



INTEGRITY IN PUBLIC LIFE

## THE APPLICATION OF SANCTIONS

### 1. INTRODUCTION

- 1.1 Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended, outlines the options available to the Standards Commission on the finding of a contravention of their respective Codes of Conduct by a councillor or member of a devolved public body at a Hearing it has conducted.
- 1.2 Section 19 obliges the Standards Commission to impose a sanction upon the finding of a contravention. The Standards Commission cannot, therefore, choose not to apply one.
- 1.3 The options available to the Standards Commission are to censure, suspend or disqualify the councillor or member. Section 19 is reproduced below.

#### **19 Action on finding of contravention**

**(1) Where the members of the Commission conducting a hearing find that a councillor has contravened the councillors' code or a member of a devolved public body the members' code, they shall impose one of the following sanctions—**

**(a) censuring, but otherwise taking no action against, the councillor or member;**

**(b) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend one or more but not all of the following—**

**(i) all meetings of the council or body;**

**(ii) all meetings of one or more committees or sub-committees of the council or body;**

**(iii) all meetings of any other body on which the councillor or member is a representative or nominee of the council or body;**

**(c) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend meetings of the council or body and of any committee or sub-committee thereof and of any other body on which the councillor or member is a representative or nominee of the council or body;**

**(d) in the case of a councillor, disqualifying the councillor for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;**

**(e) in the case of a member of a devolved public body, removing the member from membership of the body and disqualifying the member, for a period not exceeding five years, from membership of the body.**

- 1.4 The purpose of this policy is to outline the factors the Standards Commission may consider when making a determination under Section 19.
- 1.5 The policy aims to help achieve clarity, consistency, awareness and transparency in relation to decision-making in respect of sanctions.

- 1.6 The policy is intended as a guide and the list of considerations outlined below is not exhaustive. The decision will depend on the individual and particular circumstances of each case.
- 1.7 Section 17 of 2000 Act provides a Hearing shall be conducted by not fewer than three members of the Standards Commission. However, reference is made to the Standards Commission in this policy as the Hearing Panel makes decisions at Hearings, including determining any sanction to be applied, on behalf of the Standards Commission.

## 2. SANCTIONS

- 2.1 The sanctions that can be imposed on the councillor or member of a devolved public body (who is known at the Hearing as the Respondent), following a finding of a breach of the Councillors' or Members' Code of Conduct, are as follows:
- **Censure:** Censure is a formal recording of the Standards Commission's severe and public disapproval of the Respondent.
  - **Suspension:** This can be a full or partial suspension. A full suspension means that the Respondent is suspended from attending all meetings of the Council / Board. Partial suspension means that the Respondent is suspended from attending some of the meetings of the Council / Board.
  - **Disqualification:** Disqualification means that the Respondent is disqualified for the period determined (of up to 5 years) from being a Councillor or Board Member. In a Local Authority, this has the effect of removing that Councillor from office.

## 3. KEY PRINCIPLES & AIMS

- 3.1 The Standards Commission will adhere to the following key principles when determining the sanction to be applied:
- While it is important to be as consistent as possible, the appropriate sanction will depend on the facts and circumstances of each individual case.
  - Decisions will be made on an impartial, fair and proportionate basis.
  - Clear reasons will be provided for decisions in order to ensure transparency.
- 3.2 When applying sanctions, the Standards Commission will aim to:
- Preserve the ethical standards framework.
  - Promote adherence to Codes.
  - Maintain and improve the public's confidence that councillors and members of devolved public bodies will comply with the Codes and will be held accountable if they fail to do so.
  - Achieve credible deterrence.

## 4. ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

- 4.1 The Standards Commission notes that any sanction it imposes in relation to a contravention of a Code of Conduct that, on the face of it, interferes with the Respondent's right of freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as enshrined in the Human Rights Act 1998, can also be an interference with the right under Article 10.
- 4.2 Therefore, any restriction involved by a finding that a Code of Conduct has been contravened and the imposition of a sanction will require to be justified by Article 10(2), which allows restrictions on the freedom of expression that are necessary in a democratic society for the

protection of the reputation or rights of others. Any such restriction must be for relevant and sufficient reasons; and to be proportionate to the legitimate aim being pursued.

- 4.3 In considering applying a sanction in cases where the application of Article 10 may apply, the Standards Commission will consider:
- firstly, whether the interference (i.e. the proposed sanction) is the minimum necessary, or whether less restrictive means could be employed; and then
  - secondly, whether the benefit of that least necessary measure outweighs its adverse impact on the Respondent's right to freedom of political expression. For example, whether any benefit in applying a sanction in respect of protecting the mutual bond of trust and confidence between elected members and officers (which enables local government to function effectively), will outweigh any impact on the Respondent.

