

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 7 January 2023 (reference LA/EL/3839) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of East Lothian Council (the Respondent), the ESC referred a report to the Standards Commission on 15 September 2023.

The complaint alleged that the Respondent had shouted at the Complainer during a telephone conversation.

In his investigation report, the ESC advised that:

1. the Complainer alleged that the Respondent had, during a telephone conversation in September 2022:
 - a. shouted at him;
 - b. referred to 'angry' emails the Complainer was sending him; and
 - c. said he would not meet with the Complainer again.
2. the Respondent accepted that he may have raised his voice in order to be heard over outside noise, to emphasise he could do no more to support the Complainer and to voice his concern about the Complainer's threatening tone and language, but contended that he had not done so in an aggressive or threatening manner.
3. no further evidence was available to substantiate what took place during the telephone call.

Having considered the evidence gathered and available, the ESC was unable to conclude, on the balance of probabilities, that the Respondent had shouted at the Complainer during the call. As such, the ESC advised that the facts of the complaint could not be proven.

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 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, however, the Standards Commission was not satisfied that there was, or would be, sufficient evidence to support a finding, on the balance of probabilities, that the Code had been breached.

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. 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 ESC, in his report, had reached the conclusion that there was insufficient evidence to be able to find the factual basis of the complaint to be proven. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. While the Standards Commission noted that holding a Hearing would offer the opportunity to question the parties involved under oath or affirmation, it considered it was unlikely they would change their positions and / or that further substantive evidence would be led which would allow it to conclude, on balance, that a breach of the Code had occurred. This was particularly the case given the ESC had found there had been no independent witnesses to the call, and no recording or contemporaneous note of it had been made.

The Standards Commission further noted that the Code did not require councillors to meet members of the public more than once. As such, any statement that the Respondent made to the effect that he would not meet the Complainer again would not amount to a breach of the Code. The Standards Commission further noted that it was a matter of opinion as to whether the Respondent considered any emails sent by the Complainer to be 'angry' in tone and that any reference to this opinion in the call would again not amount to a breach of the Code.

Having taken into account the above factors, 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.

Date: 18 September 2023



**Lorna Johnston
Executive Director**