

## **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/R/3598) concerning alleged contraventions of the Councillors' Code of Conduct dated July 2018 (the Code), being the version of the Code in place at the time of the events in question by three elected members of Renfrewshire Council (the Respondents), the Acting ESC referred a report to the Standards Commission on 2 November 2022.

The complaint concerned comments made by the Respondents at three Council meetings on 13 May, 26 May and 24 June 2021. The Complainer, a company providing bus services in the local area, alleged that the Respondents' comments were false, misleading and designed to damage the Complainer's reputation.

In his report, the Acting ESC investigated whether the Respondents' conduct would amount to a contravention of the respect and courtesy provisions in the Code.

The Acting ESC advised that:

1. While two of the respondents were no longer councillors, there was no dispute that all three were attending the meetings in question as councillors at the time of the events in question. As such, the Code applied.
2. He had found the Respondents made the statements attributed to them. The comments were recorded in the minutes of the meetings in question and could be viewed on the Council's publicly available webcasts.
3. While lying or knowingly misleading people at meetings could be potentially disrespectful or discourteous, his view was that the Respondents were merely stating opinions. The Acting ESC noted that while the Complainer disagreed with the Respondents' views on its services, that did not in itself mean their comments were false or misleading.
4. He had found the Respondents provided reasons for their views. The Acting ESC noted that although some of the Respondents' comments were robust in nature, they were entitled to scrutinise and criticise the Complainer's actions.

The Acting ESC advised, therefore, that he did not consider that the Respondents' conduct was disrespectful or discourteous and, therefore, did not amount to a breach of the Code. The Acting ESC noted, in any event, the Respondents would be entitled to enhanced protection of freedom of expression, under Article 10 of the European Convention on Human Rights (ECHR) as their comments had been made in a political context and

concerned matters of public interest. The Acting ESC noted that, in a political context, comments that may otherwise be considered excessive can be tolerated.

### **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 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, there was no 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 Respondents' 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 Respondents' 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. The Standards Commission noted that the comments made by the Respondent concerned a company's services and were not directed at any specific individual or individuals.

The Standards Commission agreed with the Acting ESC that the fact the Complainer disagreed with the Respondents' comments did not, in itself, mean that they were false or misleading. The Standards Commission considered, in any event, that even if it was established that the Respondents' comments had no basis in fact and were inaccurate, this would not necessarily render them discourteous or disrespectful. The Standards Commission noted that a statement, or even the expression of an opinion, about the quality of a service could be disrespectful and / or discourteous if there was evidence that the individual making or expressing the opinion had done so in bad faith, and in the knowledge that what they were saying was entirely false. In this case, however, the Standards Commission was satisfied that it was evident that the comments were value judgements or opinions. The Standards Commission noted that the Acting ESC had not identified any evidence that would suggest the comments were made in bad faith.

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.

The Standards Commission noted that even if the Respondents' conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that they would enjoy the enhanced protection to freedom of expression afforded by Article 10, given their comments concerned a matter of public interest (being local bus services). The Standards Commission noted that the courts have found that comments made in a political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

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.

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.

**Date: 7 November 2022**



**Lorna Johnston  
Executive Director**