

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 5 May 2023 (reference LA/PK/3888) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Perth and Kinross Council (the Respondent), the ESC referred a report to the Standards Commission on 23 January 2024.

The complaint was that, at a meeting in March 2023, the Respondent, as Convener of the Council's Licensing Committee, moved to grant a short-term licence without allowing discussion or consideration of the police evidence, or a debate on the objections.

In his investigation report, the ESC advised that:

- He had found that the police were only present as they were to provide information about an entirely separate licensing application. The police made no formal representations or objections in relation to the application in question, that may have required consideration.
- The Complainer made a deputation objecting to the licence application. When doing so, the Complainer raised an incident which had resulted in a report being made to the police. Representatives of the police who were present during the meeting were able to confirm that the incident had been recorded as a civil matter. The Convener proceeded to move to grant the licence without further discussion or debate.
- There was no requirement under the Council's procedures for Committee members to have discussed or debated the objections or any representations from the police and, in the absence of any members asking further questions or moving motions to amend or reject, it would be appropriate for the Convener to move to grant the application.
- He had found that the Respondent asked members if they would like to adjourn to discuss the matter further following the objectors and applicant's deputations, but no one indicated that they wished to do so. The Respondent therefore moved a motion to grant the application, as he was entitled to do. The ESC advised he was satisfied, therefore, that the Respondent acted in accordance with process and treated all parties fairly.

The ESC concluded that there had not been any 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>.

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 concern how quasi-judicial and regulatory decisions (including ones on licensing applications) are made. 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 there is no requirement under the Code for members of Licensing Committee to discuss or debate any objections. They are simply obliged to take relevant and material objections into account in their decision-making.

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: 25 January 2024



**Lorna Johnston
Executive Director**