

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 12 December 2023 (reference NB/SLCC/4022) the ESC referred the matter to the Standards Commission on 1 May 2024.

The ESC advised that the complaint concerned an alleged contravention of the Scottish Legal Complaints Commission's Code of Conduct (the Code) by an unknown and unnamed number of its former members, who had formed one of its Determination Committees.

The ESC advised that the Complainer alleged that the Determination Committee had "threatened" him by advising him, in a letter, that they could not help him further, that he would need to refer the matter to the Court of Session, and that he could not "bring any more brain injury cases" to the Scottish Legal Complaints Commission (the SLCC).

The ESC reported that:

- The Complainer initially advised his office that the alleged conduct had happened in 2015, but later indicated that he could no longer remember when the alleged conduct occurred. The SLCC confirmed that it destroyed records of complaints after five years. While it had found that the Complainer had made complaints to it in 2009/10, 2010/11 and 2012/13, the case files for these had not been retained. The SLCC indicated that complaints could take up to 2 years to complete and, therefore, the latest the Determination Committee would have made their decision about any complaint submitted by the Complainer would have been in 2014/15.
- The versions of the Code that may have been in place at the time of the events in question only required members to treat their colleagues and employees with respect and courtesy. They did not contain any provisions that would require the Determination Committee to treat the Complainer, as a service user, in a specific way.

The ESC concluded, therefore, that members of the Determination Committee could not have breached the versions of the Code in place at the time "even if the conduct were proven".

The Standards Commission asked the ESC to clarify why the complaint was deemed admissible, in terms of the admissibility criteria outlined in his Investigations Manual, which include that:

- The complaint must be made within a year of the conduct or end of a course of conduct; and
- That the conduct or course of conduct complained of must, on its face, amount to a breach of an applicable provision of the relevant Code if it could be established that the conduct occurred.

The ESC advised that he had concluded it was appropriate to investigate the complaint, despite it being potentially aged, by way of a reasonable adjustment. The ESC further advised that as the allegation was that the former members had threatened the Complainer in a letter, he considered the complaint could, on its face, constitute disrespectful and discourteous conduct, dependant on the Code which was applicable at the time the alleged conduct occurred.

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 a Code regarding bullying and harassment or disrespect could have the potential to bring the role of a member and their public body 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 complaint was that unidentified SLCC Members allegedly advised the Complainer, as a service user, that they could not assist him with a matter outwith the organisation's remit. The Standards Commission did not consider doing so could be deemed to be threatening or disrespectful. The Standards Commission determined, therefore, that there was no evidence of a breach of the Code. It concluded that it was not proportionate for it to hold a Hearing, and the Standards Commission determined, therefore, to take no action on the referral.

Date: 9 May 2024



**Helen Donaldson
Standards Commission Member**