

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/AB/3533) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of Argyll & Bute Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 16 March 2022, in accordance with section 14(2) of the 2000 Act.

The complaint concerned an allegation by the complainer that the Respondent, on 1 May 2021, while leafleting for his own political party, removed another political party's poster from a pole to which it was affixed.

In his report, the Acting ESC investigated whether the Respondent's conduct 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:

1. Although the complainer had not seen the Respondent removing any poster or posters, he advised that he knew of two witnesses who had, and provided their contact details. Only one of those witnesses could be contacted, Mrs A. Mrs A, whose husband is in a club with the complainer, advised that the complainer had asked her to put up posters that had "SNP Out" on them in her housing scheme. She advised that where she saw an SNP poster, she affixed an "SNP Out" poster either above or below it. Mrs A further advised, that while she could not recall the exact day, she saw the Respondent on her street with an "SNP Out" poster in his hand. Mrs A confirmed she did not see the Respondent tearing down any poster, but that shortly after she saw the Respondent with the poster, she checked and noticed that one of the posters she had put up was no longer there. The Acting ESC noted, however, that the housing scheme in which the poster was placed contained approximately 70 houses and that the Respondent was not the only person leafleting that day.
2. The Respondent stated that he saw the "poster" on the ground (he refers to it as a postcard size flyer, rather than a poster) and picked it up with the intention of taking it home and disposing of it. Mr B, who

was assisting the Respondent with his leafleting, advised that the Respondent had shown him a “leaflet type thing”. Mr B advised that the Respondent told him he had found it in the street.

3. The complainer could not recall what was written on the poster, but thought that it was from a “unionist club Scotland”, and additionally was of the view that the poster related to a political party running in the Scottish Parliamentary election. Mrs A, Mr B and the Respondent all agreed that the item in question had “SNP Out” written on it, and that it did not relate to a political party running in the election. The Respondent said that the poster contained a web address for a “Scots4UK” Facebook group. The Acting ESC noted, with reference to the council’s policy, that it did not appear to fall into the description of a “campaign poster” for election purposes. The Acting ESC further noted that it was likely that there were several items in circulation containing “SNP Out” on them, and concluded on the balance of probabilities that it did not relate to another party running in the Scottish Parliamentary election.
4. In removing such an item and taking it home to dispose of, the Acting ESC did not consider that the Respondent acted in an intentionally disrespectful manner, or without courtesy. Additionally, there was no evidence that the Respondent had damaged or defaced the item.

Having considered the various factors of the complaint and the evidence gathered, 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 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 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.

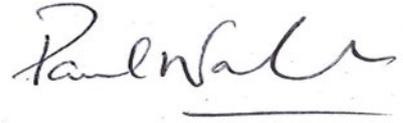
In considering proportionality, the Standards Commission noted that the Acting ESC, in his report, had reached the conclusion that the Respondent’s conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

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.

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: 21 March 2022



Paul Walker
Convenor of the Standards Commission