

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 complaints dated 3, 4, 5 and 6 July 2022 (reference LA/G/3776) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Glasgow City Council (the Respondent), the Acting ESC referred a report to the Standards Commission on 19 January 2023.

The complaints related to three Tweets posted by the Respondent in July 2022 in respect of a venue that was to host events organised by the Alba Party. There was no dispute that, in one of his Tweets, the Respondent stated that he considered the venue was "welcoming the business of a party obsessed with transphobia and led by a man with so many allegations of sexual harassment against him". In his second Tweet, the Respondent noted that the venue had cancelled the event on becoming aware of who had made the booking and stated "bigotry has consequences". In the last Tweet, the Respondent stated that "transphobia is unacceptable, wherever it goes".

In his report, the Acting ESC investigated whether the Respondent's conduct could amount to a contravention of the provision of the Code regarding respect and courtesy. The Acting ESC advised that:

1. The Respondent accepted that he was acting as a councillor when he posted the Tweets and, as such, the Code applied.
2. He did not consider any of the Tweets to be objectively discourteous, noting that no specific individual or individuals, other than the leader of the Alba Party, could be identified from their contents. In considering whether the association of the Alba Party with transphobia was disrespectful, the Acting ESC noted the Alba Party's position on transgender rights was both publicly known and was one it was entitled to hold. The Acting ESC stated that opposition to gender recognition reform should not automatically be associated with an 'obsession' with transphobia, or more generally with bigotry, and noted that others are entitled to disagree with the Alba Party's position on the topic. The Acting ESC advised that he was of the view that, in this case, the making of a general connection between the Alba Party and transphobia was not disrespectful.
3. While he considered that it would have been more accurate for the Respondent to have made it clear the Alba Party's leader had been cleared of allegations of sexual misconduct that had been made against him, the statement the Respondent made on his Twitter feed, though unnecessary and out of date, had a basis in fact. The Acting ESC further noted that the Respondent had not identified the Alba Party's leader by name.

Having considered the various factors of the complaint and the evidence gathered, the Acting ESC recommended that the Respondent's conduct did not amount to a breach of 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 and courtesy 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, 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, having reviewed the evidence before it, was of the view that the Respondent could arguably be said to have inferred, in his Tweets, that the Alba Party was both transphobic and bigoted. The Standards Commission considered that such inferences, if made without basis, could potentially, on the face of it, be considered disrespectful. The Standards Commission nonetheless noted, however, 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, being the views of another political party and the conduct of its leader.

The Standards Commission noted that the Courts have held that comments in the political context, that amount to value judgements, are tolerated even if untrue, so long as what was expressed was said in good faith and there was some reasonable (even if incorrect) factual basis for making such comments. In this case, the Standards Commission considered that any inferences made by the Respondent about the Alba Party being transphobic and bigoted would amount to value judgements. The Standards Commission accepted, given the media coverage and public debate on the issue of transphobia and opposition to gender recognition reform, that such value judgements were likely to have been made in good faith, regardless of whether they were accurate or not.

While the Standards Commission accepted that the Respondent had not named the Alba Party's leader, it considered he was entirely and easily identifiable. The Standards Commission noted, nevertheless, that there had been a great deal of press coverage in relation to accusations of sexual harassment made against the leader, albeit he had been found not guilty in a subsequent criminal trial. As such, the Standards Commission found the Respondent's comment to the effect the leader had been the subject of "many allegations of sexual harassment" to simply be a statement of fact on a matter that was already in the public domain.

As such, the Standards Commission was of the view that, even if found to be disrespectful, it was very unlikely that the conduct in question would be found to be sufficiently gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression, that any finding of a breach of the Code and imposition of a sanction would entail.

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 all the above factors 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.

Date: 25 January 2023



**Lorna Johnston
Executive Director**