

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 CSE/3748) concerning an alleged contravention of Children's Hearings Scotland's Code of Conduct (the Code), by one of its board members (the Respondent), the Acting ESC referred a report to the Standards Commission on 22 September 2022.

The complaint was that the Respondent breached Children's Hearings Scotland's Acceptable Use Policy when she posted a tweet in April 2022 and that, in doing so, she had contravened paragraph 3.26 of the Code, which relates to the use of public body resources. Paragraph 3.26 of the Codes states that board members will only use Children's Hearings Scotland's resources, including employee assistance, facilities, stationery and IT equipment, for carrying out duties on behalf of the public body, in accordance with its relevant policies.

The Acting ESC noted that the Complainer considered the Respondent's language in the tweet was a breach of paragraph 3.1 of the Code, relating to courtesy and respect. The Acting ESC advised, however, that he had dismissed that part of the complaint as ineligible on the basis that it could not amount to a breach of the Code. This was because while the Respondent had used a swear word, it had been directed at a set of circumstances, rather than at a specific individual or organisation, and had been used in the context of her make a tribute to two people who had passed away. The Acting ESC had not found the Respondent's language to be disrespectful or discourteous in the circumstances. As such, that part of the complaint was not included in the referral to the Standards Commission.

In his report, the Acting ESC advised that:

1. While the content of the Respondent's tweet was unrelated to her role as a board member of Children's Hearings Scotland, her Twitter profile identified her as such. As such, the Acting ESC considered that the Respondent could objectively be considered as acting in her capacity as a board member when she posted the tweet and, therefore, the Code applied.
2. The Respondent advised she posted the tweet using her personal mobile phone, as opposed to a device provided by Children's Hearings Scotland. The Acting ESC noted that Children's Hearings Scotland had confirmed that it did not monitor the usage of a device it had provided to the Respondent. In the absence of any other evidence, the Acting ESC was unable to conclude, on the balance of probabilities, that the Respondent used a Children's Hearings Scotland device to post the tweet.

The Acting ESC advised that he was unable to conclude, therefore, that the Respondent had breached the Children's Hearings Scotland's Acceptable Use Policy or the Code.

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 provision in the Code that required Members of Children's Hearings Scotland to comply with the organisation's policies, including one on the acceptable use of IT equipment, could have the potential to bring the role of a member and the public body itself into disrepute.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions 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, having undertaken a full investigation, the Acting ESC had not found the facts of the complaint to be proven. Having reviewed the Acting ESC's report the Standards Commission was satisfied that it was very unlikely that any further evidence would come to light that could be considered at a Hearing.

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 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 was not satisfied that there was evidence of any breach of the Code, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Date: 26 September 2022



Lorna Johnston
Executive Director