



INTEGRITY IN PUBLIC LIFE

**SURVEY OF MONITORING
OFFICERS 2022:
ANALYSIS OF RESPONSES**

EXECUTIVE SUMMARY

1. This document summarises the responses received by the Standards Commission for Scotland (Standards Commission) to a survey it issued to Monitoring Officers in mid-February 2022.
2. The intention of the survey was to learn about Monitoring Officers' experiences with the ethical standards framework and, in particular, their elected members' compliance with, and awareness of, the provisions of the Councillors' Code of Conduct. The Standards Commission intends to use information gathered to inform its future training events and to identify the need for any further educational material or guidance. The Standards Commission was also keen to see if it could improve how enquiries are handled and its Hearings and adjudicatory processes.
3. Actions the Standards Commission hopes to take in light of the responses to the survey, subject to budget and resources constraints, are also outlined in the document under Section 10 below ('Next Steps'). It should be noted that as respondents were not asked to provide the dates of any experiences that are the subject of comments, it may be that changes and improvements have been made by either the Standards Commission or the Ethical Standards Commissioner's office in the intervening period.

ANALYSIS OF RESPONSES

4. All 13 Monitoring Officers who responded confirmed that their Council provided an induction on the Councillors' Code of Conduct for newly elected members following the last election in May 2017. A majority of Councils had subsequently offered refresher training on the Code.
5. While all respondents found the Standards Commission's training events to be 'wholly adequate' or 'reasonably adequate', many were disappointed by low uptake amongst their elected members.
6. Feedback on Standards Commission's Guidance, Advice Notes and other educational material was generally positive, although some respondents commented that there was scope for simplifying the content of the Advice Note for Councillors on the Right to Freedom of Expression under Article 10 of the European Convention on Human Rights (ECHR).
7. The majority of respondents found the Standards Commission's annual Monitoring Officers' workshop to be 'very helpful' as it was a good opportunity to share and discuss experiences.
8. Respondents indicated a good level of engagement with the Standards Commission's quarterly Standards Updates and an understanding of the content on its website. However, while respondents indicated they were aware of the Standards Commission's social media channels, there was less engagement with the content posted on these.
9. The Standards Commission's responses to enquiries was seen as 'very helpful' by seven respondents and 'reasonably helpful' by four.
10. Of the six respondents with experience of the Standards Commission's Hearings process and decision-making, this was seen as 'wholly adequate' by two respondents and 'reasonably adequate' by the remainder. It was noted, however, that Hearings were considered to be unduly lengthy and sometimes difficult for observers to follow. The quality of written decisions was perceived as being 'very clear' by seven of respondents and 'reasonably clear' by six.

11. In general, respondents were of the view that elected members understood and tried to comply with the Councillors' Code of Conduct. Respondents expressed varying opinions in respect of whether standards of conduct deteriorated during the coronavirus pandemic. Respondents noted that disrespect towards other elected members and/or council employees was becoming more of a problem.

1. INTRODUCTION

- 1.1 In February 2022, the Standards Commission for Scotland (Standards Commission) asked Monitoring Officers to complete a survey to learn about their experiences with the ethical standards framework and, in particular, their elected members' compliance with, and awareness of, the provisions of the Councillors' Code of Conduct.
- 1.2 A total of 13 completed responses were received by the closing date of 14 March 2022. This paper summarises the responses and comments received.

2. RESPONDENTS

- 2.1 The survey was sent to the Monitoring Officers of all 32 of Scotland's local authorities.

