

Ethical Standards Commissioner

NOTIFICATION OF PROCESS CHANGE REGARDING “NON BREACH” REPORTS

05/02/2021

Message from the Commissioner

Since the inception of this Office some two decades ago, the Commissioner has independently investigated and concluded investigation on Local Authority Councillor complaints, with findings in terms of a breach or non-breach of the Councillors' Code of Conduct (the "Code"). Only "breach" reports were referred to the Standards Commission for Scotland ("SCS"), who then had the power to decide whether to hold a hearing, to direct the Commissioner to carry out further investigation or to do neither.

Since my term began on 1 April 2019, a total of 19 "breach" reports have been referred to the SCS and all have been subject to public hearing with one exception, for which a late hearing cancellation occurred in March 2020.

For complaints received from 12 November 2020 onward, the SCS have issued directions which alter this arrangement, as any non-breach investigation reports eventuating must be provided to the SCS. The effect is that hearings may now be held even where my investigation concluded that no breach of the Code has occurred. The name and political party details of the respondent Councillor may possibly enter the public domain in connection to a complaint, then potentially subjecting the Councillor to criticism for matters which I have already investigated and concluded to be "not at fault". The upshot of this is that frivolous, vexatious or groundless complaints could potentially be aired in the public hearing of a Councillor who, in my view as the regulatory investigator, has not breached the Code of Conduct.

Had this direction applied since I commenced my term, a total of 16 such "non-breach" cases could have been subject to a public hearing by the SCS, exposing the Councillors involved to potential negative consequences.

Any non-breach reports which I provided to the SCS for informational purposes only (under a data sharing agreement) have been, to date, appropriately redacted, as I sought to guard against identification of the Councillor and other persons concerned. Additionally, I provided these redacted reports to the SCS within a timeframe which aimed to facilitate dissatisfied complainers in their right to pursue legal action via judicial review. I will now desist in this protocol (other than redaction as is required under GDPR), the directions of the SCS being in place.

A copy of the directions is attached for your further information.



Caroline Anderson FCA
Ethical Standards Commissioner

5 February 2021

Direction under Section 10 of the Ethical Standards in Public Life etc. (Scotland) Act 2000

The Standards Commission (the Commission), established by section 8 Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act), for the purpose of discharging its functions under the Act, namely the promotion of guidance and enforcement of the relevant codes of conduct for councillors and members of public, in exercise of its power under section 10(1) of the Act directs the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner), as follows:

1. In respect of all investigations undertaken by the Commissioner under sections 9 and 12 of the Act on complaints received on or after the date of this direction, the Commissioner must report to the Standards Commission on the outcome of each such investigation within 7 days of the date on which the investigation is concluded.
2. A report provided to the Standards Commission in compliance with paragraph 1 of this direction shall set out the findings of the Commissioner's investigation into the complaint or complaints and the Commissioner's conclusions as to whether she considers there has been a breach of a Code of Conduct.
3. Where the Commissioner is unable to comply with the relevant timescale for submission of a report or reports, the Commissioner shall notify the Standards Commission immediately and, on cause shown, the time for submission of the report may be extended.
4. In respect of each report submitted to the Standards Commission in compliance with this direction the Commissioner (in addition to complying with the requirements of sections 14(2) and (3) of the 2000 Act where appropriate) shall notify the parties to a complaint (being the respondent and any complainers) that a report has been issued to the Standards Commission for it to make a decision under Section 16 of the Act.
5. This direction is effective from 12 November 2020 and expires on 11 November 2022.

Date: 12 November 2020



**Lorna Johnston
Executive Director**