

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. Under the framework, complaints about breaches of these Codes are investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

Following his investigation into a complaint (reference LA/NL/3581) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of North Lanarkshire Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 6 September 2022, in accordance with Section 14(2) of the 2000 Act.

In his report, the Acting ESC advised that there were three issues of complaint, which can be summarised as follows:

1. During a telephone conversation, the Respondent threatened to report the Complainer [who was a neighbour] to the Council's Planning Department if the Complainer did not agree to build a new fence.
2. The Respondent suggested that the Council's Planning Department had told her that she could remove a fence and that planning officers would attend the Complainer's property to support her [the Respondent's] position.
3. The Respondent started a hate campaign against the Complainer and his wife, falsely accusing them of using their CCTV system to film her, in discussions with other neighbours and in a Facebook post.

The Acting ESC advised that:

1. In respect of issues one and three, there was no evidence the Respondent told the Complainer or his wife that she was acting as a councillor or referred to herself as such during the telephone conversation or during the discussions with other neighbours. The Facebook comment was posted on her personal account, not her councillor one. As such, the Respondent was not acting as a councillor, and could not reasonably have been perceived to have been acting in that capacity, during the events in question. The Code did not, therefore, apply.
2. In any event, the Respondent would have been entitled to state that she would report the Complainer to the Council's planning department (if indeed she did so), as that was an option open to all members of the public, including councillors.
3. The Respondent disputed, in respect of issue two, that she told the Complainer she could remove the fence and that planning officers would support her. The Acting ESC concluded that there was insufficient evidence to find the facts of the issue proven.

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 failure to comply with the provisions in the Code that require councillors to act with courtesy and respect and to not take unfair advantage of their position could bring the role of a councillor and the Council itself into disrepute. In this case, however, the Standards Commission was not satisfied, on the face of it, there was evidence of any such failure to comply with the Code.

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 found that the Code did not apply in respect of issues one and three of the complaint. The Standards Commission further noted that the Acting ESC had not found the factual basis of issue two to be proven. Having reviewed the evidence before it, the Standards Commission found no reason to depart from those conclusions.

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 there was evidence of any 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.

Date: 8 September 2022



**Lorna Johnston
Executive Director**