

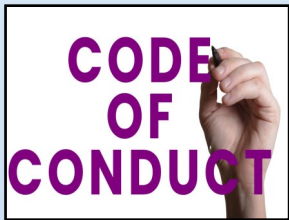
STANDARDS UPDATE

ISSUE 42: June 2024

News

Consultation on Proposed Amendments to Ethical Standards Legislation

The Ethical Standards in Public Life etc (Scotland) Act, which introduced the ethical standards framework and Codes of Conduct for councillors and members of devolved public bodies in Scotland, was one of the first laws passed by the Scottish Parliament. In advance of the 25th anniversary of its enactment, the Standards Commission and the Ethical Standards Commissioner (ESC) have conducted a joint review of its provisions and have identified some amendments that could be made to improve or strengthen the framework. The Standards Commission and ESC intend to consult with stakeholders on these proposals. A copy of the proposals and information on how to respond will be published on the Standards Commission's website shortly. We will be grateful for any views you may have.



Correspondence to Political Parties

The Standards Commission and ESC have sent a joint letter to all political parties in Scotland, in advance of the General Election on 4 July 2024, inviting them to help to promote the Councillors' Code and encourage awareness of its provisions and, in particular, the ones that require councillors to treat each other with courtesy and respect and to refrain at all times from engaging in conduct that would constitute bullying and/or harassment. The ESC and Standards Commission noted that while the forthcoming election could lead to more robust political debate, it was hoped that a distinction would be drawn between such robust debate and overt personal criticism and abuse.

Revised Advice Note for Members of IJB's

The Standards Commission has revised its Advice Note for Members of Health and Social Care Integration Joint Boards. The Advice Note aims to provide members of IJBs with an overview of their responsibilities under the ethical standards framework. It seeks, in particular, to assist such members in recognising and dealing with potential conflicts of interest. This is to help minimise the risk of the impact of any such a conflict on effective governance and to help members ensure they comply with their Code of Conduct.



New Commission Members

The Standards Commission is delighted to welcome two new members, Lezley Stewart and Morag Ferguson.

Dr Stewart is a graduate of University of St Andrews and University of Edinburgh, and Princeton and Pittsburgh Seminaries, USA. She worked for the Church of Scotland for over 25 years in Dundee and Edinburgh, serving as an ordained Office Holder. Most recently, Dr Stewart was employed as the Recruitment & Support Secretary and Ministries Support Manager for the Church of Scotland with oversight of the recruitment and assessment processes for the Ministries of the Church, and had responsibility for the centralised support provisions and policies for those serving as Office Holders, providing advice and guidance and working with a Code of Conduct.



Ms Ferguson, a solicitor for more than 30 years, has worked mostly in the public sector in both the NHS Central Legal Office and a number of local authorities. Latterly, she was Head of Corporate Support at East Lothian Council, with responsibility for Governance, People Services, HR and Corporate Communications. Over her career, Ms Ferguson has gained extensive experience of local government governance and of working with elected members, holding the statutory role of Monitoring Officer at both Fife Council and East Lothian Council. She has also developed and delivered training on governance and the Councillors' Code and was a member of the SOLAR Monitoring Officers Networking Group.

Updated Councillors' Code of Conduct Guidance and Dispensation

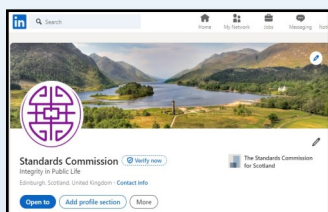
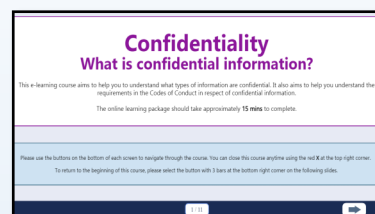
The Standards Commission granted a dispensation in June 2024 to elected members appointed or nominated to Pension Committees. This dispensation allows all members of Pension Committees to take part and vote at full Council on pension issues (including ones concerning the pension fund either as a scheme employer or as an administering authority), or at any Pension Fund Committee meeting, without having to declare their membership of the Pension Committee as an interest.

