



INTEGRITY IN PUBLIC LIFE

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# ADVICE ON THE ETHICAL STANDARDS FRAMEWORK FOR CHAIRS OF DEVOLVED PUBLIC BODIES

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## 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to outline the role and responsibilities of the Chair of a Schedule 3 devolved public body, within the ethical standards framework. Schedule 3 devolved public bodies are those listed at [Schedule 3 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (the 2000 Act).
- 1.2 While this Advice Note aims to assist Chairs of devolved public bodies, employees and others, by providing information about the role that Chairs may be expected to undertake within the ethical standards framework, it is not intended to be prescriptive. The Standards Commission recognises that governance arrangements and the extent of the Chair's role are entirely matters for each devolved public body to determine, subject to the agreed arrangements that they have in place with the Scottish Ministers.

## 2. Background

- 2.1 The Standards Commission's functions are provided for by the 2000 Act. The 2000 Act created an ethical standards framework whereby members of devolved public bodies and councillors are required to comply with Codes of Conduct, which are approved by the Scottish Ministers.
- 2.2 The role of the Standards Commission is to:
- encourage high ethical standards in public life. This includes promoting and enforcing the Codes of Conduct and issuing guidance to councils and devolved public bodies; and
  - adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 Individual Codes of Conduct, which are based on a Model Code of Conduct, have been created and approved for all devolved public bodies described within Schedule 3 of the 2000 Act. Codes of Conduct currently apply to the following categories of public bodies:
- Devolved Public Bodies (for example, the Scottish Legal Aid Board);
  - National Health Service Boards;
  - Health & Social Care Integration Joint Boards;
  - Further Education Colleges;
  - National Parks; and

- Regional Transport Partnerships.
- 2.4 Complaints about potential breaches of the Codes of Conduct by members of devolved public bodies and councillors are investigated by the Ethical Standards Commissioner (ESC). Following the completion of an investigation, the ESC will submit a report to the Standards Commission.
- 2.5 The Standards Commission will review the ESC's report and determine whether to:
- direct the ESC to carry out further investigations;
  - hold a Hearing; or
  - do neither.
- 2.6 The Standards Commission holds Hearings to determine whether there has been a breach of their respective Code of Conduct by the councillor or member. If the evidence presented to the Standards Commission's Hearing Panel supports, on the balance of probabilities, that a breach of the Code had occurred, the Hearing Panel will then determine the sanction to be applied, in accordance with the 2000 Act.

### 3. The Chair's Role in relation to the Ethical Standards Framework

- 3.1 The public body should ensure that appropriate training on the ethical standards framework, the Code of Conduct for their public body's members (the Code), and the guidance issued by the Standards Commission is given to all members, including the Chair. This includes ensuring training is provided at the point of induction and on a regular basis thereafter. It may also be prudent to ensure that a record of all training provided, and those sessions attended by members, is maintained.
- 3.2 It is a member's personal responsibility to ensure they comply with the provisions in the Code. Chairs are expected, nevertheless, to contribute to the promotion and maintenance of high standards of conduct and a respectful organisation-wide culture, by ensuring they lead by example and encourage their colleagues to adhere to the Code and the key principles of public life in Scotland.
- 3.3 Chairs are also expected to have a good awareness of the Code, as other members and employees may seek advice or support from them on the interpretation and application of its provisions. Chairs should familiarise themselves with the content of the Standards Commission's Guidance on the Model Code and any relevant Advice Notes and to draw these to the attention of members. Chairs may also wish to review, and encourage other members to review, the Standards Commission's Standards Updates and decisions so that any relevant learning points that have arisen at recent Hearings are noted.  
The Guidance and Advice Notes can be found at:  
<https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 3.4 Chairs are asked to note that they can seek advice on the Code or any other aspect of the ethical standards framework from the Standards Commission at any time. Chairs may also wish to engage regularly with the public body's Standards Officer in respect of matters concerning compliance with the Code, with a view to securing mutual understanding and securing appropriate conduct. The Standards Commission's Advice Note on the Role of a Standards Officer contains more information on the role and responsibilities of the Standards Officer within the ethical standards framework.

