

## **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 26 January 2023 (reference LA/AC/3847) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Aberdeen City Council (the Respondent), the ESC referred a report to the Standards Commission, which was received on 14 March 2024.

The complaint concerned an allegation that the Respondent harassed and threatened the Complainer, a member of the public, about how she had parked her car outside a community centre.

In his investigation report, the ESC advised that:

- He had found that the Complainer had parked her car outside a community centre, obstructing the road, when attending a yoga class. The Respondent had knocked on the door, towards the end of the class, to ask if the car belonged to anyone there. The Respondent then met the Complainer outside the class when she left and raised concerns about her parking, which he felt was dangerous. The conversation lasted a few minutes.
- The Complainer advised that the Respondent had identified himself as a councillor during the conversation. She further advised that she believed the Respondent's conduct had been disrespectful, intimidating and threatening.
- Photographic evidence demonstrated the Complainer's car was parked in a way which obstructed other cars from passing by. The Complainer did not dispute that the parking was inappropriate.
- The Complainer alleged that the Respondent spoke with a raised voice (albeit he did not shout), and would not stop his "tirade", despite her apologies. She said the Respondent threatened her by saying she would regret it if she ever parked there again. The Respondent alleged, however, that he spoke at a normal volume and was courteous and polite during the conversation.
- The ESC advised he found the Complainer's evidence "to be credible and compelling", particularly as she had reported the incident to the community centre, her parents and boyfriend immediately afterwards. The ESC advised it was evident the "Respondent felt strongly" about the Complainer's parking being a safety concern. The ESC advised he considered this tended "to suggest that he was angry or frustrated with the way the Complainer had parked, and that this came across in the way he communicated with her." In addition, the ESC noted the Respondent accepted that he "repeatedly" told the Complainer that she had parked dangerously. The ESC considered this supported the Complainer's position that the Respondent had embarked on a "tirade".
- The ESC advised that he had concluded, on balance, that the facts of the complaint had been established, insofar as the Respondent spoke "at length" to the Complainer with a raised voice, intimidated her, and threatened her by saying she would regret it if she ever parked there again. The

ESC advised he had further concluded that such conduct amounted, on the face of it, to a breach of provisions in the Code that require councillors to treat members of the public with courtesy and respect.

- The ESC nevertheless advised that, although the Respondent's conduct felt intimidating to the Complainer, he was satisfied the Respondent had not used profanities or resorted to personal abuse or insults. The ESC noted that the Respondent was entitled to express his concerns about the Complainer's parking. In the circumstances, the ESC advised he did not consider the Respondent's conduct, including his threat that the Complainer would regret it if she parked there again, was sufficiently shocking, aggressive or gratuitous as to justify a restriction on the enhanced right to freedom of expression (to which he was entitled, under Article 10 of the European Convention on Human Rights), that a formal finding of a breach of the Code would entail.

### **Reasons for Decision**

Having considered the terms of his report, the Standards Commission did not consider that it was appropriate to direct the ESC to undertake any further investigation into the matter. This was because the Standards Commission was satisfied that the ESC's investigation appeared to have been thorough in nature, with all key potential sources of evidence having been explored.

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 assessing the public interest, the Standards Commission noted that a breach of the courtesy and respect provisions in the Code could have the potential to undermine public confidence in the role of a councillor and potentially even bring the Council itself into disrepute.

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 Respondents' conduct amounted to a breach of the Code. There could, therefore, be some limited public interest in holding a Hearing. Regardless of this, the Standards Commission was, however, also required to consider whether it would be proportionate to do so.

In considering proportionality, the Standards Commission noted that the ESC, in his report, had reached the conclusion that the Complainer's evidence was compelling. The Standards Commission noted, nevertheless, that the Respondent disputed her version of events. While the Complainer's boyfriend and parents were able to confirm that she had relayed her version of events to them immediately after the incident, no one else had been present during the exchange itself. While the Standards Commission noted that holding a Hearing would offer the opportunity to question the Complainer and Respondent, under oath or affirmation, about their differing versions of events, and their perception of the Respondent's conduct, it considered it was unlikely they would change their positions and / or that further substantive or material evidence would come to light either before or at a Hearing.

The Standards Commission further noted that the Respondent was entitled to challenge the Complainer about her parking, particularly if he considered it to be dangerous to others. The Standards Commission did not agree that the fact that the Respondent may have felt strongly about the matter indicated, necessarily, that he had communicated his concerns in a disrespectful manner. The Standards Commission was further of the view that the fact the Respondent had repeated his concerns did not necessarily mean he had berated the Complainer. It may have been the case that he had repeated himself to ensure she understood why he was concerned.

The Standards Commission noted, in any event, that the ESC had concluded that a restriction on the Respondent's right to freedom of expression, that a finding of a breach of the Code would entail, would not be justified in the circumstances. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

The Standards Commission noted 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.

Having taken into account the factors outlined above and, in particular its view:

- that it was unlikely that any further evidence would emerge (given the extent of the investigation already undertaken), and
- that it was unlikely that the conduct in question would be found to be sufficiently offensive, gratuitous or egregious as to justify a restriction on the Respondent's right to freedom of expression,

the Standards Commission concluded that it was not proportionate, despite some residual public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

The Standards Commission nevertheless wishes to emphasise that the requirement for councillors to treat their colleagues, Council officers and members of the public with courtesy and respect is an essential requirement of the Code as it helps ensure public confidence in elected members and their local authorities.

**Date: 20 March 2024**



**Lorna Johnston  
Executive Director**