

# STANDARDS UPDATE

ISSUE 41: March 2024

## News

### ***Updated Guidance on the Councillors' Code of Conduct and Model Code of Conduct***

The Standards Commission has updated its Guidance on both the Councillors' Code and Model Code, in light of feedback, and issues that have arisen during the Ethical Standards Commissioner's investigations and at Hearings. We are grateful to everyone who helped us with suggestions and feedback.

The [updated Guidance documents can be found here](#). The main changes to both include more information about:

- when the Codes apply and the factors the Standards Commission may take into account in determining this;
- how the Standards Commission will make an objective assessment when deciding whether alleged conduct could amount to a breach of the respect, courtesy, bullying or harassment provisions in the Codes;
- the fact that the Codes do not prevent councillors or members from making points or from scrutinising the performance of their local authority or public body, provided they do so in a respectful manner that is compatible with the applicable Code;
- the fact that anyone can make a complaint to the Ethical Standards Commissioner (ESC) about an alleged breach of the Code and that pressurising officers or employees to do so could compromise them;
- what might constitute a registrable interest under category 5: Houses, Land and Buildings; and
- what might constitute a registrable interest under category 8: Non Financial Interests;



In addition, the updated Guidance on the Councillors' Code contains:

- specific guidance on participating in decisions on the Council's budget when a councillor has a personal interest under Section 5; and
- further guidance on 'pre-judging' quasi-judicial and regulatory applications under Section 7.

The updated Guidance on the Model Code also contains more information on:

- the composition of boards and the complaint route for different types of board members; and
- the requirement for members to act in the best interests of the public body, as opposed to the interests of any individual constituency from which they have been appointed, nominated or elected.



### ***Advice Note for Councillors on the Right to Access Information***

The Improvement Service and Standards Commission recently issued a Briefing Note for Councillors on the Right of Access to Information. It outlines the circumstances under which an elected member has a right of access to information held by the council. It also highlights some of the provisions in the Councillors' Code of Conduct that may apply and should be considered when an elected member is exercising their right to access information. The Briefing Note can be found on both the [Standards Commission](#) and [Improvement Service](#) websites.

### ***Webinars with the Improvement Service***

The Improvement Service and Standards Commission hosted two webinars in January and February. The first covered the key issues elected members need to be aware of when engaging with the public, including the use of language, data protection and confidentiality. The second webinar focused on the use of social media. Elected members were advised of good practice when using social media, but also given examples of the pitfalls and what can go wrong if ethical standards are not upheld. Recordings of the webinars can be found on the Improvement Service's YouTube channel. A link to this can be found on the [Improvement Service](#) website.



### ***Standards Officers' Workshop***

The Standards Commission held its annual workshop for Standards Officers of devolved public bodies online on 19 March 2024. Discussion topics included potential revisions to the Guidance on the Model Code of Conduct, Members' awareness of, and compliance with, their Codes, and general issues and trends. We are grateful to everyone who attended and hope you found the discussions as informative and useful as we did. Please contact [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk) if you were unable to attend but would like a copy of the notes taken at the workshop.

# News cont.

## Advice Notes on the use of Social Media

The Standards Commission has revised its Advice Notes on the use of Social Media for Councillors and Members of Devolved Public Bodies to include a reminder about being careful to avoid promoting 'fake news'. Councillors are also asked to note that the Councillors' Code may still apply if they have amended the name of any social media account for campaigning purposes (for example, by changing it from '@CllrX', to 'XforYTown'), particularly if they have retained the original content and have the same followers.



## Cases Overview

Since the last briefing in December 2023, 13 cases were referred to the Standards Commission by the Ethical Standards Commissioner (ESC) about elected members of Renfrewshire, Perth and Kinross, Scottish Borders (two cases), Aberdeen City (three cases), Glasgow City, North Lanarkshire, Highland and Aberdeenshire Councils and members of Loch Lomond and The Trossachs National Park Authority and a former member of Cairngorms National Park Authority. The Standards Commission has scheduled Hearings in two cases concerning a Scottish Borders councillor and a former member of Cairngorms National Park Authority. The decision on an Aberdeenshire Council case is pending.

