

Decision of the Standards Commission for Scotland

On receipt of a referral 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.

Referral to the Standards Commission

Following his investigation into a complaint received on 30 April 2023 (reference LA/AB/3925) concerning an alleged contravention of the Councillors' Code of Conduct dated December 2021 (the Code) by an elected member of Argyll and Bute Council (the Respondent), the ESC referred the matter to the Standards Commission on 19 June 2024.

The complaint concerned a comment the Respondent made on the Facebook page of the Complainer (a fellow elected member). The Complainer alleged that the comment was 'accusatory and defamatory' as it misrepresented her position in respect of a proposed increase in local car parking fines.

The ESC reported that:

- A proposal to increase the level of local car parking fines was considered at an online Council meeting on 27 April 2023. The ESC advised that both the Complainer and the Respondent were in attendance and that a webcast of the meeting recorded that the Complainer observed that the proposed increase was significant and noted that there was not much available parking for the local medical centre. The Provost's subsequent motion for the Council to support the proposed increase was then agreed.
- The Complainer (or someone on her behalf) published a post on her Facebook page on 30 April 2023 noting that she, and another councillor, had raised concerns over proportionality of the proposed increase in parking fines and the impact the proposed increase may have on local citizens. The ESC found that the Respondent posted a comment stating that she "hoped that the days of Councillors saying one thing to their local community whilst doing the opposite in the council chamber were behind us. Sadly it appears not to be the case here".
- The ESC found that it was clear that the Respondent's comment about misleading constituents was directed towards the Complainer. The ESC advised that he considered the Respondent's comment implied that the Complainer had misled constituents in respect of whether she had opposed the proposed increase in the level of parking fines and had therefore "been dishonest". The ESC advised that he considered such a "public accusation about the Complainer's integrity" to be inherently discourteous and disrespectful and concluded, therefore that the Respondent had, on the face of it, breached paragraph 3.1 of the Code.
- He had, nevertheless, considered the Respondent's enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC advised that as he considered the Respondent was expressing a genuinely held view, and as her comments were not particularly egregious, he did not consider a restriction on her right to freedom of expression, that a formal finding of a breach of the Code would entail, could be justified.

Reasons for Decision

Having considered the terms of his referral, 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 assessing the public interest, the Standards Commission noted that a breach of the respect provisions in the Code could have the potential to bring the role of a councillor and the Council itself into disrepute.

The Standards Commission further noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code and, therefore, there could be some limited public interest in holding a Hearing. The Standards Commission also 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 questioned whether the conduct in question would amount, on the face of it, to a breach of the Code. This was because it noted that the Complainer had not, in fact, formally opposed the proposed increase at the meeting. Instead, she had simply raised concerns about whether it was proportionate, and its potential impact. Furthermore, the Standards Commission was not satisfied that a suggestion that the Complainer may have said she would take a certain action and then proceeded to do the opposite, necessarily implied that she had lied or been dishonest. The Standards Commission noted that it could also, or alternatively, be taken to mean that the Complainer did not always fulfil commitments she had made.

The Standards Commission nevertheless agreed with the ESC, for the reasons he provided, that it was unlikely that the conduct in question would be found to be sufficiently egregious as to justify a restriction on the Respondent's right to freedom of expression.

Having taken into account the fact that it was not satisfied the Respondent's conduct could amount to a breach of the Code, and the likelihood of the Respondent's conduct being protected by her enhanced right to freedom of expression, 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 June 2024



**Lorna Johnston
Executive Director**