

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 17 December 2021 (reference LA/As/3686) concerning an alleged contravention of both the 2018 and 2021 versions of Councillors' Code of Conduct (the Code) by a (now) former elected member Aberdeenshire Council (the Respondent), the ESC referred a report to the Standards Commission on 10 March 2023.

The complaint concerned a failure by the Respondent to register the property where he lived and a further property that he owned, in accordance with the applicable versions of the Code in place during his term in office.

In his investigation report, the ESC advised that:

1. While he had found, and it was not in dispute, that the Respondent owned property and ran two businesses from "one of his residences", no corresponding entries were recorded in his Respondent's Register of Interests during his term in office.
2. As such, he had concluded that the Respondent had breached the requirement, contained in both applicable versions of the Code, for councillors to register any interest in houses, land and buildings in Scotland.

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 proportionality and public interest 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 considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that the Respondent had breached the provisions in both applicable versions of the Code that require councillors to register any interest in property in Scotland.

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 doing so. 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 this case, the Standards Commission noted that the complaint had been made to the ESC in 2021 and that the Respondent was no longer a councillor. The Standards Commission noted that the Respondent, in a letter commenting on the ESC's report, had acknowledged that he should have registered his interests in the properties in question and had apologised for his failure to do so. The Respondent noted that he was no longer a councillor and advised that he had no intention of holding public office again.

In the circumstances, and having taken into account the above factors, the Standards Commission concluded that it was not proportionate, despite some residual public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission nevertheless emphasised that the requirement for councillors to register certain interests is an absolutely fundamental requirement of the Code. A failure to ensure a register is kept up to date, as required, removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether the councillor's interests may or may not have the potential to influence their discussion and decision-making.

Date: 13 March 2023



**Lorna Johnston
Executive Director**