

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 9 May 2023 (reference LA/NL/3889) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of North Lanarkshire Council (the Respondent), the ESC referred the matter to the Standards Commission on 23 April 2024.

The complaint concerned an allegation that the Respondent left the Complainer (a council officer) a voicemail, in which he "intimidated" the Complainer and accused him of lying about whether he had completed work to cut a hedge on a specific road that the Respondent had, on behalf of constituents, asked him to undertake.

The ESC reported that:

- Having listened to a recording of the voicemail, he found that the Respondent was not instructing the Complainer to carry out the work. Instead, the Respondent was querying whether the request he had made, on behalf of a constituent, had been actioned. The ESC did not find, therefore, that the Respondent had become inappropriately involved in operational management by directing an officer to undertake a specific task.
- The ESC found, however, that by saying the Complainer had lied to him about work that had been carried out and by querying whether the Complainer was trying to "pull the wool" over his eyes, the Respondent was insinuating that the Complainer had not carried out the work he said he had, despite the Respondent not having checked for himself whether that was the case. The ESC was of the view that doing so was disrespectful and discourteous and, as such, the Respondent had, on the face of it, breached paragraphs 3.1 and 3.10 of the Code.
- He had, nevertheless, also 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 the Respondent was entitled to express his opinion on the matter, and that his comments were not particularly gratuitous and would not amount to an overtly personal attack. 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 undermine the relationship between councillors and officers that ensured the effective operation of the Council. It could also bring the role of a councillor into disrepute.

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 agreed with the ESC, for the reasons he provided, that it was 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. While the Standards Commission understood that the questioning of his integrity would have been upsetting for the Complainer, it noted that the accusation had been made in a private voicemail (rather than in a public forum). The Standards Commission further considered that, while the words he had used were inappropriate and unnecessary, it was evident from the context that the Respondent was questioning why it appeared the work had not been carried out, despite apparent assurances to the contrary, as opposed to it being a personal attack on the Complainer's character.

Having taken into account the nature of the potential breach in respect of the 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 officers is a fundamental requirement of the Code, as it helps allow good administration and ensures the council or office of a councillor is not brought into disrepute.

Date: 25 April 2024



**Lorna Johnston
Executive Director**