

Scottish Parliament Region: Central Scotland

Case 201105266: Public Standards Commissioner ¹

Summary of Investigation

Category

Scottish Government & Devolved Administration: governance; complaints handling

Overview

The complainant (Mr C) complained about the handling by the Public Standards Commissioner (the PSC) of a complaint Mr C had raised concerning the actions of a councillor (the Councillor). Specifically, he complained that the PSC had failed to investigate his complaint adequately and that there were errors in the PSC's Note of Decision which remained uncorrected.

The Scottish Public Services Ombudsman Act 2002 invests in the SPSO powers to investigate the administrative and procedural actions of public bodies in Scotland, including whether there is evidence of service failure. The PSC is a public body which is named within the Act and, therefore, comes within my remit. Given this, I consider the PSC should be open to scrutiny of his administrative and procedural actions by my office in the same way as any other organisation under my jurisdiction. Unfortunately, in practice this has not been the case. I have found the actions of the PSC in response to my enquiries on this complaint and others to be at times obstructive and unhelpful and not what I would expect from a public body. I consider it necessary to take the unusual step of placing on public record the PSC's refusal to cooperate fully with my investigation of this complaint and, in particular, his refusal to release all the information I requested during the course of my enquiries. I do so in this public report.

From the outset and during the course of my investigation the PSC repeatedly questioned my jurisdiction to investigate Mr C's complaint and refused to provide me with all the information I requested, in particular copies of interview notes and a full, unredacted, schedule of those interviewed by his Investigating Officer. Correspondence with the PSC was protracted which severely hampered my investigation and, in addition, caused undue delay in my consideration of Mr C's complaint.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) an Investigating Officer (the Investigating Officer) acted unreasonably in accepting the Councillor's testimony without scrutiny (*not upheld*);
- (b) the Investigating Officer acted unreasonably by failing to conduct interviews with all relevant witnesses (*not upheld*);
- (c) the Investigating Officer failed to prepare adequately for the interview with Mr C because he was not aware of contemporaneous notes which had been previously provided by Mr C (*not upheld*);
- (d) the Note of Decision failed to adequately make clear that Councillor X's statement about the Councillor's conduct (at paragraph 4.14) was a statement of opinion, rather than a statement of fact (*not upheld*);
- (e) the Note of Decision was not objective and made subjective comments, specifically at paragraphs 5.3, 5.4, 5.6 and 5.8 (*not upheld*); and
- (f) the Note of Decision was factually inaccurate at paragraph 5.9 in relation to the date of the meeting and remains uncorrected (*upheld*).

Redress and recommendations

The Ombudsman recommends that the PSC:	<i>Completion date</i>
(i) takes steps to correct the Note of Decision and web summary to record the date of 26 September 2011.	26 August 2013

The PSC has accepted this recommendation and has already acted upon it accordingly.

¹ From 1 July 2013, the Commission for Ethical Standards in Public Life in Scotland and its two existing members - the Commissioner for Public Appointments and the Public Standards Commissioner - were restructured to establish one new office of the Commissioner for Ethical Standards in Public Life in Scotland.

Main Investigation Report

Introduction

1. Mr C was, at the time the matters he complained of occurred, a member of a Community Council (the Community Council). As such, he attended bi-monthly meetings of a Development Group (the Development Group) administered by a local authority (the Council). On 10 October 2011 Mr C made a formal complaint to the Public Standards Commissioner (the PSC) about the conduct of an elected member of the Council who chaired the Development Group meetings (the Councillor). Mr C complained that there had been a contravention of the Councillors' Code of Conduct (the Code) by the Councillor. Specifically, Mr C alleged that during a meeting of the Development Group held on 26 September 2011 the Councillor used inappropriate and disrespectful language towards him and that the Councillor's conduct impacted adversely on his role as Chair of the Development Group. Mr C complained that the Councillor's conduct breached Section 3 of the Code:

General Conduct, 3.1:

'The rules of good conduct in this section must be observed in all situations where you act as a Councillor including representing the Council on official business.'

Conduct at Meetings,3.2:

'You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its committees or sub committees or any public bodies where you have been appointed by, and represent the Council. You must comply with the rulings from the chair in the conduct of the business of these meetings.'

