

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 26 October 2022 (reference LA/DG/3817) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by an elected member of Dumfries & Galloway Council (the Respondent), the ESC referred the matter to the Standards Commission on 11 April 2024.

The complaint concerned an allegation that the Respondent had bullied and harassed the Complainer, then a headteacher of a local authority school, between January 2020 and October 2021, as allegedly evidenced by:

- his 'confrontational, rude, aggressive and intimidatory' behaviour in two meetings at the school;
- by calling the Complainer on her personal mobile device to 'agitate' against decisions made by the Council's Director of Education; and
- by encouraging members of the public (parents) to complain about aspects of the school's service, when he did not agree with decisions made by the Complainer in respect of the school.

The ESC reported that:

1. Having interviewed the Complainer, the Respondent and two Council officers present at the meetings in question, he had not found any evidence to support the Complainer's contention that the Respondent's behaviour in those meetings amounted to bullying or harassment towards her.
2. The Complainer had not been able to provide any other witnesses or documentary evidence to support her allegation that the Respondent had called her to 'agitate' against the decisions made by the Director of Education. The ESC advised that the Respondent did not deny seeking to protect the allocation of learning support to the school, but noted that he was entitled to do so and that this, in itself, was not evidence that he was 'agitating against' decisions made by the Director of Education.
3. The Complainer had also not been able to provide any other witnesses or documentary evidence to support her allegation that the Respondent had encouraged members of the public to complain about the service the school was providing or decisions the Complainer had made. On the contrary, the ESC advised that he had found that, instead of the Respondent approaching parents, he had found that the Respondent was approached by a number of parents to advocate on their behalf and attend meetings with them.

Having considered the various factors of the complaint and the evidence gathered, the ESC concluded that as the facts of the Complainer's allegation had not been established, the Respondent did not breach the Code.

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 provisions of the Code regarding bullying and harassment 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 report, had been unable to find any evidence to substantiate the Complainer's allegations, and had therefore reached the conclusion that the Respondent's conduct did not amount to a breach of the Code. Having reviewed the extent and nature of the evidence before it, the Standards Commission found no reason to depart from that conclusion.

Having taken into account the above factors, and in particular the fact that it was not satisfied that there was evidence of any breach of the Code, 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: 15 April 2024



**Richard Wilson
Case Manager**