

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 into a complaint received on 26 November 2021 (reference LA/Fi/3661) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member of Fife Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 17 January 2023.

The complaint alleged that the Respondent failed to apply the objective test and declare an interest in respect of a planning application submitted by the Complainer's daughter, which was considered by the Council's Central and West Planning Committee at a meeting on 24 November 2021. The Complainer alleged that this was despite the Complainer's family being known to the Respondent. The Complainer alleged that the Respondent asked the Council's staff and the meeting's convenor questions about whether a condition could be placed on the planning permission if it were to be granted. The Complainer further alleged that the Respondent was prejudiced against the Complainer and the Complainer's daughter.

In his report, the Acting ESC advised that:

1. The complaint concerned a failure on the part of the Respondent to declare an interest when acting as an elected member at a planning committee meeting, and that therefore there was no dispute that he was acting as councillor at the time of the events in question. As such, the Code applied.
2. He has found that the comments made and questions posed by the Respondent related to matters mentioned in the Council's report on, and in one of the objections received about, the application. The Acting ESC advised that he had concluded, therefore, that it was neither unreasonable nor inappropriate for the Respondent to have made reference to the matters in question.
3. He was satisfied that there was no connection or relationship between either the Respondent and the applicant or the Respondent and the applicant's family (including the Complainer) that could be said to be an interest that was so clear and significant as to fall within the objective test, which is:
whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice [the councillor's] discussion or decision-making.
4. He had not found any evidence of prejudice or bias. The Acting ESC noted, in any event, that the Respondent did not vote against the application.

The Acting ESC concluded that he had not found any evidence to support the contention that the Respondent had breached 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 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 regarding the requirement to declare certain interests and to refrain from taking part in discussions and decision-making could have the potential to bring the role of a councillor, the Council's committee system and the Council itself into disrepute. It could also leave the Council open to the risk of a legal challenge. In this case, however, the Standards Commission was of the view that, on the face of it, there was no evidence of any such breach of the Code.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, if it was found that the Respondent's conduct amounted to a breach 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 reached the conclusion that the Respondent's conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. In particular, the Standards Commission agreed with the Acting ESC that it did not appear that the objective test had been met, in respect of matters before the planning committee and, as such, the Respondent would not have been required to declare an interest at the meeting in question. The Standards Commission noted that an important part of a councillor's role is to scrutinise and did not consider that the Respondent asked questions that went beyond what might be classed as robust scrutiny.

Having taken into account the above factors, and in particular the fact that it is not satisfied, on the face of it, that the conduct as established could amount to a breach of the Code, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Date: 18 January 2023



**Lorna Johnston
Executive Director**