

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 received on 15 July 2022 (reference LA/R/3781) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by two elected members of Renfrewshire Council (the Respondents), the ESC referred a report to the Standards Commission on 25 April 2023.

The complaint concerns allegations that the Respondents had breached the Code by using "bullying and offensive language", during a council meeting on 30 June 2022 at which a motion regarding the Council's position on Scottish independence was being debated.

In his report, the ESC advised that he had considered the Respondents' conduct against paragraph 3.1 of the Code, which states:

I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

The ESC further advised that:

1. Both Respondents were participating in the council meeting in question in their capacity as elected members and, therefore, there was no dispute that the Code applied.
2. Having reviewed a recording of the meeting, he had found that the first Respondent had made comment to another councillor that included stating that:
"successive Tory and Labour governments are more than happy to put money into nuclear weapons and have the ability to commit genocide you want to kill people, you don't want to feed people and that's the difference and that is what I want to change".
And that, as a new elected member, the other councillor had:
"maybe not been privy to what has previously been said in the Chamber, so let me recap on that, we've spoke about the austerity measures, this amounts to no more than the murder of the people you are here to look after... people have died because of your austerity measures..."
And that the austerity measures amounted:
"to no more than the murder of the people you're here to look after. You're as bad as a murderer."
3. He recognised that while the first Respondent had made a connection between political policies and the deaths of citizens (which might be categorised as hyperbole), he had not attacked any other individual councillor. The ESC nevertheless advised that he considered the remark that opposing parties could commit genocide and kill people, if made without basis, could potentially be considered disrespectful.

The ESC concluded, therefore, that the first Respondent A's remarks amounted to a breach of paragraph 3.1 of the Code, "albeit any breach in the context of this complaint is a low-level breach".

4. The second Respondent had noted some meeting attendees had taken issue with the first Respondent's comments. In response, the second Respondent had stated:
"The policies which the Conservatives are implementing do kill people. They do, they kill the poorest in Society. That's fact."
5. He considered that the association of a political party with the deaths of those living in poverty during a debate on Scottish independence could, on its face, be disrespectful. As such, the ESC concluded that the second Respondent's contribution at the meeting also amounted to a breach paragraph 3.1 of the Code.
6. He considered, however, that both Respondents, as politicians commenting on issues of potential concern (being the Council's position on Scottish independence) during a political debate, 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). The ESC advised that as he considered the Respondents were expressing opinions about the policies of the political parties, and as their comments were not personal in nature, a restriction on the right to freedom of expression enjoyed by the Respondents (that a finding, at a Hearing, of a breach of the Code and imposition of a sanction would entail), could not be justified.

Reasons for Decision

Having considered the terms of the ESC's report, and having noted there did not appear to be any dispute as to the factual basis of the complaint, the Standards Commission did not consider that it was necessary or appropriate to direct that further investigation be undertaken.

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 considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that the Respondents' conduct could amount, on the face of it, to a breach of the provision in the Code that requires councillors to behave with courtesy and respect.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, particularly 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. The Standards Commission noted, however, 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.

In this case, 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 that the comments appeared to have been made in a political context and concerned matters of public interest (being the Council's position on Scottish independence).

The Standards Commission noted that the Courts have held that, in a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated. The Courts have further held that comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some reasonable (even if incorrect) factual basis.

In this case, the Standards Commission was of the view that the Respondents' remarks about the effect or potential effects of other party's policies amounted to value judgements. Given the amount of media coverage on both topics, the Standards Commission understands that both the imposition of austerity measures and expenditure on nuclear weapons are matters that provoke a great deal of public debate, with many individuals having strong feelings on both subjects. In that context, the Standards Commission considered that it was likely that the Respondents had expressed their opinions and value judgements in good faith, regardless of whether or not their views had any basis in fact.

In addition, the Standards Commission was satisfied that it was apparent the remarks were directed towards the policies of another party and not any individuals or groups of individuals. While the Standards Commission accepted that the first Respondent's remark that "you're as bad as a murderer" could be perceived, when taken out of context, as more of personal statement directed towards the new councillor, it considered it was evident that it was intended as part of the overall point being made about the impact of the policies and any support the other councillor may have had for these. In that context, the Standards Commission was of the view that the comments were not sufficiently gratuitous or offensive as to be likely to justify a restriction on the Respondents' enhanced right to freedom of expression. As such, the Standards Commission concluded that it was unlikely that a finding of breach could be made at a Hearing.

Having taken into account the above factors, 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 emphasises that the requirement for councillors to behave in a respectful and courteous manner towards everyone, including their political opponents, 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. The Standards Commission reiterates that councillors should be able to make political points or arguments about policy in a respectful, courteous and appropriate manner without being offensive, abusive or unduly disruptive.

Date: 27 April 2023



**Lorna Johnston
Executive Director**