

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. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/SA/3672) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code), which was the version in place at the time of the events in question, by an elected member of South Ayrshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 11 October 2022.

The complaint was that the Respondent, in submitting an objection to a planning application, included incorrect information and also failed to mention that he was personally connected to a neighbour of the applicant. The Complainer further complained that the Respondent attended a site visit at the property made by a Reporter, in consideration of an appeal against the Council's refusal to grant the planning application.

In his report, the Acting ESC advised that:

1. There was no dispute that the Respondent included, in his email of objection, information about the property that was incorrect. The Acting ESC advised that he had found, however, that there was no evidence to demonstrate that the information had been given in bad faith. The Acting ESC further advised that the information had "little impact" on the Regulatory Panel's decision.
2. While the Respondent confirmed that he submitted the objection, there was no evidence that he had any further involvement in the Council's consideration of the application or that he had sought preferential treatment.
3. There was no evidence that the Respondent was connected to the neighbour of the applicant, beyond having been approached for assistance in his capacity as the ward councillor. The Acting ESC stated, "this is not something which [the Respondent] would have been expected to disclose in the objection".
4. While there was no dispute that the Respondent went to the site with the Reporter, he was not involved in the decision taken by the Reporter (which is separate from decisions taken by the Council) and, therefore, it was not inappropriate for the Respondent to have attended.

The Acting ESC concluded that while the facts of the complaint had been established, a breach of the Code could not be found.

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 that require councillors to declare interests and to refrain from seeking preferential treatment, could have the potential to bring the role of a councillor and the Council itself into disrepute. In this case, however, the Standards Commission was not satisfied that there was evidence of such a breach of the Code.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions 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 found that there was no evidence that the Respondent had been involved in the decision-making on the application or any appeal, or that he had sought preferential treatment. Having reviewed the evidence before it, the Standards Commission found no reason to depart from these conclusions. The Standards Commission noted that, like any other member of the public, councillors are entitled to submit objections to a planning application, regardless of whether or not they have any connection to a property (or its owner / occupier) that could be affected by any decision to grant or reject the application.

The Standards Commission noted 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.

Having taken into account the above factors, and in particular the fact that it was not satisfied that there was evidence of any breach of the Code, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Date: 14 October 2022



**Lorna Johnston
Executive Director**