

STANDARDS UPDATE

ISSUE 32: December 2021

News

Revised Codes

The new versions of the Councillors' and Model Codes of Conduct were issued on 7 December 2021. [Links to the new Codes can be found here on the Standards Commission website.](#) The Standards Commission's Guidance on both Codes and Advice Notes for councillors and members on specific topics have been comprehensively rewritten to reflect the provisions in the revised Codes. [The Guidance can be found here,](#) and [the Advice Notes here.](#) We would welcome any comments you may have on the updated Guidance and Advice Notes, and in particular would appreciate any examples that could be used for illustrative purposes.



LA/R/2257 & 3262 - Appeal Judgment

A decision by the Standards Commission to disqualify a Renfrewshire councillor was upheld by the Sheriff Principal of Paisley Sheriff Court. In refusing the appeal in its entirety, the Sheriff Principal confirmed that the original decision by the Standards Commission to disqualify the councillor for 16 months was neither excessive nor unreasonable. [A link to the full Press Release can be found here.](#) The Standards Commission received notification on 24 November 2021 that the former councillor has submitted an appeal against the Sheriff Principal's decision to the Court of Session.

Monitoring Officers' Workshop

The Standards Commission held its annual workshop for Monitoring Officers both online and in person, on 25 October 2021. Topics discussed included conduct on social media and in online meetings, the revised Councillors' Code and how the Standards Commission can best add value in terms of its educational and training material. We are grateful to everyone who attended and hope you found the discussions as informative and useful as we did.



Cases Overview

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.

Since the last briefing in September 2021, nine cases were referred to the Standards Commission by the Acting Ethical Standards Commissioner (ESC) about elected members of Aberdeen City (2 cases), Angus, Dumfries & Galloway (2 cases), Argyll & Bute, Moray, Fife and Highland Councils. The Standards Commission held Hearings in respect of three cases concerning councillors from Aberdeen City (2 cases) and Perth & Kinross Councils, as outlined below. A Hearing concerning a Councillor from Moray Council is to be held in February 2022. The Standards Commission has directed the Acting ESC to undertake further investigation into a complaint involving a councillor from Highland Council. No action was taken in six cases, outlined on page 2. **It should be noted that the Acting ESC now refers reports on all concluded investigations to the Standards Commission, regardless of whether the investigation suggests the Code was breached. The final decision on breach is then made by the Standards Commission.**

Aberdeen City Council - LA/AC/3497 - Hearing Held - No Breach

The complaint concerned an unannounced visit the Respondent made to a constituent's property in February 2021, during the Covid-19 pandemic, in respect of a neighbourhood dispute that had been ongoing for over a year and remarks made during her exchange with the constituent.

The Panel was of the view that an unexpected and unannounced visit could have caused some anxiety, and that it would have been reasonable for the constituent to have perceived the Respondent, as an elected member, to be in a position of power or influence. The Panel was of the view that the Respondent should have been more careful in her choice of words, given her position of authority and responsibility. As such, the majority of the Panel was satisfied, that when considered as a whole, the Respondent's conduct amounted, on the face of it, to a contravention of the requirement under paragraph 3.2 of the Code for councillors to treat members of the public with courtesy and respect.

The Panel noted, however, that in the circumstances, the Respondent would attract the enhanced protection of freedom of expression afforded to politicians, under Article 10 of the European Convention on Human Rights, when they are discussing matters of public concern. The Panel determined that the Respondent's conduct was not sufficiently offensive or gratuitous as to justify a restriction on her right to freedom of expression. As such, the Panel concluded that a breach of the Code could not be found. [A copy of the full Written Decision can be found here.](#)

Perth & Kinross Council - LA/PK/3477 - Hearing Held - No Breach

The Hearing Panel heard that the Respondent suggested in an email to a constituent that he had colleagues who may be "persuaded" to ask questions on his behalf in respect of a planning matter to be considered at an upcoming planning committee meeting. The Respondent was not a member of the committee. It was argued that the use of the word "persuaded" could give rise to suspicion, or the appearance of improper conduct. The Panel was not

Cases Overview cont.

