

## 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 Ethical Standards Commissioner and adjudicated upon by the Standards Commission.

### Report to the Standards Commission

Following his investigation into a complaint (reference LA/E/3504) concerning an alleged contravention of the Councillors' Code of Conduct (Code) by Councillor [REDACTED] of Edinburgh City Council (Respondent), the Acting Ethical Standards Commissioner (Acting ESC), referred a report to the Standards Commission, on 21 September 2021, in accordance with Section 14(2) of the 2000 Act.

The complaint related to a tweet by the Respondent, dated 19 March 2021. The tweet referred to an STV News article (which was re-tweeted by the Respondent) reporting on an incident concerning a cyclist being seriously hurt when their bike hit a wire tied to fences across a path in Edinburgh. The re-tweeted article also referred to a previous similar incident where a wire had been tied across a cycle path. The Respondent, in his tweet, mentioned the Council's "Spaces for People" project.

In his report, the Acting ESC investigated whether the Respondent's conduct, by posting the tweet in question, would amount to a contravention of Paragraph 3.2 of the Code.

Paragraph 3.2 of the Code states:

#### ***Relationships with other councillors and members of the public***

*You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.*

The Acting ESC advised that he had found the following during his investigation:

1. In considering whether the Respondent was acting as a councillor or could be perceived as acting as such, the Acting ESC noted that the Respondent's Twitter account was entitled "Cllr [REDACTED]" and contained a number of retweets of Council tweets. Additionally, the Respondent's profile information included a reference to him being the Leader of Edinburgh City Council, and his council contact details. While the Respondent's Twitter feed did contain some personal opinions, the Acting ESC found that the Respondent was clearly identifiable as a councillor and could, therefore, objectively be perceived as acting in his capacity as a councillor at the time he posted the tweet in question. As such, the Code applied.
2. While it was considered that the Respondent could have expressed himself in a clearer fashion, the tweet itself was not considered by the Acting ESC to be a gratuitous personal comment towards any of the complainers, nor a comment that amounted to offensive abuse (notwithstanding any personal offence that may have been caused by the tweet). The Acting ESC was satisfied that, despite the way the tweet may have sounded or was perceived, the Respondent's intention was not to link those campaigning against the Spaces for People project with the criminal behaviour described in the STV News article.
3. The Acting ESC also considered the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). It was noted that the tweet in question related to a political matter, and one in the public interest (being the Council's Spaces for People project). By

expressing his opinion on a political matter of public interest, the Acting ESC was of the view that the Respondent would have benefitted from enhanced protection of freedom of expression. It is important to note that the enhanced protection afforded to politicians engaging in political discussion, or debate on questions of public interest, is not absolute. However, there is little scope for restrictions on such discussion or debate, unless there is a pressing social need for such a restriction, and unless that restriction is proportionate to a legitimate aim.

In considering and balancing the various factors of the complaint, the Acting ESC concluded that a restriction on the Respondent's right to freedom of expression was not justified on this occasion. A finding, therefore, that the Respondent had contravened the Code, was also not justified.

### **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 Respondent was the author of, and had posted, the tweet in question – 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.

Additionally, the Standards Commission was satisfied that, on the face of it, the Code would apply, for the reasons outlined by the Acting ESC.

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 tweet could have caused offence to some members of the public who may have seen it. As the Respondent was readily identifiable as a councillor on his Twitter account, any disrespectful comment he posted from it would have 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 noted, however, that this would only be the case if any posting was found to be disrespectful.

The Standards Commission 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. There could, therefore, be some limited public interest in holding a Hearing. Regardless of this, the Standards Commission was, however, also required to consider whether it would be proportionate to do so.

In considering to the question of proportionality, the Standards Commission noted that it would be obliged at a Hearing to apply Article 10 of the ECHR, which concerns the right to freedom of expression. Article 10 is a qualified right and may be limited by a restriction such as the imposition of a sanction for a breach of a Code of Conduct, provided such a restriction is:

- responding to a pressing social need;
- for relevant and sufficient reasons; and
- proportionate.

The Courts have held, however, that enhanced protection of freedom of expression applies to all levels of politics including local. As such, there is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. In a political context, a degree of the immoderate, offensive, colourful and emotive, that would not be acceptable outside that context, is tolerated.

An Advice Note on the approach the Standards Commission takes when issues that concern the application of Article 10 and the right to freedom of expression arise can be found at:

<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

The Standards Commission noted that the Respondent, being a local politician commenting on a political matter, and a matter of public interest, would likely benefit from the enhanced protection to freedom of expression afforded by Article 10 of the ECHR. Therefore, even if, at a Hearing, the Respondent's conduct was found to have been disrespectful, it was likely, in the particular circumstances of the case, that a finding of a breach of the Code would interfere with the Respondent's enhanced Article 10 protection. This would especially be the case given the Acting ESC's findings in respect of the nature of the tweet and, in particular, that it was not abusive or egregious. As such, the Standards Commission determined that it was not proportionate to hold a Hearing.

The Standards Commission noted 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 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, and in particular the likelihood that the Respondent's conduct would be 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.

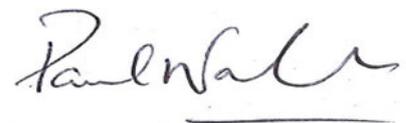
**It should be noted that this means no decision has been taken or is to be taken on whether the Respondent's conduct amounts to a breach of the Code.**

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 Standards Commission notes that, regardless of his intention, the Respondent should have considered how his comment could or was likely to be perceived.

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 carefully the potential impact of all social media posts before making them.

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 – including social media – in order to ensure that public confidence in the role of a councillor and the council itself is maintained.

**Date: 27 September 2021**



**Paul Walker  
Convener of the Standards Commission for Scotland**