



INTEGRITY IN PUBLIC LIFE

ADVICE ON RELATIONS BETWEEN MEMBERS AND EMPLOYEES OF DEVOLVED PUBLIC BODIES

1. Introduction

1.1 Section 3 of the Model Code of Conduct for Members of Devolved Public Bodies (the Code) concerns issues relating to the general conduct expected of members of devolved public bodies, including their relationships with other members and employees of the public body.

1.2 Some relevant paragraphs of the Code are highlighted below:

3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.3 I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of [the] Code.

3.7 Except where it is written into my role as Board member, and / or at the invitation of the Chief Executive, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and Executive Team.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.

3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

1.3 This Advice Note is intended to assist members in complying with the provisions of the Code in their dealings with employees. However, given the variety of circumstances and situations which may arise, it is intended to be a starting point rather than an exhaustive or definitive guide.

1.4 It should be noted that for the purpose of the Code, the term ‘employees’ includes employees of contractors providing services to the public body; and employees of any other organisations where it might be reasonably perceived that the public body, and by implication the member, has an influence over that organisation.

2. Distinction between Roles of Members and Employees

2.1 Members should not be involved in the delivery of services supported or provided by the devolved public body – that is the role of employees. However, as an employer, a board also has a duty of care to its employees. It must abide by its employment responsibilities and ensure that the body has the right number of staff with the right skills to deliver its services.

2.2 Members are expected to:

- provide leadership, direction, and support to the body, agreeing its strategic aims and business priorities;
- promote commitment to the values and ethos of the organisation including equality and diversity;
- ensure satisfactory delivery of the body’s performance and financial objectives;
- be accountable to and maintain the trust of key stakeholders;
- ensure identification and control of the main risks associated with the delivery of the body’s responsibilities and business objectives;
- ensure employees have the appropriate skills, knowledge, culture and working environment; and
- scrutinise the body’s performance and, when necessary, provide challenge to senior employees.

2.3 Employees are expected to deliver the body’s performance and achieve the strategic objectives set by the board.

2.4 The Standards Commission has produced an Advice Note for Members on distinguishing between their strategic role and any operational work, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>. In general, if a duty is delegated to an employee, then it is likely to be operational in nature.

3. General

3.1 Members and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

3.2 As the most common contacts between members and employees will be at Chief Executive or senior management level, this guidance mainly concerns those relationships. However, as members may also have contact with other employees, the principles of the guidance also apply to them. The particular position of employees who provide direct support services for members is dealt with separately at Section 5 of this Advice Note.

3.3 It is in the interests of both employees and board members to build a healthy relationship of mutual respect and understanding. While members are responsible for scrutinising the public body’s performance and for holding employees to account for delivery of the organisation’s objectives, they should also provide support, guidance and understanding. Members who are too close to staff or who just assume that everything is fine may be failing in their responsibilities. On the other hand, members who are too confrontational or too quick to doubt employees will not gain the best from the partnership.

3.4 In order to develop a constructive and professional partnership with employees, members may wish to take time to understand the roles of individual employees. Members should recognise and understand what constitutes a professional relationship and should endeavour to maintain this with employees.

4. Scrutiny Role

4.1 If a member has concerns about actions employees are taking or proposals they have made, they may wish to check, in the first instance, whether other members share these concerns. Employees take instruction from the board as a whole, not individual members.

4.2 Members will not have a full awareness of the priorities and workload of individual employees. As such, any issues about conflicting priorities, conduct or performance must be referred to the employee's line manager in accordance with the body's agreed procedures.

4.3 Members should make sure that the body has a strong performance management framework to measure both qualitative and quantitative achievements against planned objectives.

4.4 Members should ask for assurance and evidence that actions to mitigate risks to the body's business objectives are being taken and that any risks are being properly recorded and managed.

4.5 Members are entitled to seek information about specific matters, cases or a particular item of work, but they should be aware that employees may feel pressured by a member challenging their actions or appearing critical of some aspect of their work. This is particularly the case with junior employees, who may not be used to dealing directly with members. Any concerns about performance should be raised with the Chair who can then bring them to the attention of the Chief Executive or the employee's line manager, as appropriate.

4.6 Often the most effective ways to challenge employees is to simply ask for more information or to seek confirmation of the evidence behind a recommendation or action proposed. It may help if members explain why they are asking for such information. For example, saying "*I note this report does not contain a risk assessment – I would be grateful if such an assessment could be provided so that we have confidence that we have identified actions we can take to mitigate against all relevant risk*" would be respectful, whereas saying "*as usual, your report is inadequate and poorly prepared as it does not contain a risk assessment*" could be perceived as being personally critical of the report's author.