The decision on an Aberdeenshire case was pending at our last briefing. The Standards Commission decided to take no action on the referral. The Standards Commission held Hearings in respect of four cases concerning councillors from Aberdeen City, North Ayrshire, Highland and West Lothian Councils. The outcomes of the Hearings are outlined below. No action was taken in 10 cases and the written decisions in respect of these cases can be found on the [Cases](#) page of our website.

### Aberdeen City Council - LA/AC/3812 - Breach

An Aberdeen City Councillor was suspended for one month after a Hearing held online, where he was found to have contravened the requirement in the Councillors' Code for elected members to treat their colleagues with courtesy and respect. The Panel found that, in an online news article the Respondent stated that the Complainer had "showed his prejudice" by refusing to sign his nomination to a UK wide pension forum. The Respondent proceeded to state in the article that the city's Council Pension Committee should lead the way when it comes to equality and diversity "rather than allow prejudice and discrimination against councillors like [him] who represent ethnic minorities." The Panel considered that the clear implication from the article was that the Complainer, as an individual, had been prejudiced and had discriminated against the Respondent on the grounds of ethnicity. The Panel was not satisfied that there had been any evidence to support the Respondent's belief or assumption that this had been the case. The Panel did not consider, from the circumstances and factors available to him at the time, that it was reasonable for the Respondent to have formed the belief that the Complainer's decision was based on prejudice. This was particularly the case given that the Respondent: a) was aware that the decision not to nominate him had been made before any issues about the ethnic minority representation had been raised; and b) had been advised that no elected members were to be nominated as it was considered that engagement at officer level was sufficient.



The Panel agreed that making a public statement that inferred a fellow councillor had been motivated by racial prejudice, without having a basis for such a claim, was entirely disrespectful. The Panel considered this was particularly the case given the Respondent must have known it was likely that such a serious accusation would damage the Complainer's reputation and standing among the electorate. The Panel noted that the serious nature of the accusation might, in other circumstances, have merited a longer suspension, but given the mitigatory circumstances outlined at the Hearing, and in particular the Respondent's cooperation with the process, and his long and otherwise unblemished record as a public servant, the Panel considered that a suspension of one month was proportionate, necessary and justified. **The Respondent has appealed the decision on the basis of the Standards Commission's application of the law in relation to his right to freedom of expression. The appeal is yet to be heard.**

### North Ayrshire Council - LA/NA/3707 - No Breach

A North Ayrshire Councillor was found not to have breached the Councillors' Code at a Hearing held in Irvine. The allegation concerned the Respondent's actions in participating in the consideration of a planning application at a meeting of the Council's Local Review Body in December 2021, without disclosing that he had visited the site two days earlier and had discussed the application with the applicant's former neighbours. The Panel noted it had been alleged that the Respondent advised the applicant's neighbours, during his visit, that he thought the proposed extension, that was the subject of the planning application, would look out of place. Given the passage of time and the (entirely understandable) discrepancies in recollections in witness accounts provided at the Hearing, the Panel was unable to determine conclusively what exactly had been said. It was nevertheless satisfied, on the balance of probabilities, that the Respondent raised the possibility of whether the proposed extension could look out of place.

The Panel noted that councillors are entitled to carry out site visits and discuss applications with any interested parties before meetings. The Panel noted that doing so would not, in itself, necessarily create a declarable interest. The Panel acknowledged that even if the Respondent had questioned the suitability of the extension at the site visit, he would only have been required to declare an interest at the Local Review Body meeting where the application was being considered, if the objective test was met. In this case the Panel was not satisfied that any suggestion made by the Respondent to the neighbours that the proposed extension might look out of place would be considered sufficiently significant as to be likely to have an impact on his discussion or decision-making. This was because there would have been nothing to prevent him from making such a suggestion at the Local Review Body meeting itself. The Panel concluded, therefore, that there would have been no requirement for the Respondent to have declared an interest and withdrawn from the meeting.