2. The PSC carried out an investigation of the complaint and decided that, for reasons provided in a decision notice (the Note of Decision) sent to Mr C on 17 January 2012, the Councillor had not contravened the Code in terms of the complaint made. In view of this, no further action was taken by the PSC, except for informing the Standards Commission for Scotland, the Councillor and the Council of his decision.

3. Mr C's MSP initially raised a complaint with me on behalf of Mr C about the way in which the PSC had handled the investigation of Mr C's complaint. In particular, that Mr C considered his complaint had not been handled with total

objectivity and that there were a number of errors contained in the Note of Decision. We subsequently corresponded with Mr C on the complaint.

4. The complaints from Mr C which I have investigated are that:
- (a) an Investigating Officer (the Investigating Officer) acted unreasonably in accepting the Councillor's testimony without scrutiny;
 - (b) the Investigating Officer acted unreasonably by failing to conduct interviews with all relevant witnesses;
 - (c) the Investigating Officer failed to prepare adequately for the interview with Mr C because he was not aware of contemporaneous notes which had been previously provided by Mr C;
 - (d) the Note of Decision failed to adequately make clear that Councillor X's statement about the Councillor's conduct (at paragraph 4.14) was a statement of opinion, rather than a statement of fact;
 - (e) the Note of Decision was not objective and made subjective comments, specifically at paragraphs 5.3, 5.4, 5.6 and 5.8; and
 - (f) the Note of Decision is factually inaccurate at paragraph 5.9 in relation to the date of the meeting and remains uncorrected.

Background information

5. The Scottish Parliamentary Commissions and Commissioners etc Act 2010 set up the Commission for Ethical Standards in Public Life in Scotland including the PSC and the Public Appointments Commissioner (PAC). The Act came into effect on 1 April 2011. The Public Standards Commissioner is an independent office-holder who can consider a complaint about:

- a councillor who is alleged to have contravened the Code, or a member of a devolved public body who is alleged to have contravened the Model Code of Conduct for members of devolved public bodies. Where appropriate, the PSC will report on the outcome of these investigations to the Standards Commission for Scotland;
- a Member of the Scottish Parliament who is alleged to have broken the Code of Conduct for MSPs. Where appropriate, the PSC will report on the outcome of these investigations to the Scottish Parliament.

6. The Codes of Conduct give guidance to councillors, members of devolved public bodies and MSPs on how to conduct themselves in carrying out their duties.

Overview of my office's correspondence with the PSC

7. From the outset, and repeatedly as the investigation progressed, the PSC failed to meet my standard timescales for comments and receipt of information, including my request for the complete investigation file. In addition, he highlighted on a number of occasions what he considered to be an apparent lack of understanding by my office of the statutory role discharged by the PSC. He considered that Mr C's complaints related to the merits of how his office had investigated the complaint and Mr C's disagreement with the decision rather than with the administrative efficiency with which his complaint was handled. He advised that the unqualified discretion vested in the PSC in relation to the investigation of complaints had been explained to me on a number of occasions in the context of previous complaints made to my office about the actions of the PSC. He considered that the matters complained about by Mr C related to how the PSC had investigated the complaint and the merits of the decision reached. As such, they were within the statutory discretion of the PSC and were not matters which fell to be investigated by the SPSO. He raised a number of other issues, in particular that, as a matter of good practice, he would have expected to have been provided with a copy of the original letter of complaint and that there was no disclosure that Mr C had suffered injustice, which was a prerequisite of a relevant complaint in terms of the Scottish Public Services Ombudsman Act 2002 which governs my powers.

8. While the PSC provided comments on each complaint, in a further letter on this complaint and another separate complaint he indicated that he was unable to accede to my request for copies of all information he held and he would continue to deal with each of my requests for information on their respective merits. He continued that he had reviewed the correspondence (on the separate complaint) and a full diary of events which disclosed no prima facie suggestion of maladministration or service failure which would warrant my involvement. Given his concerns about the extent of my jurisdiction on these complaints he was not prepared to allow me, without what he considered to be demonstrable good reason, to audit confidential investigation files indiscriminately. He confirmed that if it was my intention to pursue the matter further, he would consider permitting access to his correspondence file at his office under conditions which maintained the integrity of the investigative process and, in particular, the requirement of confidentiality.

