

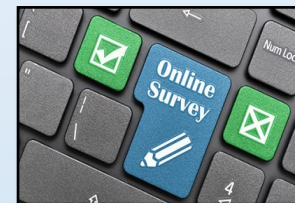
STANDARDS UPDATE

ISSUE 33: March 2022

News

Surveys

The Standards Commission issued a survey to all councillors on 14 February 2022 asking about their experiences with the ethical standards framework and, in particular, whether they had any experience of colleagues failing to comply with the Councillors' Code of Conduct and, if so, the nature of any potential breaches. A similar survey was sent to Council Monitoring Officers. We intend to use the information gathered to inform any future training events and / or identify the need for any further educational material or guidance. We are also keen to see if we can improve how we handle enquiries and our Hearings and adjudicatory processes.



The surveys closed on 14 March 2022. We will publish the results on our website over the next month, along with information about any actions we intend to take in light of the comments and any suggestions received. We are really grateful to all those who took the time to respond.

We intend to issue similar surveys to members of devolved public bodies and Standards Officers in the first quarter of 2022/23.

Outcome of Appeal to Court of Session

The Court of Session considered an appeal made by Councillor Mack of Renfrewshire Council against a decision by the Standards Commission to disqualify him for 16 months for a breach of the Councillors' Code of Conduct. The Court determined that the disqualification period should be 10 months, reduced to account for the period already served.

The Court stated that it agreed with the Panel's assessment that a disqualification was an appropriate sanction and noted: "that these were serious breaches; that the appellant had no basis for the allegations he was making; that they constituted gratuitous personal abuse; that the breaches were deliberate in nature, intended to be disrespectful, to cause offence and to harass; that the appellant had no insight, and had failed to learn from two prior suspensions imposed for breaching the code, thus raising issues about the prospect of repetition; that the breaches included not just discourtesy, disrespect and abuse towards other councillors, but involved intimidation and harassment of council employees; and that the breaches had the potential to disrupt working relations and pose a threat to the council's reputation and to the role of elected representatives."

In short, the Panel was fully entitled to reach the conclusion that the only appropriate sanction was disqualification, and that the disqualification ought not to be brief". The Court nevertheless concluded that the length of the disqualification was too long in this case.

New Standards Commission Member

We are delighted that Suzanne Vestri has been appointed by the Scottish Parliament as a Member of the Standards Commission and commenced in post on 7 February 2022. Suzanne is a self-employed consultant providing support and training to public and voluntary sector organisations. She previously led the award-winning 'see me' campaign to end mental health discrimination. Suzanne breeds rare-breed sheep and runs a successful wool business, and is a volunteer First Responder for the Scottish Ambulance Service. She has been a Board Member of Scottish Children's Reporter Administration since 2016, and was previously a Children's Panel Member and Panel Practice Adviser.



Standards Officers' Workshop - 23 March

The Standards Commission held its annual workshop for Standards Officers on 23 March 2022. Thanks to everyone who attended and participated. Discussion topics included: adoption of / training on the revised Model Code; respect, bullying & harassment; conduct on social media; confidentiality; identifying and declaring interests and the issues arising from distinguishing between strategic and operational matters. We are grateful to everyone who attended and hope you found the discussions as informative and useful as we did.

Cases Overview

Since the last briefing in December 2021, twelve cases were referred to the Standards Commission by the Acting Ethical Standards Commissioner (Acting ESC) about elected members of Aberdeen City (two cases), City of Edinburgh (two cases), Dundee City, Dumfries and Galloway, Highland, Glasgow City (2 cases), South Lanarkshire, Angus and Argyll and Bute Councils. The Standards Commission held one Hearing in respect of a case concerning a former councillor from Moray Council. The outcome of the Hearing is outlined below. The Standards Commission has scheduled Hearings in four cases in respect of councillors from Dundee, Dumfries and Galloway, Angus and Aberdeen City Councils. No action was taken in eight cases, outlined below. **It should be noted that the Acting ESC now refers reports on all concluded investigations to the Standards Commission, regardless of whether the investigation suggests the Code was breached. The final decision on breach is then made by the Standards Commission.**

Cases Overview cont.

