

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/SL/3587) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of South Lanarkshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 26 July 2022, in accordance with Section 14(2) of the 2000 Act.

Having been directed by the Standards Commission to undertake further investigation, the Acting ESC provided a further report, in the form of a letter, to the Standards Commission on 26 August 2022.

The Acting ESC reported that the Respondent and Complainer were members of a Community Centre Management Committee. When the Chair of the Community Centre passed away in June 2021, the Complainer became Acting Chair. On 25 June 2021, a meeting was held at which a unanimous decision was made to end the lease on the Community Centre and to hand it back to the Council. The Respondent was not invited to the meeting and did not attend.

The Acting ESC reported that the complaint alleged that the Respondent had contacted members of the committee and had harassed them, in an attempt to persuade them to overturn the decision. The Complainer alleged that, in doing so, the Respondent had provided the members with incorrect information to the effect that the Community Centre would be demolished. The Complainer also alleged that the Respondent had attacked her character by calling her a liar during a telephone call with another Community Centre member.

The Acting ESC advised that:

1. The Respondent could be perceived to be acting in his capacity as a councillor as he was involved in the Community Centre through his work as a councillor. As such, the Code would apply to him at the time of the events in question.
2. While it was not in dispute that the Respondent had contacted at least one member of the Community Centre, his position was that he had done so to try to understand why the late Chair had changed her mind in respect of whether to extend the lease (as the decision was different to what he and the Chair had discussed previously). The Acting ESC advised that it was also not in dispute that the Respondent had telephoned the late Chair's daughter about the matter, despite knowing that she was still grieving. The late Chair's daughter advised that she had found the call upsetting and distressing as the Respondent had brought her late mother's feelings into the conversation and had questioned why her late mother's position had changed.

3. He had not been provided with any evidence to suggest that the Respondent informed anyone, as a matter of fact, about what would happen to the Community Centre. Instead, the Acting ESC found that the Respondent only outlined what potentially could happen. As such, the Acting ESC was satisfied that the Respondent did not provide incorrect information when speaking to Community Centre members.
4. The Respondent denied making a telephone call to the Community Centre member, during which it was alleged that he had called the Complainer a liar. The Acting ESC reported that he had found, in any event, that the Community Centre member had provided different recollections of what had been said during the alleged call when contacted by his office. The Acting ESC advised that he was unable to conclude, from the evidence before him, that the facts of the issue had been established.
5. He was not persuaded that by asking questions about how the decision was taken and by making references to the late Chair's wishes, the Respondent's alleged conduct would constitute bullying, harassment and/or disrespect. The Acting ESC noted that while the Respondent's call to the late Chair's daughter could potentially be described as ill-judged or insensitive, due to the timing, it appears the Respondent was simply trying to understand why a decision had been made which was different to that which he had anticipated following the conversations he had previously had with the late Chair.

Having considered all evidence gathered, the Acting ESC found, on the balance of probabilities, that the complaint had not been proven.

Reasons for Decision

Having considered the terms of his report, 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, bullying and harassment 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, it was not satisfied, on the balance of probabilities, that there was evidence of any such breach of the Code.

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, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. In particular, the Standards Commission was of the view that while it appeared they were upset at being challenged about the decision to end the lease, this did not in itself mean that the Respondent was not entitled to contact Community Centre members to ask why they had made that decision. The Standards Commission understands that the Community Centre member and the late Chair's daughter may have been upset at any suggestion that the decision was contrary to the wishes of the late Chair. The Standards Commission considers, nevertheless, that it would not have been inherently disrespectful for the Respondent to have advised them of his understanding of the late Chair's position.

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.

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

Date: 1 September 2022



**Michael McCormick
Member of the Standards Commission for Scotland**