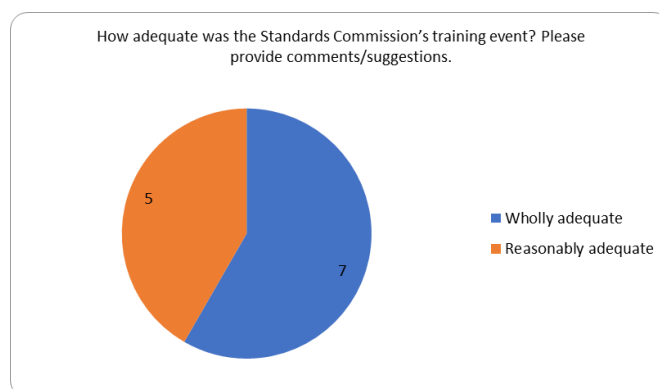
3. INDUCTION AND TRAINING

- 3.1 Respondents were asked whether their Council had provided an induction on the Councillors' Code of Conduct for newly elected members after the last local government election in May 2017 and, if so, what form had this taken and whether the majority of first-time elected members had attended.
- 3.2 All 13 respondents confirmed that induction training had been provided. Most respondents confirmed that a face to face training session for both newly-elected and returning councillors had been offered. The format of this had varied, with some respondents indicating that only the key points of the Code had been covered initially, as part of a wider training session on governance, with further more detailed training on the specific provisions that were likely to cause the most difficulties being provided at a later date. Other respondents indicated that the training had included examples, with time set aside for comments, questions and discussion. One respondent confirmed that hard copies of the Code and the Standards Commission's Guidance had been included in a welcome pack for newly-elected councillors.
- 3.3 While three respondents advised that the training had been badged as being mandatory for all first-time councillors, with all present; eight respondents advised that most of their councillors had attended the induction offered. The remaining two respondents advised that only some councillors had attended. It was noted that the induction period was a really busy time, with new councillors being expected to attend training on several distinct matters to be able to undertake their role effectively.
- 3.4 Respondents noted that some newly-elected councillors had been unable to attend the induction training offered due to having other jobs or commitments (particularly if they had not anticipated being elected). One respondent noted that their council had been forced to run multiple sessions (which had taken up a lot of officer time) and, as such, a variety of different approaches and formats were being considered for induction training following the forthcoming local government elections. Another respondent noted that several councillors had taken up their offer to meet them individually to discuss any queries and to provide further clarification if required.
- 3.5 Ten respondents confirmed that their council had offered refresher training on the Councillors' Code, with eight advising that 'most' or 'some' of their councillors attended. A number of

respondents advised that their council offered annual refresher sessions and confirmed that, in addition, the Standards Commission's quarterly Standards Update briefings were circulated to councillors, with an invitation for them to contact the Monitoring Officer to discuss any queries or concerns. Respondents also commented that *ad hoc* training sessions were provided as and when there was a significant development, such as the introduction of the revised Councillors' Code in December 2021, or the issuing of Directions by the Standards Commission to the Ethical Standards Commissioner.

3.6 Several respondents commented that attendance at refresher training sessions had been poor and, therefore, consideration was being given to revising the training format to encourage engagement (for example, by moving to e-learning rather than in person). One respondent noted that, in their experience, it was the same few members who engaged and, ironically, that these were the individuals who had demonstrated the greatest awareness of the Code and, as such, were often the least likely to be in need of the training.

3.7 Twelve respondents confirmed that they had attended a training event run by the Standards Commission. All respondents advised that they had found the training events to be either 'wholly adequate' (seven respondents) or 'reasonably adequate' (five respondents). A number of respondents commented that it was unfortunate that there had been limited uptake amongst councillors (despite them being encouraged to attend), as the training had been useful and informative. One respondent noted that while there was a good level of engagement and interaction, it would have been helpful to have left more time for questions and answers. Another respondent noted that the training sessions were useful for Monitoring Officers as councillors were sometimes more willing to accept advice on the provisions in the Code if they were provided by a third party.



