

## **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/E/3158) concerning alleged contraventions of the Councillors' Code of Conduct dated December 2010 (the Code) by a former City of Edinburgh councillor (the Respondent), the ESC referred a report to the Standards Commission, on 17 March 2023, in accordance with Section 14(2) of the 2000 Act.

The ESC advised that the complaint about the Respondent's conduct, which was alleged to have occurred on several occasions between April 2016 and February 2018, had been received by his office in November 2019. However, as the Respondent was charged by Police Scotland, on 17 June 2020, in relation to some of the conduct that formed part of the complaint, the case was initially suspended and then closed, pending the outcome of the criminal proceedings. The ESC advised that the investigation had been re-opened after the Respondent was convicted of various matters on 24 August 2022 and was placed on the Sex Offenders' Register.

Having been directed by the Standards Commission to undertake further investigation into the capacity in which the councillor was acting, at the time of the events in question, in order to determine whether the Code applied, the ESC provided a further report (in the form of a letter) to the Standards Commission on 12 May 2023.

The ESC reported that, following investigation, he found that following issues of the complaint had been proved, being that:

1. In April 2016, in a taxi home after an event for members of a political party, the Respondent engaged in sexually motivated conduct towards Ms A (who worked for a MSP of the same party and was also a fellow member of its city association) by forcibly kissing and inserting his tongue in her mouth without her consent.
2. In October 2017, at a property in Glasgow, the Respondent engaged in sexually motivated conduct by forcibly attempting to get into bed with a colleague, Councillor C, without her consent.
3. Between December 2017 and 13 February 2018, while subject of an internal political party process, in relation to his conduct towards Councillor C, the Respondent inappropriately exchanged text messages with Councillor C, and contacted her by telephone and left her a voicemail.

4. In February 2018, at a hotel in Edinburgh, during a meeting with party colleagues, as part of an internal party-political process, the Respondent lifted or punched a table, punched furniture outside the hotel, and punched a wall outside the hotel on more than one occasion.
5. On or around 15 February 2018, following his suspension from the political party, the Respondent inappropriately attended Ms A's place of work.

The ESC advised that he considered the Respondent had breached the respect provision in the 2010 version of the Councillors' Code, which was in place at the time the events outlined above had occurred. The ESC advised that he considered the Code applied to the Respondent in respect of the allegations listed above because the Respondent was identifiable as a councillor and / or because the Respondent could be reasonably perceived to be a councillor at the time of the events in question.

The ESC advised that he had also considered an allegation that:

6. In October 2017, the Respondent punched a party colleague, being a Parliamentary Assistant, during a taxi journey to a party conference in Glasgow. The ESC advised, however, that he had found that "there was a lack of evidence to conclude the Respondent was readily identifiable as a councillor at the material time". The ESC had concluded, therefore, that the Code did not apply to the Respondent in respect of that particular allegation.

### **Decision and Reasons for Decision**

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>.

**The Standards Commission wishes to emphasise that a decision on whether to hold a Hearing is not a decision on the merits of the complaint or the seriousness of the Respondent's alleged conduct and its impact on others. The Standards Commission considers, however, that it is neither proportionate nor in the public interest to hold a Hearing in circumstances where a breach of the applicable Code cannot be found at the Hearing, because it did not apply to the Respondent at the time of the events that are the subject of the complaint.**

The Standards Commission noted the 2010 version of the Code, in place at the time, stated that it applied in all situations where an individual was acting as a councillor, which included when they were representing the Council on official business. The 2018 version of the Code stated that it applied in all situations where an individual was "*acting as a councillor or could be perceived as acting as a councillor*, including representing the Council on official business and when using social media".

The Standards Commission's Guidance on the 2010 version of the Code stated that it was important to note that the rules of good conduct set out in Section 3 of the Code, which included the requirement to treat all colleagues, council employees and members of the public with respect, must be observed in all situations where councillors *were acting as councillors*, including representing the council on official business.

The Standards Commission's Guidance on the 2018 version of the Code noted that councillors should be mindful that their perception of when they were carrying out official business (when the Code would apply), and when they were acting privately may be different to how it was viewed by members of the public. Councillors were advised to "to treat the Code as being applicable in all situations in which you might be *perceived to be acting as a councillor*".

In this case, the Standards Commission accepted that the Respondent was known to be a councillor and, therefore, was identifiable as such. The Standards Commission further accepted that the Respondent could reasonably be perceived as being a councillor. **The Standards Commission did not consider, however, that the Respondent was acting as a councillor, or could reasonably be perceived as acting as a councillor, during any of the events outlined in bullet points 1, 2, and 6, for the reasons outlined below.**

In respect of the first issue (bullet point 1 above), the Standards Commission noted that the event was one that was open to all members of the political party, not just councillors. The Council's Monitoring Officer confirmed that the council itself would not have a role in receiving or circulating invitations to such an event, which was political in nature and outwith the remit of the work of the council. The Standards Commission noted, in any case, that the conduct that was the subject of the issue occurred after the event had ended. The Standards Commission did not consider, therefore, it was reasonable to conclude that the Respondent, when in a taxi after the event (the travel being a private and personal arrangement), was acting or could be reasonably perceived as acting in his then capacity as an elected member of the City of Edinburgh Council.

