

## **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 16 November 2022 (reference LA/An/3822) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Angus Council (the Respondent), the ESC referred a report to the Standards Commission on 1 December 2023.

The complaint concerned the Respondent's conduct at a meeting of Angus Council on 3 November 2022.

In his investigation report, the ESC advised that:

- At the meeting, the Respondent put forward a motion to reinstate the title of 'Baillie' for Angus. An amendment was put forward to disregard the motion, with the vote supporting the amendment. Having reviewed a video of the meeting, the ESC stated he had found that the Respondent reacted to the failure of his motion by stating, in front of all attendees, that he would no longer refer to the chair as 'Provost' until he started "to act like one". The Respondent stated that he was leaving the room in protest at "the disgraceful pettiness of the SNP and the two stooges they have got".
- Taking into account the personal and public nature of both comments made by the Respondent, the ESC concluded that they could reasonably be interpreted as disrespectful and discourteous. The ESC concluded that, on the face of it, the Respondent had breached the Code.
- The Respondent's comments to the Chair were not, however, especially gratuitous, personal or threatening in nature, as to justify an interference on his right to freedom of expression under Article 10 of the European Convention on Human Rights, in order to protect the rights and reputation of the Provost (or for any other reason). The ESC indicated, therefore, that he was not satisfied that a formal breach of the Code could be found.

### **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>.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code and, therefore, there could 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 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 noted, however, 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 his comments were made during an exchange about political matters. The Standards Commission noted that the Courts have held that "in a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemic, colourful, emotive, non-rational and aggressive language, that would not be acceptable outside that context, is tolerated".

The Standards Commission considered that while the comments were directed at the Chair as an individual, it was evident from the context in which they were made that the Respondent was expressing unhappiness that his motion had been rejected (and the behaviour of members of another political party in opposing it), rather than making a particularly personal remark. The Standards Commission agreed with the ESC that it was very unlikely that the Respondent's comments would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on his right to freedom of expression.

In the circumstances, and 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.

**Date: 12 December 2023**



**Lorna Johnston  
Executive Director**