

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/G/3637) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by a councillor of Glasgow City Council (the Respondent), the Acting ESC referred a report to the Standards Commission for Scotland, on 3 March 2022, in accordance with section 14(2) of the 2000 Act.

The complaint concerned a tweet the Respondent posted on 22 May 2022, in which she referred to the Prime Minister, Boris Johnson, as "a racist".

The Acting ESC reported that it was not in dispute that the Respondent posted the following comment from a Twitter account from which the Respondent was identifiable as a councillor:

"The UK has a billionaire Chancellor who won't give NHS staff a fair pay rise during a global pandemic + a racist Prime Minister who's more interested in lining the pockets of his Tory donors than feeding hungry children".

In his report, the Acting ESC investigated whether the Respondent's conduct, in making the comment in question, would amount to a contravention of paragraph 3.2 of the 2018 version of the Code, which was in place at the time.

The applicable section of the 2018 version of the Code is reproduced below.

3.2 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. The Respondent's Twitter profile included the description "Glasgow City Councillor". As such, the Respondent could be perceived to be acting as a councillor when posting the comment and, therefore, the Code applied.
2. The Respondent advised in responding to the complaint, that the Respondent used the term Prime Minister in the post context deliberately to give the tweet a political context. The Respondent argued that many people consider the Prime Minister to be racist and she was not the only politician or person to use that term about him. The Respondent referred to the Prime Minister using language including

referring to people from Africa as “Piccaninnies” with “Watermelon Smiles” in his written newspaper columns. She noted that he had also referred to young people having an “almost Nigerian interest in money” and had used the terms “bank robber” and “letterbox” to describe Muslim women who wear a burqa.

3. The Respondent referred to other politicians, campaigning organisations and members of the public who have made the same claim. The Respondent also referred and provided links to several media articles that reported on the Prime Minister’s comments as outlined above and questioned whether these comments and his views were racist in nature.
4. The descriptor of the Prime Minister as “racist” appeared to be a gratuitous personal comment. The Acting ESC noted that while this personal comment was not directed at the complainer or any members of the public directly, the question of whether an individual was being respectful is one of perception. The Acting ESC stated that the Respondent should have been mindful of how the comment could or was likely to be perceived by members of the public.
5. The Acting ESC was of the view that, as such, the Respondent’s conduct, could, on the face of it, amount to a contravention of paragraph 3.2 of the Code.
6. The Respondent nevertheless would be protected by the enhanced right to freedom of expression afforded by Article 10 of the European Convention on Human Rights (ECHR), as the Respondent’s comment amounted to a value judgment. The Acting ESC noted that the Courts have held that comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. As such, the ESC was of the view that a restriction on the Respondent’s right to freedom of expression was not justified.

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 and having noted that the factual basis of the complaint was not in dispute, 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, it was not clear that there had been such a breach of the Code.

The Standards Commission noted that while it was apparent, from the complaint that a member of the public had been offended by the comment tweeted by the Respondent, it considered that the question of whether someone has been disrespectful or discourteous must be subject to some form of objective test. In this case, the Standards Commission considered that, on balance, it was evident that the comment was intended as a political comment. The Standards Commission noted that while the comment was about an individual, it had not been directed towards them. As such, it could not be said to amount to gratuitous or offensive personal abuse. The Standards Commission was of the view that there was no evidence to suggest that the comment was intended to harass, alarm, or distress and, therefore, considered that it would also not amount to hate speech.

The Standards Commission considered the question of whether the Prime Minister of the country was a racist was a matter of public concern and noted that the issue had been, and continued to be, the subject of political and media comment. As such, the Standards Commission did not agree with the Acting ESC that a comment on the matter, as made by another politician, could be categorised as gratuitous.

The Standards Commission noted that while 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 was of the view that this was a reasonable conclusion. This was because even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that they would be entitled to the protection of freedom of expression afforded by Article 10 of the ECHR, given that it was a comment made in a political context.

The Standards Commission noted that the Courts have further held that comments in the political context, that amount to value judgements, are tolerated, even if untrue, so long as what was expressed was said in good faith and there was some reasonable (even if incorrect) factual basis for making such comments.

In this case, the Standards Commission agreed with the Acting ESC that the comment the Respondent made about the Prime Minister was a value judgement. The Standards Commission accepted, given the media coverage and public debate on the issue, that such a value judgement had been made in good faith, whether if it was accurate or not.

As such, the Standards Commission was of the view that it was very unlikely that the conduct in question would be found to be sufficiently gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail.

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 was 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.

The Standards Commission nevertheless wishes to reiterate that the requirement in the Code for councillors to conduct themselves with courtesy and respect helps ensure public confidence both in their role and the council itself. This includes when they are in meetings and engaged in online activity.

Date: 8 March 2022



**Lorna Johnston
Executive Director**