

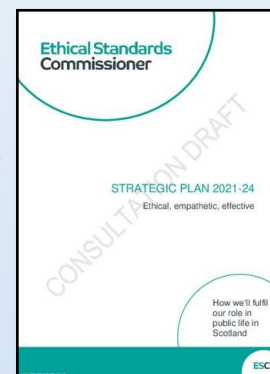
STANDARDS UPDATE

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News

Ethical Standards Commissioner's Revised Strategic Plan 2021-24

The Standards Commission welcomes the draft revised Strategic Plan for 2021-24 issued by the Acting Ethical Standards Commissioner. The plan aims to inform MSPs, local authority councillors, public body board members and the public about what the Commissioner's team plans to do in the coming years and, just as importantly, how they plan to do it. A copy of the Plan and information about how to submit comments on it can be found on the [Publications page](#) of the Commissioner's website.



Review of the Codes of Conduct

Thank you to everyone who responded to the Scottish Government's consultation on the proposed revised Councillors' Code of Conduct and Model Codes of Conduct for Members of Devolved Public Bodies. The Working Group established by the Government to review the Codes is currently considering the responses, with a view to seeking Parliamentary approval for revised Codes after the summer recess. The Standards Commission is updating its Guidance on both Codes and will consult on the content and format of this once the wording of the draft revised Codes is finalised.



Section 31 of the Local Government (Scotland) Act 1973

Section 31 of the Act provides for circumstances in which councillors will be disqualified automatically from their role, regardless of whether they are acting in a public or private capacity. In particular, Section 31(c) states that a conviction resulting in a custodial sentence for a period of not less than three months (without the option of a fine) will result in automatic disqualification. While the Act reflected sentencing practice in 1973, modern sentencing guidelines discourage the use of custodial sentences of under 12 months.



This can mean that circumstances may arise where a councillor, convicted of a crime which falls outwith the current automatic disqualification provisions in the Act and outwith the remit of the Commission (i.e. in situations where the individual is not acting as a councillor or could not reasonably be perceived as acting as such and where the Code does not apply), can continue to serve as a councillor. This is despite their actions falling far short of the standards the Commission considers the public could reasonably expect of an elected official.

The Commission has, therefore, written to the Minister for Social Security and Local Government proposing that the Act should be reviewed. In particular, the Commission has suggested the introduction of two extra disqualification criteria.

These are when a councillor is the subject of the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the Sex Offenders Register') and / or a Sexual Risk Order. An update will be published on the 'News' page of the Commission's website when a response is received.

Policy on Hearing Adjournment Requests

The Standards Commission's Hearing Rules provide that a Hearing Panel may, at its own discretion or on the application of any of the parties, postpone or adjourn a Hearing. The Rules state that before any postponement or adjournment is granted, the Hearing Panel will consider:

- (a) the public interest in the expeditious disposal of the case; and
- (b) any inconvenience or prejudice to the parties and to witnesses.

The Standards Commission has produced a policy which aims to provide guidance and clarity on the factors a Panel may take into account when exercising their discretion in terms of (a) and (b) above, and in determining whether to grant an adjournment. The policy on Hearing Adjournment Requests can be found on the [Hearing Rules](#) page of the Standards Commission's website.

Committee on Standards in Public Life: Standards Matter 2

Initial findings of the Committee have recently been published and can be found on the [Government's website](#).

Appeal on Case LA/AC/2276

An appeal was lodged by the Respondent in respect of a decision made at a Hearing on 22 October 2020, to find her in breach of the confidentiality provisions in the Councillors' Code of Conduct. On 31 May 2021, the Court accepted a joint minute to dismiss the appeal and to find the appellant liable for the Standards Commission's expenses as taxed.



Monitoring Officers' Workshop

The Standards Commission is intending to hold its annual workshop for Monitoring Officers on **Monday, 25 October 2021**. Depending on Covid restrictions in place at the time, we will either hold the Workshop online from 9.30 am, or from mid-morning in the Radisson Blu Hotel, 80 High Street, The Royal Mile, Edinburgh. If you would like to book a space and have not yet done so, please contact us. Please also let us know if you have any specific matters you would like us to add to the agenda.

