

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 22 November 2022 (reference LA/WL/3826) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2018, being the version of the Code in place at the time, by an elected member of West Lothian Council (the Respondent), the ESC referred a report to the Standards Commission on 23 October 2023.

The complaint alleged that during a council meeting in November 2021, the Respondent made a scathing and demeaning remark to the Complainer, a fellow councillor, in breach of the respect, bullying and harassment provisions in the Code.

In his investigation report, the ESC advised that:

1. Having reviewed an audio recording of the meeting in question he found that the Respondent told the Complainer, while gesturing or pointing towards a report, that it contained "a handy summary in the final few pages", "just in case he prefers to read the summary rather than the detail".
2. The Complainer considered that, in doing so, the Respondent was mocking his dyslexia. The ESC stated, however, that the evidence he had found suggested, on balance, that the Respondent was unaware at the time that the Complainer had dyslexia. The ESC noted that the Complainer did not indicate, at the meeting, that this was the reason why he objected to the Respondent's comments.
3. He did not consider that the Respondent's comments were disrespectful and had not found any other evidence to support the Complainer's contention that she was mocking his dyslexia. The ESC stated that, instead, he found the Respondent's reference to the summary of the report and accompanying pictures had been relevant to the discussion and questions from the Complainer. As such, the ESC considered it was likely that the Respondent would have made these comments regardless of whether the Complainer was dyslexic.
4. In any event, the ESC considered that, at worst, the Respondent's comments could be described as a satirical characterisation of a political opponent's ability to comprehend complex information. As such, even if it was found, on the face of it, that the Respondent's comments were disrespectful, a restriction on her enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights would not be justified.

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 would not amount, on the face of it, to a breach of the provisions in the Code that requires councillors to behave with courtesy and respect and to refrain from bullying and harassment.

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 there was no other evidence to support the Complainer's contention that the Respondent was mocking his dyslexia. In the circumstances, the Standards Commission did not consider the conduct in question would amount to a breach of the respect or bullying and harassment provisions in the Code. The Standards Commission noted in any event, 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 in a political context during a discussion about a matter of public concern. 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 agreed with the ESC, therefore, that it was very unlikely that the Respondent's conduct 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: 26 October 2023



**Lorna Johnston
Executive Director**