

STANDARDS UPDATE

ISSUE 35: September 2022

News

Responses to Surveys of Members and Standards Officers

The Standards Commission issued separate surveys to Members and Standards Officers of all devolved public bodies covered by the ethical standards framework as we were keen to learn about their experiences in terms of compliance with, and awareness of, the provisions of the Model Code of Conduct. The surveys closed at the end of June and documents outlining the responses received can be found on the [Surveys](#) page of our website. We intend to use the information gathered to inform future training events and to identify the need for any further educational material or guidance. The actions the Standards Commission hopes to take in light of responses, subject to budget and resources constraints, are outlined in the documents under the headings 'Next Steps'.



Revised Hearing Rules

We have revised and simplified the Standards Commission's Hearing Rules, which outline the procedures to be followed at Hearings held to determine whether there has been a breach of a Code of Conduct. The revised Rules can be found on the [Hearing Rules](#) page of our website.

We have removed all content from the Rules that essentially amounted to guidance for Respondents and have, instead, published this information on a [new page for Respondents](#) on the website.

Direction to the Ethical Standards Commissioner on the Progress of Investigations

Following a consultation with the Acting Ethical Standards Commissioner (ESC), the Standards Commission has renewed its Direction on the Progress of Investigations issued to the ESC under sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Direction requires the ESC to provide the Standards Commission with reports on the progress of investigations into complaints about councillors and members of devolved public bodies every three months.

The reports provide a summary of the investigative work undertaken, an explanation as to what requires to be done to complete the investigation and an indication of when it is expected that a final report will be issued. The ESC is also required to provide three-monthly written updates to the Respondent, the Complainer and the relevant council or devolved public body. The information received in these reports allows the Standards Commission to understand the timescales involved in dealing with complaints and provides assurance that parties are being kept updated on the progress being made.



Advice Note for Members on Conduct at Online Meetings

In light of feedback from the surveys of Members of Devolved Public Bodies and Standards Officers, the Standards Commission has produced an Advice Note for Members on conduct at online meetings. The Advice Note is intended to assist members in complying with the provisions of the Code when attending meetings or other events (such as training seminars or conferences) online. The Advice Note recognises that several other provisions within Section 3 of the Model Code can apply when a member is attending an online meeting or event, including those concerning respect, bullying and harassment, confidentiality and the use of the public body's facilities. It makes various suggestions for ensuring compliance with these and for good practice.

Monitoring Officers' Workshop

The Standards Commission will hold its annual workshop for Monitoring Officers on **Monday, 24 October 2022** at the COSLA Conference Centre, 19 Haymarket Yards, Edinburgh, 11 am - 2 pm. Tea/coffee will be available from 10.30 am and lunch will be provided. If anyone is unable to attend in person there will also be an opportunity to join remotely via Teams. If you would like to book a space and have not yet done so, please contact us. Please also let us know if you have any topics or issues you would like us to add to the programme.



SAVE THE DATE - Standards Officers' Workshop will take place on Tuesday, 21 March 2023. The programme, venue and timings have not yet been finalised so any / all suggestions welcome.

Cases Overview

Since the last briefing in June 2022, 13 cases were referred to the Standards Commission by the Acting Ethical Standards Commissioner (Acting ESC) about elected members of Glasgow City, Angus (3 cases), Aberdeenshire (2 cases), South Lanarkshire (2 cases), North Lanarkshire, Moray and Stirling Councils and board members of the Cairngorms National Park Authority and Children's Hearings Scotland.

The Standards Commission has scheduled Hearings in two cases in respect of councillors from Glasgow City and Angus Councils, detailed below. No action was taken in 11 cases, outlined below.

Glasgow City Council - LA/G/3563

A Hearing about a former Glasgow Councillor was due to be held on 13 September 2022, but was postponed as a mark of respect following the death of Her Majesty the Queen. The Hearing will now be held on 26 October 2022.

Angus Council - LA/An/3546

Following a direction from the Standards Commission in April 2022 to undertake further investigation into a complaint about an Angus Councillor, the Acting ESC referred a supplementary report on his further findings in August 2022. The Standards Commission decided to hold a Hearing in respect of the case. The Hearing is scheduled to take place on 1 November 2022.



