

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 19 August 2022 (reference LA/AC/3788) concerning an alleged contravention of the 2021 version of Councillors' Code of Conduct (the Code) by an elected member of Aberdeen City (the Respondent), the ESC referred a report to the Standards Commission on 2 March 2023.

Decision

The Standards Commission initially decided to hold a Hearing on the matter. Having received, on 19 April 2023, what it considered to be new and material information (as outlined below) in submissions received from the Respondent's representative, the Standards Commission then reviewed the decision it had made under Section 16 of the 2000 Act. It has now decided to 'do neither', which means that no further action will be taken on the matter.

ESC's Report

In his investigation report, the ESC advised that:

- There was no dispute that the Respondent had failed to include a shareholding of between 25% and 50% of a limited company in her Register of Interests between 22 November 2021 and August 2022. There was also no dispute that while the Respondent had updated her Register of Interests on 19 August 2022 to include her directorship of the company, she had not registered her shareholding in the company, despite owning more than 1% of the issued share capital.
- The Respondent's position was that she had registered, with Companies House, a limited company she set up with two family members in November 2021 with the intention of potentially using it to run a tourism business. The Respondent advised, however, that the company had never traded and that it never had any turnover or a bank account. As such, the Respondent had mistakenly considered that it was not something that needed to be included on her Register of Interests. The Respondent had offered apologies for the inadvertent failure to register her shareholding and had confirmed that she had rectified the mistake as soon as the error had been brought to her attention.
- Councillors must register any interests within one month. The Respondent had been obliged, therefore, to have registered the shareholding within one month of the Company's incorporation on 22 November 2021. As the Respondent had failed to do so, the ESC concluded that she had breached paragraph 4.20 of the Code, which requires councillors to register any shareholding, where they own or have an interest in more than 1% of the issued share capital of a company.

Submissions from Respondent's representative

The Respondent's representative advised that the issued share capital had been a nominal £3, with the Respondent's share amounting to £1. The Respondent's representative advised that the company never had any value and that, although by operation of the Companies Act 2006 the Respondent was a "person of significant control", by virtue of her percentage shareholding there had been nothing to control.

The Respondent's representative provided evidence to show that the Respondent had sent a council officer an email asking that her Register of Interests be updated to record that she was registered as a director of the company.

Reasons for New Decision

Having considered the terms of the ESC's report and the submissions received, 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>.

The Standards Commission noted that, if the ESC was of the view that an investigation had demonstrated there has been a breach of the Code, it would 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 that 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 may have contravened the Code, their behaviour will be scrutinised at a Hearing.

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 even in cases, such as this, where the Respondent has accepted that they breached the Code. 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.

The Standards Commission noted that paragraph 4.20 of the Code did not make a distinction as to the status of a company, such as it being active or dormant. The Standards Commission further noted that the Code requires councillors to register certain interests so that members of the public are given the opportunity to understand a councillor's interests and identify any potential conflicts.

In considering proportionality, the Standards Commission noted that there was a possibility that the simple establishment of a tourism business could have resulted in the Respondent potentially having a conflict of interest, for example, if a decision on a matter that could impact the tourism industry in the area was to be determined by the Council. A failure to register the shareholding could, therefore, have removed the opportunity for members of the public to identify any potential interest that the Respondent might have had, as a result of her shareholding in the company. In this context, the Standards Commission noted that a non-trading company could start trading at any point. The Standards Commission was unable to conclude, therefore, on the evidence that the accepted breach of the Code was of a minor nature.

The Standards Commission nevertheless noted, in terms of proportionality, that there was no evidence or suggestion that the Respondent had experienced such a conflict of interest as a result of the shareholding. The Standards Commission noted that while there had been no discussion between the Respondent and council officer about the shareholding, the fact that she had sought advice about whether she needed to register the directorship of the company indicated that there had been no intention to conceal an interest in

the company. The Standards Commission also noted the minimal value of the Respondent's shareholding. It concluded that the accepted breach of the Code appeared, in the specific circumstances, to be insignificant with little or no practical consequence.

The Standards Commission further noted that a full admission of the breach of the Code and an apology had been proffered by the Respondent.

In the circumstances of this case, and having taken into account the above factors, the Standards Commission concluded that it was not proportionate, despite the public interest arising from the breach of the Code, 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 a 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: 26 April 2023



**Lorna Johnston
Executive Director**