

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 15 February 2023 (reference LA/Mo/3857) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Moray Council (the Respondent), the ESC referred a report to the Standards Commission on 8 December 2023.

There were two issues of complaint. The first was that the Respondent failed to register an interest in a hotel in Lossiemouth. The second was that the Respondent failed to declare an interest in meetings of the Licensing Board in June 2022, September 2022 and February 2023, and also at a meeting of the Licensing Committee in February 2023.

In his investigation report, the ESC advised that:

- The Respondent was not an employee of the hotel. The ESC advised he had found no evidence that the Respondent had worked for the hotel or engaged in any activity on its behalf for which he received payment. The ESC advised that he had, however, found the Respondent published posts, on social media, promoting the hotel, which was owned by a friend of his. The ESC concluded that the Respondent should have registered his personal connection with the hotel and its owner as a non-financial interest.
- He considered the Respondent's failure to register the interest amounted to a breach of paragraph 4.22 of the Code, which states that councillors must register any non-financial interests, "such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trade unions and voluntary organisations", if they were ones that "members of the public with knowledge of the relevant facts might reasonably think" could influence their "actions, speeches, votes or decision-making" in the council.
- He had found the Respondent did not declare an interest at any of the meetings in question. The ESC noted, however, that the Respondent would only have been obliged to do so if the objective test was met. In this case, it would be met if a member of the public with knowledge of the relevant facts (being the Respondent's link to the hotel and his actions in promoting it) would reasonably regard his connection to any specific matter being considered at a meeting as being so significant that it would be considered as being likely to influence the discussion or decision-making. In this case, the ESC advised that he had not found that the objective test had been met, in respect of any matters before either the Licensing Board or the Licensing Committee at any of the meetings identified.

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>.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code and, therefore, there could 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 the Respondent's conduct did not amount to a breach of the provisions in the Code that required councillors to *declare* certain interests. Having reviewed the ESC's factual findings and reasoning, the Standards Commission found no reason to depart from his conclusions.

The Standards Commission noted that a councillor would have to *declare* a connection to a friend or family's business, especially one they promoted, if the objective test was met in terms of the specific item or matter being considered by the council or one of its boards or committees (for example, if the friend or family's business could be directly impacted by the decision).

The Standards Commission did not consider, however, that a member of the public, with knowledge of the Respondent's connection, would consider it could influence his *overall* actions, speeches, votes or decision-making. As such, the Standards Commission did not consider that there had been any requirement for the Respondent to have *registered* his connection to the hotel as an interest.

In reaching this view, the Standards Commission considered that if it had been the intention for councillors to register this type of activity, they would have been required by the Code to record any unpaid work undertaken. Similarly, the Standards Commission considered that the Code would have made express provision if it had been intended that councillors register the interests of any friends or family.

In the circumstances and for the reasons outlined above, 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: 12 December 2023



**Lorna Johnston
Executive Director**