

Agenda Item	18
Report No	HC/26/23

THE HIGHLAND COUNCIL

Committee: Highland Council

Date: 29 June 2023

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 legal implications arising as the Standards Commission decided there had not been a breach of the Code of Conduct.

4. Complaint against Councillor Morrison

- 4.1 A complaint was made to the Ethical Standards Commissioner (ESC) alleging that Councillor Morrison had failed to comply with the Code of Conduct, and, in particular, that he had breached paragraphs 5.5, 5.6, 7.1, 7.4 and 7.5 which are as follows:

5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

5.6 I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest. Taking Decisions on Quasi-Judicial or Regulatory Applications

7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.

7.4 In dealing with these applications, I WILL:

- a) throughout my involvement with the entire application process act fairly and be seen to act fairly;*
- b) declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined;*
- c) deal fairly and impartially with all parties involved in the application;*
- d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;*
- e) take into account professional advice given to me by council employees; and*
- f) seek advice from the relevant council employee if I am in doubt as to any material or relevant considerations.*

7.5 In dealing with such applications, I WILL NOT:

- a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;*
- b) indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered;*
- c) in advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am prejudiced in my decision-making;*
- d) lobby other councillors who may be dealing with the application;*
- e) express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application;*
- f) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered;*
- g) express any indicative or provisional views in the course of my involvement in any aspect of the application; or*
- h) otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly*

- 4.2 Having reviewed the ESC's report, the Standards Commission directed the ESC on 8 March 2023 to undertake further investigation in respect of whether Councillor Morrison had ensured that he was seen to be acting fairly and that he avoided any suspicion of unfairness or bias in respect of the matter in question. Following the conclusion of the further investigation on 31 March 2023, the ESC advised that they were of the view that Councillor Morrison had not breached the Code. The Standards Commission nevertheless decided, on 6 April 2023, that it was both proportionate and in the public interest to hold a Hearing on the matter. This was because the Standards Commission was not satisfied, based on the contents of the ESC's initial report and his report on further investigation, that no breach of the Code had occurred. It further considered that

the alleged breach was not insignificant or of a technical nature. 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. The Standards Commission noted that holding a Hearing (and the associated publicity) could also promote the provisions of the Codes of Conduct and the ethical standards framework.

4.3 The Standards Commission for Scotland convened a Hearing on 25 May 2023. The Commission heard submissions from both the ESC and Councillor Morrison.

4.4 The Hearing Panel concluded that:

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

2. Councillor Morrison had not breached the Code

4.5 The complaint arose from Councillor Morrison's attendance and participation in a meeting of North Planning Applications Committee on 26 April 2022. In particular concern was raised about Councillor Morrison's participation in the consideration and determination of a windfarm application proposal at Sallachy.

Having considered both the evidence received before and the submissions made at the Hearing, the Panel concluded that there was no breach. As the Panel did not find that the Councillor Morrison had failed to ensure he was acting fairly, or that he had failed to avoid any suspicion of pre-judging, bias, or a lack of fairness in relation to the application, there was no requirement for him to have declared an interest and withdraw from the meeting. As such, the Panel concluded that it had not been established that Councillor Morrison had breached the Code.

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 both the Code of Conduct and participation in planning related decision making as part of its induction for Councillors, and refresher training is also provided. Councillors are also kept informed of changes and developments through circulation of the Standards Commission's regular newsletter. Training on the Code of Conduct will continue to be part of the Council's ongoing training programme and Members are encouraged to seek advice from officers upon any potential issues of interest or connection.

Designation: Head of Legal and Governance/Monitoring Officer

Date: 11 June 2023

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