

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 received on 2 February 2022 (reference LA/G/3606) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by a (now) former elected member of Glasgow City Council (the Respondent), the ESC referred a report to the Standards Commission on 7 March 2023.

The complaint concerned tweets posted by the Respondent on 1 February 2022 regarding a sign that had been put up on the door of a bookshop. The complaint was that the Respondent made disparaging remarks in her tweets about alternative belief systems by referencing "tarot etc", alternative medicine and "ancient Mongolian chanting classes".

In his investigation report, the ESC advised that:

1. The Respondent referred to herself as a councillor in her Twitter name and, therefore, the Code applied to her conduct when she made the comments on Twitter.
2. He considered that, whether the Respondent's criticisms were of the bookshop's owners or whether they were aimed more generally, her tweets had a mocking tone. The ESC advised that he considered, in this respect, "the Respondent was, objectively, disrespectful and discourteous". The ESC advised, however, that he considered the Respondent's comments to "be only mildly disrespectful", as they were "relatively light-hearted and mocking in tone, as opposed to being intentionally cruel".
3. He nevertheless considered that restriction on the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) was not reasonable.

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 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 considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that the Respondent's conduct could amount, on the face of it, to a breach of the provision in the Code that requires councillors to behave with courtesy and respect. The Standards Commission was not satisfied fully, however, that the Respondent's comments, on the face of it, would be sufficiently disrespectful as to meet the threshold for amounting to a breach of the Code. This was because while the Standards Commission accepted that the Respondent's comments could be perceived as being disparaging about alternative belief systems and medicine, it was arguable that she was merely proffering her opinions. The Standards Commission noted that the Respondent's remarks were not offensive or personal in nature.

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. The Standards Commission noted, however, 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.

In this case, the Standards Commission noted that even if the Respondent's conduct was found to be disrespectful or discourteous at a Hearing, it was highly likely that she would enjoy the enhanced protection to freedom of expression afforded by Article 10, given that the tweets concerned a matter of public interest (being the acceptability of a sign that had been displayed publicly in a shop window). The Standards Commission was of the view that it was very unlikely that the Respondent's comments, in the tweets in question, would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on her right to freedom of expression.

Having taken into account the above factors, 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.

Date: 8 March 2023



**Lorna Johnston
Executive Director**