The Standards Commission also updated its Guidance on the Councillors' Code to make it clear that elected members can participate, without being required to declare an interest, in any discussions and decision-making on the appointment of councillors to any roles or committees within their council and in any motions of no confidence or ones calling on an elected member to resign. This is even if they could be affected financially, politically or reputationally by the decision. In addition, elected members can participate, without being required to declare an interest, in their council's consideration of a written finding of a Standards Commission Hearing, even if they were the Respondent, attended the Hearing or were otherwise involved in the complaint that was the subject of the Hearing (as the Complainer or as a witness).

News cont.

New E-Learning Module: What is Confidential Information?

The Standards Commission has produced a new e-learning module on the confidentiality requirements of the Councillors' and Model Codes of Conduct. The new module can be found on the [E-Learning Modules and Videos](#) page of our website.



Standards Commission - LinkedIn

The Standards Commission has a new [LinkedIn page](#). Please follow us for news, blogs and guidance on the ethical standards framework.

The link to our most recent blog on why language matters can be found on the page.

Advice Note on the Role of a Standards Officer

Following discussions at its Standards Officers' workshop in March, the Standards Commission updated its Advice Note for Members of Public Bodies on the role of the Standards Officer, to include a new section on when it might be appropriate to attempt local resolution to resolve a matter concerning a potential breach of the their public body's Member's Code of Conduct. It should be noted, however, that there is no requirement for the Standards Officer (or anyone else) to try to resolve matters informally or internally, and that individuals can make a complaint to the ESC, regardless of whether or not they have been directly affected by the alleged conduct.



Direction on the Progress of Investigations

At their meeting on 28 May 2024, Standards Commission Members reviewed the Direction on the Progress of Investigations issued to the ESC under the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Direction obliged the ESC to provide three-monthly progress updates on ongoing investigations to all parties involved. Members acknowledged that the ESC's Investigation Manual confirms that parties to complaints, and the relevant council or public body, will receive updates every three months on the progress of investigations. Members further noted that the Standards Commission was being provided with fortnightly case updates outlining the progress of cases. As such, Members agreed that it was no longer necessary to continue with the Direction. The Direction was therefore rescinded, with effect from 30 May 2024.

Appeal against Breach Finding

Following a Hearing on 17 January 2024, an elected member of Aberdeen City Council, was found by the Standards Commission to have breached the respect and courtesy provisions in Councillors' Code when he was quoted in a news article as stating that another elected member had "shown his prejudice" in refusing to sign his nomination to the Local Authority Pension Fund Forum. The Hearing Panel found that the statement was not justified in the circumstances, as it found that the decision not to nominate the Respondent had been made before any issues about ethnic minority representation had been raised. The Respondent had also been advised that the Administration had decided that no elected members were to be nominated as it was considered that engagement at officer level was sufficient. The Panel did not consider that the Respondent's comments were protected by Article 10 of the European Convention on Human Rights (the right to freedom of expression).

The Respondent appealed the decision on the grounds that the Panel had made an error of law in relation to how they had approached the technical legal test in the application of Article 10. Having taken legal advice on the way the Panel approached Article 10 in its written decision, the Standards Commission decided not to defend the appeal. As a consequence, the Sheriff Principal quashed the finding that there had been a breach of the Code by the Respondent on the basis of no expenses being due to or by either party.

The Standards Commission reminds all councillors of their obligations to comply with the respect provisions of the Code, as it considers that a failure to do so reduces the standards of public debate and can erode public confidence in politicians, the role of a councillor and the Council itself.

