

## **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 31 October 2023 (reference LA/As/3999) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Aberdeenshire Council (the Respondent), the ESC referred the matter to the Standards Commission on 29 April 2024.

The complaint related to an allegation that the Respondent had breached the confidentiality provisions of the Code by posting, on 31 October 2023, images of her desk and computer screen to her Facebook page. The Complainer alleged that the images showed "highly confidential" information, being an image of the Respondent's Council email inbox, showing internal Council emails and personal information.

The ESC reported that:

1. The Respondent had advised that as soon as she was alerted to the potential issue regarding her post (being the day it was published), she took it down and reported the matter to the Council's Monitoring Officer. The ESC advised that the Council's Monitoring Officer had confirmed to him that no confidential information was contained in the post. As such, the ESC did not find the Respondent had breached the confidentiality provisions in the Code.
2. The evidence demonstrated that the Respondent had published the post using her personal mobile phone. The ESC reported that he had not found, therefore, that the Respondent had breached the provisions in the Code concerning the use of Council IT equipment.

### **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 confidentiality provisions in the Code could have the potential to damage the reputation and integrity of the Council and to bring the role of a councillor 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: 1 May 2024**



**Lorna Johnston  
Executive Director**