4. THE STANDARDS COMMISSION'S GUIDANCE AND EDUCATIONAL MATERIAL

4.1 Respondents were asked to identify whether they are aware of and had used any of the following guidance and educational materials produced by the Standards Commission:

- Guidance on the Councillors' Code
- Advice for Councillors on Arm's Length External Organisations
- Advice Note for Councillors on Distinguishing between Strategic and Operational Matters
- Advice Note for Councillors on Bullying and Harassment
- Advice Note for Councillors on the Application of Article 10 of the ECHR
- Advice Note for Councillors on How to Declare Interests
- Flowchart for Councillors on Making Declarations of Interest
- Advice Note for Councillors on the Role of the Monitoring Officer
- Assisting Constituents Card for Councillors

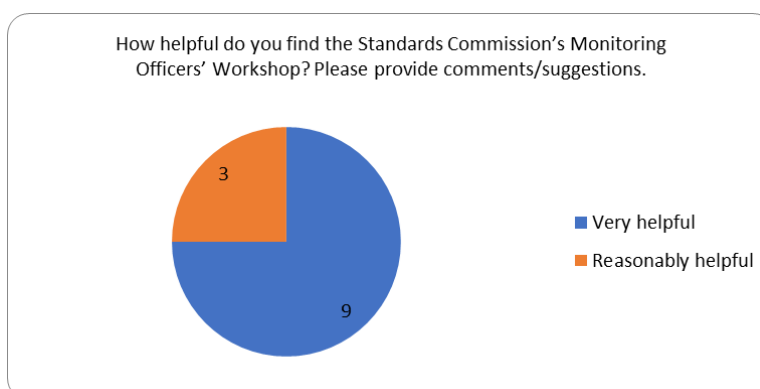
4.2 All respondents indicated that they were aware of, or had used, the guidance and educational materials noted above. The most used were the Guidance on the Code and the Advice Notes on

Distinguishing between Strategic and Operational Matters and on How to Declare Interests with all respondents reporting having used this material.

- 4.3 Respondents were also asked if they had any comments or suggestions on the content or format of the guidance and educational materials produced by the Standards Commission. Respondents advised that they considered the content of the Guidance and Advice Notes to be “good and very helpful”, “excellent”, and “sensible”. A few respondents advised that they considered the versions issued in 2021 (with the revised Councillors’ Code) to be an improvement and “sufficiently clear”. One Respondent noted that it was helpful to “use plain English and examples”, while another indicated they were pleased that the Standards Commission had consulted with the SOLAR on the content of the proposed revised Guidance before it was issued.
- 4.4 A number of respondents noted, however, that the Advice Note for Councillors on the Application of Article 10 of the ECHR (the right to freedom of expression) was complicated and lengthy. Whilst the respondents indicated they appreciated it was a complex topic, they suggested there was scope to simplify the content to encourage engagement with it by councillors. One respondent suggested the footnote definitions be deleted from the document.
- 4.5 In terms of format, several respondents suggested the Guidance and Advice Notes would benefit from being shorter and / or more concise, with the inclusion of more highlights or bullet points. One respondent suggested that the Standards Commission should consider ways of taking readers to relevant parts of documents to avoid them having to scroll through the whole document or a large parts of it by, for example, including sections containing frequently asked questions with hyperlinks. Another suggestion was for the Standards Commission to produce online accessible courses for officers and for members.

5. THE STANDARDS COMMISSION’S ANNUAL MONITORING OFFICERS’ WORKSHOP

- 5.1 Respondents were asked whether they had attended any of the Standards Commission’s annual Monitoring Officers’ workshops and, if so, whether they found them to be of assistance. Nine of respondents advised they considered the workshops ‘very helpful’, with three respondents considering them to be ‘reasonably helpful’.



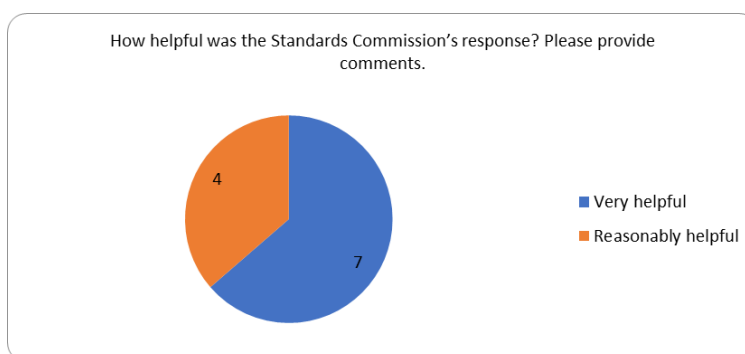
- 5.2 Respondents advised that they considered the workshops were useful as they provided an opportunity for monitoring officers to network and exchange experiences. One respondent noted that holding the workshop in person allowed them to “see other colleagues in person and have full and frank discussions”, while another noted that they were “an opportunity to share experiences and discuss thorny issues”. A further respondent commented that the last workshop had been a “good session but could have been better with more structure”.
- 5.3 Respondents suggested that while they enjoyed seeing colleagues in person, the option for Monitoring Officers to attend remotely should be retained. One respondent also suggested that the sessions be recorded and made available afterwards.