4.7 Members should ensure that the Board has procedures in place for keeping in touch with the opinions and experiences of all employees, not only the views passed on to them by senior staff.

5. Access and Support

5.1 Where bodies arrange for employees to support members directly in carrying out their duties, particular considerations should be applied. Such employees are normally involved in providing administrative and practical support to members. While they may operate to the requirements of individual members in their daily business, members should remember that the employees remain accountable to their line managers for their actions and activities.

5.2 Members are entitled to seek advice, support and information in respect of matters relating to the body. If a member is seeking assistance that is outwith an employee's normal duties, the

request should be made to, and approved by, the employee's line manager. Employee support in these circumstances must not extend beyond providing information, assistance and advice in relation to matters directly concerning the body's business.

6. Delegated Authority and Committees

- 6.1** Members should be aware that where authority is delegated, the employee to whom it is delegated may consult them about the action they propose to take. However, the responsibility for the final decision remains with the employee who is accountable for the action or decision. Members should bear this in mind when discussing proposed action with employees.
- 6.2** The Chair of the Board or any committee will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members on their areas of professional competence. While employees will wish to listen to the views of members, they must retain final responsibility for the content of reports.
- 6.3** It is important for there to be a close professional working relationship between the Chair of a committee and the director or senior manager of any service that reports to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an employee's ability to deal impartially with other members, and the ability of Chairs to deal impartially with other employees.

7. Public Comment and Confidentiality

- 7.1** Members should not raise matters relating to the conduct or capability of employees in public and must accord to employees the respect and courtesy due to them in their various roles. Any issues about the conduct, capability or performance of an employee should be raised in private and in accordance with the body's procedures. You may wish to discuss your concerns with the Chair in the first instance, to see if they are shared by other members. If you are raising concerns about an employee with senior management, you should try to be as objective and specific as possible. For example, it would be more helpful to say: "I am concerned about the way X spoke to me at the board meeting on Y date in that I found his remark to the effect that... to be rude and disparaging", rather than "X is rude towards board members".
- 7.2** Members should be careful not to make public statements which expressly, or by implication, criticise the actions (or inaction) of an individual employee or identifiable group of employees (where individuals in that group are, or could be, identifiable). Members should note that the concept of a public statement is wide and can cover a variety of scenarios such as the published minutes of a board meeting, a comment on social media, or being overheard in a public area, such as a corridor or tearoom.
- 7.3** Members must respect the confidentiality requirements of the Code. Members should note that confidentiality can sometimes be a matter of timing in that it may be that the public body intends to release the information into the public domain but wishes to ensure its employees are notified beforehand, for example, to avoid any unnecessary fear or alarm or to enable them to prepare public communications. Members must respect the requirement for confidentiality even if they do not agree with it or consider that the information should be released at an earlier stage.

8. Respect, Bullying and Harassment

- 8.1 Members should ensure that all communications with employees are professional, respectful and courteous both in tone and content. In return, members should expect to be treated with courtesy and respect by employees.
- 8.2 The Standards Commission has produced an Advice Note for Members on Bullying and Harassment. The Advice Note is available on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>. It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident. Even if the behaviour is unintentional it can still be classed as a form of harassment. It is the impact of the behaviour, not the intent, that is the key.
- 8.3 Members should not participate in, or condone, acts of harassment, discrimination, victimisation or bullying towards employees. If a member is a witness to any acts of harassment, victimisation or bullying, they should encourage the victim to seek support and assistance. Members should make it clear that you will offer the victim assistance and provide evidence if they decide to make an informal or formal complaint.

9. Unfair Advantage

- 9.1 Members should be aware of the inherent influence their role brings. Members should ensure that they are not compromising employees or preventing them from undertaking their duties properly and appropriately, by behaving in a manner that could result in them feeling threatened or intimidated. Members must not bring any undue influence to bear on an employee to take a certain action (either during a one-off incident or as part of a course of conduct), particularly if it is contrary to the law or the public body's policies and procedures.

10. Appointments

- 10.1 Where members are involved in the appointment of employees they must act fairly and openly and judge candidates solely on merit.

11. Social relationships

- 11.1 The relationship between members and employees depends upon trust and this will be enhanced by the development of positive, professional relationships. Members and employees may find themselves in social situations within the community and they have a responsibility to project a positive image of the body. Members should be aware of the potential implications of social relationships with employees, including on whether they can undertake their governance and scrutiny role effectively and also on whether they are perceived to be doing so.

12. Other Resources

- 12.1 Other guidance that may be of interest includes:
- The Scottish Government's *On Board Guidance for Board Members of Public Bodies in Scotland (April 2015)*, which can be found at www.gov.scot/Publications/2015/04/9736.

