

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 20 June 2022 (reference LA/E/3768) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of the City of Edinburgh Council (the Respondent), the ESC referred a report to the Standards Commission on 13 June 2023.

The complaint concerned the conduct of the Respondent, in a retweeted a post, dated 9 June 2022, from a third party entitled “#FMQs summed up through the sign language translator”. The post showed fictional phrases next to a sign language interpreter describing various opposition party politicians as a “creaking wardrobe”; “I’m sorry, I don’t speak Fud” and, “He’s too dense for me to comprehend”.

In his investigation report, the ESC advised that:

1. The Respondent referred to herself as a councillor in her Twitter account name and, therefore, the Code applied to her conduct when she retweeted the post.
2. The Respondent’s position was that she must have retweeted the post in error as it did not reflect her views. The Respondent had advised that she did not condone personalised name-calling or the making of disrespectful or personalised comments.
3. The ESC considered that by re-tweeting the tweet in question, which contained derogatory comments next to the politicians pictured, the Respondent had failed to treat everyone with courtesy and respect. The ESC advised, therefore, that he had found that, on the face of it, the Respondent had breached paragraph 3.1 of the Code.
4. He was of the view that the Respondent would enjoy enhanced protection in respect of her right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) as the tweet contained screenshots of politicians speaking during a political debate. The ESC considered that the Respondent’s conduct in retweeting the post was not so egregious as to justify a restriction on her enhanced rights under Article 10.

Reasons for Decision

Having considered the terms of his report and, in particular, having noted that the factual basis of the complaint was not in dispute, 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 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 post she had retweeted was political in nature and concerned the perceived intelligence of opposition party members and how difficult they may be to understand. The Standards Commission noted that the Courts have held that "in a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemic, colourful, emotive, non-rational and aggressive language, that would not be acceptable outside that context, is tolerated".

The Standards Commission considered that while the phrases were directed at individual politicians, it considered that they were relatively light-hearted and mocking in tone. The Standards Commission was of the view that it was very unlikely that the Respondent's conduct, in retweeting the post in question, would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on her right to freedom of expression.

The Standards Commission further noted that the Respondent's position was that she must have retweeted the post in error and had indicated that she did not endorse the making of disrespectful or personalised comments.

In the circumstances, and 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: 14 June 2023



**Lorna Johnston
Executive Director**