

Decision of the Standards Commission for Scotland

Background

The Standards Commission for Scotland (Standards Commission) is a statutory body established under The Ethical Standards in Public Life etc. (Scotland) Act 2000 (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. It provides that complaints about breaches of these Codes are to be investigated by the Commissioner for Ethical Standards in Public Life in Scotland and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/Mo/3469) concerning an alleged contravention of the Councillors' Code of Conduct (Code) by Councillor [REDACTED] of Moray Council (Respondent), the Acting Commissioner for Ethical Standards in Public Life in Scotland (Acting ESC), referred a report to the Standards Commission, on 30 June 2021, in accordance with section 14(2) of the 2000 Act.

In his report, the Acting ESC found upon investigation that there was sufficient evidence to establish, on the balance of probabilities, that the Respondent had contravened Section 3.7 of the Code, which states:

Conduct at Meetings

You must respect the Chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

In his report, the Acting ESC concluded that the Respondent had made a disrespectful, inappropriate and gender-based comment, directed at another councillor (councillor X), during an online meeting of Moray Council's Education, Communities and Organisational Development Committee on 18 November 2020 (Committee Meeting). The comment was as follows:

"Just to say to councillor X the Fitlife card for Christmas is a very good gift for his wife, and possibly a lot better than the iron and ironing board combination he got her last year."

In reaching this conclusion, the Acting ESC advised the following:

1. the Respondent's comment caused a councillor present at the Committee Meeting to voice their concern that the comment was inappropriate and gender-based;
2. the comment caused the Council Leader to request, at a later date, that the Respondent apologise for his conduct, which he failed to do;
3. as the comment was of a personal nature, rather than addressing a matter of public interest, 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 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;
4. the comment had no factual basis;

5. the Respondent was in agreement that his comment was inappropriate; and
6. the comment, coming as it did during a Committee Meeting being broadcast live for public viewing, did not appropriately represent Moray Council or meet the high standards that the public expect of councillors. Even though no formal complaints were made by members of the public, the Respondent's comment could diminish the public's opinion of, and trust and confidence in, its elected representatives.

The Acting ESC advised that he had reached this conclusion, despite the fact that the Respondent's comment was made in the context of an exchange between councillors who had become friendly and familiar with one another. Furthermore, the context of a "virtual meeting", can on occasion provide the feeling of a more relaxed and informal environment than that experienced "in person".

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 contested the conclusion that his comment was gender-based, instead stating that it was intended to be a joke regarding his colleague's unwillingness to part with his cash.

The Respondent expressed regret for any offence caused and indicated that, with hindsight, he accepted his comment was perhaps unfortunate and ill-judged. The Respondent nevertheless disputed the Acting ESC's conclusion that the comment amounted to a breach of the Code.

Decision of the Standards Commission

On receipt of a report from the Acting ESC, the Standards Commission has three options available, in terms of Section 16 of the 2000 Act. These are: (a) to direct the Acting 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 - that the comment as ascribed to the Respondent had been made by him at the Committee Meeting - was not in dispute. As such, the Standards Commission did not consider that it was necessary or appropriate to direct the Acting 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 alleged breach was that Respondent's comment, given its potentially gender-based nature, could cause offence to not only those taking part in the Committee Meeting, but also any members of the public who may have been viewing the public broadcast of the Committee Meeting. Indeed, the making of an informal comment of that nature, even if no offence was intended, in the setting of a Council's committee meeting 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 comment amounted to a breach of the Code. The Standards Commission noted, therefore, that there was some limited public interest in holding a Hearing. However, the Standards Commission noted that holding a Hearing may result in the wider circulation of the comment which, in itself, may not be in the public interest.

It further noted that while the Respondent did not accept his conduct could potentially amount to a breach of the Code and had not apologised when asked to do so at the meeting, he had nonetheless accepted that

it was inappropriate and ill-judged, thus limiting the need for a Hearing where consideration of the appropriateness or otherwise of the comment may have been discussed.

Turning to the question of proportionality, the Standards Commission noted that while the allegation before it concerned the making of a comment that potentially could be seen as sexist or as having sexist overtones, it was not abusive or egregious in nature, and had not been delivered in an aggressive manner.

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, on balance, warrant such action.

Having taken into account the nature of the potential breach, 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.

It should be noted that this means no decision has been taken or is to be taken on whether the Respondent's conduct amounted to a breach of the Code. The Standards Commission nevertheless wishes to emphasise that the question of whether an individual is being respectful is not necessarily one of intention but, instead, is one of perception.

The Respondent, in his representations, stated that he did not *intend* his comment to come across as sexist or gender-based. The Standards Commission notes that, regardless of his intention, the Respondent should have considered how his comment was likely to be perceived.

While it was the Respondent's position that his comment was directed at councillor X, a fellow councillor with whom the Respondent has developed a close working relationship, resulting in a friendship, it must be borne in mind that the comment was made during a public meeting. A member of the public watching the webcast, either live or after the event, would not necessarily be aware of the friendship between councillor X and the Respondent. Without this knowledge, such a comment might not be perceived as a joke.

In order to comply with the respect provisions in the Code and maintain confidence in the role of a councillor and the Council itself, the Standards Commission considers that the Respondent should have been mindful of the potential impact of his throwaway comment. This is especially the case given it was made at a public meeting and that the ambiguity of the comment gave rise to the possibility that it could be interpreted as promoting a certain gender stereotype. Stereotypes surrounding gender often appear in jocular discourse, or to use the popular term, "banter" and regardless of intent can cause offence or lead to others feeling belittled.

The Standards Commission is of the view that, those in public life, including councillors, should lead by example and be aware of the potential impact of their conduct on others. Councillors should be mindful that what may seem harmless to them could be offensive to someone else and should consider whether such banter has any place in a public meeting where decisions that involve public money or council services are being discussed.

The Respondent's suggestion that the Committee Meeting had an informality about it which perhaps invited jokes is understandable; the Acting ESC acknowledged in his report that virtual meetings may indeed create a more relaxed environment. The Standards Commission wishes to reiterate, however, that no matter the format of a meeting – whether in person, or online – or how informal or otherwise that meeting is, councillors are expected and indeed obliged to abide by the Code.

The Standards Commission agreed that the Respondent should be reminded of the importance of adhering to the respect provisions in the Code, in all settings, in order to ensure public confidence in the role of a councillor and the council itself is maintained.

Date: 7 July 2021



Lorna Johnston
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