

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 7 May 2025 (reference LA/Fa/4317) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by an elected member of Falkirk Council (the Respondent), the ESC referred the matter to the Standards Commission on 5 February 2026.

The complaint related to comments the Respondent made as part of a deputation before the Council's Planning Committee in which he compared "the apparent position of officers to that of a fat, obese child who just can't say no to another cream cake". The Complainer considered the comments to be disrespectful to Council officers, and an attempt to both place undue pressure on the Committee and to bring into question the integrity of the Council as a planning authority.

The ESC reported that:

- He considered that while the Respondent's comments could be regarded as satirical in nature, they could reasonably be viewed as being disrespectful to Council officers. The ESC advised this was because they implied officers were acting out of greed. The ESC considered the Respondent could have raised any concerns he may have had about the Council's approach to developer contributions without resorting to disparaging language.
- He was therefore of the view that the Respondent's comments amounted, on the face of it, to a breach of the provisions in the Code that require councillors to both behave with respect and courtesy and to refrain from undermining Council officers.
- He considered, however, that a restriction on the Respondent's right to freedom of expression under Article 10 of the ECHR that a finding of a breach of the Code would entail, could not be justified. This was because he considered the comments were not gratuitous or personal, and further that they were intended as an analogy.

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 the provisions that require councillors to behave in a respectful manner and to refrain from undermining Council officers are key requirements of

the Code. The Standards Commission noted that a failure to adhere to these provisions can lower the tone of political discourse and bring the role of a councillor, the Council's committee system 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 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, in his referral, had reached the conclusion that the Respondent's conduct amounted, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission had some reservations as to whether the comments would reach the threshold for amounting to disrespectful or discourteous behaviour. This was because it was evident they were delivered as an analogy. Furthermore, the Standards Commission was not persuaded that the comments could be taken to concern the performance, conduct or capability of any identifiable officer or group of officers (thus undermining them). Instead, the Standards Commission considered the comments concerned the general position or approach taken by the Council as a whole.

The Standards Commission noted the Complainer considered the comments were intended to put 'undue pressure' on the Committee. The Standards Commission noted, however, the Respondent was not a member of the Committee and was only there to make submissions as part of a deputation (which he was entitled to do). The Standards Commission considered that the inherent purpose of making a deputation before a Council committee is to influence the Committee members as decision-makers and, as such, the Respondent's conduct in that regard would not amount to a breach of the Code.

The Standards Commission considered, in any event, that even if the Respondent's conduct was found at a Hearing to amount, on the face of it, to a breach of the Code, it was highly likely that he would enjoy enhanced protection in respect of his right to freedom of expression, given the comments concerned a matter of public interest (being the Council's approach to developer contributions). The Standards Commission agreed with the ESC that it was very unlikely that the conduct in question would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on this right. In reaching this conclusion, the Standards Commission agreed with the ESC that the comments represented an analogy, and were not directed at any individual or identifiable group, or personal in nature.

Having taken into account the nature of the potential breach, and the likelihood of the Respondent's conduct being protected by his enhanced 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: 9 February 2026



**Lorna Johnston
Executive Director**