

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.

Initial Report to the Standards Commission

Following his investigation into a complaint (reference LA/SL/3575) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of South Lanarkshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 8 March 2022 (the report), in accordance with section 14(2) of the 2000 Act.

The complaint concerned the Respondent's alleged conduct during an incident that took place on 15 July 2021 in a street where the complainer and the Respondent's parents lived.

The Acting ESC indicated that the complaint was considered in terms of paragraph 3.1 of the Code, which states:

The rules of good conduct in this section must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media.

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

1. In particular, the complainer alleged that during the incident in question the Respondent:
 - abused his power during the incident, by stating that he was going to "find out who is supposed to be living in [the complainer's house] because [he] is the local councillor";
 - raised his voice in an intimidating manner and used abusive language towards the complainer, her partner and neighbour; and
 - informed his mother that the complainer was in receipt of benefits.
2. While the complainer's version of events was supported by her partner, eight other witnesses interviewed by his office all stated that the Respondent did not refer to himself as the "local councillor" during the altercation. Three of these witnesses stated that, contrary to the allegation, it had been the complainer's neighbour or partner who shouted at the Respondent that he was the local councillor and could do what he wanted. The witnesses advised that the Respondent had not really communicated with the complainer or her partner at all during the incident. The witnesses advised that, instead, it had been the complainer's partner who had done most of the shouting and that the Respondent had ignored him.
3. Two of the witnesses, who were both independent of both the complainer and the Respondent, provided accounts of the incident that contradicted the complainer's version of events and broadly supported the versions of events provided by the Respondent and the other witnesses.

4. The Respondent was not, in fact, the local councillor of the area where the incident occurred. The Acting ESC noted, therefore, that it was unlikely that he would be able to access information about who did, or should, live in the complainer's home.
5. There was insufficient evidence to find any of the complainer's allegations proven.

Reasons for Decision

Having considered the report, the Standards Commission concluded that it was not necessary 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 conduct provisions in the Code could have the potential 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, and for the reasons outlined below, there was no real likelihood of a breach of the Code being established at a Hearing.

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 public interest in holding a Hearing. The Standards Commission was, nevertheless, also required to consider whether it would be proportionate to do so.

In considering proportionality, the Standards Commission noted that the Acting ESC had reached the conclusion that there was insufficient evidence to support the allegations made by the complainer.

The Standards Commission noted that, in addition to the Respondent and complainer, the Acting ESC had interviewed nine individuals who had witnessed the incident in whole or part. While the complainer's version of events was supported by her partner, all eight other witnesses advised that the Respondent had not referred to himself as the "local councillor" during the altercation. The Standards Commission noted that the Acting ESC had confirmed that two of these witnesses were entirely independent of both the Respondent and complainer.

The Standards Commission noted that the Code applies to elected members at all times when: they are acting as councillors; have referred to themselves as councillors; and / or in circumstances where they could reasonably be perceived to be acting as a councillor. In this case, the Standards Commission was satisfied that the two independent witnesses had confirmed that the Respondent had not referred to himself as a councillor during the incident in question. The Standards Commission was of the view that, unless the Respondent had done so, it would not be reasonable for anyone to have perceived him as acting in anything but a private capacity during the incident. This was because the incident did not take place on council premises and did not occur when the Respondent was engaged in or carrying out council business. In the circumstances, the Standards Commission determined that the Code would not have applied to the Respondent at the time of the events in question and, as such, it was not proportionate to hold a Hearing.

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.

Therefore, and for the reasons outlined above, 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 amounted to a breach of the Code.

Date: 14 March 2022



**Lorna Johnston
Executive Director**