

Decision of the Standards Commission for Scotland

On receipt of a referral 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.

Referral to the Standards Commission

Following his investigation into a complaint received on 19 October 2022 (reference LA/SB/3908) concerning an alleged contravention of the versions of the Councillors' Code of Conduct dated July 2018 and December 2021 (the Code) by an elected member of Scottish Borders Council (the Respondent), the ESC referred the matter to the Standards Commission on 22 February 2024.

The complaint concerned an allegation that the Respondent had failed to declare an interest at two meetings of the Council's Common Good Fund Sub Committee, held on 17 November 2021 and 23 November 2022. The complaint further alleged that the Respondent may have accepted a free or reduced-price pitch at a local event held by a local company on common good land, in contravention of the Code's provisions regarding gifts and hospitality.

In his report, the ESC advised that he had found:

1. The Respondent had been able to demonstrate that payments were made by his business to the local company for pitches at events in 2018, 2019 and 2022. As such, there was no evidence that any gifts or hospitality had been received. There was also no evidence to suggest that the Respondent had sought any preferential treatment for his company.
2. While the local company had benefited from the Council's policy not to charge certain organisations for the use of common good land, there was no evidence of a connection between the Respondent (and his business) and the local company that went beyond what might be expected of local businesses. In any event, the Respondent had paid for his pitch and, therefore, any benefit enjoyed by the local company as a result of the Council's decision was not passed on to him.
3. That while the Respondent knew some of the directors of the local company and that his business had paid for pitches at an event run by it, there was no evidence of any other connection. As such, the ESC was unable to conclude that a member of the public, with knowledge of the relevant facts, would reasonably regard the Respondent's connection as so significant that it would be likely to prejudice his discussion or decision-making at either meeting. The ESC indicated, therefore, that he did not consider that the Respondent had been required to declare an interest at either meeting.

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 referral, 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 provisions in the Code that required councillors to declare certain interests and to refrain from accepting certain gifts and hospitality could bring the role of a councillor and the Council itself into disrepute. 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 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 referral, 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.

Date: 27 February 2024



**Lorna Johnston
Executive Director**