

# STANDARDS UPDATE

ISSUE 43: September 2024

## News

### Joint Improvement Service / Standards Commission Webinar on Confidentiality

The Improvement Service is hosting a joint webinar with the Standards Commission on confidentiality, on **Monday, 7 October at 14:00**. The webinar is open to all elected members. If you would like to attend, please just click on the following link: <https://www.improvementservice.org.uk/products-and-services/workforce-and-skills-development/elected-members-development/elected-member-webinars>



Topics to be covered include: the right of access to Council information; what information is confidential; why Councils require certain information to be kept confidential; dealing with information provided by constituents; and the provisions in the Councillors' Code of Conduct on confidentiality.



### Advice Note for Councillors on Gifts and Hospitality

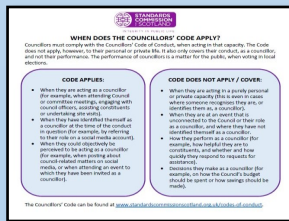
With a great deal of thanks to all those who contributed to the wording, the Standards Commission has updated its Advice Note for Councillors on Gifts and Hospitality. More information has been provided in respect of hospitality which would reasonably be associated with a councillor's duties as an elected member or a member of an arm's length external organisation to which they have been appointed or nominated by their council. Two annexes have been added, with Annex A providing a series of considerations intended to assist councillors in scrutinising offers of hospitality, to help them reach fair and transparent decisions on what should be accepted and what should be declined. Annex B provides a few examples of typical scenarios and how councillors might use the considerations outlined in Annex A. The Advice Note can be found on our [website](#).

### Consultation on 2000 Act

The Ethical Standards in Public Life etc (Scotland) Act 2000, which introduced the ethical standards framework and Codes of Conduct for councillors and members of devolved public bodies in Scotland, was one of the first laws passed by the Scottish Parliament. In advance of the 25th anniversary of its enactment, the Standards Commission and the Ethical Standards Commissioner (ESC) conducted a joint review of its provisions and have identified some amendments that could be made to improve or strengthen the framework. The Standards Commission and ESC then consulted with stakeholders on these proposals. Thank you to all those who responded.



The consultation is now closed and the Standards Commission and ESC have issued a joint letter to Scottish Ministers asking for the Act to be reviewed in light of the proposals. A copy of the letter and document outlining the proposed changes can be found on our [website](#).



### "When the Code Applies" Card

The Standards Commission has produced a Card for members of the public, which explains when the Councillors' Code of Conduct does and does not apply, and what it covers. The Card makes it clear that while councillors must comply with the Councillors' Code of Conduct when acting in that capacity, it does not apply to their personal or private life. The Card further makes it clear that the Code only covers their conduct as a councillor, and not their performance. A copy of the Card can be found on our [website](#).

### Update from the Ethical Standards Commissioner

"The Investigations Manual is being reviewed and revised on a quarterly basis, with the last review being completed in April and the current review due to be completed this month. The updated version will be re-published on our [website](#). The Manual shows updates on changes in practice which we have put in place over previous quarters. This includes the introduction of a new system of clarifying a complaint or capturing relevant information during the initial triage, so that assessments can proceed faster when an Investigating Officer is assigned. We have also enhanced our two-tier peer review process to ensure that reviewers consistently and thoroughly check the accuracy and completeness of complaint assessments and proposed reports. The September revision will also include details on what happens if a party fails to cooperate with our process or attempts to influence witnesses, which the Standards Commission will take into consideration in respect of its decisions on disposals. It also covers complaining to our office as a group and includes a new section on witness care.

We have also commenced a project to review all our publicly available complaints information and produce "Easy Read" versions of key material. The majority of the staff have also been through Plain English training. The aim of this training is to enhance accessibility, helping us communicate our messages clearly and more effectively with stakeholders."

# News cont.

## Standard Training Presentations on the Codes of Conduct

The Standards Commission has updated its standard training presentations on the Codes of Conduct for councillors and members of devolved public bodies. These can be found and downloaded from our [website](#).

## Standards Commission's Annual Report 2023/24

The Standards Commission has laid and published its Annual Report for 2023/24. A copy can be found on our [website](#).

# Cases Overview

Since the last briefing in June 2024, 12 cases were referred to the Standards Commission by the Ethical Standards Commissioner (ESC) about elected members of Angus, Renfrewshire, City of Edinburgh (three cases), Glasgow City, North Lanarkshire (three cases), Highland, Argyll and Bute and Scottish Borders Councils, along with one case about a board member of Children's Hearings Scotland. The Standards Commission has scheduled Hearings in one case concerning a North Lanarkshire councillor and directed further investigation be undertaken on a case concerning a Highland councillor. The decision on a North Lanarkshire Council case is pending. At our last briefing, the Standards Commission had directed the ESC to carry out further investigation in a case involving two Glasgow City Councillors and following receipt of the further investigation report decided to take no action. The Standards Commission held Hearings in respect of a case concerning a councillor from Glasgow City Council, along with three cases involving councillors from Stirling, Falkirk and East Ayrshire Councils. The outcomes of the Hearings are outlined below. No action was taken in ten cases and the written decisions in respect of these cases can be found on the [Cases](#) page of our website.

