

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 15 December 2022 (reference LA/ED/3832) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of East Dunbartonshire Council (the Respondent), the ESC referred a report to the Standards Commission on 23 November 2023.

The complaint concerned an incident in December 2022 during which the Respondent entered the Complainer's driveway, without consent, and began measuring it.

In his investigation report, the ESC advised that:

1. The Respondent confirmed she was acting as a councillor at the time she attended the Complainer's property, as she was attempting to assist a constituent, Mr Y, who was involved in a boundary dispute with the Complainer. Accordingly, the ESC was satisfied that the Code applied to the Respondent at the time of the incident.
2. It was evident from CCTV video footage provided by the Complainer, that the Respondent walked on the Complainer's driveway and proceeded to measure the distance from the Complainer's property to a fence post that lay between her property and that of Mr Y. The video showed the Complainer and her partner coming out of their property and the Complainer's partner pushing the Respondent off the driveway.
3. He was of the view that the Respondent did not treat the Complainer with courtesy or respect in assuming she had a right to enter the Complainer's driveway without permission. The ESC advised he had therefore found that, on the face of it, the Respondent had breached paragraph 3.1 of the Code. The ESC reported that he was nevertheless of the view that the Respondent's actions were not sufficiently offensive, bad or shocking as to justify a restriction on her right to freedom of expression under Article 10 of the European Convention on Human Rights.
4. The Complainer had also complained that, during the incident, the Respondent accused her of having something to hide, had shouted and told her what she could and could not do with her property. The ESC advised that, having viewed the CCTV footage and interviewed all individuals present, he had not found this aspect of the complaint to be established.

Reasons for Decision

Having considered the terms of his report having reviewed the CCTV footage of the incident, 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>.

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 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, however, that the Respondent's conduct in attending the Complainer's property and attempting to take a measurement could, on the face of it, amount to a breach of the Code. The Standards Commission noted the CCTV footage demonstrated that the Respondent was on the Complainer's driveway for approximately 20 seconds before the Complainer and her partner left their house and the Complainer's partner immediately pushed the Respondent to the side. As such, it was apparent that there was no evidence to support a contention that the Respondent had refused to leave the property when asked. While the Standards Commission accepted that the Respondent had not been invited by the Complainer to attend the property, it did not consider that an assumption she could do so was inherently disrespectful or discourteous, particularly given it was evident that the Respondent had done so in an attempt to help a constituent resolve what was clearly an acrimonious neighbour dispute. The Standards Commission noted that it would not be uncommon for a councillor, when campaigning or delivering leaflets, to attend the constituents' properties without necessarily having been invited to do so or assuming they would be welcomed.

The Standards Commission noted that the ESC had not found the contention that, during the incident, the Respondent had accused the Complainer of having something to hide, had shouted and told her what she could and could not do with her property to have been established. Having reviewed the ESC's reasoning and the CCTV footage of the incident, the Standards Commission found no reason to depart from this conclusion.

In the circumstances and for the reasons outlined above, 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: 28 November 2023



**Lorna Johnston
Executive Director**