

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/E/3589) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the 2018 Code) by a councillor of City of Edinburgh Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 27 January 2022 (the Initial Report), in accordance with section 14(2) of the 2000 Act.

The complaint detailed in the Initial Report related to an allegation by the complainer that the Respondent had deliberately misrepresented a local residents' group's (the Group) position on cycle lanes in Edinburgh at a meeting of the council. The complainer is the chair of the Group.

In the Initial Report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.2 and 3.7 of the 2018 Code.

Paragraph 3.2 of the 2018 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 3.7 of the 2018 Code states:

You must respect the Chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

In the Initial Report, the Acting ESC advised that:

1. During a meeting of the City of Edinburgh Council on 24 June 2021, the complainer presented a deputation on behalf of the Group. As part of the complainer's deputation, a councillor asked the complainer a question about cycle lanes, to which the complainer provided a response. Approximately one hour after the complainer's deputation, the Respondent, referring to the complainer's response to the question that had been posed, made a comment welcoming the Group's change of position on cycle lanes. The complainer alleges that the Respondent deliberately misrepresented the complainer's comments in order to support the Respondent's agenda.
2. In his response to the complaint, the Respondent stated that he honestly believed the complainer had changed his mind on the matter, given the (according to the Respondent) positive manner in which the

complainer had responded to the question posed, understanding that it meant the complainer would no longer be contesting the siting of cycle lanes in the area in question.

3. There was some disparity between the complainer's comments at the council meeting, and the Respondent's interpretation of those comments. Specifically, the Acting ESC highlighted that the complainer had advised that the Group wanted to "work for the safety of all road users". The complainer had not, as suggested by the Respondent, stated that the Group would be changing its position and campaigning to improve safety in cycle lanes rather than removing them altogether. The Acting ESC considered that in attributing such a position to the complainer, the Respondent had distorted the intended meaning of the complainer's statement to the council meeting, and as such had misrepresented the complainer's comments.
4. In considering whether such misrepresentation was deliberate, the Acting ESC noted that the complainer and the Respondent have directly opposing positions on that point – the complainer believing that the Respondent falsely attributed a comment to him because it suited the Respondent's political agenda, and the Respondent stating that he honestly believed the complainer had a change of heart given the positive manner in which he answered the question posed during his deputation. Upon reviewing the recording of the meeting, the Acting ESC was unable to determine whether the Respondent's misrepresentation was deliberate, and also noted that there was no reasonable prospect of obtaining any additional supporting evidence which would allow him to make such a determination. As such, the Acting ESC was unable to conclude, on the balance of probabilities, that the Respondent deliberately misrepresented the complainer.
5. As the complainer's correct position is recorded on the webcast, the Acting ESC considered that the public had ready access to the complainer's views on the subject. Furthermore, the Acting ESC noted that even if he had been able to establish that the Respondent had deliberately misrepresented the complainer, that would not have amounted to a breach of the 2018 Code. The Acting ESC considered that such a misrepresentation in these particular circumstances, whether deliberate or not, would not amount to disrespect under the 2018 Code, noting, that in a political setting, that it is often the case that councillors may misrepresent the comments of their political opponents to add weight or credence to their own arguments.

Having considered the various factors of the complaint and the evidence gathered, the Acting ESC concluded in the Initial Report that the Respondent's conduct did not amount to a breach of the 2018 Code.

Standards Commission's Request for Further Investigation

Having considered the Initial Report, the Standards Commission considered that it was necessary, in terms of Section 16(a) of the 2000 Act, to direct the Acting ESC to undertake further investigation into the matter. The Acting ESC was directed, on 2 February 2022, to investigate the following further matters:

- i. why the Respondent understood that the complainer's comments were positive and that the complainer had changed his position on cycle lanes;
- ii. whether any question posed to the complainer during the meeting could have contributed to a potential misunderstanding; and
- iii. whether the Respondent could supply any notes taken at, or prepared for, the meeting.

Further Investigation Report to the Standards Commission

Having carried out the further investigation requested by the Standards Commission, the Acting ESC provided a substantive response on 15 March 2022 (the Further Investigation Report), addressing the matters raised above (and following the same numbering):

- i. the Respondent explained that when the cycle lanes in question were first considered, a major concern of residents was parking. The Respondent noted that the complainer's position had been, both before the meeting and since, that the cycle lanes should be removed. However, at the meeting itself, the Respondent considered that the complainer had changed their position, noting that the

complainer did not call for the removal of the cycle lanes. The Respondent noted that the complainer was asked, directly, if he would be willing to work with the council to ensure everyone's safety, or if "convenient parking" would get in the way of that. The Respondent noted that the complainer's response to this question was yes, he did want to work for the safety of all road users, and further noted that (in the Respondent's opinion) as you can't have both convenient parking and cycle lanes, he assumed that the complainer had changed his position. The Respondent added that he now understood he was mistaken, and that at the time he had misinterpreted the complainer's comments.

- ii. having reviewed the webcast of the meeting, the Acting ESC confirmed that the complainer did not make any further comments which could legitimately have led to the Respondent's misunderstanding.
- iii. the Respondent advised he had no pre-prepared notes and did not take any notes during the meeting.

