



INTEGRITY IN PUBLIC LIFE

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# ADVICE FOR COUNCILLORS ON THE ROLE OF A MONITORING OFFICER IN RESPECT OF THE ETHICAL STANDARDS FRAMEWORK

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## 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission for Scotland (Standards Commission), aims to provide elected members with information about the role and responsibilities of a Council's Monitoring Officer in respect of the ethical standards framework.
- 1.2 The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. While this Advice Note aims to assist elected members by providing an outline of a Monitoring Officer's role and responsibilities within the ethical standards framework, it is not prescriptive. Elected Members are asked to note that Monitoring Officers have various other responsibilities and statutory duties.

## 2. Background

- 2.1 The Standards Commission's functions are provided for by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) as amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010. The 2000 Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with Codes of Conduct, approved by Scottish Ministers.
- 2.2 The role of the Standards Commission is to:
- Encourage high ethical standards in public life; including the promotion and enforcement of the Codes of Conduct and to issue guidance to councils and devolved public bodies.
  - Adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 Complaints about potential breaches of the Codes of Conduct by councillors and members of devolved public bodies are investigated by the Commissioner for Ethical Standards in Public Life in Scotland (ESC). Following the investigation, and where the

ESC determines that a contravention of a Code of Conduct is established, the ESC will then submit a Report to the Standards Commission.

- 2.4 The Standards Commission will review the Report and determine whether to:
- direct the ESC to carry out further investigations;
  - hold a Hearing; or
  - do neither.
- 2.5 The Standards Commission holds Hearings to determine whether there has been a breach of their respective Code of Conduct by the councillor or member of a devolved public body concerned. 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.
- 2.6 The 2000 Act provided for the introduction of a Code of Conduct for local authority councillors. The latest version of the Councillors' Code of Conduct was issued by Scottish Minister in July 2018, with the approval of the Scottish Parliament.

### **3. Councillors and the Council**

- 3.1 The Monitoring Officer is responsible for ensuring that appropriate training is given to elected members on the Ethical Standards Framework, the Councillors' Code of Conduct and any guidance and advice notes issued by the Standards Commission. This includes ensuring that training is provided on induction, and on a periodic basis thereafter. Elected members should endeavour to attend any training sessions on the Code and should ensure they ask the Monitoring Officer for clarification if they are unsure about any information they have been given at any training event.
- 3.2 While it is an elected member's personal responsibility to ensure he or she complies with the provisions in the Councillors' Code of Conduct, Monitoring Officers are expected to contribute to the promotion and maintenance of high standards of conduct by promoting awareness of the Councillors' Code of Conduct. The Monitoring Officer can also provide advice and support to elected members on the interpretation and application of the Code. This means that Monitoring Officers may, on occasion, intervene and advise an elected member accordingly if there are concerns that the elected member may have breached the Code or may be about to do so. Elected members should try, where possible, to seek any advice or support from the Monitoring Officer in private and in advance of any relevant Council or committee meeting so that the Monitoring Officer has the opportunity to ask any relevant questions and to give the matter proper consideration.
- 3.3 Section 7(1) of the 2000 Act provides that all councils must set up, maintain and make available for public inspection a register of elected members' interests. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2003 (Scottish Statutory Instrument 2003/135) expands on this and requires all councils to appoint a proper officer who is responsible for ensuring the Council keeps a Register of Interests, which is open to the public to inspect. The proper officer should ensure the elected members' Register of Interests is maintained and that a reminder to

update entries on the Register of Interests is issued to elected members at least once a year. The Monitoring Officer should ensure that a proper officer is appointed under the Council's Scheme of Delegation and that such a Register of Interests is maintained.

- 3.4 While it is an elected member's personal responsibility to ensure that all relevant interests are recorded, the Council's Monitoring Officer should try to ensure that elected members are aware of what constitutes a registrable interest under the Code and, further, that they are aware that any changes must be recorded within one month. The Monitoring Officer should also ensure reminders incorporating a note to the effect that the statutory requirement is to update entries on the Register of Interests within one month of any change are issued to elected members at least once a year.
- 3.5 The Monitoring Officer should also ensure that elected members are aware that they have an obligation under the Councillors' Code of Conduct to ensure gifts and hospitality are also registered within one month.
- 3.6 The Monitoring Officer should ensure that there are 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 Council (and any committee or sub-committee thereof).
- 3.7 The Monitoring Officer may also ensure that all relevant Council officers are aware of, and familiar with, the requirements of the Councillors' Code of Conduct.
- 3.8 The Monitoring Officer may be required to report to their Council from time to time on matters relating to the ethical standards framework that may require review. The Monitoring Officer may report any concerns about compliance with the Code to the Chief Executive.
- 3.9 The Monitoring Officer may have an investigatory role if an internal decision is made to attempt local resolution in respect of complaints or concerns made about an elected member's conduct.

#### **4. The Standards Commission**

- 4.1 In practice, the Monitoring Officer is the principal liaison officer between the Council and the Standards Commission and may be asked to assist the Standards Commission whenever necessary in connection with any Hearings concerning an elected member of their local authority. This may include, for example, assisting the Standards Commission in sourcing a venue for a Hearing within the local authority area.
- 4.2 The Standards Commission expects Monitoring Officers to assist it in its work to promote the ethical standards framework by engaging in any of its consultations and by circulating and promoting any Guidance and Advice Notes it has produced to elected members and fellow officers.
- 4.3 Monitoring Officers are also expected to familiarise themselves with the content of the Standards Commission's standards briefings and should ensure these are circulated to their elected members. The Monitoring Officer should regularly review the Standards Commission's decisions and advise elected members of any relevant learning points that have arisen at recent Hearings.

4.4 The Monitoring Officer should try to attend any events arranged by the Standards Commission in order to be keep up to date with any relevant developments in respect of the ethical standards framework, to share experiences with other Monitoring Officers and to keep the Standards Commission abreast of any issues or trends that have emerged.

4.5 The Monitoring Officer may be asked to assist the Standards Commission in making arrangements to run external training events on the Councillors' Code of Conduct. Elected members are strongly encouraged to attend any such events.

## 5. The ESC

5.1 The Monitoring Officer is the principal liaison officer between the body and the ESC and is expected to assist the ESC whenever necessary in connection with the investigation of complaints against any elected member of their Council. This includes providing information and evidence within the timescales as requested and making arrangements for interviewing of any officers or other elected members as required.

5.2 If local resolution in respect of complaints or concerns made about an elected member's conduct is deemed inappropriate in the circumstances or is unsuccessful, the Monitoring Officer may report an alleged breach of the Councillors' Code of Conduct to the ESC.



Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
20/12/18	LJ	N/A	V1.0	Introduction of Advice Note
12/02/19	LJ	V1.0	V1.1	Minor amendments to clarify wording, in light of feedback received.