

## 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/3517) 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.

In his report, the Acting ESC found upon investigation that the conduct complained of would not amount to a finding of a contravention of paragraph 3.2 of the Code in the particular circumstances of the case. 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.*

In his report, the Acting ESC concluded that, on 31 August 2020, the Respondent tweeted the following comment, in relation to an Edinburgh Evening News article (the article), entitled "An Edinburgh journey that took three times longer that it should have done thanks to city council". The article was also re-tweeted by the Respondent:

*"Women drives the wrong way across City & doesn't understand how google maps works. What a scoop! 🤔"*

The Acting ESC advised that he had found the following:

1. The Respondent's Twitter account was entitled "Cllr [REDACTED]" and contained a number of retweets from the Council's official Twitter feed. Information contained in the Respondent's Twitter profile included a reference to him being the Leader of Edinburgh City Council and his council contact details. While the Respondent's Twitter feed contained 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. Having considered comments from the Respondent in response to the complaint, and a subsequent tweet he sent on 1 September 2020, the Acting ESC considered the Respondent was intending to comment on the quality and content of the article, rather than addressing a group of people, namely "women". The Respondent had confirmed that his tweet contained a spelling error in that he should have stated "woman", which was in reference to his understanding of the author of the article also being the driver. As such, the Respondent had not intended the tweet to be misogynistic.
3. The part of the tweet stating "what a scoop! 🤔" was seen as implying sarcasm in relation to the Respondent's view of the article and supported his contention that he was intending to mock its content. The Respondent had confirmed he considered the content of the article to be ridiculous and that his tweet in response was intended to be taken as a parody of its title.

The Acting ESC advised that he had concluded that the Respondent, in mocking the article and alleging that its author did not understand Google Maps, had behaved in a disrespectful and discourteous manner. As

such, the Acting ESC was of the view that, on the face of it, the Respondent's tweet amounted to a contravention of paragraph 3.2 of the Code.

The Acting ESC noted, nevertheless, that the Respondent was entitled to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC concluded that as the tweet did not contain a comment that was considered to amount to offensive abuse (notwithstanding any personal offence it had caused), the Respondent's conduct, in posting it, did not justify a restriction on his right to freedom of expression that a finding of a contravention of paragraph 3.2 of the Code would involve.

### **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, given its gender reference, could have caused offence to not only to the article's author, but also to other members of the public who may have seen the tweet. The Standards Commission noted that the Respondent was readily identifiable as a councillor from his Twitter account and, therefore, 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, having taken into the account the full circumstances, any posting was found to be disrespectful by a Hearing Panel.

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 could be merit in holding a Hearing for reasons of public interest.

Turning to the question of proportionality, the Standards Commission noted that it would be obliged, at a Hearing, to consider the application of 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 Standards Commission noted that the Courts have held, however, that enhanced protection of freedom of expression applies to all levels of politics including local. As such, there was 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 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.

In this case, the Standards Commission noted that even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was likely that he would enjoy the enhanced protection to freedom of expression afforded by Article 10, given the tweet concerned a matter of public interest (being a newspaper article on a council matter), and given the reference on his Twitter account to his role as a senior politician. The Standards Commission agreed with the Acting ESC that it was unlikely that the conduct in question would be found to be sufficiently offensive or egregious as to justify a restriction on the Respondent's right to freedom of expression.

Having taken into account the nature of the potential breach 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.

**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.**

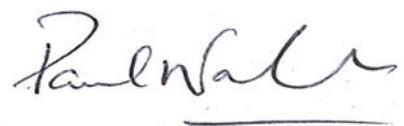
The Standards Commission nevertheless wishes to emphasise that the question of whether an individual is being respectful is not necessarily one of intention but, instead, is one of perception. The Standards Commission notes that, regardless of his intention, the Respondent should have considered how his comment could or was likely to be perceived.

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 any social media posts. This is especially the case given the comment could be potentially be interpreted as being of a sexist nature or as promoting a gender stereotype. Stereotypes surrounding gender, 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.

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 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**