## Glasgow City Council - LA/G/3919 - No Breach

At a Hearing held on 29 July 2024, a Glasgow City councillor was found, on the face of it, to have breached the Councillors' Code, in respect of remarks made during a speech at a full Council meeting in June 2023 and, in particular, a statement that some of those attending a rally in respect of women's rights held earlier in Glasgow that year were "Nazis".

The Panel acknowledged that, in her speech, the Respondent had been seeking to set out her position in respect of transgender rights, and wished to outline concerns about those who she perceived sought to restrict or undermine these. The Panel further acknowledged that the debate surrounding the issue of transgender and women's rights is extremely polarised, with strong views expressed frequently on the subject. The Panel accepted that, as an elected representative, the Respondent was expected to express her views and, further, that she was entitled to do so in a forthright and even robust manner.

The Panel agreed, however, that a reasonable interpretation of the Respondent's remark that the rally had been attended by Nazis, in the context of a speech about the impact of anti-trans groups or views, was that, at the very least, a number of those attending a women's rights rally adhered to extreme far-right ideology. The Panel noted that while no individuals who attended the rally had been named by the Respondent, individual attendees could be identified by video footage of the event, which remained in the public domain. The Panel considered that the use of the term 'Nazi' as a descriptor for those who attended the rally on women's rights was objectively disrespectful, given a common understanding of Nazis is that they were an extreme far right group who committed genocide and whose extremist political ideology was based on ideas of racial, social and biological purity. The Panel agreed this would have been deeply offensive and shocking to attendees, especially any identifiable from the footage available. The Panel noted that the statement that Nazis had attended a rally in Glasgow could also have been highly disturbing for members of the public.

The Panel found, however, that the Respondent was entitled to enhanced protection of freedom of expression, as a politician commenting on a matter of public interest. It acknowledged that given:

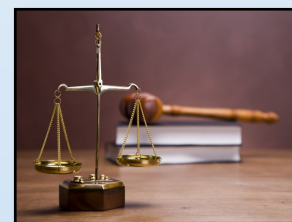
- there was apparently reliable evidence to the effect that similar rallies organised by the same person in other cities had been attended by individuals who had displayed clear support of the Nazis or their ideology;
- how open to interpretation the term 'Nazi' can be; and
- its breadth of meaning and how it is commonly used to describe anyone with what are perceived as opposing or extreme views,

there was a sufficient factual basis for the Respondent's contention that the Glasgow rally had been "attended by Nazis", even if this was entirely inaccurate. The Panel was of the view that a restriction on the Respondent's Article 10 rights could not be justified in the circumstances of the case and, therefore, that a formal finding of breach could not be made.

## Stirling Council - LA/S/3867 - Breach

At a Hearing, a Stirling councillor was found to have behaved disrespectfully towards another elected member during the recess of a meeting of the Council in March 2023. The Hearing Panel found that it was not in dispute that, during the recess, the Respondent and the Complainer (another councillor) had a verbal altercation after the Complainer suggested the Respondent would have to explain to parents in their ward why he voted in favour of a decision that effectively would cut nursery hours. Having heard evidence from the Respondent, Complainer, other elected members and council officers present, the Panel was satisfied, on the balance of probabilities that, during the exchange that then ensued, the Respondent: was clearly angry, frustrated and agitated; stood over the Complainer and raised his voice; and repeatedly pointed his finger or otherwise gesticulated towards her in an aggressive manner. The Panel agreed that, by conducting himself in the manner as found and outlined above, the Respondent failed to treat the Complainer with courtesy and respect and, on the face of, breached paragraph 3.1 of the Code.

The Panel considered it was reasonable for the Complainer to have found the Respondent's conduct intimidating. The Panel accepted that the Respondent may have felt aggrieved by the Complainer's suggestion that he could have made a difference to the debate or decision in respect of the proposed cut to nursery provision and that he was entitled to raise his concerns with her in that regard. The Panel agreed, however, there was no reason why the Respondent could not have done so in a respectful manner, without losing his temper, resorting to aggressive and intimidatory behaviour and causing others to feel they had to intervene. The Panel determined, therefore, that the Respondent's conduct towards the Complainer during the recess of the Council meeting had been wholly unnecessary and inappropriate. The Panel was satisfied that the Respondent's overall conduct was entirely egregious and exceeded the degree that should be tolerated, even in a political context. In the circumstances, the Panel was satisfied that a restriction on the Respondent's right to freedom of expression under Article 10 of the ECHR was relevant, sufficient and proportionate to



# Cases cont.

## ***Stirling Council - LA/S/3867 - Breach cont.***

protect the rights of the Complainer, to ensure a minimum standard of public debate and to prevent public confidence in local government, the Council and the role of a councillor from being undermined. The Panel concluded, therefore, that it was satisfied that a finding of breach, and the subsequent application of a sanction, would not contravene Article 10. It concluded a finding of a breach of paragraph 3.1 of the Code could be made.