Cases Overview

Since the last briefing in March 2024, 14 cases were referred to the Standards Commission by the Ethical Standards Commissioner (ESC) about elected members of Dumfries and Galloway, Aberdeen City, North Lanarkshire (three cases), Stirling, Aberdeenshire, Glasgow City (three cases), Falkirk, East Ayrshire and Argyll and Bute Councils and one case involving former members of the Scottish Legal Complaints Commission. The Standards Commission directed the ESC to undertake further investigation into complaint involving two councillors from Glasgow City Council and has scheduled Hearings in five cases concerning Stirling, Glasgow City, North Lanarkshire, Falkirk and East Ayrshire councillors. The decision on an Aberdeenshire case was pending at our last briefing. The Standards Commission decided to hold a Hearing and the outcome is outlined below. The Standards Commission held Hearings in respect of a further three cases concerning councillors from Highland, Inverclyde and Scottish Borders Councils, as well as a Hearing involving a former member of Cairngorms National Park Authority. The outcomes of the Hearings are outlined below. No action was taken in eight cases and the written decisions in respect of these cases can be found on the [Cases](#) page of our website. The Standards Commission also received a report on an ex officio member of a college sector board, the outcome of which is detailed on page 4.

Highland Council - LA/H/3838 - No Breach

At a Hearing held online, a Highland Councillor was found, on the face of it, to have breached the Councillors' Code, in respect of a comment he made about the Council's former Chief Executive at a full Council meeting held online in December 2022. The Panel found that the Respondent, when discussing the closure of a children's home in his ward, made comments, at the meeting, questioning whether the Chief Executive had lied to elected members when she had advised them, at a meeting in June 2022, that the home would not close. The Panel was of the view that such a public attack on the then Chief Executive's character could have been highly damaging, not only to her reputation as an individual, but also to the Council itself (given she was its senior officer). The Panel accepted that the position in respect of the closure of the home may have changed between June and the Council

Cases cont.

Highland Council - LA/H/3838 - No Breach cont.

meeting in December 2022, and, therefore, that the then Chief Executive's position, as stated in June, may have been accurate and made in good faith at that time.

The Panel considered that the Respondent must have known that the making of such an accusation in the context of a discussion on such an emotive subject had the potential to have a significant, detrimental impact on the then Chief Executive's reputation. The Panel noted that there had been nothing to prevent the Respondent from raising his concerns about the apparent change in position regarding the potential closure of the home in a respectful manner. As such, the Panel concluded that the Respondent had, on the face of it, contravened the requirements under the Code for councillors to treat council officers with courtesy and respect and to refrain from criticising their conduct, performance or capability in public.

The Panel accepted, nevertheless, that the Respondent's accusation was a value judgement made in good faith. In considering it was made in good faith, the Panel accepted that the Respondent was motivated by concerns about the closure of the home, rather than a desire to question the then Chief Executive's integrity in general. The Panel further considered that there was evidence to demonstrate that, while not necessarily accurate, the accusation had a basis in fact, given it appeared the position had changed in respect of the potential closure of the home, despite the apparently categorical assurances that the then Chief Executive had given at the June meeting. It also took account of the Respondent's position (which had not been challenged at the Hearing) that he and others had sought information on the position in respect of the home in advance of the Council meeting, and that this had not been provided. The Panel was satisfied, therefore, that in the very specific and particular circumstances of the case, the Respondent's comment amounted to a value judgement that was not excessive. It concluded, therefore, that a restriction on the Respondent's right to freedom of expression would not be relevant, sufficient and proportionate and, as such, a formal finding of breach could not be made.

Inverclyde Council - LA/I/3764 - Breach

An Inverclyde Councillor was suspended for one month by the Standards Commission at a Hearing held in Greenock, for failing to declare an interest in a planning application for a development at a former industrial site near his property, which was considered by Inverclyde Council's Planning Board at a meeting in March 2022. The Panel noted that it was not in dispute that the Respondent did not declare an interest at the meeting and voted in favour of granting the application, subject to the recommended conditions.



The Panel acknowledged that, while it was the nearest property to the proposed development, the Respondent's farmhouse was still some distance from it. The Panel further acknowledged that the Respondent had supported the recommendation made by officers to grant the application at the meeting, albeit in an amended form with conditions on the number of properties to be built. The Panel nevertheless considered that, having applied the objective test, as required by the Code, the Respondent should have reached the view that his connection to the planning application would reasonably be regarded as being so significant that it would be considered as being likely to affect his potential discussion and decision-making on the agenda item under consideration. While the Panel noted that it did not have sufficient evidence before it to confirm whether the outcome of the decision on the matter would have had an impact, either positive or negative, on the Respondent's property, it nevertheless considered that given the proximity and the fact that it was an adjacent property separated only by a dual carriageway, a person with knowledge of these facts would reasonably consider that the Respondent's connection to the site of the development proposal would be sufficiently significant as to be likely to affect his discussion or decision-making. The Panel agreed, therefore, that the Respondent should have declared an interest, withdrawn from the meeting and taken no part in the discussion and decision-making on the matter.

