

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 December 2025 (reference LA/H/4491) 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 20 April 2026.

The ESC advised that he had investigated one issue of complaint, concerning a comment the Respondent sent to a newspaper in November 2025. The comment was *"So, if the Labour Party had been fighting an election in Germany in 1936, presumably their pitch would have been: "Everyone knows there's a problem with Jews poisoning the water, so we will do something to stop them, though not as much as that nice Mr Hitler."*

The ESC reported that the Complainer, a member of the public, considered the Respondent's comment was disrespectful and discriminatory.

The ESC reported that:

- He did not consider the Respondent's conduct in making the comment would reach the threshold for amounting to a breach of the Code as he considered it was evident, from the context in which it was made, that the Respondent was trying to highlight what he considered to be a racist stance on asylum seekers and an appeasement of the far right by the UK Government. The ESC advised he considered that while the Respondent had referred to an offensive antisemitic stereotype, it was evident from the context, and an objective reading of the whole quote, that he did not agree with the stereotype and did not intend it to be taken as a literal statement. The ESC concluded that, instead, the Respondent made the reference in an attempt to engage in satirical criticism of the UK Government.
- He did not consider, therefore, that the Respondent's comment amounted to discrimination against Jewish people or that it would meet the threshold for amounting to disrespect in terms of the Code.
- In any event, given the context in which it was made, the comment was not so egregious, as to justify a restriction on Respondent's right to freedom of expression that a finding of a breach of the Code and imposition of a sanction would entail.

Reasons for Standards Commission's Decision

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 provisions in the Code that require councillors to behave with courtesy and respect and to refrain from discrimination 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 also 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 would not reach the threshold for amounting to a breach of the Code. Having reviewed the report, the Standards Commission had no reason to depart from the ESC's conclusion in this regard. The Standards Commission noted the Complainer advised she considered the *"Respondent's use of a Nazi antisemitic conspiracy theory and ironic praise of Hitler in a national newspaper to be incompatible with the standards expected of elected officials."* The Standards Commission agreed with the ESC, however, that it was evident the Respondent was not suggesting, in any way, that he agreed with or condoned the theory, or that he was praising Hitler. On the contrary, the Standards Commission considered it was apparent the Respondent did not agree with the theory and was condemning the UK Government's stance by comparing it to one that those appeasing Hitler might take.

The Standards Commission agreed with the ESC, in any event, that even if the Respondent's conduct was found, on the face of it, to be disrespectful at a hearing, it was highly unlikely that a restriction on his right to freedom of expression, that a formal finding of breach and imposition of a sanction would entail could be justified.

In the circumstances, 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: 22 April 2026



**Lorna Johnston
Executive Director**