### 4. Compliance with the Code

- 4.1 It may be helpful, on occasion, for Chairs to intervene and advise a member accordingly if there is unhappiness about that member's behaviour and concerns that they may have breached the Code or may be about to do so.
- 4.2 Chairs may wish to note that a failure by a member to comply with the Code can have an adverse impact on both that individual member's reputation but also the reputation of the public body as whole. It can also lead to the risk of a legal action being raised against the public body, with associated resource and cost implications. An example of this could be if a member has failed to declare a financial interest when making a decision to approve a business case. A failure to comply can also have an adverse impact on the effective operation of the public body (for example, if a member was bullying a senior employee, or was preventing employees from undertaking their roles by constantly interfering or demanding they take a certain course of action).
- 4.3 The Chair may have a role in trying to resolve a matter informally if any complaint is made, or if concerns are raised about a member's conduct. It should be noted that there is no requirement for a Chair (or anyone else) to refer the matter to the ESC as a formal complaint. The Chair may wish to consider doing so, however, if it does not appear the matter can be resolved and / or the alleged conduct is serious in nature. In making such a decision, Chairs should consider the impact of the alleged conduct on others, the likelihood of it continuing or being repeated, and the potential risk to the reputation of the public body if no action is taken. Chairs may also wish to consider whether the potential benefit of having an investigation undertaken by the ESC, being someone who is independent of the board and public body, and also the potential consequences if any attempt to resolve the matter informally is unsuccessful.
- 4.4 Chairs may wish to consider including a discussion on compliance with the Code and key principles of public life in board members' annual appraisals and any review of board effectiveness.

## 5. The Chair's Role in respect of some specific provisions in the Code

- 5.1 **Introduction and Key Principles:** It should be noted that a breach of the introduction (section 1) or a breach of one or more of the key principles, listed in Section 2 of the Codes, does not in itself constitute evidence of a breach of a Code. The ESC (in its investigatory role) and the Standards Commission (in its adjudicatory role) can only consider alleged breaches of the substantive sections of the Code, being Sections 3 to 7 and Annex A inclusive. Chairs may, therefore, be responsible for handling and dealing with complaints that a member has breached one of the provisions in the introduction section or a key principle.
- 5.2 **Respect, bullying and harassment:** Chairs have a key role in promoting a respectful culture and again, should lead by example. Chairs have a role in promoting consensus and shared understanding and should actively encourage all members to participate and express their views. They should also seek to preclude individual members from dominating debates and discussions, which should draw on contributions from everyone. Chairs should also encourage diversity of thought and make it clear to members that there is nothing wrong with them disagreeing with others, provided they express any opposing view in a respectful manner and comply with the principle of collective responsibility (see paragraph 5.6).
- 5.3 Chairs may wish to try to hold either formal or informal individual discussions with other members to check that they are not experiencing any issues with respect, bullying or harassment. Chairs should consider stepping in if they witness any poor conduct to prevent a situation from escalating. Chairs should also endeavour to address any such conduct and try to prevent a recurrence by communicating privately with the member concerned, and anyone affected by it, as soon as practicable. Chairs may wish to draw members' attention to the

Standards Commission's Advice Note for Members on Bullying and Harassment, as well as the relevant policies of the public body (it should be noted that these policies will require a formal investigation to be undertaken in cases where certain types of allegations have been made).

