

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

### **Report to the Standards Commission**

Following an investigation into a complaint (reference LA/CES/3453) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor [REDACTED] of Comhairle Nan Eilean Siar, the Acting Commissioner for Ethical Standards in Public Life in Scotland (the ESC), referred a report to the Standards Commission for Scotland, on 29 June 2021, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The Acting ESC reported that while the complaint about Councillor [REDACTED] concerned five allegations, he had only found, at investigation, that there was sufficient evidence to establish, on the balance of probabilities, that one allegation could amount to a potential breach of the Code.

The Acting ESC reported that he had concluded that the Respondent had used disrespectful language while commenting about another councillor (Councillor A) in an email to a constituent of 10 August 2020. The Acting ESC advised that he considered that the comment amounted to a personal attack on Councillor A. The Acting ESC concluded that a personal attack of that nature amounted, in turn, to a breach of paragraph 3.2 of the Code that requires councillors to treat their colleagues with courtesy at all times when acting as a councillor (which would include when sending emails in that capacity to constituents). The Acting ESC reported that he was not satisfied that the enhanced protection afforded to politicians, under Article 10 of European Convention on Human Rights (ECHR) would apply in the circumstances and, as such, had reached the view that any interference with the Respondent's Article 10 rights that would occur, following a finding of a breach of the Code, was justified.

The Acting ESC reported that the Respondent had confirmed he had sent the email containing the comment 'in the heat of the moment'. The Acting ESC noted that the Respondent had advised that the remark had been made in a private email to the constituent and he had not intended it to be made public. The Acting ESC reported that the Respondent had explained that the constituent had inadvertently sent the email as an attachment to another councillor and that it had been passed subsequently to other councillors. The Acting ESC further reported that the Respondent had apologised timeously to Councillor A, and that Councillor A had accepted the apology in full.

### **Submissions made by the Respondent**

The Standards Commission noted that the Respondent had made submissions on the Acting ESC's report. In these, the Respondent reiterated that the comment about Councillor A had been made in a private email to a constituent that been incorporated, in error, by the constituent in a further email sent to someone at the Council. The Respondent advised that as soon as he became aware that the email had then been circulated to other councillors, he had immediately sent an unqualified apology to Councillor A, which he had "graciously accepted".

### **Decision**

On receipt of a report from the ESC, the Standards Commission has three options available, in terms of Section 16 of the 2000 Act. These are: (a) to direct the ESC to carry out further investigations; (b) hold a hearing; or (c) do neither.

The Standards Commission noted that the factual basis of the allegation was not in dispute. As such, 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 the 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 the potential impact or consequence of the breach was that offence was given (or potentially given) to another councillor. In addition, using offensive language and making a personal attack has the potential to lower the tone of political discourse and to bring both the role of a councillor and the council itself into disrepute. The Standards Commission further noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, if it was found that the Respondent's conduct was unacceptable and amounted to a breach. The Standards Commission noted, therefore, that there was some limited public interest in holding a Hearing. However, it considered that holding a Hearing may result in the wider circulation of the offensive comment which, in itself, may not be in the public interest.

Turning to the question of proportionality, the Standards Commission noted that the allegation before it concerned a single instance of the use of an offensive (albeit not egregious) word, in a private email which and was not meant to be made public. While the Standards Commission noted that circulation of the email would have caused offence and embarrassment, it noted that this had not been the Respondent's intent. The Standards Commission further noted that the Respondent had minimised the impact by proffering an immediate and full apology.

The Standards Commission noted that the option under the 2000 Act to take no action had been included to ensure that neither the ethical standards framework, nor the Standards Commission, was brought into disrepute by spending public funds on unnecessary administrative or legal processes in cases that did not warrant such action.

Having taken into account the nature of the potential breach, the genuine expression of contrition by the Respondent and the generous acceptance of the apology by Councillor A, 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 agreed that the Respondent should be reminded of the importance of adhering to the respect provision in the Code, in order to ensure public confidence in the role of a councillor and the council itself is maintained.

**Date: 2 July 2021**



**Lorna Johnston  
Executive Director**