

## **Decision of the Standards Commission for Scotland**

On receipt of a referral 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.

### **Referral to the Standards Commission**

Following his investigation into complaints received on 13, 14 and 20 March 2023 (reference LA/E/3865) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of City of Edinburgh Council (the Respondent), the ESC referred the matter to the Standards Commission on 11 December 2023.

The complaints alleged that the Respondent, in a series of tweets posted on 12 March 2023, was disrespectful to those attending an event at a local library called 'School and Gender Identity', by encouraging people to attend a protest against it.

The ESC reported that:

- He had found that the Respondent had been critical of the event in her tweets and, in particular, the impact she considered it would have on young trans individuals. The Respondent stated that the event would stir up "moral panic about trans children" by "spreading misinformation and fear".
- The ESC found, however, that the Respondent's tweets had not been personal in nature, offensive or intimidating and, instead, had been professional and respectful in tone. While the ESC accepted that those attending the event may have found the protest intimidating, he considered that this did not mean the Respondent's actions in promoting it amounted to a breach of the Code.
- Paragraph 3.2 of the Code requires councillors to foster good relations between different people. The ESC noted, however, that this did not prevent councillors from taking sides in a political debate or from promoting a legitimate protest. The ESC noted that the Respondent was entitled to publicise her views on matters of public interest online, even if others disagreed with her.

Having considered the various factors of the complaint and the evidence gathered, the ESC did not consider that the Respondent had been disrespectful to or had bullied, harassed or discriminated against those who attended the event. As such, the ESC recommended that the Respondent's conduct did not amount to a breach of the Code. The ESC noted, in any event, that as the Respondent's tweets were not gratuitously offensive or shocking, a restriction on her right to freedom of expression, under Article 10 of the European Convention of Human Rights, would not be justified.

### **Reasons for Decision**

Having considered the terms of his referral, 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 of the view that, on the face of it, there was no evidence of any such breach of the Code.

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 referral, had reached the conclusion that the Respondent's conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

The Standards Commission noted that there is nothing in the Code to prevent councillors from promoting or attending a peaceful protest. While paragraph 3.2 of the Code requires councillors to foster good relations between different people, this does prevent them from expressing views or taking sides in a political debate, provided they do so in manner that is compatible with the Code. In this case, the Standards Commission agreed with the ESC that the Respondent's tweets were not personal or abusive in nature, and that she was entitled to express her views on the potential effect of the event. The fact that others may disagree with her did not mean the Respondent's tweets were inherently disrespectful.

In the circumstances, and having taken into account the above factors, and in particular the fact that it is not satisfied, on the face of it, that the conduct as established could amount to a breach of the Code, 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: 15 December 2023**



**Lorna Johnston  
Executive Director**