



INTEGRITY IN PUBLIC LIFE

SUMMARY ADVICE NOTE ON THE APPLICATION OF ARTICLE 10 ECHR FOR MEMBERS OF DEVOLVED PUBLIC BODIES

1. Introduction

- 1.1 This Advice Note aims to provide a short summary of a member's right to freedom of expression under Article 10 of the European Convention on Human Rights (Article 10). A more detailed Advice Note for Members on the Application of Article 10 can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 1.2 This Advice Note should be read in conjunction with the Model Code of Conduct (Model Code), which can be found on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/codes-of-conduct>
- 1.3 The Standards Commission has also produced a general Guidance document on the Model Code, which can be found on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>

2. General Principles

- 2.1 An individual's right to freedom of expression is protected by Article 10. Freedom of expression is a general term covering a person's right to hold opinions, or to receive or share information or ideas.
- 2.2 The right to freedom of expression under by Article 10 is, however, qualified. Article 10(2) notes that public authorities, such as the Standards Commission, may restrict this right if they can show that their action is lawful, necessary and proportionate in certain circumstances. These include:
- to protect the rights and reputations of other people (it may be necessary, for example, to protect employees from offensive and abusive verbal attacks that prevent them from performing their duties);
 - to prevent the disclosure of confidential information; and
 - if the views expressed encourage racial or religious hatred.
- 2.3 An example of a restriction would be a finding of a breach of a Code of Conduct and imposition of a sanction (being a censure, suspension, or disqualification).
- 2.4 There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. In this context, a "degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive" that would not be acceptable outside that context, can be tolerated.
- 2.5 Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are

for elected politicians. It may be necessary, for example, to protect employees from offensive and abusive verbal attacks as it is in the public interest that employees are not subjected to unwarranted comments that prevent them from performing their duties.

3. The Standards Commission's approach

3.1 The Standards Commission will consider whether Article 10 might afford protection when deciding whether it is in the public interest and proportionate to hold a Hearing, in respect of any cases alleging a breach of the respect, courtesy, bullying and harassment or confidentiality provisions in the Code.

3.2 In determining at Hearings whether there has been a breach of the Code in such cases, the Standards Commission will take a three-stage approach (as outlined in the diagram below) and consider:

- 1) Whether, on the face of it, the Code has been breached.
- 2) If so, whether such a finding could be a breach of the Respondent's right to freedom of expression under Article 10.
- 3) If so, whether the restriction involved by the finding is justified by Article 10(2). It should be noted that a restriction may still be justified, even if the Respondent enjoys an enhanced right to freedom of expression.

3.3 While all members enjoy the right to freedom of expression, they are required by their Code to behave with courtesy and respect at all times when they are acting as a member or when they could reasonably be regarded as acting as such. Members should, therefore, consider both what they are expressing and the way they are expressing it. They should be able to:

- undertake their scrutiny role;
- interact with any service users and stakeholders; and
- make their views known

in a respectful, courteous and appropriate manner, without resorting to personal attacks and without being offensive, abusive and / or unduly disruptive.

3.4 If a member is making a gratuitous personal comment and / or is simply indulging in offensive abuse, it is unlikely they will attract the protection of freedom of expression afforded under Article 10.

The Standards Commission's Approach at Hearings

