

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. Under the framework, complaints about breaches of these Codes are investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/NL/3758) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of North Lanarkshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 13 October 2022.

The complaint concerned a tweet posted by the Respondent on 20 May 2022, in which he stated that the Complainer, another councillor, was "spouting lies".

In his report, the Acting ESC advised that:

1. Although the Respondent contended that he was not acting in his capacity as a councillor when posting the tweet, he had referred to himself as a councillor in both his Twitter name and profile. The Acting ESC therefore concluded that the Respondent could objectively be perceived as acting as a councillor at the time he posted the tweet and, as such, the Code applied.
2. The Respondent had called into question the integrity of the Complainer by suggesting he was telling lies. The Acting ESC considered that given the importance of integrity to a politician's reputation, the tweet was disrespectful and discourteous in nature. The Acting ESC concluded that the Respondent's conduct in posting the tweet amounted, on the face of it, to a breach of paragraph 3.1 of the Code.
3. The tweet related to a matter of public interest, namely claims the Complainer had made in respect of the political composition of another council. As such, the Acting ESC was of the view that the Respondent would be entitled to the enhanced protection to freedom of expression afforded to politicians under Article 10 of the European Convention on Human Rights (ECHR) when commenting on matters of public interest. The Acting ESC considered that the Respondent's conduct was not so bad or shocking as to justify the restriction on his enhanced protection to freedom of expression that a finding of a breach of the Code would entail.

As such, the Acting ESC recommended that the Respondent's conduct could not be found to amount to a breach of 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 respect 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, the Standards Commission noted that, on the face of it, there was evidence of such a breach of the Code.

The Standards Commission further 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 amounted, 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. The Standards Commission nevertheless noted that it would be obliged, at a Hearing, to consider the Respondent's right to freedom of expression under Article 10 of the ECHR.

The Standards Commission agreed with the Acting ESC that even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that he would enjoy the enhanced protection to freedom of expression afforded by Article 10, given the tweet concerned a matter of public interest, namely claims the Complainer had made in respect of the political composition of another council. The Standards Commission noted that the Respondent had not proffered any direct view on the Complainer's integrity, which could be perceived as being a personal insult. Instead, he had expressed a value judgement or view about the accuracy of the Complainer's claims (and whether these had been made in good faith). The Standards Commission considered that, in the circumstances, it was very unlikely that the content of the tweet would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression.

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 nature of the potential breach and the likelihood of the Respondent's conduct being protected by his enhanced right to freedom of expression, 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.

The Standards Commission nevertheless wishes to emphasise that the requirement for councillors to behave in a respectful and courteous manner towards colleagues is a fundamental requirement of the Code, as it ensures public confidence in the role of an elected member and the council itself is not undermined. This requirement applies in all situations a councillor may find themselves in while acting in that capacity, including when posting on social media.

Date: 18 October 2022



**Lorna Johnston
Executive Director**