

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 a complaint received on 14 April 2025 (reference LA/H/4296) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by an elected member of Highland Council (the Respondent), the ESC referred the matter to the Standards Commission on 16 December 2025.

The ESC reported that:

1. The first issue of complaint concerned a text message the Respondent sent the Chair of a community council warning him to be 'wary' of the Complainer, who had been elected to the community council the previous day. The ESC advised he considered the Respondent could objectively be considered to be acting as a councillor when he sent the text because he knew the Chair, at least in part, due to his role as a councillor, attended the community council as a representative of the Council, and mentioned, in the text, a council motion regarding the ethical standards imposed on councillors. Having concluded, therefore, that the Code applied, the ESC advised he considered the Respondent's description of the Complainer as someone to be 'wary' of to be objectively disrespectful, in breach of the Code, as it suggested she was untrustworthy, difficult or devious and that she should be watched closely.
2. The second issue of complaint alleged the Respondent shared false information about the Complainer (being that she had failed to respond to a solicitors' letter about a defamation claim raised against her by a third party) in a telephone conversation with the Chair of the board of her employer, a local Citizens Advice Bureau (CAB). The ESC advised he again considered the Code applied to the Respondent's conduct. This was because he was a trustee of the CAB by virtue of being a councillor and was speaking "about matters relating to CAB and a CAB employee". The ESC concluded that by telling the CAB Chair the Complainer would be taken to court for failing to respond to the letter, and by repeating the allegations that were the subject of the potential court action, the Respondent intentionally undermined her in a manner that amounted to a breach of the provision in the Code that requires councillors to conduct themselves with courtesy and respect.
3. The third issue of complaint alleged the Respondent had disclosed confidential information about the Complainer (being that he had repeated to the CAB Manager the allegations that were the subject of the defamation action) to a third party. The ESC again concluded that the Code applied to the Respondent's conduct. This was because the ESC considered the Respondent had "gained the knowledge through his role at the CAB". The ESC was of the view that the Respondent "could not have reasonably considered that it was appropriate" for him to pass on details of the Complainer's discussion with her employer to the third party. The ESC concluded that as he had done so in order for the information to be used against the Complainer, the Respondent had again been disrespectful towards her in breach of the Code. The ESC further advised that as he considered the information "could reasonably be regarded as

confidential”, he considered the Respondent had also breached the confidentiality provisions in the Code.

Standards Commission’s Decision and Reasons

Having considered the terms of his referral, the Standards Commission did not consider that it was necessary or appropriate to direct 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 respect and confidentiality provisions in the Code could have the potential to bring the role of a councillor, into disrepute. In this case, however, the Standards Commission was not satisfied that, on the face of it, there was 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 and, therefore, there could be some limited public interest in holding a Hearing. The Standards Commission noted, 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.

In considering proportionality, the Standards Commission noted that the ESC had concluded the Code applied to the Respondent’s conduct in respect of all three issues of complaint. The Standards Commission was not satisfied, however, that this was the case, given it appeared all matters appeared to arise from a personal dispute between the Complainer and Respondent, that concerned his friendship with the third party, rather than his role as a councillor or Council business.

The Standards Commission noted, in respect of the first issue, that there was evidence the Respondent and Chair had been or were friends and considered, in the circumstances, that it would be reasonable for the Respondent to have expected his text message would be treated as being of a private nature. The Standards Commission did not agree with the ESC that the only reasonable interpretation of the message was that the Complainer was being described as untrustworthy, difficult or devious. The Standards Commission considered it could be interpreted, reasonably, as the Respondent suggesting the Chair be careful in any dealings with the Complainer as she might be likely to repeat or make public anything that was said. Given this, and the fact that it was a private message (as opposed to a statement made publicly), the Standards Commission was not satisfied the Respondent’s conduct, in sending it, would meet the threshold for amounting to a breach of the respect provision in the Code.

The Standards Commission noted, in respect of the second issue, that even if the Code applied, the Respondent was providing his understanding of the position in respect of the potential defamation action in what he considered to be a private telephone conversation with the Chair. The Standards Commission noted that he was not raising any issues about the Complainer’s conduct, capability or performance as an employee of the CAB. Indeed, the Standards Commission noted that the subject matter being discussed did not concern the CAB and, instead, related to a defamation action raised by a third party. The Standards Commission noted, in any event, that there was evidence the Respondent was providing the information (being his understanding of the situation) to the Chair in the context of him noting, that as a friend of the third party, he may have a conflict of interest as a Trustee, if a court action was brought against one of its employees (even if the action itself did not concern the CAB).

Turning to the third issue, the Standards Commission did not agree that the information in question could be deemed as being confidential to the CAB or, indeed, to anyone else. The Standards Commission did not agree

with the ESC that the information was confidential simply because the Respondent gained knowledge of the Complainer's conversation with the Manager through his role at the CAB, or because the Manager may not have expected the Respondent to have informed the third party about the conversation. By way of comparison, Members noted that them obtaining knowledge of the work of the Standards Commission from being a member of the organisation did not automatically render such knowledge or information confidential. The Standards Commission noted that the situation was analogous to the Respondent's conversation with the Chair and noted that the ESC, in that scenario, had considered the Chair would be expected to disclose what had been said. The Standards Commission agreed that the Respondent would have a right to advise a third party that an individual was repeating defamatory statements about them if he considered that to be the case. The Standards Commission did not agree that doing so was inherently disrespectful.

In further considering proportionality, the Standards Commission noted that it would be obliged, at any Hearing, in the event of a determination that not only did the Code apply but also that it may have been breached, to consider the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights. In this case, the Standards Commission noted it was highly unlikely that the conduct in question would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression. This was because the Respondent did not disclose the information in respect of the first two issues in public and, further, did not say anything of an egregious, personal nature about the Complainer.

Having taken into account the nature of the potential breach (on the assumption the Code applied) and the likelihood of the Respondent's conduct being protected by his right to freedom of expression, 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: 19 December 2025



**Lorna Johnston
Executive Director**