

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.

Reports to the Standards Commission

Following his investigation into a complaint (reference NPA/C/3612 & 3628) concerning an alleged contravention of the Code of Conduct for Members of the Cairngorms National Park Authority (the CNPA's Code) by a board member of the Cairngorms National Park Authority (the Respondent), the Acting ESC referred a report to the Standards Commission, on 31 August 2022, in accordance with Section 14(2) of the 2000 Act. The report concerned complaints submitted by two Complainers alleging that the Respondent, during a meeting of the board of the CNPA, uttered or mouthed the words "oh for fuck's sake" (the remark) while one of the Complainers was speaking.

On the same day, the Acting ESC referred a further report to the Standards Commission following an investigation about the same matter and Respondent, in the Respondent's capacity as a councillor of Aberdeenshire Council (reference LA/As/3613). The Acting ESC reported that the Respondent had been nominated by Aberdeenshire Council to the board of the CNPA. Having considered the terms of this report, 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 further action on the report.

In respect of the complaints about the Respondent in his capacity as a board member of the Cairngorms National Park Authority (CNPA), the Acting ESC reported that he had investigated whether the Respondent's conduct would amount to a contravention of paragraphs 23 and 24 of the version of the CNPA's Code in place at the time of the event in question, which stated:

23: You must respect the chair, your colleagues and employees of the Cairngorms National Park Authority in meetings. You must comply with rulings from the chair in the conduct of the business of these meetings.

24: You will treat your fellow board members and any staff employed by the body with courtesy and respect. It is expected that fellow board members and employees will show you the same consideration in return. It is good practice for employers to provide examples of what is unacceptable behaviour in their organisation and members must adhere to adopted guidance on this subject. Public bodies should promote a safe, healthy and fair working environment for all. As a board member you should be familiar with the policies of the Cairngorms National Park Authority in relation to bullying and harassment in the workplace and also lead by exemplar behaviour.

The Acting ESC advised that:

1. In participating in the meeting, the Respondent was acting as a board member of the CNPA, and as such the CNPA's Code applied.
2. The Respondent disputed the Complainers' allegation that the Respondent spoke or mouthed the remark when one of them was speaking. The Acting ESC noted that the parties were credible witnesses and, as such, it was difficult to prefer one account of the alleged incident to another. The Acting ESC nevertheless noted the following further evidence that the Respondent spoke or mouthed words during the incident in question:
 - During the meeting, one of the Complainers posted a message in 'chatbox' facility suggesting it was unprofessional for a board member to mouth expletives in response to a fellow member's comments; and
 - Evidence gathered as part of the CNPA's internal investigation into the matter, where an unidentified participant at the meeting observed that they Respondent had "muttered something" while one of the Complainers was speaking.
3. As he was not satisfied that the Respondent uttered the remark as alleged, or that if he did, he did so with the intention of swearing at another Member, the Acting ESC did not consider that paragraphs 23 or 24 of the CPNA's Code had been breached.

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 provisions in the CNPA's Code could have the potential to lower the tone of discourse within public bodies and to bring the role of a board member and the public body itself into disrepute. In this case, however, the Standards Commission was not satisfied that, on the face of it, there was evidence of any such breach of the CNPA's Code.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the CNPA's Code, if it was found that the Respondent's conduct amounted to a breach of the CNPA's Code. While there could, therefore, be some limited public interest in holding a Hearing, the Standards Commission was 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 would not amount to a breach of the CNPA's Code even if established. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

The Standards Commission further noted that even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, he would enjoy the right to freedom of expression afforded by Article 10 of the European Convention on Human Rights. The Standards Commission noted that it was very unlikely that the alleged conduct, if established, would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression.

The Standard 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 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 if established could amount to a breach of the CNPA's 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 agreed, nevertheless, that the Respondent should be reminded of the importance of adhering to the respect provision in the CNPA's Code, in order to ensure public confidence in the role of a board member and in public bodies is maintained.

Date: 7 September 2022



**Lorna Johnston
Executive Director**