

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 28 July 2022 (reference LA/As/3784) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Aberdeenshire Council (the Respondent), the ESC referred a report to the Standards Commission on 31 May 2023.

The complaint concerned an allegation that the Respondent failed to declare an interest and withdraw from the consideration of a planning application at two Area Committee meetings held on 7 and 28 June 2022, despite being a close neighbour of a company that stood to benefit from the application, and being 'Facebook friends' and / or linked by marriage with individuals connected in various ways to the application.

In his investigation report, the ESC advised that it was not in dispute that the Respondent:

1. Did not declare an interest at the 7 June 2022 meeting and, instead, had made a transparency statement explaining that while she knew some of the individuals with an interest in the application, she did not consider her connection to those individuals amounted to a declarable interest.
2. Did not declare an interest at the meeting on 28 June 2022, and did not make a transparency statement at this meeting. The ESC advised, however, the Complainer had been unable to provide any evidence or details to support her contention that the Respondent had a close connection to any of the individuals in question. The ESC further advised that, having investigated the matter, he had not found that the Respondent's connections to any of the individuals in question to be so significant that a member of the public, with knowledge of the relevant facts, would reasonably regard them to be likely to influence her decision-making. As such, the Respondent was not required to declare an interest and was entitled to participate in the discussion and decision-making on the application.

The ESC noted that while councillors could choose to make transparency statements (if they have a connection to a matter that they do not consider amounts to a declarable interest), there is no obligation, in terms of the Code, for them to do so.

Reasons for Decision

Having considered the terms of his report, and in particular the extent of the investigation into the purported connections between the Respondent and the individuals in question, 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 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 requirements in the Code to declare interests and to act fairly and impartially when taking quasi-judicial decisions could have the potential to bring the role of a councillor, the Council's committee system and the Council itself into disrepute and expose it to legal challenge. In this case, however, the Standards Commission was of the view that 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. 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 considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that there was no evidence to support the Complainer's contention that the Code had been breached. Having reviewed the ESC's report, the Standards Commission found no reason to depart from that conclusion.

Having taken into account the above factors, and in particular the fact that it was not satisfied that there was any evidence of 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.

The Standards Commission noted that a connection will only amount to a declarable interest if the objective test is met. The objective test is:

where a member of the public with knowledge of the relevant facts would reasonably regard the councillor's connection to a particular matter as being so significant that it would be considered as being likely to influence their discussion or decision-making.

The Standards Commission further noted that councillors should always consider making a transparency statement to indicate why, having applied the objective test, they consider any connection they have to a matter does not amount to a declarable interest. This can be particularly helpful if councillors are conscious that members of the public are aware of a connection, but suspect they may not have knowledge of all the relevant facts. The Standards Commission wished, nevertheless, to reiterate the ESC's point that there is no obligation for councillors to make such transparency statements, and that a failure to do so would not amount to a breach of the Code.

Date: 5 June 2023



**Lorna Johnston
Executive Director**