



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, aims to provide 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 in terms of section 5 of the [Local Government and Housing Act 1989](#). While this Advice Note aims to provide an outline of a Monitoring Officer's role and responsibilities within the ethical standards framework, it is not intended to be prescriptive. It should be noted 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](#) (2000 Act). 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 the 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; and
  - adjudicate on complaints about 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 [Ethical Standards Commissioner](#) (ESC). Following the completion of an investigation, the ESC will submit a report to the Standards Commission.
- 2.4 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.

- 2.5 The Standards Commission holds Hearings to determine whether there has been a breach by the councillor or member of a devolved public body of their respective Code of Conduct. If the evidence presented to the Standards Commission's Hearing Panel supports, on the balance of probabilities, that a breach of the relevant Code of Conduct has 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 (Code) was issued by the Scottish Ministers in December 2021, with the approval of the Scottish Parliament. A copy of the Code can be found at: <https://www.standardscommissionscotland.org.uk/codes-of-conduct>.

### 3. Councillors and the Council

- 3.1 The Monitoring Officer is responsible for ensuring that appropriate training is given to councillors on the ethical standards framework, the Code 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. Councillors 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 a councillor's personal responsibility to ensure they comply with the provisions in the Code, Monitoring Officers are expected to contribute to the promotion and maintenance of high standards of conduct by promoting awareness of the Code. The Monitoring Officer can also provide advice and support to councillors on the interpretation and application of the Code.
- 3.3 This means that Monitoring Officers may, on occasion, intervene and advise a councillor accordingly if there are concerns that the councillor may have breached the Code or may be about to do so. Councillors 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, obtain the necessary information and give the matter proper consideration so that they are in a position to give informed advice. It should be noted that while councillors may be required by the Code to treat any advice received as being confidential, Monitoring Officers have a responsibility to the Council, as a whole and, therefore, may be required to share any information or advice provided with the Chief Executive or other employees.
- 3.4 Section 7(1) of the 2000 Act provides that all councils must set up, maintain and make available for public inspection a register of councillors' interests. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021 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 councillors' Register of Interests is maintained and that a reminder to update entries on the Register of Interests is issued to councillors 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. A copy of the 2021 Regulations can be found at: <https://www.standardscommissionscotland.org.uk/corporate-info/ethical-standards-legislation>.
- 3.5 While it is a councillor's personal responsibility to ensure that all relevant interests are recorded, the Council's Monitoring Officer should try to ensure that councillors 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 councillors at least once a year.

- 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). Councillors should note, however, that it is their personal responsibility to ensure that they declare any interests, as required by Section 5 of the Code. They should not rely on the Monitoring Officer (or any other Council employee) to remind them that they may have an interest. This is because employees may not be aware of the extent of the councillor's connection to or interest in a matter, or may not recall it.
- 3.7 The Monitoring Officer may also ensure that all relevant Council employees are aware of, and familiar with, the requirements of the Code.
- 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 a councillor's conduct.

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

- 4.1 In practice, the Monitoring Officer is the principal liaison between the Council and the Standards Commission and may be asked to assist the Standards Commission, whenever necessary, in connection with any Hearings concerning a councillor 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 councillors and fellow employees.
- 4.3 Monitoring Officers are also expected to familiarise themselves with the content of the Standards Commission's Standards Updates and should ensure these are circulated to their councillors. The Monitoring Officer should regularly review the Standards Commission's decisions and advise councillors 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 kept 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 Code. Councillors are strongly encouraged to attend any such events.

#### **5. The ESC**

- 5.1 The Monitoring Officer is the principal liaison between their Council and the ESC and is expected to assist the ESC whenever necessary in connection with the investigation of any complaints concerning a councillor of their local authority. This includes providing information and evidence

within the timescales as requested and making arrangements for interviewing of any employees or other councillors as required.

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

## 6. Other Monitoring Officers

- 6.1 Monitoring Officers may wish to try to develop relationships with other Monitoring Officers to share knowledge, experience and information about best practice and to see whether any joint training sessions for councillors can be arranged.