Angus Council - LA/An/3631 - no action

The complaint related to a planning application submitted by an agent on behalf of a company of which the Respondent was a director. The Acting ESC advised he had not found any evidence to support the Complainer's contention that the Respondent was involved in the submission of the application or that he was aware it had been made. The Acting ESC further advised that he had found that the Respondent had not had any dealings (formal or otherwise) in respect of the Council's consideration of the application that would have required any declarations of interest to be made.

The Acting ESC found that the Respondent had included an entry to the effect that he was a director of the company in his register of interests, as required by the Code. The planning officer who made the decision on the application confirmed that he had not been influenced, in any way, by the Respondent. The Acting ESC concluded, therefore, that there had not been any breach of the Code by the Respondent. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. The Standards Commission determined, therefore, that it was neither proportionate, nor in the public interest, for it to hold a Hearing and decided to take no action on the referral.

Aberdeenshire Council - LA/As/3629 - no action

The complaint concerned text messages sent by the Respondent to a fellow councillor (Councillor A) during a virtual meeting of an area committee of the Council, which Councillor A later shared with the Complainer. The Acting ESC reported that, in the text messages, the Respondent encouraged Councillor A to challenge the Complainer's position. The Acting ESC advised that he did not consider that doing so was inherently disrespectful and noted that there was nothing within the Code or the Council's Standing Orders that would prevent a councillor from messaging a colleague during a meeting.

The Acting ESC found that, on the face of it, the words the Respondent used in the text messages to describe the Complainer were disrespectful in nature. The Acting ESC noted, however, that the exchange did not occur in a public context and the Code was not intended to capture private correspondence. As such, the Acting ESC considered that the Respondent had not contravened the Code. The Standards Commission agreed with the Acting ESC that it did not appear 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.



South Lanarkshire Council - LA/SL/3684 - no action

The complaint related to an email exchange between the Respondent and the Complainer. The Acting ESC advised that the Complainer sent the Respondent three emails relating to a Facebook post made by the Respondent commenting on GP services in the local area. The Complainer, a GP, found the Respondent's Facebook post to be upsetting and emailed the Respondent to raise her concerns. The Respondent replied to the Complainer twice. The Acting ESC acknowledged that the Complainer was critical of the Respondent's conduct in making the Facebook posts but was of the view that the Respondent's conduct was not sufficiently serious as to amount to bullying. This was because the Complainer had initiated the email exchange (which was wholly private in nature) and her emails to the Respondent had been persistent and had pressed for a response; the Respondent apologised to the Complainer for the wording of her Facebook post in her first email and attempted to make amends; it was not a workplace situation where one individual held a position of power over the other. Instead, it was an exchange of emails between two individuals of recognised and respected professions and there was no evidence of a course of conduct, such as repeated unwanted emails from the Respondent or any evidence of the Respondent making any threats towards others. As such, the Acting ESC considered that the Respondent's conduct did not amount to a breach of the Code.

Having reviewed the evidence, the Standards Commission found no reason to depart from that conclusion. 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.

South Lanarkshire Council - LA/SL/3587 - no action

The complaint concerned the Respondent's behaviour towards members of a Community Centre Management Committee. The Acting ESC reported the complaint alleged that the Respondent had contacted members of the committee and had harassed them, in an attempt to persuade them to overturn a decision. The Complainer alleged that, in doing so, the Respondent had provided the members with incorrect information. The Complainer also alleged that the Respondent had attacked her character by calling her a liar during a telephone call with another Community Centre member. Having considered all evidence gathered, the Acting ESC found, on the balance of probabilities, that the complaint had not been proven.

The Standards Commission was of the view that while it appeared the Community Centre Members were upset at being challenged about the decision, this did not in itself mean that the Respondent was not entitled to contact them to ask why they had made it. 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.

Cases Overview cont.