The Panel further considered that the making of such a suggestion would not indicate that the Respondent had pre-judged the application in advance of the Local Review Body meeting. The Panel did not consider that it would demonstrate that the Respondent had completely closed his mind or was not

# Cases Overview cont.

## North Ayrshire Council - LA/NA/3707 - No Breach cont.

prepared to consider the merits of the application at the meeting. Having reviewed the webcast of the meeting, the Panel was satisfied that the Respondent gave the Complainer the opportunity to make statements in support of his application and afforded him an opportunity to comment on the question of whether the extension would look out of place (being the reason why the application had been rejected previously). In addition, the Panel was satisfied that the Respondent did not attempt to intervene when another elected member made comments in support of the application. The Panel was not satisfied, therefore, that it would be reasonable for a member of the public, with knowledge of the Respondent's site visit and his conduct at the Local Review Body meeting to conclude, objectively, that he had failed to ensure he was acting fairly, or that he had failed to avoid any suspicion of pre-judging, bias or a lack of fairness in relation to the application.

## LA/H/3759 - Highland Council - Breach

A Highland councillor was suspended for one month at a Hearing held online on 6 February 2024 after she was found to have behaved discourteously and failed to advance equality of opportunity, in relation to another councillor, regarding nominations for a post on a planning committee of the Council. The Standards Commission's Hearing Panel found that this was because the other councillor was pregnant, and the Respondent had assumed she was likely to take maternity leave. The Panel acknowledged the Respondent's position that it had not been her intention to discriminate against the other councillor. The Panel further acknowledged that the Respondent felt passionately about the effectiveness of the committee and that her aim had been to ensure that two councillors from her ward were on the committee, and in a position to attend its meetings, to ensure that any potential impact on their constituents could be considered.

The Panel considered, nonetheless, that given the Respondent's own admission that she did not put the other councillor forward due to her pregnancy and assumptions about any ensuing maternity leave, meant that the Respondent had failed to advance equality of opportunity. The Panel further found that the Respondent, in making assumptions and in seeking to exclude the other councillor based on such assumptions, without making any effort to check they were correct, had been both discourteous and disrespectful.

The Panel heard further that it was not in dispute that the Respondent failed to update her register of interests to detail her shareholding in two limited companies after the Council election in 2022. The Panel noted that it had no reason to consider the failure to register the interests properly was anything other than an inadvertent breach of the Code. It noted that the Respondent had made no attempt to hide her interests and had apologised to all concerned for the failure to ensure her register of interests was updated and correct, in adherence to the Code.



## West Lothian Council - LA/WL/3698 - No Breach

Following a Hearing held in Livingston, a West Lothian councillor was found not to have breached the Councillors' Code of Conduct in relation to his behaviour during a meeting of the Council held online on 28 September 2021. Having listened to an audio recording of the meeting and accounts from witnesses in attendance, the Standards Commission's Panel noted that the meeting was somewhat heated in nature, with several participants having raised their voices and talked over each other.



The Panel found that while the Respondent raised his voice on several occasions during the meeting, it did not consider that his conduct could objectively be categorised as yelling or shouting. In addition, while it noted that he had made some unnecessary comments, it found that these had not been targeted at one individual only, or that they had been abusive, offensive or particularly personal in nature. The Panel concluded that, in the overall context of the meeting, the Respondent's conduct did not amount to a failure to treat his fellow councillors and the Chair of the meeting with courtesy and respect, as required by the Code.

**Details of the outcome of cases, including full written decisions and information about scheduled Hearings, can be found in the [Cases](#) section of our website.**

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:

Room T2.21

0131 348 6666

Scottish Parliament

[enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)

Edinburgh

[www.standardscommission.org.uk](http://www.standardscommission.org.uk)

EH99 1SP

[@StandardsScot](https://www.facebook.com/StandardsScot)

[facebook.com/StandardsCommission](https://www.facebook.com/StandardsCommission)