6. THE STANDARDS COMMISSION'S STANDARDS UPDATES, WEBSITE AND SOCIAL MEDIA

- 6.1 Respondents were asked whether they engaged with the Standards Commission's quarterly Standards Update newsletter and content on its website and social media pages. The majority of respondents indicated they were aware of, or had read, the content posted; with all 13 respondents confirming they read the Standards Updates. While 12 respondents indicated they also reviewed information on the 'Cases' page of the Standards Commission's website (including the written decisions of Hearings), the responses demonstrated there was less engagement with its social media pages (with three respondents reading the Standards Commission's tweets and only two engaging with its Facebook posts).
- 6.2 Feedback on the Standards Updates was positive with respondents commenting that they were "helpful as they are short, focused and informative" and "well received by elected members". One respondent suggested that as the Codes of Conduct were now written in the first person, it might be helpful for the Standards Updates to follow the same format. The respondent accepted, however, that this would mean they were directed solely towards councillors and members of devolved public bodies, rather than being aimed at everyone (including officers).
- 6.3 One respondent suggested that the publication on the Standards Commission's website of short summary articles and "bitesize" training content would be welcomed.

7. ENQUIRIES MADE TO THE STANDARDS COMMISSION

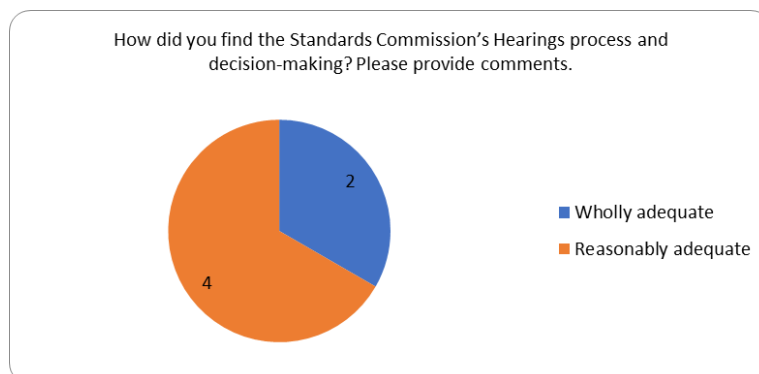
- 7.1 In response to a question about whether they or any of their colleagues had made an enquiry to the Standards Commission (either in writing or by telephone), some 11 respondents confirmed that they had. All 11 respondents advised that they had found the response from the Standards Commission to be either 'very helpful' (seven respondents) or 'reasonably helpful' (four respondents).