Perth & Kinross Council - LA/PK/3477 - Hearing Held - No Breach cont.

convinced, however, that the Respondent's use of the word "persuaded", would necessarily be interpreted as him suggesting that his colleagues on the committee could be pressured or influenced into reaching a certain decision or into doing something wrong. The Panel considered a member of the public, with knowledge of the relevant facts, would be aware that there was nothing to prevent the Respondent or anyone else from asking a committee member to raise a question at the meeting. The Panel did not consider, therefore, that it was reasonable to conclude that an informed member of the public would have any occasion for suspicion or perceive the appearance of any improper conduct. The Panel determined that the Respondent had not breached paragraph 7.4 of the Code. [A copy of the full Written Decision can be found here.](#)

Aberdeen City Council - LA/AC/3495 - Hearing Held - No Breach

At a Hearing held online, the Standards Commission's Hearing Panel heard that it was not in dispute that at a council meeting, which was livestreamed via a webcast, two Aberdeen City Councillors (the Respondents) referred to another elected member as the "resident sex offender" and suggested that his presence was unwelcome and he should resign.

While the Panel accepted that the complainer had been convicted of a sexual offence, it concluded that remarks to the effect that he was unwelcome at the meeting, or as a councillor, would have made him feel uncomfortable at work and offended. As such, the Panel was satisfied that the conduct of the Respondents amounted, on the face of it, to a contravention of the requirement in the Code for councillors to treat each other with respect. The Panel noted, however, that the remarks concerned matters of public interest, in such circumstances, the Panel considered that both Respondents would attract the enhanced protection of freedom of expression afforded to politicians, including local politicians, under Article 10 of the European Convention on Human Rights. The Panel determined that the conduct of the councillor, in making comments to the effect that the complainer, as someone who had been convicted of a sexual offence and was not welcome / should resign, was not sufficiently gratuitous as to justify a restriction on their right to freedom of expression. As such, the Panel concluded that a breach of the Code could not be found. [A copy of the full Written Decision can be found here.](#)

Angus Council - LA/AN/3520 - No Action

A complaint about a Councillor from Angus Council alleged the Councillor was rude towards a member of the public who was present as an objector to an application being considered at a meeting of the Council's Civic Licensing Committee. Having taken into account proportionality and public interest factors, and in particular the fact that it was not satisfied that the alleged conduct could amount to a breach of the Code even if established, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Dumfries & Galloway Council - LA/DG/3543 - No Action

The complaint concerned a post a Dumfries and Galloway Councillor shared on Facebook which described the leader of another political party as a "parasite politician". Having taken into account the nature of the potential breach and the likelihood of the Respondent's conduct being protected by his enhanced right to freedom of expression, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Argyll & Bute Council - LA/AB/3573 - No Action

The complaint involved the Respondent's conduct in sharing, on Facebook, a newspaper article entitled "Stop Chinese Whispering online, headteacher tells parents". The complainer alleged that, by sharing the article in question, the Respondent had permitted an "inaccurate malicious representation" of a council employee (being the school's headteacher). Having taken into account the nature of the alleged breach, and the likelihood of the Respondent's conduct being protected by her enhanced right to freedom of expression, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined to take no action on the referral.

Fife Council - LA/Fi/3526 - No Action

The complaint concerned two tweets by the Respondent, which were subsequently picked up by the local press, leading to two newspaper articles containing quotes from the Respondent. The tweets and subsequent press quotes related to accusations of bullying by a party group within the Council. Having taken into account the nature of the alleged breach, and the likelihood of the Respondent's conduct being protected by her enhanced right to freedom of expression, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined to take no action on the referral.

Dumfries & Galloway Council - LA/DG/3577 - No Action

The complaint concerned a quote given by the Respondent to a local newspaper regarding the issue of fly-tipping in the locality. Having taken into account the nature of the alleged breach, and the likelihood of the Respondent's conduct being protected by his enhanced right to freedom of expression, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined to take no action on the referral.

Aberdeen City Council - LA/AC/3545 - No Action

The complaints related to quotes given by the Respondents that appeared in an article in the Press & Journal concerning protests that took place in Glasgow in respect of deportation proceedings being undertaken by the Home Office. The Standards Commission was not satisfied that the conduct in question could amount to a breach of the Code and that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined to take no action on the referral.

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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