

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: (1) to direct the ESC to carry out further investigations; (2) to hold a hearing; or (3) 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 in Scotland are required to comply with a Code of Conduct (the Code). 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 30 June 2022 (reference LA/E/3775) concerning an alleged contravention of the 2021 version of the Code by an elected member of City of Edinburgh Council (the Respondent), the ESC referred a report to the Standards Commission on 17 July 2023.

The complaint concerned a tweet posted by the Respondent on 26 June 2022, in which he stated *“Annoying Sunday 740am wake up call for local people today. Thank you to @LidlGB #twats for being a pain in the ass. Alarm goes off regularly and nothing done about it”*.

In his investigation report, the ESC advised that:

1. It was not in dispute that the Respondent posted the tweet in question. It was also not in dispute that the Respondent did so from an account where he referred to himself as a councillor in the Twitter handle. The ESC concluded, therefore, that the Code applied to the Respondent when he posted the tweet.
2. The Respondent confirmed that he identified the particular store on Twitter when requested to do so by Lidl. The ESC noted that the term ‘twats’ was usually used to describe people, “rather than a situation or inanimate object”. The ESC advised that, by identifying the particular store, “it could be inferred” that the Respondent was referring to the staff at that store. The ESC further advised that he considered the comments in the tweet to be “personal in nature” and derogatory, as the terms ‘twat’ and ‘pain in the ass’ were both “vulgar and commonly understood to be offensive”. The ESC concluded that the Respondent’s conduct, in posting the tweet was, on the face of it, disrespectful.
3. He nevertheless considered that the comments were not sufficiently egregious as to justify a restriction on the Respondent’s right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR).

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 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 considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that the Respondent's 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 was not satisfied, however, that the Respondent's comments, on the face of it, would be sufficiently disrespectful as to meet the threshold for amounting to a breach of the Code. This was because while the Standards Commission accepted that the terms used by the Respondent were somewhat vulgar, it did not agree with the ESC that they were personal in nature or that they had been made in a way that resulted in any members of staff being reasonably identifiable. Instead, the Standards Commission considered the terms were directed at a company, as an entity.

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 Respondent's 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 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 that the tweet concerned a matter of public concern (being the impact of the testing of an alarm on local residents). The Standards Commission was of the view that it was very unlikely that the Respondent's comments, in the tweet in question, would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on his right to freedom of expression.

The Standards Commission also noted that the Respondent had deleted the tweet after Lidl apologised for and adjusted the timing of the alarm tests. 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, both in person and while using social media, 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: 19 July 2023



**Lorna Johnston
Executive Director**