Moray Council - LA/Mo/3516 - Hearing Held - No Breach

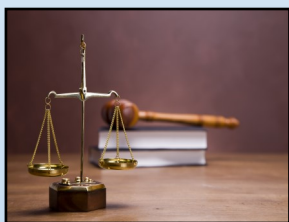
The Hearing Panel heard that the Respondent had posted four tweets relating to a fellow politician moving to another political party. The Panel found that the Respondent had made personal comments about the politician and his wife (the complainer) in the publicly available tweets. The Panel noted that these included making a comparison between the complainer and an activist suspended by another political party for mocking, on Twitter, the First Minister's experience of suffering a miscarriage. The Panel considered that making a comparison between the complainer and someone who had supported such an offensive view was a wholly inappropriate and discourteous personal comment. The Panel was of the view that the Respondent's conduct in doing so was unacceptable, because it lowered the standard of public debate and, further, had the potential to erode public confidence in the role of an elected member. The Panel found that certain of the Respondent's comments met the threshold for a breach of the respect and courtesy provision in the Code. However, the Panel was satisfied that the Respondent's comments had been made in the context of tweets about political matters and, as such, concerned matters of public interest. In the circumstances, the Panel considered that the Respondent would attract the enhanced protection to freedom of expression afforded to politicians, including local politicians, under Article 10 of the European Convention on Human Rights (ECHR). Having undertaken a balancing exercise, which involved weighing the protection against any restriction imposed by the application of the Code and imposition of a sanction, the Panel considered that the Respondent's comments were not sufficiently offensive and gratuitous as to justify such a restriction. The Panel concluded that a breach of the Code could not be found.



Aberdeen City Council - LA/AC/3592 - No Action

The complaint related to the Respondent's conduct during an online meeting of the Community Planning Aberdeen Board. The Acting ESC reported that it was not in dispute that during the recording of the online meeting, which was streamed on YouTube, the Respondent could be heard saying that he was 'listening to folk who could bore for Scotland'. The Respondent was off-screen talking to someone who was not a meeting attendee. The Standards Commission was not satisfied that the conduct could amount to a breach of the Code and 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.

Highland Council - LA/H/3515 - No Action



The complaint concerned an allegation that the Respondent shared the complainer's personal mobile number with the press, without the complainer's knowledge or consent. The Acting ESC advised that he had two competing accounts of the alleged conduct, with no additional evidence at hand to support either position and, as such, he was not able to prefer either account. Having previously directed the Acting ESC to undertake further investigation into the matter, the Standards Commission noted that the complainer had not provided any other evidence to support her assumption that the Respondent was responsible for disclosing her mobile telephone number. In the absence of any other evidence, and given it was very unlikely that further substantive evidence would emerge before or during a Hearing, the Standards Commission determined in the circumstances it was not proportionate to hold a Hearing based on such an assumption.

North Ayrshire Council - LA/NA/3586 - No Action

The complaint related to an incident which is alleged to have taken place in relation to an ongoing dispute about parking on, and access to, a public lane. The complainer alleged that the Respondent intimidated her during a discussion about where she parked her car and alleged the Respondent was "improperly influenced" by a local business owner to revise the regulations relating to the access to the lane in question. The Standards Commission noted that the Acting ESC had found that the Respondent was uninvolved in the decision to revise the regulations so there was no question that he could be "improperly influenced" by the local business owner. The Standards Commission further noted that the Acting ESC had reported that, other than her contention that the Respondent had called her into the lane to discuss the parking issue, the complainer had not provided any other indication as to why she considered his behaviour to be intimidatory. The Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing and determined, therefore, to take no action on the referral.

Glasgow City Council - LA/G/3548 - No Action

The complaint concerned a tweet the Respondent posted during the Eurovision Song Contest Final. The Acting ESC reported the Respondent posted the following comment from a Twitter account from which she was identifiable as a councillor: "it's ok Europe we hate the United Kingdom too. Love Scotland." Standards Commission considered that, on balance, it was evident that the comment was intended as a political joke that had not been directed towards and was not about a specific individual or group. Having taken into account the nature of the alleged breach, and the likelihood of the Respondent's conduct being protected by her 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 and determined to take no action on the referral.



Glasgow City Council - LA/G/3637 - No Action

The complaint concerned a tweet the Respondent posted in which she referred to the Prime Minister as "a racist". The Standards Commission noted the question of whether the Prime Minister was a racist was a matter of public concern and noted that the issue had been, and continued to be, the subject of political and media comment. As such, the Standards Commission considered that a comment on the matter, as made by another politician, could not be categorised to be gratuitous. The Standards Commission was of the view that the Respondent's comment amounted to a value judgement. And accepted, given the media coverage and public debate on the issue, that such a value judgement had been made in good faith, whether if it was accurate or not. As such, even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that they would be entitled to the protection of freedom of expression afforded by Article 10 of the ECHR. The Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing and determined, therefore, to take no action on the referral.

