

Decision of the Standards Commission for Scotland

On receipt of a report 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. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/AC/3592) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by a councillor of Aberdeen City Council (the Respondent), the Acting ESC referred a report to the Standards Commission for Scotland, on 25 January 2022, in accordance with section 14(2) of the 2000 Act.

The complaint concerned the Respondent's conduct during an online meeting of the Community Planning Aberdeen Board on 7 July 2021.

The Acting ESC reported that it was not in dispute that during the recording of the meeting, which was streamed on YouTube, the Respondent could be heard saying that he was 'listening to folk who could bore for Scotland'. Acting ESC reported that the Respondent acknowledged he had made this comment in an article reported on the *Press and Journal's* website on 12 July 2021 entitled "SNP group leader claims community council bosses 'could bore for Scotland' in online meeting gaffe".

In his report, the Acting ESC investigated whether the Respondent's conduct, in making the comment in question, would amount to a contravention of paragraph 3.2, 3.3. and 3.7 of the 2018 version of the Code, which was in place at the time.

The applicable sections of the 2018 version of the Code are reproduced below.

3.2 You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

3.7 You must respect the Chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

In his investigation report, the Acting ESC advised that he had found that:

1. There was no dispute that the Respondent had made the comment in question at a part of the meeting where the Council's Chief Executive and its Leader were on-screen in conversation. The Respondent was off-screen talking to someone who was not a meeting attendee. The meeting had continued and, when the Respondent was later called to contribute and another elected member explained that he had been overheard, the Respondent apologised, explaining that he had dropped out and re-joined the meeting and must not have failed to mute his microphone. As such, there was sufficient evidence to find the factual basis of the complaint proven.
2. The Respondent could be perceived to be acting as a councillor, as he was attending the meeting in that capacity. As such, the Code applied.
3. The Respondent had advised that his comment had been directed at the council leader, not anyone else present at the meeting. There was insufficient evidence to support a conclusion that the comment was directed at any council employee. As such, the Acting ESC did not consider paragraph 3.3 of the Code had been breached.
4. While the Respondent was quoted in a later press article as apologising for any offence caused by inferring the Council's Leader could 'bore for Scotland'; he had proceeded to state that, given her political views, it was likely she would 'prefer to bore for Britain'.
5. As the Respondent did not intend for his private conversation to be overheard and had subsequently apologised, and given the nature of the comment was not so offensive to be disrespectful or discourteous, his conduct would not amount to a breach of either paragraph 3.2 or 3.7 of the Code.
6. In any event, it was likely that the Respondent would be protected by the enhanced right to freedom of expression afforded by Article 10 of the European Convention on Human Rights (ECHR), as his comment had been made in the context of a matter of public concern; namely a meeting at which the Council's response to the pandemic was being discussed.

The Acting ESC concluded that the Respondent's conduct did not amount to a breach of the Code.

Reasons for Decision

Having considered the terms of his report and having noted that the factual basis of the complaint was not in dispute, the Standards Commission did not consider that it was necessary or appropriate to direct the Acting 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 and courtesy provisions in the Code 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. In this case, however, the Standards Commission was of the view that, on the face of it, it was not clear that there had been such a breach of the Code.

The Standards Commission noted that it was accepted that the Respondent had not intended his comment to be public, and that he had apologised when advised that he had been overheard. While the Standards Commission considered the Respondent had somewhat diminished his own apology, in his subsequent quote to the press, it nevertheless noted that the nature of the remark made was not particularly abusive or offensive. The Standards Commission noted that the complaint had not been made by the individual who was allegedly the subject of the comment.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, if it was found that the Respondent's conduct amounted to a breach of the Code. There could, therefore, be some limited public interest in holding a Hearing. Regardless of this, the Standards Commission was, however, also required to consider whether it would be proportionate to do so.

In considering proportionality, the Standards Commission noted that the Acting ESC, in his report, had reached the conclusion that the Respondent's conduct did not amount to a breach of the Code. Having reviewed the evidence before it, the Standards Commission was of the view that this was a reasonable conclusion. This was because even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that he would be entitled to the protection of freedom of expression afforded by Article 10 of the ECHR. The Standards Commission agreed with the Acting 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 the Respondent's right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail.

The Standards Commission noted 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 unnecessary administrative or legal processes in cases that did not, on balance, warrant such action.

Having taken into account the above factors, and in particular the fact that it was not satisfied, on the face of it, that the conduct as established could amount to a breach of the Code, 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.

The Standards Commission nevertheless wishes to reiterate that the requirement in the Code for councillors to conduct themselves with courtesy and respect helps ensure public confidence both in their role and the council itself. This includes when they are in meetings and engaged in online activity

Date: 28 January 2022



**Lorna Johnston
Executive Director**