9. In response, I confirmed to the PSC that it was my responsibility to ensure I acted within the powers of my legislation and it was my responsibility to decide

whether maladministration or service failure had occurred. To do so, I must examine and test the evidence and it was preferable to do so with all the relevant evidence at hand. Allowing limited access in a controlled way was not, in my view, complying with my request and would significantly curtail my ability to take a view of the evidence. I confirmed that, as with all other bodies under my jurisdiction, my process (which had been externally validated) was to inform the bodies of the complaint agreement which constituted 'the complaint' within the meaning of the powers under which I operate. I also confirmed that each head of complaint contained an allegation for the purposes of the Scottish Public Services Ombudsman Act 2002 under which I operate. I was, during the course of this correspondence, provided with some principal correspondence and decision related documents in relation to Mr C's complaint.

10. In subsequent correspondence I explained that my request for the complete investigation file for Mr C's complaint, including interview notes, was not unique to the PSC. I considered that I was unable to reach a decision on each complaint until, in line with my statutory powers, I was provided with the information my complaints reviewer had requested: specifically, in relation to the interviews held, including confirmation of who had been interviewed. Correspondence became protracted between our respective offices, to the extent that I provided the PSC further opportunity to provide the requested information. Failing which, I explained, I would need to consider commencement of legal proceedings to obtain the required documentation. At a late stage in my investigation, the PSC provided some further comments and an amended copy of the list of interviewees showing the councillor witnesses interviewed. This allowed me to progress the investigation, however, to date the PSC has refused to release the complete investigation file, including interview notes and an unredacted interview schedule.

Investigation

11. As part of the investigation, all the information provided by Mr C and the PSC was given careful consideration. This included complaints correspondence and the PSC's investigation guidelines. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the PSC were given an opportunity to comment on a draft of this report.

(a) The Investigating Officer acted unreasonably in accepting the Councillor's testimony without scrutiny

12. Mr C complained that the PSC's Investigating Officer, in carrying out his investigation, accepted without scrutiny the Councillor's testimony in relation to his conduct. He complained that this was despite the conduct of the Councillor being one of the core elements of his complaint.

13. The Note of Decision prepared by the Investigating Officer stated that the complaint to the PSC had been set out in two letters from Mr C. The Councillor had also responded to the complaint in two letters and information had been sought from the Council. Having considered the documentary evidence, the Investigating Officer proceeded to interview Mr C, the Councillor and relevant witnesses. The Note of Decision considered the evidence, including information provided by the Council in relation to the history of the Development Group and the management of its meetings. The Development Group meetings held in August and September 2011 were considered and details of interview statements were provided, including those attributed to Mr C, the Councillor and Councillor X and Councillor Y, who were all present at the September meeting of the Development Group and interviewed by the Investigating Officer.

14. The Note of Decision recorded that Mr C alleged that the Councillor had stated 'It was a funeral, [Mr C]! Jesus Christ! A bloody funeral and you want it minuted. You'll be wanting the actual time that we left next! Come on tell us what was the actual time'. The interview statements from Councillor X and Councillor Y, as recorded in the Note of Decision, related to the tone of the exchange rather than the exact wording used. It was recorded that the Councillor accepted at interview that Mr C's allegation was substantially what he had said but he denied using the phrase 'Jesus Christ'. In his findings and conclusions, the PSC found that whether or not the recollections of the Councillor or Mr C were accurate, he did not find anything in the alleged wording which was inherently disrespectful to Mr C or others present at the meeting. He concluded that the Councillor had not contravened the Councillors' Code of Conduct.

15. The PSC's Investigation Guidelines (the guidelines) state that in the interests of openness and transparency it is important that all parties are made aware, as soon as possible, that a complaint has been made. It is noted that information should be requested from the council/body including contextual material as a preliminary to any investigation; details of the respondent's

political affiliation; membership of committees and external bodies should be sought from the council and the council should be provided with an opportunity to comment on the complaint. It is advised that the respondent should be provided with a copy of the complaint and be given adequate opportunity to answer. With regard to the complainant, the guidelines state that it may be helpful to gain supplementary information from the complainant which would assist the investigation but this is not required prior to progressing the complaint.

16. The guidelines go on to state that once initial responses have been considered by the PSC it may be possible to resolve the complaint. It may, however, be necessary for the investigating officer to interview relevant persons. It is stated that interviews will normally be face-to-face with witnesses. In all cases, however, the interviewer should be accompanied and a careful and comprehensive note taken of the exchange.