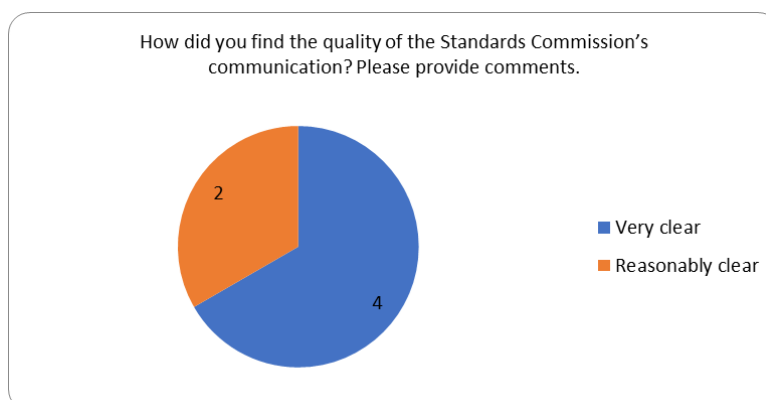
- 7.2 Respondents advised that they found the Standards Commission to be "extremely responsive, collaborative and helpful", "extremely helpful", "very helpful", and "always very helpful and informative - excellent service". Some respondents noted, however, that while the Standards Commission was "always very happy to discuss matters", it often could not offer a definitive view", given that the matter might eventually be the subject of a complaint referred to the Standards Commission for adjudication. While one respondent advised they considered that it was nevertheless "useful to chat through a matter" with the Standards Commission and that its input was "often very helpful", another noted that a response had been "bit non-committal". The respondent advised that "clearer direction would have been appreciated" as it was a risk for an officer to make a complaint about a councillor, especially if the complaint was then not accepted for investigation by the Ethical Standards Commissioner.

8. COMPLAINTS ABOUT BREACHES OF THE COUNCILLORS' CODE OF CONDUCT

- 8.1 Six respondents advised that they had experience of the Standards Commission's Hearings and adjudicatory processes. Of these, three respondents advised that they had been a witness at a Hearing, with the remaining three having observed a Hearing, either in person or online. In response to a question about how they had found the Standards Commission's Hearings process and decision-making, two respondents advised they considered it to be 'wholly adequate', with the remaining four respondents advising they had found it to be 'reasonably adequate'.



- 8.2 Comments received on Hearings included that some of the Hearings held online had been extremely lengthy "with a lot of unnecessary questioning" of witnesses. One respondent noted that the Panel Chair had seemed unwilling to interject "possibly due to the lack of proximity of his adviser". Another respondent commented that, in a recent case, "two important witnesses had not been able to give evidence as the external legal adviser appointed by the Ethical Standards Commissioner had failed to follow the notification process". The respondent noted that "as a result, the Hearing was deprived of vital information that would likely have impacted the outcome". Another issue identified was that observers could not always make sense of parts of the proceedings without having access to the written productions that the parties were referring to and relying on, such as any joint statement of facts.
- 8.3 One respondent suggested that it would be helpful for the Standards Commission to produce and publish a simplified guide on its Hearings process and procedures.
- 8.4 In response to a question about the quality of the Standards Commission's communication about the Hearing, four respondents advised they found it to be 'very clear', while the remaining two respondents considered it to be 'reasonably clear'.



- 8.5 Respondents were also asked about the quality of the Standards Commission's written decisions of Hearing. All respondents found this to be either 'very clear' (seven respondents) or 'reasonably clear' (six respondents), with one respondent noting that the decisions have been very helpful in supplementing the guidance materials.

8.6 One respondent noted that any move to further use plain English and to simplify written decisions would be welcomed, while another indicated that an explanation of why the Standards Commission decided to hold a Hearing would be helpful. Another suggestion was for the Standards Commission to include some of the written documents (such as any joint statements of facts) as annexes, to help provide clarity and make the substantive parts of the decisions more concise.

