subject to the consideration of any adjournment requests, the Standards Commission will normally proceed to hold any scheduled Hearings in a pre-election period. This is provided the Standards Commission is satisfied that there is sufficient time for the written decision of the Hearing to be finalised, issued and published before the date of the election.



Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
29/9/22	LJ	n/a	V1.0	Introduction following approval at SCS meeting on 26/9/22
15/8/23	LJ	V1.0	2023 v1.0	Update to make it clear policy only covers general local government pre-election period, not the period before any individual by-election.