The Panel was not satisfied that there was any evidence that the Respondent's interest had affected his discussion or decision-making as a member of the Planning Board, or that he had acted in anything other than good faith, when taking part in the decision-making. The Panel agreed, however, that it was necessary to impose a suspension in order to reflect the seriousness of the breach, to promote adherence to the Code and to maintain and improve the public's confidence that councillors will comply with the Code and will be held accountable if they fail to do so.

Scottish Borders Council - LA/SB/3722 - Breach

At a Hearing held online, a Scottish Borders Councillor was suspended from attending full Council and Council Executive meetings for one month. This was for failing to declare his employment with South of Scotland Enterprise at three council meetings held between February and August 2022, when matters concerning, or that could impact upon the work of South of Scotland Enterprise, were being discussed.



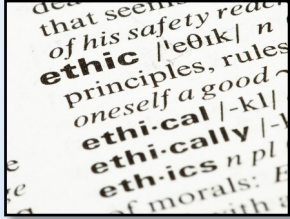
The Panel acknowledged that the Respondent had recorded promptly his employment on his Register of Interests and, as such, was satisfied there was no attempt to conceal it. The Panel nevertheless considered that, having applied the objective test, as required by the Councillors' Code, the Respondent should have reached the view that his connection, being his paid employment with a local enterprise agency, would reasonably be regarded as being so significant to the specific agenda items in question as to be likely to affect his potential discussion and decision-making on those matters. The Panel agreed, therefore, that the Respondent should have declared an interest, withdrawn from the meetings and taken no part in the discussion and decision-making on the specific matters in question. The Panel further found that on one occasion, having declared an interest in relation to an item being discussed, the Respondent emailed a fellow elected member and suggested that they could comment on a particular point. While the Panel accepted it may not have been the Respondent's intention to influence anyone remaining in the meeting, it found that by suggesting that a fellow councillor could "comment on the challenges" arising from the item, the Respondent had continued to participate, in breach of the Code.

In reaching its decision on sanction, the Panel accepted there was no suggestion the Respondent had tried to hide or conceal his interest. The Panel agreed, nevertheless, that it was necessary to impose a suspension in order to reflect the seriousness of the breach, to promote adherence to the Code and to maintain and improve the public's confidence that councillors will comply with the Code and will be held accountable if they fail to do so. The Panel emphasised that the requirement for councillors to declare interests is a fundamental requirement of the Code as it gives the public confidence that decisions are being made in the public interest, and not the personal interest of any councillor or their friends, family or employer. A failure to comply with the Code's requirements in this regard can erode confidence in the Council and leave its decisions open to legal challenge.

Cases cont.

Cairngorms National Park Authority - NPA/C/3831 - Breach

At a Hearing held online on 27 May 2024, a former member of Cairngorms National Park Authority (CNPA) was found to have breached the CNPA's Members' Code. The Panel found that the Respondent failed to declare an interest at a planning meeting of CNPA in December 2021, when applications for planning permission to build two self-catering units and access roads on an estate were being considered. The Panel found the Respondent had a connection to the applications being discussed, as she lived near the estate in question and, further, was employed as a manager of a hospitality business on a nearby estate. The Panel accepted that the Respondent's employer may not necessarily have been a direct competitor of the applicant business, in terms of price and the standard of accommodation to be offered. The Panel nevertheless considered that, having applied the objective test under the Code, the Respondent should have reached the view that her employment at a nearby hospitality business, which also offered self-catering options within the park area, would be reasonably regarded by members of the public with knowledge of the relevant facts as being so significant to the applications being considered at the meeting, that it would be regarded as being likely to prejudice her potential discussion and decision-making.



