

## 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/DG/3543) concerning an alleged contravention of the Councillors' Code of Conduct by Councillor [REDACTED] of Dumfries and Galloway Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 5 November 2021, in accordance with Section 14(2) of the 2000 Act.

The complaint concerned a post the Respondent shared on Facebook on 27 March 2021, which described the leader of the Scottish Conservative Party as a "parasite politician".

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.2 of the Code, which 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 investigation report, the Acting ESC advised that:

1. There was no dispute that the Respondent shared the post on Facebook and, as such, there was sufficient evidence to find the factual basis of the complaint proven.
2. He was satisfied, that as the Respondent's Facebook profile referred to him being a councillor, he was acting as a councillor, or could reasonably be perceived as acting as a councillor, when he shared the post and, therefore, that the Code applied.
3. Various standard dictionaries defined 'parasite' as a person who uses others to obtain an advantage without doing anything in exchange, or as a person or thing that takes something from someone or something else and does not do anything to earn or deserve it.
4. The leader of the Scottish Conservatives was described in the post as a "parasite politician" due to his parliamentary voting record in respect of devolved matters. In that context, the Acting ESC advised that he had concluded that the intention of the post was to express the author's view that the leader of the Scottish Conservatives was taking power away from Scotland, without giving anything in return.
5. The use of the term of "parasite politician", as a descriptor, could be considered discourteous or disrespectful. 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 Acting ESC advised that he was satisfied, in the context, that the “parasite politician” description was not a personal and gratuitous comment, but instead was political criticism of the leader of the Scottish Conservatives and his voting record. As such, the Respondent’s conduct, in sharing 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.

The Standards Commission noted that the Respondent had made submissions to the Acting ESC. The Respondent had indicated that while he believed the post was intended to be satirical in nature, he nevertheless acknowledged, with hindsight, that it could have caused offence.

### **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 provision in the Code could have the potential to lower the tone of political discourse and to bring 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, the sharing of the post was found to be disrespectful by a Hearing Panel.

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 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 highly 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 politician's voting record in respect of matters that should and should not be devolved). The Standards Commission agreed with the Acting ESC that it was very unlikely that the conduct in question would be found to be sufficiently offensive, gratuitous 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.

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.

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: 9 November 2021**



**Lorna Johnston  
Executive Director**