

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 August 2023 (reference LA/S/3791) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Stirling Council (the Respondent), the ESC referred a report to the Standards Commission on 15 September 2023.

The complaint alleged that the Respondent failed to declare an interest in relation to an application for a temporary public entertainment licence at a festival, despite having received four complimentary tickets to the festival.

In his report, the ESC investigated whether the Respondent's conduct would amount to a contravention of the provisions of the Code regarding gifts and hospitality, the declaration of interests and taking decisions on quasi-judicial or regulatory applications. The ESC advised that:

1. in June 2022, the Respondent's husband requested, and received, four complimentary tickets to the festival on the basis that he lived in a village close to the festival site. The ESC further advised that all residents of the village were able to request tickets (over 400 tickets were available in this way) and that no conditions were attached to their provision.
2. the Respondent's aide updated her Register of Interests on 13 July 2022 to declare receipt of the tickets, to which a notional value was attached.
3. the Respondent chaired a meeting of the Council's Planning and Regulation Panel on 13 July 2022 at which the festival organiser's application for a temporary public entertainment licence was granted. The ESC further advised that the Respondent did not declare an interest when considering the application.
4. because the tickets had not been gifted to the Respondent, nor gifted on the basis of her role as a councillor (instead they were available to all village residents as an acknowledgement for any inconvenience suffered during the festival), he did not consider that they could be classed as gifts or hospitality. As such, the ESC recommended that the Respondent had not breached the Code's gifts and hospitality provisions.
5. by having the tickets registered in her Register of Interests, the Respondent created a 'connection' between herself and the tickets in terms of the Code. The ESC did not, however, consider that connection to amount to an interest that required to be declared, because:

- a. the tickets had been acquired by the Respondent's husband, on the basis of his residence;
- b. there was no link between her role as a councillor and the receipt of the tickets;
- c. there was no suggestion that the tickets were issued to the Respondent's husband on the basis that the Respondent would be involved in the decision-making on the application;
- d. the Respondent had clearly and credibly stated that she would not have approved the application but for council officers' confirmation that the applicants had fulfilled the requirements placed on them; and

and, as such, the ESC did not consider that a member of the public, with knowledge of the relevant facts, would reasonably regard the Respondent's connection as being so significant that would be likely to have influenced the Respondent's decision-making.

6. there was no evidence that the Respondent had not ensured the application was given a fair and proper hearing or that she had done anything other than act fairly during its consideration. The ESC considered that it would not be reasonable to interpret the contact between her husband and the festival organisers (to request the tickets) as giving an impression of bias to her decision-making role as there had been no mention of the Respondent, nor her role as a councillor, during that contact.

Having considered the various factors of the complaint and the evidence gathered, the ESC concluded that the Respondent's conduct did not amount to a breach of 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 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 applicable provisions in the Code could bring the role of a councillor and the Council itself into disrepute and put the Council at risk of a successful 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 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.

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.

The Standards Commission notes that while the current (2021) version of the Code allows councillors to accept gifts and hospitality if they are a minor item or token of modest intrinsic value offered on an infrequent basis, it does not require these to be registered. As such, there was no requirement for the Respondent to register the tickets. The Standards Commission noted, however, that having done so, the Respondent automatically created a 'connection', in terms of Section 5 of the Code, which states that a connection includes anything that has been registered as an interest. Section 5 requires councillors to apply the objective

test (being whether a member of the public, with knowledge of the relevant facts, would reasonably regard the connection as being so significant that it would be likely to influence the councillors' decision-making) to any connection to then determine whether it is an interest that requires to be declared.

The Standards Commission noted that, having registered the tickets when she was not required to so, it would have been helpful for the Respondent in this case to have made a transparency statement explaining why, having considered the objective test, she concluded that her connection did not amount to a declarable interest.

The Standards Commission reminds all councillors that it can be helpful for them to indicate why they consider any connection they have to a matter does not amount to a declarable interest. This is particularly if they know that members of the public are aware of the connection, but where they suspect they may not have knowledge of all the relevant facts. The Standards Commission further reminds all councillors to seek advice if they are unsure about whether to register something or whether they have a declarable interest.

Date: 19 September 2023



**Lorna Johnston
Executive Director**