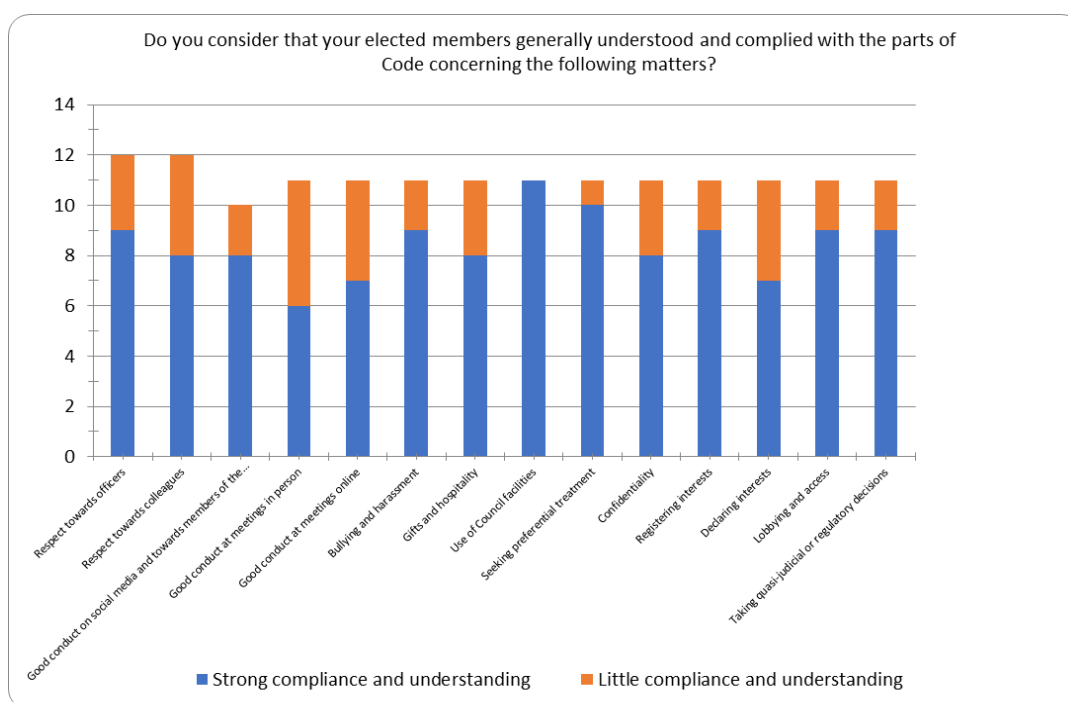
8.7 In terms of the quality of decisions, one respondent noted that there could be inconsistencies in terms of the length and extent of suspensions and a lack of clarity around whether the elected member was suspended from all meetings of the Council and its Committees or just meetings of full Council. It was also noted that imposing a sanction over a recess period was pointless. A further respondent noted that the decisions could sometimes be inconsistent, with the Standards Commission appearing to take some minor issues seriously, but not giving the same weight to matters that seemed more serious.

9. COMPLIANCE WITH THE COUNCILLORS' CODE OF CONDUCT

9.1 Respondents were asked whether they considered that elected members of their council generally understood, and complied with, specific the parts of Councillors' Code. Respondents were asked to indicate, for each part, whether they considered their elected members demonstrated 'strong compliance and understanding' or 'little compliance and understanding'. Several respondents noted that the question was very difficult to answer as some elected members were very aware of the rules and very compliant, whilst others were not. Respondents noted that it would have been helpful for the Standards Commission to have included a further option such as 'the majority demonstrate strong compliance and understanding, but a minority demonstrate little compliance and understanding', to better reflect their experience.

9.2 Respondents nevertheless reported that they considered the areas of the Councillors' Code in respect of which there was the strongest compliance and understanding was the use of council facilities (11 respondents) and seeking preferential treatment (10 respondents). The areas that scored the highest in terms of the least compliance and understanding were good conduct at meetings in person (five respondents), good conduct at meetings online (four respondents) and declaring interests (four respondents).