17. In commenting on the complaint, the PSC advised that the substance of the original complaint was that the Councillor allegedly directed disrespectful remarks to Mr C during the meeting of the Development Group held on 26 September 2011. The Councillor refuted the allegation in relation to the detail of some of the words attributed to him but accepted, in general, that he had responded in robust terms to questioning by Mr C at the meeting. The question to be considered by the PSC was whether the content of the respondent's remarks was of such a nature as to breach the terms of paragraph 3.2 of the Code. The PSC continued that there was no substantial disagreement as to the words employed by the Councillor - with the exception of the words 'Jesus Christ' - and the Investigating Officer considered that the question to be addressed was whether the largely undisputed remarks complained of, and their manner of expression, was such as to breach the terms of paragraph 3.2 of the Code. The PSC continued that, in dealing with complaints of this nature, it was necessary to take account of the precursor or subsequent conduct of the parties concerned; the duration of the incident; its impact on the business; and the readiness or otherwise of the respondent to acknowledge that his conduct (if admitted) fell below the appropriate standard.

(a) Conclusion

18. Mr C has complained that the Investigating Officer acted unreasonably in accepting the Councillor's testimony without scrutiny. In considering the matter, the Investigating Officer interviewed both the Councillor and Mr C and also two

councillors who were present at the meeting. While I have noted that it is not recorded whether the two councillors were asked if they could recall exactly what was said, the Note of Decision does record that they commented on the tone and manner of the exchange. In this case, what was said was not substantially disputed – with the exception of the words 'Jesus Christ'. I also accept that, procedurally, what required scrutiny was whether the largely undisputed remarks, and the manner of their expression, were inherently disrespectful as to constitute a breach of the Code. I consider, from the evidence provided to me, that the Councillor's testimony was properly and reasonably scrutinised by the Investigating Officer in line with the guidelines, prior to a decision being reached on this matter. In the circumstances, I do not uphold this complaint and I have no recommendations to make.

(b) The Investigating Officer acted unreasonably by failing to conduct interviews with all relevant witnesses

19. Mr C complained that, despite him advising the Investigating Officer of witness names and contact details, the Investigating Officer instead interviewed people of his own choosing, including someone who had not been in attendance at the meeting in question. In subsequent correspondence Mr C questioned, in particular, why a representative attending the meeting, who Mr C considered to be a prime witness to the Councillor's use of language, was not called as a witness. Mr C also complained that others who he considered to be corroborating witnesses and whose details he had provided to the Investigating Officer were not interviewed.

20. In responding to my complaints reviewer's enquiries on this complaint the PSC advised that, given the broad acceptance by the Councillor that he had spoken as alleged by Mr C, the Investigating Officer had sought to ascertain the context of the incident. The interviewees were primarily identified as being potentially helpful in establishing the context; the degree to which Mr C's questioning had been pertinent to the purpose of the meetings, both prior to and on the date in question; and the manner in which the meetings were chaired and administered. While further witnesses might have been sought to speak to the incident complained of, the facts were not significantly in dispute, and the Investigating Officer did not consider that reiteration would have added materially to the evidence.

21. The guidelines state that, at the outset, every effort should be made by the Investigating Officer to identify the full range of witnesses required to resolve the complaint.

(b) Conclusion

22. Mr C considered there were witnesses who could provide corroboration of the events he had complained about who were not interviewed by the Investigating Officer. He was also concerned that someone who was not in attendance at the meeting was interviewed. Had what was said by the Councillor been largely disputed I would have expected, in accordance with the guidelines, consideration to have been given to seeking a full range of witnesses to the events complained about. However, that is not the case here and I do not consider the Investigating Officer acted unreasonably in this regard.

23. Regarding Mr C's concern that the Investigating Officer interviewed someone who was not in attendance at the meeting: the Note of Decision records that the Council's Head of Economic Development had not been present at the September meeting of the Development Group and was interviewed by the Investigating Officer. Unfortunately, the witness schedule provided to me by the PSC remains redacted, providing only the names of the councillors interviewed so I am unable to confirm this unequivocally. However, it appears from the Note of Decision that he was the other interviewee. I am satisfied that it was reasonable to interview this officer, despite the fact he was not in attendance at the September meeting. It is clear that the purpose of this interview was to provide the necessary context of the Development Group's meetings, including the general manner in which the meetings were chaired and administered.

