

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/AC/3545) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillors [REDACTED] of Aberdeen City Council (the Respondents), the Acting ESC referred a report to the Standards Commission, on 9 December 2021, in accordance with section 14(2) of the 2000 Act.

The complaints related to quotes given by the Respondents that appeared in an article in the Press & Journal on 15 May 2021 concerning protests that took place in Glasgow on 13 May 2021 in respect of deportation proceedings being undertaken by the Home Office

In his report, the Acting ESC investigated whether the Respondents' conduct, in making the statement in question, would amount to a contravention of paragraph 3.2 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.

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

1. There was no dispute that the Respondents had made the comments ascribed to them in the article. As such, there was sufficient evidence to find the factual basis of the complaint proven. The complainer considered the Respondents' comments to be unacceptable as they demonstrated support for individuals blocking UK Government officials from carrying out their duties.
2. The Respondents accepted they were acting as councillors when providing the quotes, as the article clearly identified them as such. The Code therefore applied.
3. There was nothing in the article that could be construed as being disrespectful or discourteous. The protest referred to in the article was a peaceful, non-violent protest with no arrests and no criminal

activity and the quotes from the Respondents were simply intended to demonstrate that they welcomed everyone in their community and hoped that others would too.

4. In any event, the Respondents would be protected by their enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as their quotes concerned matters of political interest and public concern.

The Acting ESC concluded that the Respondents' 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 Respondents' quotes merely outlined their support for the protest, their opposition to the UK Government's overall attitude towards immigrants and refugees, and their views that everyone should be welcomed. The Standards Commission noted the Respondents were fully entitled to express their opinions and agreed with the Acting ESC that their quotes were neither discourteous nor disrespectful in either content or tone.

In considering proportionality, the Standards Commission further agreed with the Acting ESC that, in any event, it was highly likely that the Respondents would enjoy the enhanced protection to freedom of expression afforded by Article 10 of the ECHR, given that their quotes concerned matters of political interest. In the circumstances, the Standards Commission noted 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 Respondents' enhanced right to freedom of expression.

The Standards Commission also 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 was not satisfied that the conduct in question 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: 15 December 2021



**Lorna Johnston
Executive Director**