9.3 The responses received by area are reflected in the graph below.



- 9.4 Respondents were asked to provide comments or suggestions in respect of their experiences of elected members' compliance with the Code and, in particular, whether they considered that standards of conduct had improved or deteriorated since the 2017 local government elections and / or during the coronavirus pandemic.
- 9.5 A number of respondents indicated that, in their experience, the majority of councillors understood their duties and responsibilities under the Councillors' Code, but that a minority choose to ignore them. One respondent reported that there had been a trend with a minority of elected members refusing to accept advice and behaving in a challenging and confrontational manner during meetings.
- 9.6 Another respondent stated that they believed there was a problem in local government in relation to respect and bullying of officers by councillors. The respondent noted that councillors enjoyed a position of power over officers, with little motivation to behave well towards them and no real threat of proper and immediate sanction if they failed to do so. The respondent advised that they considered a lot of employees had worked in local government for so long they just accepted that was the position, despite being aware that neither they, their colleagues or members of the public would be able to behave in such manner without real and instant repercussions.
- 9.7 A further respondent noted that the political environment in which they operated often led to councillors failing to treat their colleagues with respect, as required by the Councillors' Code.
- 9.8 The responses as to whether standards of conduct had improved or deteriorated since the 2017 local government elections and / or during the pandemic were mixed. Some respondents commented that standards of conduct had generally improved over the period since the last election, with most new councillors being keen to understand their responsibilities in respect of the Councillors' Code and ethical standards framework. A few commented that more recently-elected councillors tended to have a greater awareness of the provisions in the Code. The respondents advised that most issues arose with longer-serving elected members who considered, mistakenly, that they were fully aware of the requirements of the Code simply because they had attended a training session on it years ago.
- 9.9 One respondent stated that they consider that overall standards had improved with any issues now being about respect rather than in relation to any 'regulatory' type matters, such as the registration and declaration of interests, lobbying and access and making quasi-judicial or regulatory decisions. Another respondent agreed that "conduct has improved on the whole" but noted "that social media is used increasingly and can lead to issues".
- 9.10 One respondent reported that they had not seen any evidence of an overall deterioration in standards, and that their experience was that standards of conduct have been maintained throughout the period in question, including during the pandemic.
- 9.11 Other respondents considered, however, that standards of behaviour had deteriorated over the past two years, particularly in respect of the conduct of councillors towards their colleagues and officers. One respondent advised that they considered that "respect for officers and fellow councillors appears to have sunk to new depths", while another stated that "standards of conduct have deteriorated over the past two years to the point that relations between elected members and between political parties is very difficult". The respondent noted that the use of online meetings and the lack of opportunities for councillors to meet in non-formal settings had been a key contributory factor to this. A further respondent reported that councillors were aware that officers were reluctant to report potential breaches of the Councillors' Code to the Ethical Standards Commissioner, for fear of repercussions as well as a perception of a weak response or sanctions, and that councillors exploited this.

9.12 Several respondents noted that the holding of online or remote meetings, had contributed to a regression to poorer behaviours and had “resulted in more rudeness and incivility”, with councillors often “interrupting and heckling” colleagues and officers. One noted that some online conduct had been bad particularly at full council meetings and noted that while clear rules had eventually been put in place, a very strong Chair was required to ensure they were followed.

9.13 Other general comments made included that:

- An increasing number of unfounded complaints about councillors were being made by members of the public. The respondent noted that this appeared to be driven by stress, anxiety and unrealistic expectations arising as a result of the pandemic.
- Councillors often considered their Article 10 rights to freedom of expression (particularly in respect of political opinions), and their Article 8 rights to respect for private and family life, home and correspondence, under the ECHR, were more curtailed under the Councillors’ Code than they were for MSPs under the MSP’s Code of Conduct.
- That application of Article 10 was not always wholly understood in terms of the flexibility it allowed in relation to the Code.

10. NEXT STEPS

10.1 The Standards Commission has identified below the actions it hopes to take in light of the responses to the survey, subject to budget and resources constraints. These are listed in the order in which they will be actioned, depending on priority and resource capacity.

10.2 **Training:** The Standards Commission to produce, issue and publish a video presentation on the provisions in the Councillors’ Code to supplement any induction sessions run internally by councils. The Standards Commission will also remind Monitoring Officers that a standard PowerPoint presentation on the key provisions in the Code is also available to download from its website, and that they can tell their elected members that they can contact the Standards Commission with any queries on its requirements, if they consider advice may be more welcomed when offered by an independent, outside organisation.

10.3 The Standards Commission will also run at least three online roadshows on the Councillors’ Code in 2022/23 (potentially more if resources permit). It will ensure that officers know that they are also welcome to attend and that sufficient time is set aside at the end for questions and answers.

