

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

The Acting ESC investigated a complaint (reference LA/E/3595) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of the City of Edinburgh Council (the Respondent). He referred a report to the Standards Commission subsequently, on 27 May 2022, in accordance with section 14(2) of the 2000 Act.

The Complainer alleged that the Respondent had publicly accused him of sexism in a tweet posted in August 2021.

In his investigation report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraph 3.2 of the Code, which states:

Paragraph 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.

The Acting ESC advised that:

1. The Respondent's Twitter name and handle referred to him as being a councillor and his account referenced the Ward he represented. As such, the Acting ESC was satisfied that the Respondent would be perceived to be acting in the capacity of a councillor when posting the tweet in question. As such, the Code applied to him at that time.
2. There was no factual dispute that the Respondent posted a blog, on his Twitter account, about why it was important to wear a helmet when cycling. In a post commenting on the blog, the Complainer stated "Meanwhile teenage girls won't cycle because they don't look cool with a helmet." The Respondent replied to the Complainer's comment: "That's a bit of a sexist comment tbh." [the Acting ESC noted that "tbh" is understood to be shorthand for "to be honest"].
3. The Respondent had not called the Complainer sexist and had not made a personal attack. Instead, he had referred to the Complainer's comment as "a bit sexist". The Respondent's position was that he had said that as he considered the Complainer's comment about how people might feel wearing cycling helmets could have been made without any references to gender.

The Acting ESC advised that he did not consider the Respondent's remark to be disrespectful or discourteous in nature. Instead, he was of the view that the Respondent had merely provided his opinion on a comment made by the Complainer. Accordingly, the Acting ESC concluded the Respondent had not breached paragraph 3.2 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 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, 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 Respondent had called the Complainer's comment sexist. The Standards Commission noted that the Respondent had not made any personal remark about the Complainer himself. The Standards Commission noted that the Acting ESC, in his report, had reached the conclusion that the Respondent had merely proffered an opinion and that his 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.

The Standards Commission took the above factors into account, and in particular the fact that it was not satisfied that the alleged conduct 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.

Date: 30 May 2022



**Lorna Johnston
Executive Director**