

Decision of the Standards Commission for Scotland

On receipt of a report 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) hold a hearing; or (c) 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. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/AN/3520) concerning an alleged contravention of the Councillors' Code of Conduct by Councillor [REDACTED] of Angus Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 28 October 2021, in accordance with Section 14(2) of the 2000 Act.

The complaint related to the Respondent's conduct during a meeting of Angus Council's Civic Licensing Committee on 18 February 2021. The complainer, who was present as an objector to an application being considered by the Committee, alleged that while the Respondent, as Chair of the meeting, initially allowed her to speak, he had then refused to let her speak further. The complainer alleged that when she asked if she could speak, the Respondent said "no" and told her, in a 'demanding' or rude manner, that she should not repeat anything she had said at a previous meeting. The complainer further alleged that when the Respondent apologised, at the end of the meeting, for its lengthy duration, he had implied this was the result of her behaviour.

In his report, the Acting ESC investigated whether the Respondent's conduct in the meeting would amount to a contravention of paragraphs 3.2, 3.7 and / or 7.3 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.

Paragraph 3.7 of the Code 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.

Paragraph 7.3 of the Code states:

Fairness and Impartiality

[On questions relating to matters on which councillors have to make individual decisions] it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, and such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

In his investigation report, the Acting ESC advised that:

1. He had gathered evidence from eight of the nine other councillors, another objector and council officers, who were present at the meeting.
2. He was satisfied, from the evidence, that the Respondent refused to let the complainer speak during the meeting, on at least one occasion. However, the Acting ESC advised that he had not found the complaints that the Respondent's tone was rude or demanding, or that the Respondent had stated or implied that the length of the meeting was due to the complainer, to be proven.
3. It was the Respondent's role as Chair to manage the meeting in accordance with the Council's Standing Orders, and to ensure fairness to all participants. The Acting ESC considered that the Respondent was acting in accordance with the Council's Standing Orders when he advised the complainer that she could not speak. The Acting ESC further considered that, on the basis of the evidence gathered, there was no suggestion that material considerations were not taken into account, that the process was unfair, or that any bias had been demonstrated.

Having considered the various factors of the complaint and the evidence gathered, the Acting ESC concluded that the Respondent's conduct during the meeting did not amount to a breach of the Code.

Reasons for Decision

Having considered the terms of his report, 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 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 the respect and / or fairness and impartiality provisions in the Code could have the potential to lower the tone of political discourse and to bring the role of a councillor, the role of a Chair, the Council's committee system and the Council itself 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, if it was found that the Respondent's conduct 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 proportionality, the Standards Commission noted that the Acting ESC, in his report, had reached the conclusion that the Respondent's conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

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 above factors, and in particular the fact that it is not satisfied, on the face of it, that the conduct as established could amount to a breach of the Code, 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 formal decision has been taken or will be taken at a Hearing on whether there has been breach of the Code.

Date: 3 November 2021



Ashleigh Dunn, Member