The Panel accepted that being the subject of such conduct would have been distressing for the Complainer and anyone witnessing it. The Panel noted, however, that the conduct was a one-off incident, for which the Respondent had immediately proffered an apology. The Panel further noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes. There was also no evidence of repeated behaviour or of any previous contraventions of the Code by the Respondent. In the circumstances, the Panel concluded, on balance, a one-month suspension of the Respondent's right to attend full meetings of the Council was the appropriate sanction. The sanction decision is currently the subject of an appeal.

## ***Falkirk Council - LA/Fa/3929 - Breach***

At a Hearing, a Falkirk councillor was found to have disclosed confidential information, in June 2023, on social media. The post concerned work being undertaken by the Council to award a contract to build a new access road, which had been included in a report that was discussed in private at a meeting of the Council's Executive Committee. The Panel noted it was not in dispute that the report was specifically marked as "not for publication" and printed on pink paper, and that the Respondent accepted the printing of the report on pink paper meant the information it contained was confidential.



The Panel accepted that some of the information from the report, including the overall budget and when it was expected the project would commence, had already been disclosed by the Council and published in a local news article. The Panel found, nevertheless, that detailed information the Respondent shared from the report, including the number of bids received for the work, concerns expressed by potential contractors, and the difference between the cost of a compliant bid and the Council's budget, was not in the public domain. The Panel was further satisfied that this information was confidential and should have been treated as such, given it concerned an ongoing tendering process, being a commercially sensitive matter.

The Panel concluded, therefore, that the Respondent had disclosed information that remained confidential. The Panel noted the Respondent had indicated that he had disclosed the information to rebut the "positive spin" on the project he considered the Council had given via its press release. The Panel was satisfied, therefore, that the Respondent had disclosed the information, at least in part, for the purpose of discrediting the Council.

The Panel noted, in mitigation, that the Respondent had removed the post immediately when it was suggested he did so, and that there was no evidence of any impact in terms of the project. The Panel agreed, nevertheless, that it was legitimate for the Council to have decided that information on the tender process was to be kept confidential at the time, in order to ensure the process was conducted properly, fairly and to minimise risks associated with the management of the costs and delivery of the project. The Panel also noted the potential impact of the Respondent's actions on others, particularly any officers who were responsible for the process. In the circumstances, the Panel concluded that a suspension of two months was an appropriate sanction.

## ***East Ayrshire Council - LA/EA/3904 - Breach***

Following a Hearing held online, an East Ayrshire councillor was found to have breached the provision in the Councillors' Code of Conduct that prohibits elected members from participating in certain decisions concerning Council Tax if they are in arrears of two months or more in respect of the payment of Council Tax. The Panel found, and noted that it was not in dispute, that the Respondent participated in a Council meeting in February 2023 at which the Council's Tax rates for the forthcoming year were being set, despite being in more than two months' arrears.



The Panel noted, in mitigation, that the Respondent had apologised and explained that his failure to adhere to the Code was an inadvertent oversight. The Panel found, however, that despite various opportunities to do so, the Respondent failed to disclose the full extent of his Council Tax arrears. In particular, the Panel noted that the Respondent had signed, following his election in May 2022, a non-statutory declaration of debts form, in which he declared he owed no debts to the Council. The Panel further noted that the Council's Monitoring Officer had sent all elected members an email, before the meeting, outlining clearly the requirements of both the Code and the corresponding statutory provision.

While the Panel concluded that the Respondent should have realised he could not participate in the meeting and should not have done so, it was nevertheless satisfied, on balance, that his contribution to the discussion was based on the views of his party group and did not stem from any personal interest. The Panel further accepted that the Respondent's apology and remorse was genuine. In the circumstances, the Panel concluded that a censure was an appropriate sanction.

## ***North Lanarkshire Council - LA/NL/3947***

The Standards Commission initially decided to hold a Hearing on the matter, scheduled to take place on 14 August 2024. However, having received, on 1 August 2024, what it considered to be new and material information from the Respondent, the Standards Commission reviewed the decision it had made on the referral and decided to take no further action on the case.

***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

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