24. Having considered the matter carefully, I am satisfied that the decisions made by the Investigating Officer in relation to determining who to interview were reasonable and in accordance with the guidelines. I do not uphold this complaint and have no recommendations to make.

(c) The Investigating Officer failed to prepare adequately for the interview with Mr C because he was not aware of contemporaneous notes which had been previously provided by Mr C

25. Mr C complained that when the Investigating Officer arrived to interview him, he was unaware of contemporaneous notes Mr C had made of the

September meeting of the Development Group and submitted to the PSC. Mr C said this was despite having received a letter of acknowledgement of receipt of these documents from the PSC.

26. In responding to our enquiries on this point, the PSC advised that in gathering information prior to the interviews the Investigating Officer sought additional information from Mr C as to his recollection of the remarks made to him by the Councillor. He stated that Mr C had emailed a response on 25 November 2011, which was forwarded to the Investigating Officer on 1 December 2011. At interview Mr C was asked about these notes and he expressed surprise that the Investigating Officer did not have them to hand. The PSC advised that they were available in the file and were immediately referred to.

27. The correspondence provided to me by the PSC confirmed that on 25 November 2011 Mr C provided his office with a copy of contemporaneous notes made by him during the September 2011 meeting, his letter being marked for the attention of the Investigating Officer. The letter was date stamped as having been received by the PSC's office on 29 November 2011 and there was a letter on file to Mr C dated 1 December 2011, confirming these documents had been forwarded to the Investigating Officer. When commenting on the draft report Mr C disputed the PSC's account, in particular he stated that the Investigating Officer did not have the notes to hand at interview.

(c) Conclusion

28. I have considered this complaint carefully, particularly given Mr C disputes the PSC's position. I have taken into account that Mr C's letter of 25 November 2011 formed part of the PSC's principal correspondence file provided to me. The PSC's office also confirmed to Mr C that the information had been forwarded to the Investigating Officer on receipt. While I note Mr C's position, I have not seen evidence that the Investigating Officer was unaware of the submission from Mr C prior to interview and had, therefore, failed to prepare adequately for the interview. I do not uphold the complaint.

(d) The Note of Decision failed to adequately make clear that Councillor X's statement about the Councillor's conduct (at paragraph 4.14) was a statement of opinion, rather than a statement of fact

29. Paragraph 4.14 of the Decision Notice states:

'Councillor [X] was also present at the September meeting when the exchange took place between [the Councillor] and [Mr C]. He estimated that the first 45 minutes had been taken up with picking over the detail of the minutes of the previous meeting, and that when the exchange about the funeral took place the Councillor appeared to be voicing frustration rather than aggression towards [Mr C]. He did not think that [the Councillor] had shouted but he had spoken in a raised voice. After the exchange the meeting proceeded without further rancour.'

30. Mr C complained that this statement by Councillor X was flawed and incorrect and what was a statement of opinion was presented as a statement of fact. Mr C contended that the timing of Councillor X's statements were contradicted by other witness statements taken by the Investigating Officer.

31. The PSC has stated to my office that it was considered relevant to note the impression gained by a witness to the incident and that the wording of paragraph 4.14 was evidently the witness's own opinion that did not require to be further specified as such.

(d) Conclusion

32. I am satisfied that any person reading paragraph 4.14 would be clear that this was Councillor X's opinion and not a statement of fact.

33. Mr C considers the statement by Councillor X to be inaccurate and he has stated that it was contradicted by other witness statements taken by the Investigating Officer. I have considered the Note of Decision in its entirety and I do not see any other witness statements contradicting Councillor X's statement. As stated at paragraphs 8 and 10 of this report, had I been provided with copies of the Investigating Officer's interview notes, as requested, I would have been able to scrutinise this further and it is disappointing that the PSC has refused to provide these. Nevertheless, for the purposes of this complaint, I am satisfied that paragraph 4.14 was sufficiently clear that it was Councillor X's opinion and I do not uphold this complaint.

(e) The Note of Decision was not objective and made subjective comments, specifically at paragraphs 5.3, 5.4, 5.6 and 5.8

34. Mr C complained that paragraphs 5.3; 5.4; 5.6 and 5.8 (see Annex 2) contained subjective comments which bore no resemblance to the investigation

carried out. He considered that the comments should be withdrawn as they were partisan and inaccurate.