- 5.4 **Relationships with employees:** The Code states that members should not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. Chairs should, therefore, advise members that any concerns about an employee should be raised in private with the Chair who can then bring such concerns to the attention of the Chief Executive or the employee's line manager, as appropriate.
- 5.5 Chairs can have a role in ensuring members do not become inappropriately involved in operational matters by checking that members and employees of the public body share a common understanding regarding which matters are strategic and which are operational in nature (this may vary depending on the size of the public body and the nature of its work). Chairs can review meeting agendas in advance to check whether matters being discussed are at an appropriate level and that members are being provided with sufficient, timely and relevant information to allow them to undertake their strategic and scrutiny roles effectively, without becoming too focused, either individually or as a board, on matters that are operational in nature. Chairs may also wish to intervene if employees are being asked to provide detail at a level beyond that required for members to undertake their role, or are being told how to perform activities that are wholly operational in nature. Chairs may wish to draw members' attention to the Standards Commission's Advice Note for Members on Strategic and Operational Matters.
- 5.6 **Collective responsibility:** Chairs may find it useful to remind their colleagues, from time to time, that while constructive challenge is to be encouraged and welcomed, they must share collective responsibility for decisions taken by the board as a whole, once such decisions have been made. Chairs should ask their colleagues to note that the principle of collective responsibility applies at all times where they are acting as a member of the public body, where they have referred to themselves as a member or in situations where they could reasonably be perceived to be acting as a such. This could include when they are making a press statement or providing a quote to the media.
- 5.7 **Social Media:** It should be noted that, as their membership of the public body is in a public role, a member may be perceived to be acting as a member of the public body when using social media, even if they have not identified themselves as such on the social media account or in any post. An example may be if they are discussing a matter that is relevant to the work of the public body or a service it provides. Chairs may wish to draw members' attention to the Standards Commission's Advice Note for Members on the Use of Social Media.
- 5.8 **Confidentiality:** Chairs can have a role in ensuring members do not disclose confidential information. They can do so by, for example, ensuring that members and employees of the public body share a common understanding regarding which matters are confidential and how any papers or specific information within papers that are confidential will be marked as such. Chairs can also reiterate, at meetings, that a matter that is about to be discussed or a decision that has been made is confidential. Chairs may wish to explain why information has been deemed confidential so that members understand the reasoning behind any decision not to make it public and, if applicable, the date or point at which it will cease to be confidential.
- 5.9 **Hospitality:** Chairs may wish to encourage members to discuss any offers of hospitality with them before acceptance. In considering whether it is appropriate and in compliance with the Code to accept the hospitality, Chairs can encourage members to consider whether there could be a reasonable perception that acceptance of the hospitality could, or would, influence their

decision-making as a member of the public body. The Chair can also encourage members to consider other relevant factors, such as:

- the nature of the event;
- why the hospitality has specifically been offered to them;
- what may be expected of them;
- who else will be in attendance at the event;
- the potential value of the hospitality, whether the person or body offering the hospitality has business or is likely to have any business with the public body (including seeking approval for any decision or funding); and the potential motivation behind the offer (including what the donor might expect as a result of acceptance);
- what might the public body gain from them accepting the hospitality; and
- what the potential personal benefit to the member could be, or could be perceived as being, with any associated risk in terms of the reputations of either the member or the public body.

**5.10 Registering interests:** If any of their fellow members are unclear as to whether they need to register any interest, the Chair should encourage them to seek advice from the public body's Standards Officer or the Standards Commission at as early a stage as possible.

**5.11 Identifying and declaring relevant interests:** Similarly, if any members are unclear as to whether they have a declarable interest, the Chair should encourage them, where possible, to seek any advice or support from the Standards Officer in private and in advance of any relevant board or committee meeting. This will afford the Standards Officer the opportunity to ask any relevant questions, obtain necessary information and give the matter proper consideration, so that they are then in a position to give informed advice.

**5.12** Chairs should check that the public body has procedures in place to provide for a consistent approach in respect of seeking and recording declarations of interest at the start of all meetings of the board (and any of its committees or sub-committees). Chairs should remind members that it is their personal responsibility to ensure that they declare any interests, as required by Section 5 of the Code. Members should be reminded that they should not rely on their colleagues or the public body's Standards Officer (or any other employee) to advise them that they may have an interest. This is because other members and employees may not be aware of the extent of the member's connection to or interest in a matter, or may not recall it.

**5.13** Chairs should also remind any member who has declared an interest in a matter that they must leave the room (or any online meeting platform) until the discussion and any decision-making on the matter has concluded.

**5.14 Lobbying and access:** Chairs may wish to ensure that other members understand the difference between:

- engaging with service users and stakeholders (which could include dealing with enquiries from the public and any community engagement where they are working with individuals and organisations to encourage their participation and involvement); and
- lobbying (which is where they are approached by any individual or organisation who is seeking to influence them for financial gain or advantage, particularly those who are seeking to do business with the public body).

