

## **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/AN/3564) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of Angus Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 30 August 2022, in accordance with Section 14(2) of the 2000 Act.

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.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.2 and 3.6 of the Code, which state:

*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.*

*3.6: Bullying or harassment is completely unacceptable and will be considered to be a breach of this Code.*

The Acting ESC advised that:

1. 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 the Respondent could be perceived to be acting as a councillor at the time of operating the account.
2. Only two posts from the account had been recovered and were available for consideration. One post sought to encourage tactical voting, which the Acting ESC noted to be neither disrespectful nor discourteous. The second post 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 considered that the second post was disrespectful and discourteous towards those independent councillors and as such could be considered to be a breach of paragraph 3.2 of the Code.
3. Having concluded that the Respondent's conduct in posting the second post could amount to a breach of paragraph 3.2 of the Code, the Acting ESC then proceeded to consider the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The Acting ESC considered that the post related to a matter of public concern, namely the proximity between independent councillors and political parties. As such, the Acting ESC considered that the Respondent would be entitled to the enhanced protection to freedom of expression afforded to politicians commenting on matters of public concern.

4. In considering whether the second post could be found to be bullying or harassing, in contravention of paragraph 3.6 of the Code, the Acting ESC 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;
  - the Respondent did not tag either of the independent councillors in the second post.

The Acting ESC concluded that a breach of the Code could not be found.

### **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 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.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions 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 one of the Respondent's posts could be said to amount, on the face of it, to a breach of paragraph 3.2 of the Code. The Standards Commission further noted, however, 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 ECHR, given the post related to a matter of public concern (being the alleged proximity between independent councillors and a political party). The Standards Commission considered 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. As such, it was unlikely that a breach of the Code could be found at a Hearing.

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 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 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.

The Standards Commission nevertheless wishes to emphasise that the requirement for councillors to behave in a respectful and courteous manner towards colleagues is a fundamental requirement of the Code, as it ensures public confidence in the role of an elected member and the council itself is not undermined.

**Date: 6 September 2022**



**Lorna Johnston  
Executive Director**