

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 21 May 2026 (reference LA/H/4600) 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 28 September 2026.

The ESC reported that:

- He had investigated one issue of complaint, which concerned social media posts the Respondent made in May 2026 about a new MSP. These included statements such as "Deport", "He will be deported before this term is over" and a suggestion the MSP was playing "hide and seek" from the Home Office. The ESC reported that the Complainer considered the posts to be inflammatory and racist.
- He [the ESC] considered the Respondent's posts suggested the MSP did not 'belong' in his newly elected role or within the country. The ESC advised he considered "others of the same race, citizenship, ethnic or national origins would consider the message to be that they, in turn, also do not 'belong' within the country or are otherwise unwelcome".
- Despite this, the ESC advised he did not consider a restriction on the Respondent's right to freedom of expression (that a formal finding of a breach of the Code and imposition of a sanction would entail) could be justified because, amongst other things, the comments were not of an egregious or shocking nature and would not bring the Council or the office of a councillor into disrepute. In reaching this conclusion, the ESC observed that the Respondent was expressing value judgements or opinions that had some basis in fact (even if incorrect), given the MSP's immigration status at the time was being widely questioned and was the subject of a great deal of press coverage.

Reasons for 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 respect provisions in the Code could have the potential 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 also 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.

The Standards Commission considered that suggesting someone was unwelcome in the country because of their race or ethnicity could well be egregious and could have the potential to bring a councillor and the Council they represented into disrepute.

In considering proportionality, the Standards Commission was of the view that the controversy in respect of the MSP's immigration status would be relevant context to any determination as to whether the Respondent's posts would amount, on the face of it, to a breach of the Code. The Standards Commission was satisfied it was evident the Respondent's comments referenced the controversy. It considered that given the press coverage, it would be equally, if not more plausible, that members of the public considering the posts objectively, would conclude the Respondent was making comments about whether someone with a temporary visa should be an MSP, as opposed to suggesting someone of the MSP's race or ethnicity should be one. In the circumstances, the Standards Commission was not satisfied the Respondent's conduct would amount to a breach of the Code.

In any event, the Standards Commission agreed with the ESC, for the reasons he had provided, that even if the Respondent's conduct was to be found, on the face of it, to be disrespectful at a Hearing, it was highly likely a restriction on his right to freedom of expression could not 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 in respect of the complaint. The Standards Commission determined, therefore, to take no action on the referral.

Date: 30 September 2026