The Respondent was also found, on the face of it, to have breached the respect provisions in the Code in respect of a remark she made about a senior employee of CNPA at a board meeting in November 2022. The Panel found that the Respondent's remark impliedly, and publicly, accused the employee of bullying and intimidating Members of CNPA in providing them with advice about when they may need to declare interests. The Panel agreed that the making of such an accusation about the conduct of the employee was serious and could have been damaging, not only to his reputation as an individual, but also to CNPA itself. The Panel noted that, in terms of the ethical standards framework, the employee in question was expected to provide members with advice about compliance with the Code. The Panel acknowledged he did so both to ensure that Members complied with its provisions, but also to ensure the propriety of decisions made by the public body and to mitigate the risk of these being challenged. The Panel was of the view, nevertheless, that while the Respondent's remark was emotive and unjustified, it did not consider that it was sufficiently offensive, personally abusive or shocking as to justify a restriction on her right to freedom of expression. In reaching this view, the Panel took account of the fact that the Respondent had withdrawn the remark at the meeting and had qualified it with the use of words "feels like" and "almost". The Panel concluded, therefore, that a formal finding of a breach of the Code could not be made in relation to the remark.

Aberdeenshire Council - LA/As/3958 - Breach

At a Hearing held online on 4 June 2024, an Aberdeenshire councillor was found by the Standards Commission to have breached the Councillors' Code of Conduct by disclosing confidential information from an email to a local journalist about the potential future use of a care home as asylum accommodation. The Respondent was suspended for a period of two months. The Panel noted that it was not in dispute that the word 'confidential' had appeared in uppercase in the subject line of the email. The Panel was of the view that it was evident from this that the contents of the email were confidential. The Panel agreed that even if the email had not been marked explicitly as confidential, it was clear from the sensitive nature of the subject matter and the fact that reference was made in the email to the Council being "in the very early stages" of the decision-making process, with there being a "significant amount of information" still to ascertain, that it was to be treated as such. The Panel concluded, therefore, that the Respondent was fully aware that the information, from the email, that he shared with the local journalist, was confidential at the time of disclosure.



The Panel noted that the Respondent stated he had disclosed the information in order to address speculation and any concerns his constituents may have. The Panel was satisfied, nevertheless, that he had done so, at least in part, for political reasons. This was because the Panel considered that providing information to a local journalist about an apparently contentious matter, that had been the subject of considerable local speculation, would only serve to raise public awareness and to bring the proposal into the open. The Panel agreed that the Respondent must have been aware that doing so would highlight the issue and potentially encourage constituents to bring pressure to bear on officers and other decision-makers, in order to affect the outcome. The Panel further found that, as the Respondent used his council email account to facilitate the disclosure, he had also breached the provisions in the Code regarding the improper use of a council's IT facilities.

The Panel noted, in mitigation, that the Respondent had referred himself to the ESC and had co-operated fully with the investigative and Hearing processes. The Panel noted there was no evidence that the incident had been anything other than a one-off event or of any previous contraventions of the Code by the Respondent. The Panel nevertheless noted the potential impact of the Respondent's actions on others, particularly council officers, who would have been responsible for dealing with any resulting enquiries from the press and public. The Panel further noted that the disclosure was likely to have resulted in speculation about the use of the facility, before any final decision had been taken, which may have caused undue and unnecessary concern. In the circumstances, the Panel concluded that a suspension of two months was an appropriate sanction.

College Sector Board

Section 24 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 states that, on receipt of a report from the ESC regarding a complaint about a member of a devolved public body who is (a) also an employee; or (b) an *ex officio* member, the Standards Commission shall send it to the devolved public body. The Standards Commission received a report about an *ex officio* member of a College Sector Board on 22 April 2024 and sent it to the Board's Executive Director. A summary of the complaint and the ESC's findings can be found on the [Cases](#) page of our website.

Details of the outcome of cases, including full written decisions and information about scheduled Hearings, can be found in the [Cases](#) section of our website.

For further information on the support we can offer councillors and members of devolved public bodies, please either speak to your Monitoring Officer or Standards Officer or look out for information on our website. Alternatively, please contact us:

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