Turning to the second issue (bullet point 2), while the Standards Commission accepted that Councillor C may have met and known the Respondent through his role as an elected member, it noted that the Respondent's presence at a private property was a private and personal arrangement that followed his attendance at a party-political conference. Again, the Standards Commission noted that the event was open to all members of the political party, not just councillors. The Council's Monitoring Officer again confirmed that such an event was purely political was therefore outwith the formal remit of the council. The Standards Commission again noted, in any case, that the conduct that was the subject of the issue occurred in a private property after the event. The Standards Commission did not consider, therefore, that it was reasonable to conclude that the Respondent was attending the property in Glasgow in his role as a councillor or that, when there, he could be reasonably perceived as acting in his then capacity as an elected member of the City of Edinburgh Council.

The Standards Commission noted, in respect of issue six (bullet point 6), that the ESC had found there was a lack of evidence to conclude the Respondent was readily identifiable as a councillor at the material time. The Standards Commission disagreed, however, that this was the test to determine whether the Code applied (either at the time or now), as it took no account of the capacity in which the individual in question was acting. The Standards Commission noted that the conduct in question had occurred on the way to a party conference in Glasgow, being a private travel arrangement that had not been made by the council. The travel was not to, or from, a council event. The Standards Commission again noted that the event was open to all members of the political party, was purely political and outwith the remit of the council. The Standards Commission did not consider, therefore, it was reasonable to conclude that the Respondent was acting, or could be reasonably perceived as acting in his then capacity as an elected member of the City of Edinburgh Council during a taxi journey to the event.

As noted above, the Standards Commission would only be able to find a breach of the Code at a Hearing, if it was satisfied that the Code applied to the Respondent at the time of the events in question. As the Standards Commission determined that the Code would not apply to the conduct that is the subject of issues 1, 2 and 6, it follows that a breach of the Code cannot be found in relation to these matters. The Standards Commission concluded, therefore, that it was neither proportionate, nor in the public interest, for it to hold a Hearing on issues 1, 2 and 6 of the complaint.

The Standards Commission noted that the issues outlined under bullet points 3, 4 and 5 above concerned the Respondent's conduct during and as part of an internal political party process. The Standards Commission understood that the process was undertaken because the Respondent was a member of the party. The Standards Commission noted that there was there was no suggestion that the Respondent was undertaking council related duties or discussing council business during the process. The Standards Commission further noted that while the party could have expelled him during the process, it could not have prevented him from

continuing to be a councillor. The Standards Commission nevertheless accepted that the process was being undertaken, at least in part, to determine whether the Respondent could continue to be a member of, or represent, the political party (which would include in his then role as a councillor). The Standards Commission considered it was therefore arguable that the Respondent could be reasonably perceived as acting in the capacity of a councillor in respect of his behaviour during and as part of the internal political process.

In considering the public interest and proportionality, the Standards Commission noted that the Respondent's alleged conduct in respect of issues 3, 4 and 5 could have caused fear, alarm or upset to Councillor C, his party colleagues and Ms A. The Standards Commission considered that the public are entitled to trust that those in public life will be meeting the highest standards of ethical behaviour and are entitled to expect that where it appears that a councillor may have contravened the Code, their behaviour will be scrutinised at 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 was not wholly satisfied that the Code would apply to the Respondent in respect of issues 3, 4 and 5. The Standards Commission further noted that the events that were the subject of issues 3, 4 and 5 occurred in late 2017 and early 2018, being more than five years ago and that the Respondent was no longer a councillor, having not stood for re-election in 2022.

Having taken into account the above factors, and the fact that criminal proceedings about the sexually motivated aspects of the Respondent's behaviour had already been taken, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing on issues 3, 4 and 5 of the complaint. The Standards Commission determined, therefore, to take no action on any aspect of the referral.

The Standards Commission noted that it had written to the Minister for Social Security and Local Government in June 2021 suggesting that the provisions in the Local Government (Scotland) Act 1973, which outline the circumstances in which an individual is automatically disqualified from being a councillor, be amended to include any individual who is the subject of the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the sex offenders register') or a Sexual Risk Order. It is understood that the Scottish Government will be opening a consultation on proposed changes to the automatic disqualification provisions in the 1973 Act in the near future.

**Date: 19 May 2023**



**Lorna Johnston  
Executive Director**