

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 (reference NHS/ACH/3584) into two complaints concerning an alleged contravention of the Code of Conduct for Members of Aberdeen City Health & Social Care Partnership (the Code) by a member of Aberdeen City Health & Social Care Partnership's Integration Joint Board (the Respondent), the Acting ESC referred a report to the Standards Commission, on 27 May 2022, in accordance with section 14(2) of the 2000 Act.

The complaints concerned the Respondent's conduct at a meeting of the Integration Joint Board (IJB) on 25 February 2021. The Acting ESC reported that the meeting had been held to address public concern regarding the management of a medical practice, which had been put out to tender. The Complainers alleged that the Respondent made a number of incorrect claims at the meeting concerning: whether the practice in question was the only practice where staff had opposed the tender plans and had subsequently resigned; the timing of the resignations; how many patients the Scottish Government required a practice to have in order to be deemed sustainable; and whether the tender decision was financially motivated.

In his investigation report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.2 and 3.3 of the Code, which state:

Paragraph 3.2: You must respect the chair, your colleagues and employees of related organisations supporting the operation of the IJB in meetings.

Paragraph 3.3: You will treat your fellow IJB members and employees of related organisations supporting the operation of the IJB with courtesy and respect.

The Acting ESC advised that:

1. He had found that the Respondent had made all but one of the claims attributed to her by the Complainers. The Acting ESC advised that the Respondent had not made the claim, as alleged, about how many patients the Scottish Government required a practice to have in order to be deemed sustainable.
2. It was unclear whether the Respondent had deliberately given false information to the meeting about whether there were other practices where staff had resigned and the timing of the resignations. In any event, other participants at the meeting had corrected the Respondent, so those present at the meeting were informed immediately of the factual position.
3. The Respondent maintained that her comment that the decision was not financially motivated was accurate. The Acting ESC noted that while one of the complainers disagreed, the papers from a previous meeting broadly supported the Respondent's position.

The Acting ESC concluded that the Respondent's conduct did not amount to a breach of the courtesy and respect provisions in 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 bring the role of a member and that of the Health & Social Care Partnership 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 neither presenting a different opinion nor making a factual mistake is inherently disrespectful. 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 was not satisfied that the aspects of the complaint that the Acting ESC had found to be factually established, taken either separately or together, 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: 31 May 2022



**Lorna Johnston
Executive Director**