

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/I/3688) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by a former elected member of Inverclyde Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 22 December 2022.

The complaint related to a series of Tweets posted by the Respondent, which allegedly misrepresented a Member of the Scottish Parliament's (MSP) position on paedophiles and child sexual assault. It is further alleged that the Respondent behaved disrespectfully in trying to present himself as the victim of online abuse, as a result of the criticism he subsequently received.

In his report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of the provisions of the Code regarding respect, bullying and harassment. The Acting ESC advised that:

1. There was no dispute that the Tweets in question had been posted by the Respondent in early January 2022. While noting that the Respondent disputed that he was acting as a councillor when he posted the Tweets, the Acting ESC considered, having reviewed earlier Tweets of a political nature posted on the same account and taking into account the political nature of the Tweets in question, that the Respondent was acting as a councillor, or could objectively be considered to have been acting as such when posting the Tweets.
2. While he considered that the Respondent had publicly and deliberately misrepresented the MSP's position on what was a sensitive topic, it was nevertheless a topic of political and public interest, on which the Respondent was entitled to comment and criticise. The Acting ESC noted that such criticism and misrepresentation was an aspect of politics. The Acting ESC further noted that the Respondent had explained in a later Tweet that he understood the MSP's position and condemned the abuse she had received. As such, the Acting ESC did not consider that the Respondent had deliberately encouraged abuse and criticism of the MSP.
3. The Complainer considered that the Respondent's comment that he had been receiving abuse to be disrespectful. However, the Acting ESC considered if the Respondent was receiving personal abuse, he was entitled to mention and condemn this. The Acting ESC recommended, therefore, that the Respondent's conduct did not amount to disrespect, bullying or harassment under 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 respect, 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 it may not be possible, at a Hearing, to make a finding that there had been a 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 to a breach of the Code. Having reviewed the evidence before it, the Standards Commission considered that a finding that the Respondent had deliberately and seriously misrepresented or distorted the other politician's position, in the specific circumstances of a case where it could have been reasonably anticipated that doing so could lead to her receiving abuse, could potentially be disrespectful.

The Standards Commission nevertheless noted that it would be obliged, in the event of a Hearing, to consider the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights.

In this case, the Standards Commission considered 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, given the tweet concerned a matter of public and political interest. The Standards Commission noted that the Respondent, in a quote provided to a newspaper on the same day, acknowledged that the other politician's position was potentially more nuanced than he had originally suggested in his Tweet. In the circumstances, the Standards Commission considered that it was 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 enhanced right to freedom of expression.

Having taken this into account, 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. This requirement applies in all situations a councillor may find themselves in while acting in that capacity, including when posting on social media.

The Standards Commission notes that, unfortunately, politicians and those in public life are often the targets of abuse and threats on social media. This is completely unacceptable and is frequently a reason why individuals decide not to stand for election or put themselves forward for positions in public life, which in itself has a negative impact on representation and can erode democracy. The Standards Commission understands that politicians and others in public life have a right to comment on, and indeed should be

commenting on, matters of public interest. The Standards Commission considers, however, that politicians and those in public life also have a duty to lead by example when using social media. They should, therefore, refrain from deliberately misrepresenting other politicians or members of the public on social media, particularly as doing so could result in those individuals facing abuse.

Date: 5 January 2022



**Lorna Johnston
Executive Director**