

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/S/3641) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code), which was the version in place at the time of the events in question, by a councillor of Stirling Council (the Respondent), the Acting ESC referred a report to the Standards Commission, on 22 September 2022, in accordance with the 2000 Act.

The complaint was that the Respondent posted an image on his social media account showing the then Prime Minister about to be assaulted by police at a time when the media was reporting on the recent murder of another MP.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraphs 3.1 and 3.2 of the Code, which state:

3.1: The rules of good conduct in this section must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media.

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.

The Acting ESC advised that:

1. The image posted showed the then Prime Minister standing on a road with a police officer on a horse about to strike him from behind with a baton. The image comprised of a photograph that appeared to be from the miners' strikes in the 1980s with another photograph of the Prime Minister superimposed on top. The image was posted by the Respondent before the murder of the other MP. It was not deleted until a few weeks after the other MP's death.
2. While the Respondent's social media page appeared to be a private account, and only public posts can be viewed, its introduction section, which was available to view, stated that he was a councillor and referenced the council ward he represented. The Acting ESC was therefore satisfied that the Respondent could reasonably be perceived to be acting in the capacity of a councillor at the time and, as such, the Code applied.
3. On a visit to Scotland two days before the image was posted, the former Prime Minister made a remark about the mass closure of coalmines in the 1980s. The Acting ESC advised that, regardless of this, he was nevertheless satisfied that as the Respondent posted an image that displayed violence towards an MP, his conduct could be perceived, on the face of it, as being to be disrespectful and, therefore, a contravention of paragraphs 3.1 and 3.2 of the Code. The Acting ESC acknowledged, however, that the

Respondent accepted he should not have posted the image and had indicated that he was willing to apologise for any offence it had caused.

4. Having concluded that the Respondent's conduct in posting the image could, on the face of it, amount to a breach 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 then Prime Minister's comments and views on the miners' strikes. 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. The Acting ESC concluded that, in the circumstances, a restriction on the Respondent's freedom of expression, that a finding of breach and imposition of a sanction would entail, would not be justified.

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 courtesy and respect 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 paragraphs 3.1 and 3.2 of the Code. The Standards Commission further noted, however, that the Acting ESC had concluded 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 the post related to a matter of public concern (being the then Prime Minister's comments and views on the miners' strikes). Having reviewed the evidence before it, the Standards Commission found no reason to depart from these conclusions. The Standards Commission considered that it was very unlikely that the conduct in question would be found, in the circumstances, 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 a breach of the Code could be found, 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: 27 September 2022



**Lorna Johnston
Executive Director**