

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 24 November 2022 (reference LA/As/3827) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Aberdeenshire Council (the Respondent), the ESC referred a report to the Standards Commission on 10 October 2023.

The complaint was that in comments published on (as it was then known) Twitter in November 2022, the Respondent accused the Complainer of lying about her.

In his investigation report, the ESC advised that:

1. The Respondent referred to herself as a councillor in her Twitter account and identified herself as such in the accompanying biography section. Accordingly, the ESC was satisfied that the Code applied to the Respondent when she posted the tweets in question.
2. The Respondent did not dispute accusing the Complainer, on three occasions, of lying about her in a publicly available Twitter exchange about their respective political views in respect of her commitment to the independence movement.
3. He considered that by repeatedly alleging the Complainer had lied, the Respondent had engaged in a personal and sustained attack directed at the Complainer, as an individual, that went beyond a mere disagreement on a particular issue. As such, the ESC considered the Respondent had failed to treat the Complainer 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, nevertheless, 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 accusations were made purely within the context of a Twitter exchange about differing political positions.
5. He considered that the use of the terms "lie" and "lying" in that context could reasonably be construed as an accusation on the part of the Respondent that her political views and the extent of her commitment to independence were being misrepresented deliberately by the Complainer in a public forum. As such, the Respondent's accusation represented a legitimate, albeit subjective, interpretation of a differing political position. The ESC further considered that the language used was not so egregious as to amount

to offensive abuse or threatening behaviour to an extent that would justify a restriction on her enhanced rights to freedom of expression 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 her comments were made during an exchange about political matters. 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 comments were directed at the Complainer as an individual, it was evident from the context in which they were made that the Respondent was accusing him of misrepresenting her position on a specific matter deliberately, rather than of him being generally dishonest in character. The Standards Commission agreed with the ESC that it was very unlikely that the Respondent's conduct in posting 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.

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: 16 October 2023



**Lorna Johnston
Executive Director**