Angus Council - LA/AN/3564 - no action



The complaint concerned an anonymous Facebook account (the account) operated by the Respondent, which was alleged by the Complainers to have posted abusive and disrespectful comments about others, including other councillors. The Acting ESC advised that although the account had been operated anonymously, the Respondent's subsequent identification as the operator of the account by the press, and his admission to the press that he operated the account, meant that he could be perceived to be acting as a councillor at the time of operating the account. One of the posts appeared to be a screengrab of a Tweet, questioning the proximity between independent councillor colleagues of the Respondent and a political party. The Acting ESC also advised that the Respondent's conduct was not sufficient to amount to bullying or harassment, because: there was no evidence that the Respondent had targeted any person or account repeatedly; there was no evidence that the Respondent had made any threats towards others; and the Respondent did not tag either of the independent councillors in the post. The Acting ESC advised, in any event, that the Respondent would be entitled to the enhanced protection to freedom of expression afforded to politicians commenting on matters of public concern. The Acting ESC concluded that a breach of the Code could not be found.

Having taken into account the above factors, and in particular the fact that it was not satisfied that the conduct as established could amount to a breach of the Code, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Cairngorms National Park Authority - NPA/C/3612 & 3628 and Aberdeenshire Council - LA/As/3613 - no action

The complaints alleged the Respondent, during an online meeting of the board of the Cairngorms National Park Authority (CNPA), uttered or mouthed the words "oh for fuck's sake" (the remark) while one of the Complainers was speaking. The Acting ESC advised the Respondent disputed the allegation and he had found the Respondent's muttering to be inaudible. The Acting ESC advised that all parties were credible witnesses and, as such, it was difficult to prefer one account of the alleged incident to another.

Having reviewed the evidence before it, the Standards Commission noted that the alleged incident was a one-off event and that there was no evidence that the Respondent had directed the remark at one of the Complainers. The Standards Commission acknowledged that the Respondent had issued an apology to the Complainer who had been speaking at the time of the incident when the matter was brought to his attention, in the event that he had unknowingly caused her any offence. 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.



The Standards Commission noted that the Acting ESC had also investigated whether the Respondent had breached the Councillors' Code of Conduct in respect of the same incident, as the Respondent had been nominated to the board of CNPA by Aberdeenshire Council. Having considered the second referral from the Acting ESC, the Standards Commission determined that the Respondent was not acting in the capacity of a councillor at the time of the alleged incident and, as such, the Councillors' Code of Conduct did not apply. This was because the Respondent was attending the meeting as a member of the CNPA Board and was acting in that capacity (regardless of how he had been appointed as a member of

the board). As the Councillors' Code did not apply, the Standards Commission determined it was neither in the public interest, nor proportionate to hold a Hearing and, as such, decided to take no action on the second referral.

North Lanarkshire Council - LA/NL/3581 - no action

The complaint related to a dispute between the Respondent and the Complainer, who were neighbours. The Acting ESC reported there were three issues of complaint, being that 1) during a telephone conversation, the Respondent threatened to report the Complainer to the Council's Planning Department if the Complainer did not agree to build a new fence; 2) the Respondent suggested that the Council's Planning Department had told her that she could remove a fence and that planning officers would attend the Complainer's property to support her [the Respondent's] position; and 3) the Respondent started a hate campaign against the Complainer and his wife, falsely accusing them of using their CCTV system to film her, in discussions with other neighbours and in a Facebook post. The Acting ESC found, in respect of issues one and three, there was no evidence that the Respondent told the Complainer or his wife that she was acting as a councillor or referred to herself as such during the telephone conversation or during the discussions with other neighbours. The Facebook comment was posted on her personal account, not her councillor one. As such, the Respondent was not acting as a councillor and the Code did not, therefore, apply. The Acting ESC concluded that there was insufficient evidence to find the facts of the second issue proven and concluded that a breach of the Code could not be found.

