

Agenda Item	19
Report No	HC/11/24

THE HIGHLAND COUNCIL

Committee: Highland Council

Date: 14 March 2024

Report Title: Decision of Standards Commission for Scotland - Hearing

Report By: Head of Legal and Governance / Monitoring Officer

1. Purpose/Executive Summary

1.1 The purpose of this report is to fulfil the statutory duty placed on the Council under Section 18 of the Ethical Standards in Public Life etc (Scotland) Act 2000, following a Hearing.

2. Recommendations

2.1 Council is asked to consider and note the decision of the Standards Commission of Scotland.

3. Implications

3.1 There are no Resource, Community (Equality, Poverty, Rural and Island), Climate Change/ Carbon Clever, Risk or Gaelic implications.

3.2 There are no immediate legal implications arising for the Council from the decision. The Standards Commission has decided Councillor Smith breached the Code of Conduct and has imposed the sanction of a one month suspension. The effect of the suspension is to impose a number of restrictions on Councillor Smith's ability to attend Council meetings and to participate in decision making and scrutiny activities.

4. Complaint against Councillor Smith

4.1 A complaint was made to the Ethical Standards Commissioner (ESC) on 28 May 2022 alleging that Councillor Smith had failed to comply with a number of elements of the Code of Conduct, and, in particular, that she had breached paragraphs 3.1, 3.2 and 4.20 which are as follows:

Respect and Courtesy

3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.

Registration of Interests

Category Six: Interest in Shares and Securities

*4.20 I have a registrable interest where: a) I own or have an interest in more than 1% of the issued share capital of the company or body; or
b) Where, at the relevant date, the market value of any shares and securities (in any one specific company or body) that I own or have an interest in is greater than £25,000.*

- 4.2 On 1st November 2023, following investigation, the ESC submitted a report to the Standards Commission. On 6th November 2023 the Standards Commission decided to hold a Hearing to determine whether there had been a breach of the Councillors' Code of Conduct by Councillor Smith.

The ESC's report covered five issues of complaint. Standards Commission members determined to hold a Hearing on issues 1 and 3 only, and to take no action on issues 2, 4 and 5. In all of the circumstances, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to consider issues 2, 4 and 5 at a Hearing.

- 4.3 The Standards Commission decided, therefore, that it wished to hear evidence and submissions at a Hearing in order to determine whether the Code had been contravened.
- 4.4 The Standards Commission convened a Hearing on 6 February 2024. The Hearing was conducted remotely and was available to view by the public through webcast. Commission heard submissions from both the ESC and Councillor Smith and her representative.
- 4.4 The Standards Commission Hearing Panel concluded that:

1. The Councillors' Code of Conduct applied to Councillor Smith.

2. Councillor Smith had breached paragraphs 3.1, 3.2 and 4.20 of the Code

- 4.5 The Standards Commission found Councillor Smith to have behaved discourteously and failed to advance equality of opportunity, in relation to another councillor, regarding nominations for a post on the North Planning Applications Committee of the Council. The Commission found that this was because the other councillor was pregnant, and Councillor Smith had assumed she was likely to take maternity leave. The Panel further found that Cllr Smith had failed to register certain interests timeously, as required by the Code.

- 4.6 The Commission accepted that Councillor Smith had not intended to discriminate against the councillor in question and noted that her aim had been to protect the Planning Committee (being the former Chair) and ensure its effectiveness. It was not in dispute that Councillor Smith failed to update her Register of Interests to detail her shareholding in two limited companies after the Council elections in 2022. The Commission noted that it had no reason to consider the failure to register the interests properly was anything other than an inadvertent breach of the Code. It was noted that Councillor Smith had made no attempt to hide her interests and had apologised to all concerned for the failure to ensure her register of interests was updated and correct, in adherence to the Code.
- 4.7 The Commission considered that Councillor Smith's failure to advance equality of opportunity could have been detrimental to the other councillor concerned. The Commission further considered that it could have impacted adversely upon the effective functioning of the Council, as it could have the effect of preventing or discouraging certain groups from participating in local politics. The Commission noted, in mitigation, that Councillor Smith had co-operated fully with the investigation and Hearing processes, and this was the first time she had been before the Standards Commission. The Commission also noted the Councillor Smith's longstanding contribution to the Council and public life, as evidenced by the numerous character references provided in her support.
- 4.8 In the circumstances, therefore, the Commission concluded that a suspension of one month was the appropriate sanction.
- 4.6 A full copy of the decision of the Standards Commission can be found at www.standardscommission.org.uk

5. Consideration of the Decision

- 5.1 The Council provides training on the Code of Conduct as a key element of the Induction Programme. The importance of completing and reviewing their respective Register of Interests was made clear both in the initial training and in subsequent communication from the Monitoring Officer. Councillors are kept informed of changes and developments through circulation of the Standards Commission's regular newsletters. The Monitoring Officer uses the distribution of the newsletters as an opportunity to encourage Members of the need to review their Registers and to circulate further Code of Conduct related information, such as Advice Notes. Training on wider governance issues including the Code of Conduct will continue to be part of the Council's ongoing training programme and Members are encouraged to seek early advice from officers upon any potential Code of Conduct concerns including issues of interest or connection.

Designation: Head of Legal and Governance/Monitoring Officer

Date: 27 February 2024

Author: Stewart Fraser, Head of Legal and Governance / Monitoring Officer