

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.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/G/3548) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by a councillor of Glasgow City Council (the Respondent), the Acting ESC referred a report to the Standards Commission for Scotland, on 3 March 2022, in accordance with section 14(2) of the 2000 Act.

The complaint concerned a tweet the Respondent posted on 22 May 2022, during the Eurovision Song Contest Final. The Acting ESC reported that it was not in dispute that the Respondent posted the following comment from a Twitter account from which she was identifiable as a councillor:

"it's ok Europe we hate the United Kingdom too.

Love Scotland. (Scottish flag emoji)

#Eurovision" (heart emoji)."

In his report, the Acting ESC investigated whether the Respondent's conduct, in making the comment in question, would amount to a contravention of paragraph 3.2 of the 2018 version of the Code, which was in place at the time.

The applicable sections of the 2018 version of the Code are reproduced below.

3.2 You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.

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

1. The Respondent's Twitter profile included the description "Glasgow City Councillor". As such, the Respondent could be perceived to be acting as a councillor when posting the comment and, therefore, the Code applied.
2. The Respondent had advised she had posted the comment during the announcement of the results of Eurovision, where the UK received zero (or nil points), and at a time when many were making similar jokes about the UK (as a country) and its place in the world. She said she deliberately mirrored language from a film about Eurovision where someone had said that everyone hates the UK. She said her use of the word "hate" was in this context and was an "exaggerated joke".

3. While the Respondent, in making what she described as an “exaggerated joke”, did not appear to be intending to offend anyone, the question of whether an individual is being respectful is not necessarily one of intention but instead, is one of perception. The Acting ESC stated that the Respondent should have been mindful of how the comment could or was likely to be perceived by members of the public.
4. The tweet inferred that “Scotland”, whether as a state or not “hated the United Kingdom” and, therefore, caused offence to some members of the public who felt that the Respondent was speaking on behalf of Scotland as a nation. The Acting ESC was of the view that, as such, the Respondent’s conduct, could, on the face of it, amount to a contravention of paragraph 3.2 of the Code.
5. The Respondent nevertheless would be protected by the enhanced right to freedom of expression afforded by Article 10 of the European Convention on Human Rights (ECHR), as her comment had been made in the context of the Eurovision Song Contest; being a matter of a public interest and one that was widely known to have political connotations.
6. The comment in the tweet could not be considered to be gratuitous or offensive personal comments towards or about any individual (notwithstanding any personal offence that may have been caused). It was not considered hate speech as it was not directed towards anyone specifically. As such, the ESC was of the view that a restriction on the Respondent’s right to freedom of expression was not justified

The Acting ESC concluded that the Respondent’s conduct did not amount to a breach of the Code.

Reasons for Decision

Having considered the terms of his report and having noted that the factual basis of the complaint was not in dispute, the Standards Commission did not consider that it was necessary or appropriate 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 respect and courtesy provisions in the Code could have the potential to lower the tone of political discourse and 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, it was not clear that there had been such a breach of the Code.

The Standards Commission noted that while it was apparent that some members of the public had been offended by the comment tweeted by the Respondent, it considered that the question of whether someone has been disrespectful or discourteous must be subject to some form of objective test. In this case, the Standards Commission considered that, on balance, it was evident that the comment was intended as a political joke. The Standards Commission agreed with the Acting ESC that the comment was not directed towards and was not about a specific individual or group. As such, it could not be said to amount to gratuitous or offensive personal abuse or hate speech.

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 his report, had reached the conclusion that the Respondent’s conduct did not amount to a breach of the Code. Having reviewed the evidence before it, the Standards Commission was of the view that this was a reasonable conclusion. This was because even if the Respondent’s conduct was found to be disrespectful or discourteous

at a Hearing, it was highly likely that she would be entitled to the protection of freedom of expression afforded by Article 10 of the ECHR, as the comment had been made in the context of the Eurovision Song Contest; being a matter of a public interest. The Standards Commission further agreed with the Acting ESC that it was very unlikely, for the reasons given above, that the conduct in question would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail.

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.

The Standards Commission noted that the Acting ESC reported that, following the tweet, the Respondent made a public apology to anyone she had offended.

Having taken into account the above factors, and in particular the fact that it was 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.

The Standards Commission nevertheless wishes to reiterate that the requirement in the Code for councillors to conduct themselves with courtesy and respect helps ensure public confidence both in their role and the council itself. This includes when they are in meetings and engaged in online activity.

Date: 8 March 2022



**Lorna Johnston
Executive Director**