

## **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/3542) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by a councillor of City of Edinburgh Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 13 April 2022, in accordance with section 14(2) of the 2000 Act.

The complaint concerned an allegation that the Respondent, in a letter sent to the Chief Executive of City of Edinburgh Council, copied to and shared with others, publicly criticised the conduct and capability of an identifiable council officer.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraph 20 of Annex C of the Code.

Paragraph 20 of Annex C of the Code states:

Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to Councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

In his investigation report, the Acting ESC advised that:

1. A Freedom of Information (FoI) request was made to the City of Edinburgh Council in relation to the "Spaces for People" scheme. The information published on the Council's website in its response to the FoI request included the unredacted names of council officers, amongst them the council officer allegedly criticised by the Respondent. That response was removed on 17 March 2021, redacted, and republished on 19 March 2021.
2. It was not in dispute that the Respondent sent a letter to the Chief Executive of City of Edinburgh Council on 17 March 2021 outlining his concerns in relation to aspects of the "Spaces for People" scheme and, in particular that it was "unilaterally conceived and promoted by a single council employee, not on the basis of any public health evidence but as an extension to pre-existing plans". The letter was copied to an MP and an MSP, and also shared with some constituents. The Acting ESC accepted the Respondent's position that he had shared the letter with the constituents in an attempt to assure them that their concerns had been actioned, rather than as an attempt to criticise publicly a council officer.

3. Extracts from the letter were then published online in an *Edinburgh Evening News* story the following day, 18 March 2021, bringing the Respondent's comments into the public domain. The Acting ESC was not able to find any evidence that the Respondent had shared the letter with the press. Furthermore, the Acting ESC was satisfied that when the letter was sent to the Chief Executive and when the news story was then published, the unredacted FoI response was not available online. As such, the council officer's name was not in the public domain and they were not identifiable from the letter or news story alone.
4. One of the Complainers (being the council officer in question) shared an email they received from a member of the public following publication of the news story. The Acting ESC noted that there had been previous correspondence between the council officer and this member of the public, the member of the public having already requested to submit a complaint about the matter in question. As such, as the member of the public and the council officer had already been in communication, it was likely that the member of the public already knew the council officer in question and that they had not been identified by the letter or the news story.
5. While it could be recognised that the contents of the letter could be understood as being critical of a council officer's conduct or capability, the Acting ESC also recognised that the letter was intended for the Council's Chief Executive and those leadership figures copied into the letter, and not for the wider public.

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 requirement in the Code for councillors to refrain from criticising council officers in public could have the potential to undermine the efficient running of the Council and could bring the role of a councillor, council officers and the Council itself into disrepute.

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.

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 would like nevertheless to take this opportunity to remind councillors of the importance of councillors and officers working together in an atmosphere of mutual trust and respect, as

such an environment contributes towards the effective operation of the council. The Code does not seek to restrict a councillor's ability to properly scrutinise the performance of the Council or its officers. Councillors are required, however, to refrain from raising any adverse matters about the conduct or capability of officers in public and should be careful not to make public statements which expressly, or by implication, criticise the actions (or inaction) of an individual officer or identifiable group of officers.

**Date:** 25 April 2022



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