

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/SL/3684) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by a councillor of South Lanarkshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 12 August 2022, in accordance with Section 14(2) of the 2000 Act.

The complaint related to an email exchange between the Respondent and the Complainer which took place between 6 and 9 December 2021. The Complainer alleged that the tone of the Respondent's emails was accusatory, intimidating and bullying.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraph 3.3 of the Code, which states:

3.3: I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.

In his investigation report, the Acting ESC advised that:

1. There was no dispute that the Respondent was acting as a councillor at the time of her engagement, by email, with the Complainer.
2. The Complainer sent the Respondent three emails on 6 and 8 December 2021 relating to a Facebook post made by the Respondent commenting on GP services in the local area. The Complainer, a GP in South Lanarkshire, found the Respondent's Facebook post to be upsetting, and as such emailed the Respondent to raise her concerns. The Respondent replied to the Complainer twice, on 8 and 9 December.
3. While he acknowledged that the Complainer was critical of the Respondent's conduct in making the Facebook posts, and further that the Complainer considered the Respondent's emails to be bullying in tone, the Acting ESC was of the view that the Respondent's conduct was not sufficiently serious as to amount to bullying, because:
 - the Complainer had initiated the email exchange, which was wholly private in nature, and the Complainer's emails to the Respondent had been persistent and had pressed for a response;
 - it was not inappropriate for the Respondent, in a response, to have requested confirmation from the Complainer that she was a constituent of the Respondent's ward;

- 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.

Having considered the various factors of the complaint and the evidence gathered, the Acting ESC considered that the Respondent's conduct did not amount to a breach of paragraph 3.3 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 bullying and harassment 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 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, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. In particular, the Standards Commission noted that the Respondent had been replying to emails initiated by the Complainer. The Standards Commission further noted that the Respondent had, in her initial response, offered an apology to the Complainer.

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: 16 August 2022



**Lorna Johnston
Executive Director**