Cases Overview cont.

South Lanarkshire Council - LA/SL/3575 - No Action



The complaint related to an incident which is alleged to have taken place in a street where the complainer and the Respondent's parents lived. The complainer made a number of allegations against the Respondent, including that he had abused his power as a councillor, had raised his voice and had used abusive language. The Standards Commission noted that the Acting ESC had interviewed a number of witnesses to the alleged incident, the overwhelming majority of whom had confirmed that the Respondent did not refer to himself as the "local councillor". Two independent witnesses provided accounts that contradicted the complainer's version of events and supported the version provided by the Respondent and other witnesses. In the circumstances, the Standards Commission determined that Code would not have applied to the Respondent at the time of the events in question, and as such it was not proportionate to hold a Hearing.

Argyll and Bute Council - LA/AB/3533 - No Action

The complaint concerned an allegation that the Respondent, while leafleting for his own political party, removed another political party's poster from a pole to which it was affixed. Although the complainer had not seen the Respondent removing any poster or posters, he advised that he knew of two people who had. The Respondent stated that he saw the "poster" on the ground and picked it up with the intention of taking it home and disposing of it. In removing such an item and taking it home to dispose of, the Acting ESC did not consider that the Respondent acted in an intentionally disrespectful manner, or without courtesy. Additionally, there was no witness evidence that the Respondent had damaged or defaced the item. The Standards Commission was not satisfied, on the face of it, that the conduct as established could amount to a breach of the Code and 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.

City of Edinburgh Council - LA/E/3589 - No Action



The complaint detailed in the Initial Report from the Acting ESC related to an allegation that the Respondent had deliberately misrepresented a local residents' group's (the Group) position on cycle lanes in Edinburgh at a meeting of the council. The complainer alleged that the Respondent had stated that the complainer, as Chair of the Group, had indicated the Group would be changing its position and campaigning to improve safety in cycle lanes rather than removing them altogether; whereas the complainer had simply advised that the Group wanted to "work for the safety of all road users".

While the Acting ESC considered that the Respondent had distorted the intended meaning of the complainer's statement to the council meeting, he could not conclude that this had been deliberate. The Acting ESC noted that the complainer and the Respondent had directly opposing positions on that point – the complainer believing that the Respondent falsely attributed a comment to him because it suited the Respondent's political agenda, and the Respondent stating that he honestly believed the complainer had a change of heart given the positive manner in which he answered the question posed during his deputation. Given that the Respondent's comment on the complainer's statement was not a direct contradiction, and in the absence of other evidence to support the position that there had been deliberate misrepresentation, the Acting ESC was unable to conclude in the circumstances and on the balance of probabilities that there had been a breach of the Code.

A further issue of complaint alleged that the Respondent had incorrectly implied, in a tweet, that the complainer was the only person concerned about the safety issues allegedly associated with the City of Edinburgh Council's "Spaces for People" scheme measures as implemented on the complainer's street. The Acting ESC noted that it was often the case that councillors misrepresented the positions of their opponents to add weight to their own arguments and, in any event, found that a news article attached to the Respondent's tweet had referred to the claims of multiple residents. The Acting ESC considered, therefore, that anyone viewing the Respondent's tweet would have access to the full article which contained the complainer's comments and views, and reference to the claims of multiple residents.

Having reviewed the evidence before it, the Standards Commission found no reason to depart from the Acting ESC's conclusion that in the circumstances, and on the balance of probabilities, there had been no breach of the Code. The Standards Commission concluded, therefore, that it was neither proportionate nor in the public interest for it to hold a Hearing. As such, the Standards Commission determined to take no action on the referral.

Details of the outcome of cases, including full written decisions and information about scheduled Hearings, can be found in the [Our Cases](#) section of our website.

For further information on the support we can offer councillors and members of devolved public bodies, please either speak to your Monitoring Officer or Standards Officer or look out for information on our website. Alternatively,

Room T2.21

0131 348 6666

Scottish Parliament

enquiries@standardscommission.org.uk

Edinburgh

www.standardscommission.org.uk

[@StandardsScot](#)  [facebook.com/StandardsCommission](https://www.facebook.com/StandardsCommission) 