

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) to hold a hearing; or (c) to 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/Fi/3526) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor [REDACTED] of Fife Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 1 December 2021, in accordance with section 14(2) of the 2000 Act.

The complaint related to two tweets by the Respondent, which were subsequently picked up by the local press, leading to two newspaper articles containing quotes by the Respondent. The Respondent's tweets and subsequent press quotes related to accusations of bullying by a party group within the Council.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.2, 3.3 and 3.5 of the Code.

Paragraph 3.2 of the Code states:

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

Paragraph 3.3 of the Code states:

You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

Paragraph 3.5 of the Code states:

You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

In his investigation report, the Acting ESC advised that he had found that:

1. There was no dispute that the Respondent had posted the tweets and supplied the press with the quotes ascribed to her. As such, there was sufficient evidence to find the factual basis of the complaint proven. The complainer considered that his party group had been unfairly accused of bullying.
2. The Respondent could be perceived to be acting in her capacity as a councillor, as her Twitter profile described her as an elected member and the press articles quoted her as a councillor. As such, the Code applied.

3. The Respondent was protected by her right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as her tweets highlighted her concerns in relation to bullying in her own Council, being a matter of public concern.
4. The first quote given by the Respondent to the press appeared to be directed towards those she had previously accused of bullying and concerned the overall culture of the Council. As such, it was not considered to be disrespectful towards the Council's Chief Executive directly, or to be specific to the Chief Executive's conduct or capabilities.
5. The second quote was a general statement remarking that while the Respondent's Council lacked a formal complaints procedure for elected member conduct, she was grateful to have had an opportunity to be heard, and that bullying should not have to be tolerated by anyone. The Acting ESC found the first part of the statement to be factually correct and concluded therefore that it was not disrespectful.
6. The Acting ESC further reported that the Respondent had provided evidence to support her concerns about the behaviour of some members of the party group in question. As such, there appeared to be a basis for her opinion, regardless of whether her concerns had been investigated or established.

The Acting ESC concluded that the Respondent's conduct 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 courtesy provisions 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. 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 the Respondent's tweets and press quotes were not directed at any specific individual and did not describe or refer to an individual's conduct. Instead, they amounted to broad statements highlighting the Respondent's experiences and her opinions in respect of the adequacy of the system for dealing with allegations of bullying against elected members. The Standards Commission further noted that the Respondent's tweets and quotes were not offensive or gratuitous in tone or nature.

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 to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

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 she would enjoy the enhanced protection to freedom of expression afforded by Article 10 of the ECHR, given that the subject matter of the comments concerned a matter of public interest, being issues of bullying within politics, both at a national and a local level.

The Standards Commission noted that the Acting ESC had confirmed that the Respondent had supplied evidence which she considered supported her concerns. The Standards Commission noted that comments in the political context, which amount to value judgements, are to be tolerated even if untrue, as long as they have some factual basis. The Standards Commission was satisfied in this case that the comments made by the Respondent could therefore be considered to be value judgements or opinions, based on her view of her experiences.

In the circumstances, therefore, 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 enhanced right to freedom of expression.

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.

Date: 8 December 2021



Lorna Johnston
Executive Director