10.4 **Enquiries made to the Standards Commission:** As noted above, the Standards Commission will also remind Monitoring Officers that they can invite their elected members to contact the Standards Commission with any queries on the Councillors’ Code if they consider advice may be more welcomed if offered by an independent, outside organisation. The Standards Commission will try to offer more conclusive answers on whether conduct could amount to a breach of the Code, albeit with the caveat that any response is not definitive as no decision can be made until a matter is investigated and all relevant information and circumstances are established at investigation and, potentially, a Hearing.

10.5 **Complaints about breaches of the Code of Conduct:** The Standards Commission will ensure it clearly states, both verbally at the Hearing and in any subsequent written decisions of the Hearing, whether any suspension imposed is partial or full in nature (and what this means for the respondent councillor in terms of their right to attend certain meetings). The Standards Commission will also take into account any recess periods when determining the length of any suspension to be imposed and will update its sanction policy to reflect this.

- 10.6 The Standards Commission will proactively seek feedback from the relevant Monitoring Officer after each Hearing.
- 10.7 The Standards Commission will consider including some of the written productions referred to at Hearings (such as any joint statements of facts) as annexes to written decisions (where appropriate) to help provide clarity and make the substantive parts of the decisions more concise.
- 10.8 The Standards Commission will continue to undertake regular reviews of its Section 16 decisions (on whether to do nothing, direct further investigation or hold a Hearing) and decisions made in respect of both breach and sanction at Hearings to ensure, as far as possible, consistency and clarity.
- 10.9 **Guidance and Educational Material:** The Standards Commission will review its Guidance and Advice Notes to check the contents are in plain English and are as concise as possible. Where appropriate, it will include sections containing frequently asked questions with hyperlinks.
- 10.10 The Standards Commission will explore the possibility of producing the Guidance and Advice Notes in alternative formats, such as interactive online courses.
- 10.11 The Standards Commission will review its Advice Note on Article 10 of the ECHR with a view to either shortening and simplifying it, or producing a further condensed Advice Note containing a concise and accessible summary of the key points.
- 10.12 **Monitoring Officers' Workshop:** In advance of the next workshop, the Standards Commission will review the format and structure of the workshop and will offer the option of remote attendance. The Standards Commission will also consider whether the workshop (or parts of it) should be recorded and made available afterwards, or whether more detailed notes and copies of presentations should be sent to those who were unable to attend. When sending the invitation to Monitoring Officers of the workshop date, the Standards Commission will advise that anyone who has any issue they wish to raise and ask or inform colleagues about, are welcome to ask for a slot in the programme to present on or speak about the matter.
- 10.13 **Compliance with the Councillors' Code of Conduct:** The Standards Commission will continue to highlight the requirement for councillors to treat colleagues and officers with respect, including in meetings and online, in all its educational material and at its training events. The Standards Commission will consider creating a short Advice Note on conduct at online meetings.
- 10.14 **Complaints about breaches of the Councillors' Code of Conduct:** The Standards Commission will remind its Panel Chairs that they should intervene if unnecessary questions are being asked of witnesses, to ensure compliance with the Standards Commission's Guidance on the Relevancy of Evidence. The Standards Commission will hold Hearings in person, where appropriate, and in accordance with its Hearing Rules. It will ensure that the Ethical Standards Commissioner knows that witnesses must be contacted timeously if they are required to appear at a Hearing.
- 10.15 The Standards Commission will try to use plain English and simplify written decisions of Hearings, where possible. The Standards Commission will include an explanation as to why it decided to hold a Hearing on either the 'Cases' page of its website, in the written decision of the Hearing (or in both).
- 10.16 The Standards Commission will create a simplified guide on its Hearing rules and processes. It will consider at a future meeting of the Standards Commission, whether those in attendance (including those viewing any Hearings held online) should be given access to the written documents that are before the Hearing Panel (or some of these, such as any joint statement of

facts), or whether the parties to a Hearing should be required to describe the contents of any to which they are making reference or relying upon.

10.17 The Standards Commission's Standards Updates, Website and Social Media: The Standards Commission will consider whether its Standards Updates should be written in the first person. The Standards Commission will publish short summary articles and 'bitesize' training content on its website.