

## 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/DG/3577) concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor [REDACTED] of Dumfries and Galloway Council (the Respondent), the Acting ESC referred a report to the Standards Commission for Scotland, on 6 December 2021, in accordance with section 14(2) of the 2000 Act.

The complaint related to a quote given by the Respondent to the effect that anyone guilty of fly-tipping should be publicly flogged, which featured in an article published in the Dumfries and Galloway Standard on 27 July 2021.

In his report, the Acting ESC investigated whether the Respondent's conduct, in making the statement in question, would amount to a contravention of paragraph 3.2 of the Code.

Paragraph 3.2 of the Code states:

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

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

1. There was no dispute that the Respondent had made the statement ascribed to him in the article. As such, there was sufficient evidence to find the factual basis of the complaint proven. The complainer considered the Respondent's statement to be unacceptable, believing the Respondent to be calling for the introduction of illegal and medieval punishments.
2. The Respondent could be perceived to be acting in his capacity as a councillor, as the article clearly identified him as a councillor. As such, the Code applied.
3. The Respondent was protected by his enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as his statement highlighted his concerns in relation to the issue of fly-tipping in the local area, being a matter of local political interest and public concern.

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, 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, there was no evidence of any such breach of the Code.

The Standards Commission noted that the Respondent's press quote set out his views on the increase in fly-tipping offences in the local area, and his opinion on how the issue should be addressed. While the Standards Commission accepted that certain members of the public might find the Respondent's quote shocking, it noted that the Respondent was entitled to express his opinion and that he had not directed his comment at, or been disrespectful towards, any specific individual.

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 found no reason to depart from that conclusion.

In any event, the Standards Commission noted 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 that the subject matter of the comment concerned a matter of political interest, being issues of fly-tipping in the local area.

In the circumstances, therefore, 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 enhanced right to freedom of expression.

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 is 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.

**Date: 9 December 2021**



**Lorna Johnston  
Executive Director**