

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/As/3629) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of Aberdeenshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 15 July 2022, in accordance with Section 14(2) of the 2000 Act.

The complaints concerned text messages sent by the Respondent to a fellow councillor (Councillor A) during a virtual meeting of an area committee meeting of the Council on 26 January 2021, which Councillor A later shared with the Complainer. The complaint, as submitted to the ESC on 14 October 2021, was that the Respondent's conduct in sending the text messages during a committee meeting was unacceptable and, further, that their content was disrespectful.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.2, 3.7 and 3.18 of the Code, which state:

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.

3.7 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.

3.18 The Council will normally provide facilities to assist councillors in carrying out their duties as councillors or as holders of a particular office within the Council. This may involve access to secretarial assistance, stationery and equipment such as telephones, fax machines and computers. Such facilities must only be used in carrying out Council duties in accordance with your relevant Council's information technology, communications and member support policies, or for incidental personal use as authorised by your Council and not related in any way to party political or campaigning activities. Where the Council recognises party political groups, assistance to such groups is appropriate in relation to Council matters but must not extend to political parties more generally and you should be aware of and ensure the Council complies with the statutory rules governing local authority publicity.

In his investigation report, the Acting ESC advised that:

1. There was no dispute that the Respondent had sent the text messages in question to Councillor A during a meeting of the area committee. The Acting ESC noted that, in the text messages, the Respondent was encouraging Councillor A to challenge the Complainer's position during the meeting. The Acting ESC advised that he did not consider that doing so was inherently disrespectful in nature. The Acting ESC further noted that there is nothing within the Code or the Council's standing orders that prevent a councillor from messaging a colleague during a meeting. As such, the Acting ESC concluded that the Respondent's actions in sending the texts would not amount to a contravention of paragraphs 3.2 or 3.7 of the Code.
2. He had found that, on the face of it, the words the Respondent used in the text messages to describe the Complainer were disrespectful in nature. The Acting ESC noted, however, that he had found that the text messages were sent to Councillor A in private. As the exchange did not occur in a public context, and the Code is not intended to capture private correspondence, the Acting ESC considered that the Respondent had not contravened paragraphs 3.2 or 3.7 of the Code. In any event, it was likely that the Respondent would be protected by the enhanced right to freedom of expression afforded by Article 10 of the European Convention on Human Rights (ECHR), as his comment related to matters of public concern; namely another elected member's contribution at a council committee meeting.
3. While the text messages were sent to Councillor A using the Respondent's council-issued mobile telephone, the content of the messages was work-related (as they referred to the Complainer's contribution at the meeting). As such, the Acting ESC concluded that the Respondent was using his council-issued mobile for council-related purposes and had not, therefore, contravened paragraph 3.18 of the Code.

The Acting ESC concluded that a breach of the Code could not be found.

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.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions 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 it was accepted that the Respondent's remarks formed part of a text exchange between him and Councillor A, which the Respondent understood was and would remain private, and which was not directed at the Complainer. The Standards Commission considered that it was evident that the Respondent had not intended that his remarks be passed on to the Complainer or made public in any way.

The Standards Commission further noted that even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that he would enjoy the enhanced protection to freedom of expression afforded by Article 10, given the remarks were made in respect of a matter of public interest (being a colleague's contribution at a council committee meeting). In the circumstances, and given

the context of the remarks, the Standards Commission did not consider them to be so egregious or offensive as to justify a restriction on the Respondent's enhanced right to freedom of expression.

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 conduct as established could amount to a breach of the Code, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission nevertheless wished to emphasise that the requirement for councillors to behave in a respectful and courteous manner towards colleagues is a fundamental requirement of the Code, as it ensures public confidence in the role of an elected member and the council itself is not undermined. The Standards Commission considers that councillors should take care to ensure that they do not contribute, either inadvertently or intentionally, to poor standards of public debate.

Date: 20 July 2022



**Lorna Johnston
Executive Director**