The Acting ESC advised that the findings of the Further Investigation Report did not cause him to change his conclusion, as detailed in the Initial Report, that the Respondent's conduct did not amount to a breach of the 2018 Code.

Additional Issue of Complaint

During the course of his further investigation, the Acting ESC advised the Standards Commission that details of another incident relating to the Respondent were emailed to his office on 14 February 2022. The Acting ESC, having considered the contents of the email, concluded that it detailed a separate complaint, related to the original complaint covered by the Initial Report. The Acting ESC proposed that a supplementary report covering this separate complaint be prepared and referred to the Standards Commission.

Supplementary Report to the Standards Commission

Following his investigation into the separate complaint concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the 2021 Code) by the Respondent, the Acting ESC referred a report to the Standards Commission, on 15 March 2022 (the Supplementary Report), in accordance with section 14(2) of the 2000 Act.

The complaint detailed in the Supplementary Report related to an allegation by the complainer that the Respondent had incorrectly implied, in a tweet on 19 January 2022, that the complainer was the only person concerned about the safety issues allegedly associated with the City of Edinburgh Council's "Spaces for People" scheme measures as implemented on the complainer's street.

In the Supplementary Report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraph 3.1 of the 2021 Code.

Paragraph 3.1 of the 2021 Code states:

I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

In the Supplementary Report, the Acting ESC advised that:

1. A local newspaper had tweeted, on 19 January 2022, that "collisions on a busy stretch of road have risen from zero to five since the implementation of Spaces for People measures intended to improve safety, residents claim". The tweet included a link to a news article, in which the complainer was quoted criticising the council and the Spaces for People scheme. The complainer is the only member of the public named in the article criticising the Spaces for People scheme.
2. The Respondent, also on 19 January 2022, retweeted the local newspaper's tweet, stating: "Correction to last part – 'one resident claims'". The complainer alleges that this comment was

directed at him, and believes that the Respondent is stating that the complainer is the only person who is concerned about the safety of the Spaces for People scheme on his street, which, the complainer claims, is badly misrepresentative of the reality of the situation. As an indication of the alleged misrepresentation, the complainer notes a deputation submitted by the Group to the council's Transport and Environment Committee on 14 October 2021, in which a survey of hundreds of local residents is mentioned. The Acting ESC reviewed the comments from the survey in question, and noted that many of them were concerns about safety and criticism of the Spaces for People scheme. The complainer's position is that given the Group's deputation, the Respondent would be aware that many residents had expressed concerns, and that therefore the Respondent's tweet was incorrect and misrepresentative.

3. The Respondent, referring to his tweet, stated that he was correcting a misleading headline in the local newspaper's tweet. The Respondent noted that the news article contained no quotes from other residents. The Respondent rejected the complainer's assertion that he should have been aware of the other residents' concerns as detailed in the Group's deputation of 14 October 2021, and noted that the comments in the survey were anonymous and not directly attributable to local residents. The Respondent further noted that since the project went live in January 2021, he had received one email regarding the street in question, in which a specific problem regarding access was raised, and subsequently dealt with, within one week. The Respondent asserts that receiving only one email in the year following the implementation of the scheme is indicative of local residents having little concern about the scheme.
4. The Respondent's tweet should be read in context: while the article only referred to the complainer and no other residents, the Respondent would have been fully aware that his comment implied that the complainer was the only individual who had concerns about the scheme's safety. By so implying, the Acting ESC concluded that the facts of the complaint were proven.
5. In applying the facts of the complaint to the 2021 Code, the Acting ESC noted that it was often the case that councillors misrepresented the positions of their opponents to add weight to their own arguments. In any case, the news article attached to the Respondent's tweet did refer to the claims of multiple residents. The Acting ESC considered, therefore, that anyone viewing the Respondent's tweet would have access to the full article which contained the complainer's comments and views, and reference to the claims of multiple residents.
6. In considering the conduct of the Respondent in complaint 1 (as detailed in the Initial Report) alongside complaint 2 (as detailed in the Supplementary Report), the Acting ESC noted that as the two incidents were linked, and both relating to the Respondent allegedly making incorrect or misrepresentative comments about the Group's campaign, there was a course of conduct between the two complaints.

Having considered the various factors of the complaint and the evidence gathered, the Acting ESC concluded in the Supplementary Report that the Respondent's conduct did not, taken separately, amount to a breach of the 2021 Code or, when considered as one course of conduct, amount to a breach of either the 2018 or 2021 Code.

Reasons for Decision

Having considered the Initial Report, the Further Investigation Report and the Supplementary 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 respect provisions contained in the 2018 Code and the 2021 Code (the Codes) 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 Codes.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Codes, if it was found that the Respondent's conduct amounted to a breach of the Codes. 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 the Initial Report, the Further Investigation Report and the Supplementary Report, had reached the conclusion that the Respondent's conduct did not amount, on the face of it, to a breach of the Codes. 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 the above factors into account, and in particular the fact that it is not satisfied, on the face of it, that the conduct as established, taken either separately or as one course of conduct, could amount to a breach of the Codes, 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 Codes.

The Standards Commission nevertheless wishes to reiterate that the requirements in the Codes 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. Furthermore, it should be noted that a similar complaint, in future, has the potential to add weight to the consideration of a course of conduct.

Date: 21 March 2022



Ashleigh Dunn
Member of the Standards Commission