## 5. FACTORS THAT CAN BE CONSIDERED

- 5.1 When determining the sanction to be imposed, the Standards Commission will consider any submissions made and also any evidence led in mitigation. This could include evidence about the personal circumstances of the Respondent at time of contravention
- 5.2 The Standards Commission will reflect on, and use, previous decisions to support its decision-making. However, the sanction to be applied will depend on the individual facts and circumstances of each case. In particular, the Standards Commission will consider the nature and seriousness of the breach along with any aggravating and mitigating factors.
- 5.3 The weight to be attached to any such factors will be determined on a case by case basis. It should be noted that the list of factors below is not exhaustive and not all will be present and/or relevant in each case.
- 5.4 **Nature & seriousness:** In assessing the nature and seriousness of the breach, the Standards Commission may consider the following:
- Extent and significance of the contravention
  - Duration and frequency of the failure / actions that were the subject of the contravention.
  - Whether there was any repetition of the conduct / behaviour
  - Impact (including loss or harm) or potential consequence of the breach to others
  - Extent of any impact on others
  - Benefit or intended benefit of the breach to the Respondent
  - Evidence of deliberate intent
- 5.5 **Aggravating factors** are ones which may increase the severity or culpability of the breach. The Standards Commission will consider whether there is evidence of any of the following aggravating factors:
- Repeated behaviour over a long period of time
  - Deliberate conduct
  - Dishonesty and/or concealment
  - Evidence of gain /benefit to Respondent
  - Previous contraventions by same Respondent
  - No understanding, reflection, insight and/or acceptance of actions
  - Lack of remorse and/or no apology
  - Failure to co-operate with investigation and/or adjudication process
  - Failure to take any opportunity to rectify
  - Continuing with the conduct / behaviour after it being brought to Respondent's attention and/or the complaint being made
  - Ignoring of advice or training opportunities that may have prevented contravention

5.6 **Mitigating factors** are ones that may lessen the severity or culpability of the breach. The Standards Commission will consider whether there is evidence of any of the following mitigating factors:

- Any admission of breach (particularly at an early stage); any self-referral
- Limited duration of contravention
- Limited impact of contravention
- Inadvertent or technical breach
- No gain/ benefit to Respondent
- Action taken to rectify and/or apologise (particularly at an early stage)
- Demonstrating understanding, reflection, insight and/or acceptance of actions
- Co-operation with investigation and/or adjudication process
- Evidence acted on incorrect advice
- No repetition since contravention occurred
- Evidence of good character, public service

5.7 The Standards Commission will also take into account any evidence to the effect that the Respondent has resigned or been removed from their post when determining the appropriate sanction.

## 6. PROCEDURE

6.1 The Chair of the Hearing Panel will normally state the sanction to be applied and when it will be effective from (if applicable) at the conclusion of the Hearing. The Chair will also provide a brief explanation of the reasons for the sanction and the effective from date. A full written decision will be sent to the parties and Council or Devolved Public Body within 14 days of the conclusion of the Hearing. The written decision will be published on the Standards Commission's website within 21 days of the conclusion of the Hearing.

6.2 In cases where the application of Article 10 of the ECHR may apply, the written decision will specifically state that the Hearing Panel has taken into account the need to justify any sanction imposed under Article 10(2) and will provide a description of how the Hearing Panel has assessed the proportionality of the sanction relative to the contravention.

## 7. APPEALS

7.1 Section 22 of the 2000 Act provides that a councillor or member of a devolved public body who has received a sanction (other than censure) may appeal to the sheriff principal of the sheriffdom in which the relevant council or devolved public body has its principal office. Section 22 states that appeals shall be lodged within 21 days of:

- (i) The sending of the finding (written decision)
- (ii) The imposition of the sanction
- (iii) The imposition of a suspension on consideration of an interim report

7.2 Where the Standards Commission has imposed a sanction the Respondent will be provided with a copy of Section 22 of the Ethical Standards Act when the written decision is issued.

**SECTION 16 POLICY – INDICATIVE MILESTONE DATES**

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
27/07/16	LJ	N/A	V1.0	Implementation of Policy
13/09/16	EM	V1.0	V1.1	Include Appeal procedure
27/06/17	LJ	V1.1	V2.0	Include reference to application of Article 10(2) of ECHR