35. In responding to my complaints reviewer's enquiries, the PSC commented that the consideration of a complaint and the application of the Code would inevitably require the consideration of subjective issues, other than in cases which rely solely on the facts such as non-declaration of a financial interest. In doing so, the Note of Decision sought to draw a balance between the circumstances of the individual case, the intention and wording of the Code and arrive at a proportionate conclusion.

(e) Conclusion

36. The paragraphs Mr C considers subjective all form part of the PSC's findings and conclusions and, by the very nature of findings and conclusions, will convey a degree of subjectivity. Having considered these paragraphs, I consider they are drawn sufficiently from the evidence as set out in Section 4 of the Note of Decision and are pertinent to the investigation carried out. I do not uphold this complaint.

(f) The Note of Decision was factually incorrect at paragraph 5.9 in relation to the date of the meeting and remains uncorrected

37. The date of the meeting at which the incident Mr C complained of was 26 September 2011. Paragraph 5.9 of the decision notice states:

'I have seen no evidence of similar outbursts from the Councillor at earlier meetings of [the Development Group] and I understand that nothing untoward has occurred subsequent to the 22 August meeting.'

38. In response, the PSC advised my office that the ambiguity in the date was raised by Mr C in correspondence and it was clarified in the web summary by the insertion of the words 'other than the matters complained of'.

(f) Conclusion

39. I consider paragraph 5.9 of the Note of Decision was referring to the meeting at which the incident occurred and, as such, the correct date should be 26 September 2011. Despite Mr C drawing this to the PSC's attention, the error has not, in my view, been adequately corrected. I uphold the complaint and I make the following recommendation:

(f) Recommendation

40. I recommend that the PSC:

Completion date

(i) takes steps to correct the decision notice and web summary to record the date of 26 September 2011.

26 August 2013

41. The PSC has accepted this recommendation and has already acted upon it accordingly.

Explanation of abbreviations used

Mr C	The complainant
The Community Council	A community council of which Mr C was a member
The Development Group	A development group of which Mr C attended meetings
The Council	The local authority
The PSC	The Public Standards Commissioner
The Councillor	The councillor who was the subject of complaint to the PSC
The Code	The Councillors' Code of Conduct
The Note of Decision	A decision notice from the PSC
The Investigating Officer	An investigating officer working for the PSC
Councillor X	A councillor who was interviewed as part of the investigation
Councillor Y	A councillor who was interviewed as part of the investigation

Extracts from Note of Decision

- 5.3 [Mr C] has accepted that he has requested amendments or additions to the minutes of the meetings on several occasions, requests which appear to have occupied a disproportionate amount of time at the meetings concerned. While I would not wish to constrain members of the Group from seeking legitimate changes to minutes it is clearly unhelpful if this becomes a lengthy procedure and detracts from the main business to be addressed at the current meeting. Scrutiny of the minutes over a period of time shows that the complainant has been the principal member to request changes.
- 5.4 The style and content of minutes for meetings of this nature are not prescribed in the Code of Conduct, or indeed the Council Standing Orders. This is not a matter which falls to me to consider but I would observe that [the Development Group] has no decision-making function and is in reality an information-sharing body designed to keep local interests abreast of the Council's intentions in regard to the redevelopment.
- 5.6 [Mr C] alleges that the respondent said: "It was a funeral, [Mr C]! Jesus Christ! A bloody funeral and you want it minuted? You'll be wanting the actual time that we left next! Come on, tell us what was the exact time?" and that this wording was in itself disrespectful. The respondent accepts that this is substantially what he said but denies using the epithet 'Jesus Christ!' which he says is not an expression he uses. Whether or not the recollection of either party is entirely accurate, I do not consider that there was anything in the alleged wording that was inherently disrespectful to [Mr C] or others present at the meeting.
- 5.8 The content and manner of [the Councillor]'s response are indicative of frustration and a loss of equilibrium. While a high standard of tolerance and patience is required to chair a meeting it is inevitable that on occasions a degree of intemperate language or tone will be expressed. The threshold of what does, or does not, constitute disrespectful conduct must therefore allow for the occasional outbursts of passion or frustration that accompany debate on matters of public interest and controversy. Such remarks are commonly expressed in the context of an exchange and if the normal course of business and freedom of expression is not to be inappropriately curtailed, a degree of leeway must be permitted in the interpretation of the occasional insensitive comment.