Having taken into account the above factors, and in particular the fact that it was not satisfied that there was evidence of any breach of the Code, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Moray Council - LA/Mo/3615 - no action

The complaint alleged that the Respondent had failed to declare a non-financial interest in the review of a planning application at a meeting of the Local Review Board (being that he was personal friends with two of the directors of the applicant company and that he was a co-member of a local committee that organised annual festive events with one of the directors). The Acting ESC found that there was no dispute that the Respondent did not declare an interest and withdraw from the meeting, despite having known both of the directors for a long time and being a Facebook friend of one of them. The Acting ESC noted, however, that the Respondent disputed that he was personal friends with either director and reported that this position was supported by the evidence gathered during the investigation. The Acting ESC further found that the director was not on the same local committee as the Respondent, as alleged. In the circumstances, the Acting ESC concluded that there was no requirement for the Respondent to have declared an interest in the planning application. That was because the ESC was of the view that a member of the public, with knowledge of the relevant facts, would not reasonably regard the interest, (being the Respondent's relationship with either director), as being so significant that it would be likely to prejudice his discussion or decision-making during the planning application review. The Acting ESC further advised that he had found evidence that the reasons for the decision given by the Respondent at the meeting related to relevant and material considerations. As such, the Acting ESC had not found evidence that, when making the decision on the planning application, the Respondent demonstrated bias or could be reasonably perceived as having done so.

Cases Overview cont.

Moray Council - LA/Mo/3615 - no action (cont.)

Having reviewed the evidence before it, the Standards Commission found no reason to depart from the Acting ESC's conclusions. As the Standards Commission was not satisfied that there was evidence of any breach of the Code, given that there was no requirement for the Respondent to have declared an interest in the planning application, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Children's Hearings Scotland - CE/3748 - no action

The complaint alleged that the Respondent had breached Children's Hearings Scotland's Acceptable Use Policy in respect of a tweet she had posted, and that, in doing so, she had contravened paragraph 3.26 of Children's Hearings Scotland's Code of Conduct, which concerned the use of the public body's resources. The Acting ESC noted that the Complainer had also alleged that the Respondent's language in the tweet was disrespectful, but advised that he had dismissed that part of the complaint as ineligible on the basis that it could not amount to a breach of the Code, as he had not found the Respondent's language to be disrespectful or discourteous in the circumstances. The Acting ESC advised that while the content of the Respondent's tweet was unrelated to her role as a board member of Children's Hearings Scotland, her Twitter profile identified her as such, and the Acting ESC therefore considered that the Respondent could objectively be considered to be acting in her capacity as a board member when she posted the tweet and, as such, the Code applied. The Acting ESC noted that the Respondent advised she posted the tweet using her personal mobile phone, and not a device provided by Children's Hearings Scotland. In the absence of any other evidence to dispute this position, the Acting ESC was unable to conclude on the balance of probabilities that the Respondent had used the public body's resources and, in doing so, had breached its Acceptable Use Policy or Code.



Having taken into account the above factors, and in particular the fact that it was not satisfied that there was evidence of any breach of the Code and that it was very unlikely that any further evidence would come to light that could be considered at a Hearing, the Standards Commission concluded that it was not proportionate for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Stirling Council - LA/S/3641 - no action

The complaint concerned an image posted on the Respondent's social media account showing the former Prime Minister about to be assaulted by police. The image comprised of a photograph that appeared to be from the miners' strikes in the 1980s with another photograph of the Prime Minister superimposed on top. The Acting ESC advised that while the Respondent's social media page appeared to be a private account, its introduction section, which was available to view, stated that he was a councillor and referenced the council ward he represented. As such, the Acting ESC was satisfied that the Respondent could reasonably be perceived to be acting in the capacity of a councillor at the time and, as such, the Code applied. The Acting ESC acknowledged that the Respondent accepted he should not have posted the image and had indicated that he was willing to apologise for any offence it had caused. The Acting ESC advised, however, that he was satisfied that as the Respondent posted an image that displayed violence towards an MP, his conduct could be perceived, on the face of it, as being a breach of the respect provisions in the Code.



The Standards Commission noted that the Acting ESC had concluded that even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that he would enjoy the enhanced protection to freedom of expression afforded by Article 10 of the ECHR, given the post related to a matter of public concern (being the then Prime Minister's comments and views on the miners' strikes). Having reviewed the evidence before it, the Standards Commission found no reason to depart from these conclusions. The Standards Commission considered that it was very unlikely that the conduct in question would be found, in the circumstances, to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression. As such, it was unlikely that a breach of the Code could be found at a Hearing. In the circumstances, the Standards Commission concluded that it was not proportionate for it to hold a Hearing and determined, therefore, 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, please contact us:

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