Cases Overview

Since the last briefing in March 2021, no new cases were referred to the Standards Commission by the Commissioner for Ethical Standards in Public Life in Scotland (ESC). The Standards Commission held one Hearing in respect of a case concerning a councillor from Renfrewshire Council, the outcome of which is outlined below.

Renfrewshire Council - LA/R/2257 & 3262

At a Hearing on 4 February 2021, a Sheriff Principal considered an appeal lodged by the Respondent, Councillor Paul Mack of **Renfrewshire Council**, against a decision made by a Panel of the Standards Commission at a Hearing on 10 September 2020, to find him in breach of the Councillors' Code of Conduct and to disqualify him. The Sheriff Principal did not consider, or make any finding, on the Panel's decisions on breach and sanction, but determined that the Standards Commission should not have proceeded with the Hearing in the absence of the Respondent, who stated he was self-isolating from 9 September 2020 (having been in close contact with an individual who had tested positive for Covid-19). The Sheriff Principal remitted the matter back to the Standards Commission to consider afresh the two reported complaints.



The Standards Commission considered the matter afresh at an online Hearing on 3 May 2021. The new Hearing Panel found that the Respondent had breached the Councillors' Code in respect of two different complaints. In respect of the first complaint, the Panel found that Councillor Mack had made a number of serious and unfounded allegations about the allocation of a council property to the family member of another councillor. The allocation was the subject of a review by the Council's Chief Auditor and then Audit Scotland, who concluded that the Council property was appropriately let and that there was no influence, or opportunity for influence, over the selection process, by any elected member. Despite this, and without any evidence to the contrary, Councillor Mack had embarked upon a course of conduct in which he made wholly unwarranted accusations of corruption and cronyism, and of covering up criminal activity, towards the other councillor, the Chief Executive and senior Council staff.

The Panel accepted that Councillor Mack was entitled to raise concerns about the allocation of council housing, particularly if he was doing so on behalf of a constituent. However, having heard evidence, reviewed emails sent to other councillors, senior officers and a journalist over a period of some seven months in 2019, and watched a video recording of comments made in public at a Council meeting, the Panel was satisfied that Councillor Mack had sought repeatedly to allege serious wrongdoing by a widening number of individuals. This was despite no evidence of wrongdoing being found during any investigation (including the independent inquiry). The Panel noted that Councillor Mack had not produced any evidence to support his claims at any stage. The Panel was satisfied that Councillor Mack's accusations amounted to offensive and abusive personal attacks and were persistent and unwarranted. The Panel also considered that, in copying in all elected members to some of the emails, in sending one to a newspaper and in making comments at full Council meetings, Councillor Mack had sought to inflict reputational harm.



In respect of the second complaint, the Panel was satisfied that Councillor Mack had made a number of gratuitous and unwarranted personal comments in an email to a second councillor. In addition, the Panel found that Councillor Mack had made threatening and intimidating remarks in that email in making reference to someone going to the councillor's house and inflicting personal harm on him.

The Panel found that Councillor Mack's actions contravened the Councillors' Code, which states that elected members must treat officers and their colleagues with respect, that they must avoid any conduct that amounts to bullying and harassment; and that they should refrain from raising matters relating to the conduct or capability of officers in public.

The Panel disqualified Councillor Mack for a period of 20 months, from being, or from being nominated for election as, or from being elected, a councillor; with effect from 10 May 2021. The finding and sanction take into account that the Standards Commission had previously suspended Councillor Mack for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. Despite this, the Panel did not consider there was any evidence that he had made any attempt to moderate his behaviour or that he gave any consideration to how it could impact others. The Panel noted that Councillor Mack had repeatedly indicated that he should not have to abide by the Code and did not recognise the Standards Commission and its role in the ethical standards framework. The Panel considered that it was likely that Councillor Mack's behaviour would have seriously undermined public confidence in local government and have a significant detrimental impact on working relationships within the Council. The Panel noted that disqualification was the only disposal that would prevent the Respondent's conduct from recurring, thus protecting those who have been, and others that potentially could be, affected by his behaviour. The Panel did not consider, therefore, that a more lenient sanction than disqualification was appropriate in the circumstances.

An appeal against the sanction has been lodged, with a procedural hearing date scheduled to take place on 1 July 2021.

Details of the outcome of cases, including full written decisions and information about scheduled Hearings, can be found in the [Our 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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