

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 a complaint received on 30 August 2022 (reference LA/AC/3794) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Aberdeen City Council (the Respondent), the ESC referred the matter to the Standards Commission on 27 February 2024.

The complaint concerned allegations that the Respondent, a former Lord Provost was disrespectful:

1. to the Complainer, the current Lord Provost, by purporting to still hold that position on four separate occasions, and in an email sent in August 2022;
2. both to the Complainer and council officers by failing to follow council protocol when organising an official portrait; and
3. to the council leadership by drawing comparisons between it and the Nazis during a council budget meeting.

The ESC reported that:

- In respect of the first issue, he had determined that the evidence found did not support the Complainer's allegation in respect of the first incident / occasion. He had further determined that the evidence demonstrated that the second, third and fourth incidents arose as a result of inadvertent mistakes or misunderstandings, and not as a result of any deliberate acts on the part of the Respondent.
- He had found that in his email of August 2022, the Respondent had made a comment that made it clear he was unhappy with a decision made by the Complainer and intended to criticise both him and the council's administration during an overseas trip. The ESC noted, however, that the Respondent was entitled to criticise the Complainer, the administration and any decisions they made. The ESC advised, therefore, that he had not found any breach of the respect, or bullying and harassment provisions in the Code in respect of the first issue.
- Having reviewed the Respondent's emails with the council officer regarding the official portrait, he had not found any evidence that the Respondent had deviated from council protocol or taken advantage of his position in any way. The ESC had not, therefore found any breach of the Code.
- Having reviewed the webcast of the council's budget meeting on 1 March 2023, he had found that the Respondent made several references to Nazis while commenting on the administration's proposed budget, including referencing Adolf Hitler and the concept of "night and fog". The ESC advised that he had found the Respondent's comments to be an attempt, at least in part, to associate rival political parties and their budget with the Nazis and how they treated political opponents. The ESC advised that he considered such comparisons to be objectively disrespectful and offensive and recommended, therefore

that the Respondent's conduct in making the comments amounted, on the face of it, to a breach of the Code.

- He had nevertheless considered the Respondent's enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC advised that he considered that the Respondent's comments were analogous to political caricature and had been employed to convey his criticism of the administration's budget. The ESC noted that while references to the Nazis could cause upset, the Respondent was entitled to express his criticisms and views of the budget as an elected member. The ESC was further of the view that it was evident the Respondent was only using these terms to explain concepts associated with sleight of hand, rather than stating them to imply anyone was a Nazi or held their beliefs. For those reasons, the ESC did not consider the Respondent's conduct to be so egregious that a restriction of his right to freedom of expression under Article 10, that a formal finding of a breach of the Code would entail, could 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. While the Standards Commission noted that the ESC had found no evidence of any such breach in respect of two of the issues of complaint, it further noted that the ESC had, on the face of it, recommended that a breach of the Code had occurred in relation to the third issue of complaint.

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 had not found evidence to support the allegation of a breach of the Code in respect of the first two issues of complaint. Having reviewed the ESC's factual findings and reasoning, the Standards Commission found no reason to depart from his conclusions.

Turning to issue three, the Standards Commission noted the Courts have held that there is little scope under Article 10 for restrictions on political speech or on debate on questions of public interest. In a political context, a degree of the immoderate, offensive, colourful and emotive, that would not be acceptable outside that context, is tolerated.

In this case, the Standards Commission agreed with the ESC, for the reasons he provided, that it was very unlikely that the conduct in question would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression. In particular, the Standards Commission noted that it was clear the references employed by the Respondent were intended to convey his criticism of the administration's budget proposals and process, and were not personal comments aimed at any of his fellow elected members.

Having taken into account:

- the lack of evidence to support the allegations in respect of the first two issues of complaint; and
- the nature of the potential breach in respect of the third issue and the likelihood of the Respondent's conduct being protected by his enhanced right to freedom of expression,

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 wishes to emphasise that the requirement for councillors to behave in a respectful and courteous manner towards colleagues 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: 29 February 2024



**Lorna Johnston
Executive Director**