

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 24 October 2022 (reference NHS/WI/3815) concerning an alleged contravention of the Code of Conduct for Members of NHS Western Isles dated June 2022 (the Code) by former board member of NHS Western Isles (the Respondent), the ESC referred a report to the Standards Commission on 6 September 2023.

The complaint concerned an allegation that the Respondent had breached confidentiality by disclosing his reappointment to, and promotion to deputy chair of, the NHS Western Isles board in October 2022 in advance of an official announcement.

The ESC investigated whether the Respondent's conduct would amount to a contravention of the confidentiality provisions of Code. In his investigation report, the ESC advised that on or around 24 October 2022, the Respondent updated his LinkedIn profile to reflect his reappointment to the board and promotion to deputy chair. The ESC further advised that:

1. the letter advising the Respondent of his reappointment did not mention confidentiality;
2. despite initially advising the Respondent to remove reference to his reappointment from LinkedIn, the Scottish Government's Public Appointments Team and NHS Western Isles' Standards Officer confirmed that the reappointment was not confidential; and
3. the Standards Officer also confirmed that the promotion was not confidential.

As such, the ESC recommended that the Respondent's conduct did not amount to a breach of the Code, as neither his reappointment nor his promotion was confidential information.

Reasons for Decision

Having considered the terms of the 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 public interest and proportionality 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 confidentiality provisions in the Code could have the potential to damage the reputation and integrity of a public body, and

to bring the position of a board member into disrepute. 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. 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 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.

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 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: 11 September 2023



**Helen Donaldson
Member of the Standards Commission**