Decision of the Standards Commission for Scotland

On receipt of a referral 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. Under the framework, complaints about breaches of these Codes are investigated by the ESC and adjudicated upon by the Standards Commission.

Referral to the Standards Commission

Following his investigation into 16 complaints received between 13 and 20 October 2023 (case reference LA/G/3992), concerning alleged contraventions of the Councillors' Code of Conduct by two elected members of Glasgow City Council (the Respondents), the ESC referred the matter to the Standards Commission on 21 June 2024.

The complaints alleged that, on 13 October 2023, the Respondents shouted abuse, including "fuck you", at individuals queueing to attend a women's rights conference in Glasgow, which was disrespectful and discriminatory.

The ESC reported that:

- both Respondents attended a protest outside the conference. The video evidence available indicated that some of the protestors shouted "fuck you" at attendees of the event (albeit while they were singing a song that included those words as lyrics). The ESC reported, however, that there was "no evidence" that the Respondents joined in with "this chant".
- although several of the Complainers witnessed at least part of the protest as they were queuing for the event, none of them reported specifically hearing the Respondents shouting "fuck you".
- other video clips did not show either Respondent saying anything abusive, disrespectful or discriminatory. The ESC stated that the "clips indicate that the Respondents' tone was polite and respectful throughout".

The ESC concluded therefore, on the balance of probabilities, that the Respondents did not shout "fuck you" or any other abuse at the attendees of the conference during the protest and, as such, the facts of the complaints had not been proven. The ESC concluded, therefore, that the Respondents had not breached the Code.

Further Investigation

Having received the referral report on 21 June 2024, the Standards Commission directed the ESC, on 26 June 2024 to undertake further investigation on whether the Code applied to the Respondents at the time of the events in question.

The Standards Commission noted that the ESC stated, in his report, that there was "no evidence" the Respondents engaged in the conduct as alleged. The Standards Commission noted, however, that the Complainers contended that the Respondents engaged in the conduct as alleged. The Standards Commission pointed out that an individual's recollection or understanding of what occurred is still evidence (even if it is proved, by other evidence, to be incorrect or false).

The ESC replied on 28 June 2024. The ESC advised that both Respondents said they "were acting in their capacity as councillors at the protest" and that he had found both were speaking about a matter of public

and political interest during a protest, using a loudspeaker, in a public space. The ESC reported that "given the context and the views of both councillors that they were acting in that capacity at the time", he was "satisfied the Respondents were acting as councillors at the event".

Reasons for Decision

Having considered the terms of his referral, the Standards Commission did not consider that there was any merit in directing the 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 provisions of the Code regarding respect, bullying and harassment 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 further noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code and, therefore, there could be some limited public interest in holding a Hearing. The Standards Commission accepted, however, 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 administrative or legal processes in cases that did not, on balance, warrant such action.

The Standards Commission noted that the Code is applicable in all situations where an individual:

1. is acting as a councillor (for example, when attending Council or committee meetings, engaging with council officers, assisting constituents or undertaking a site visit);
2. has identified themself as a councillor at the time of the conduct in question (for example, they state they are a councillor on their social media account); and / or
3. could objectively be perceived to be acting as a councillor (for example, when posting about council-related matters on social media, or when attending an event to which they have been invited as a councillor.

In considering proportionality, the Standards Commission was not satisfied that the Respondents were undertaking council work at the protest and were, therefore, acting as councillors. The Standards Commission noted that it had no evidence before it to suggest that the Respondents had identified themselves as councillors during the protest, or to confirm that they had been invited to it in that capacity (so that whether they could objectively be perceived it be acting as councillors could be assessed). The Standards Commission was not satisfied, therefore, it had sufficient information before it to determine that the Code applied to the Respondents at the time of the events in question.

The Standards Commission noted, nevertheless, that the ESC had been unable to find any other evidence to support the Complainers' allegations. Having reviewed the extent of the evidence obtained, and having noted it was apparent that no further evidence would be forthcoming, the Standards Commission accepted it was unlikely the factual basis of the complaint would be established. And, as such, it determined it was not proportionate to hold a Hearing.

Having taken into account the above factors, and in particular the fact that it was not satisfied that there was evidence of any breach of the Code, the Standards Commission concluded that it was not proportionate or in the public interest for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Date: 3 July 2024

Lorna Johnston
Executive Director