

Decision of the Standards Commission for Scotland

On receipt of a report 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. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Initial Report to the Standards Commission

Following his investigation into a complaint (reference LA/H/3515) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of Highland Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 8 December 2021 (the initial report), in accordance with section 14(2) of the 2000 Act.

The complaint concerned an allegation that the Respondent shared the complainer's personal mobile number with the press, without the complainer's knowledge or consent.

The Acting ESC indicated that the complaint was considered in terms of paragraph 3.17 of the Code, which states:

You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. You must always respect and comply with the requirement to keep such information private, including information deemed to be confidential by statute. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your use as a councillor and must not be disclosed or in any way used for personal or party-political advantage or in such a way to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

In the initial report, the Acting ESC advised that he had found that:

1. The event that led to the complaint was a naked man exposing himself on camera during an online meeting of a community council on 29 March 2021. This had led to a great deal of media coverage and the complainer, being a member of the community council in question, being contacted by the press. The complainer alleged that the Respondent had breached her confidentiality by providing her personal mobile telephone number to a journalist from a local newspaper without her consent.
2. The complainer contacted the Respondent by email on 1 April 2021, querying how her mobile and home phone numbers became known by the press, and asking if it was the Respondent who had shared her contact details with the press. The complainer considered that the Respondent may have been the likely sharer of her details, due to the events tying in with a previous conversation she had with the Respondent. The complainer explained that this suspicion was cemented when the Respondent failed to reply to her email.

3. The Respondent confirmed that he had been present at the meeting, but that he did not see the naked man. He stated that he was contacted, by telephone, by a member of the local press, whom he informed that he had seen nothing and therefore was not in a position to comment. The Respondent advised that he did not believe he had received the complainer's email of 1 April 2021 and additionally that he had been experiencing IT issues at the time.
4. The Respondent confirmed that while he had the complainer's mobile phone number, he did not know her home telephone number. The Respondent confirmed he had not knowingly shared the complainer's mobile number with anyone and, further, that he would not give out a personal phone number to anyone requesting it without consent.
5. The journalist who first reported the story was contacted, but was unable to reveal her source on the basis that it would be unethical to do so.

The Acting ESC concluded there was insufficient evidence to find the complainer's allegation proven. The Acting ESC advised that he had two competing accounts of the alleged conduct, with no additional evidence at hand to support either position and, as such, he was not able to prefer either account.

Standards Commission's Request for Further Investigation

Having considered the initial report, the Standards Commission considered that it was necessary to direct the Acting ESC to undertake further investigation into the matter, in terms of Section 16(a) of the 2000 Act. The Acting ESC was directed, on 14 December 2021, to investigate the following further matters:

1. Whether the Council could confirm the nature of the Respondent's IT issues.
2. What information was shared with the Respondent that had led the complainer to suspect that he was culpable, and whether the complainer had any evidence to support her assertion.
3. Whether the complainer's contact details were shared with other journalists over and above the journalist from the local newspaper as identified and, if so, whether any of those other journalists could confirm where they obtained those details.
4. Whether it was the complainer's position that she was called by the press on both her mobile and house telephone numbers.
5. Whether the complainer's details could be found online (on social media or otherwise).

Further Report to the Standards Commission

Having carried out the further investigation requested by the Standards Commission, the Acting ESC provided a substantive response on 25 February 2022 (the further report), addressing the matters raised above (and following the same numbering):

1. The Council confirmed that the Respondent had reported IT issues, though did also confirm that the email from the complainer of 1 April had been found on the Respondent's computer. When questioned about this, the Respondent reiterated that he continues to suffer from IT issues and that, for reasons unbeknown to him, sometimes emails end up in his recycling bin.
2. The complainer advised that the information that was shared only with the Respondent was, firstly, that a naked man had exposed himself on camera during the meeting, and secondly, that only one other named witness had seen the man. The complainer had no evidence to support this claim. When questioned, the Respondent disputed there was only one other witness.
3. The complainer was unable to recall the names of any of the other journalists who contacted her on her mobile telephone number.
4. The complainer confirmed she was contacted on both her mobile and home telephone numbers. The complainer was able to name a journalist who contacted her via her home telephone number, but as it has been verified that that the complainer's home telephone number is available online, this journalist was not approached to establish from where he obtained her contact details.
5. The complainer's LinkedIn account confirms her position as the secretary of the community council in question. It was not possible to find her mobile telephone number online, however the journalist who first reported the story suggested that journalists have access to information about people, including mobile telephone numbers.

The Acting ESC advised that the findings of the further report did not cause him to change his conclusion that there was insufficient evidence to support a finding that the Respondent had shared the complainer's personal mobile number, as alleged.

Reasons for Decision

Having considered both the initial and further reports, the Standards Commission concluded that it was not necessary to direct the Acting 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 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, and for the reasons outlined below, there was no likelihood of a breach of the Code being established at a Hearing.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, if it was found that the Respondent's conduct amounted to a breach of the Code. There could, therefore, be some limited public interest in holding a Hearing. Regardless of this, the Standards Commission was, however, also required to consider whether it would be proportionate to do so.

In considering proportionality, the Standards Commission noted that the Acting ESC, in both his initial and further reports, had reached the conclusion that there was insufficient evidence to support the allegations made by the complainer.

The Standards Commission noted that in this case, the complainer had not provided any other evidence to support her assumption that the Respondent was responsible for disclosing her mobile telephone number. The Standards Commission did not consider the fact that the Respondent had not replied to her email (especially in the light of his stated IT issues, which were partly confirmed by the Council) to be evidence to support such an assumption. In the absence of any other evidence, and given it was very unlikely that further substantive evidence would emerge before or during a Hearing, the Standards Commission determined in the circumstances it was not proportionate to hold a Hearing based on such an assumption.

The Standards Commission noted 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 unnecessary administrative or legal processes in cases that did not, on balance, warrant such action.

Therefore, and for the reasons outlined above, 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.

It should be noted that this means no decision has been taken or is to be taken on whether the Respondent's conduct amounted to a breach of the Code.

Date: 7 March 2022



**Lorna Johnston
Executive Director**