



INTEGRITY IN PUBLIC LIFE

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## ADVICE NOTE FOR MEMBERS ON DISTINGUISHING BETWEEN THEIR STRATEGIC ROLE AND ANY OPERATIONAL WORK

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### 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to help board members distinguish between strategic and operational matters in order to comply with their Codes of Conduct.
- 1.2 Public bodies listed at [Schedule 3 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) are required to adopt codes of conduct for their members, based on the Model Code of Conduct for Members of Devolved Public Bodies (the Code).
- 1.3 This Advice Note suggests issues members may wish to consider in order to help them to undertake their strategic and scrutiny roles effectively, while still complying with the provisions of the Code regarding relations with employees and operational management.
- 1.4 Members have a personal responsibility to observe and comply with the provisions in the Code. This Advice Note is intended to assist them in interpreting the Code in order to do so. The Advice Note should, therefore, be read in conjunction with the Code and the Standards Commission's Guidance.
- 1.5 As a general rule, the role of members is to scrutinise and hold employees to account for the delivery of the public body's services and in meeting its strategic objectives. In doing so, members are required to provide strategic leadership and oversight. This involves setting strategy and policy, scrutinising overall performance against strategic aims, and making major decisions that concern their public body as a whole.
- 1.6 By comparison, operational management is the planning, organising and execution involved in day to day activities and service delivery. This is normally the role and responsibility of employees. Members risk losing sight of their strategic role if they become too focused, either individually or as a board, on matters that are operational in nature.
- 1.7 Members also have a role in promoting their public body's values and in ensuring a positive and collaborative culture. Members should try to develop a constructive and respectful partnership with employees. In order to do so, members should take time to understand the roles of individual employees and how these differ from their own role.
- 1.8 The line between strategic and operational matters is not always distinct, as strategic objective setting and policy setting is underpinned by operational work. In addition, some operational matters will have strategic ramifications for an organisation in terms of service delivery and risk management. What may be strategic and what may be operational can also vary between different public bodies, depending on their size and the sector in which they operate. Members should be

aware that the distinction between what is strategic and operational may also alter if the size or remit of their public body changes.

1.9 It should be noted that it may be appropriate for Chairs to be more involved in certain operational matters, such as the signing-off of press releases, than other members. In addition, some members are required to become involved in operational management or decision-making by virtue of:

- their letter or contract of appointment;
- a statutory provision;
- their job description;
- having been invited to do so by the public body's Chair or Chief Executive; and / or
- having been directed to do so by their sponsor body or a Minister / Cabinet Secretary.

1.10 Difficulties can arise, however, when members become inappropriately involved in operational matters that are, or should be, the sole responsibility of employees (see Section 4 below). The aim of this Advice Note, therefore, is to help members to avoid doing so.

## 2. Relevant Provisions in the Code

2.1 The Code contains provisions relating to the differences between the responsibilities of members and employees. Specific applicable paragraphs in the Code include:

3.7 Except where it is written into my role as Board member, and / or at the invitation of the Chief Executive, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and the Executive Team.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.

3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

## 3. Strategic and Operational Management

3.1 The work of a public body is a team effort, in which the role and work of members is balanced with, and complemented by, the role and work of employees. As a member, your key role is to determine policy and scrutinise the organisation's performance against its strategic aims. In general, the role of a member is to:

- provide strategic leadership;
- ensure the public body meets its strategic aims and statutory obligations;
- ensure the public body puts the needs of its service users at the forefront of any decision-making;
- hold the Chief Executive and senior management team to account by scrutinising the way in which services are delivered and the implementation of policies and procedures;
- make or approve decisions that are key to how the public body operates; and
- ensure financial stewardship is achieved through the efficient, economic and effective use of resources.

3.2 Your scrutiny role should be undertaken with a view to making recommendations for improvement and should not normally be used to direct, instruct or pressure an individual employee to make, or change, specific operational decisions. You may also be involved in determining the steps needed

to deal with changes that are likely to impact on the strategic aims and objectives of your public body. Your duty is also to help ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control.

- 3.3 Public bodies will normally have a Scheme of Delegation, which outlines which individual, committee or team is empowered to make certain decisions (including on expenditure). You should ensure you are aware of what decisions are to be taken by which employees, and the level at which they are made. You should note that there will also be many operational decisions, routinely and appropriately taken by employees, that will not necessarily be listed exhaustively in such a scheme.
- 3.4 Some decisions may have both operational and strategic elements, particularly if they concern expenditure that does not fall within existing budgets. Those decisions may be taken jointly by members and employees; or by employees following consultation with certain members (such as members of an Audit & Risk or Human Resources Committees). This enables employees to have appropriate engagement with, and to obtain steer from, members.
- 3.5 Members may also become involved in operational matters that have strategic implications in terms of how it should deploy its resources and / or ones that carry a significant risk to the status or reputation of the public body, or its ability to provide services effectively.
- 3.6 As noted under paragraph 1.9 above, members may be required to become involved in operational management or decision-making by virtue of:
- their letter or contract of appointment (n.b. the terms of these will vary from body to body);
  - a statutory provision;
  - their job description;
  - having been invited to do so by the public body's Chair or Chief Executive; and / or
  - having been directed to do so by their sponsor body, Minister or Cabinet Secretary.
- 3.7 Examples of operational decisions that can be made by members, in terms of the categories listed in paragraph 3.6, include making decisions on:
- casework or complaints;
  - regulatory or quasi-judicial applications; and
  - the appointment of senior employees.
- 3.8 Before accepting or embarking upon such a decision-making role, you understand fully what it will involve and how to identify, and appropriately manage, any conflicts of interest. You should ensure that you do not stray beyond the boundaries of what you have been asked or are expected to do by, for example, insisting on becoming involved in the drafting of the contract of employment for a new employee that you have helped appoint.
- 3.9 Examples of appropriate operational involvement by members, in terms of the categories listed in paragraph 3.6, would include:
- a member of a health board being asked to conduct a ward round or quality assessment to ensure patient safety guidelines were being met;
  - a member with human resources experience being asked, by the public body's Chair or Chief Executive, to assist with a difficult staffing issue; and
  - the Chair signing off a press release or response to a media enquiry on a high profile or potentially contentious issue.
- 3.10 In addition, as a member, you may also be asked by service users and stakeholders of your public body for information about, or assistance with, operational matters. More information on this is outlined under Section 5 below.

3.11 These concurrent obligations can sometimes make it difficult for members to distinguish between operational and strategic matters and to understand the extent to which they should get involved in certain issues and decisions, which can lead to difficulties as outlined below.

#### 4. Matters to consider

4.1 Becoming inappropriately involved in operational management and / or operational decision-making can be a breach of the Code. It can also damage your relationship with employees and have a detrimental effect on how they perform their duties. If you become too focused on operational matters, you risk losing sight of the 'bigger picture' and / or may have less time to focus your strategic and scrutiny role.

4.2 Some illustrations of how a member might become inappropriately involved in an operational matter can be found at Annex A of this document.

4.3 Some real examples where the Standards Commission has found councillors to have become inappropriately involved in operational matters and to have breached the equivalent provisions in the Councillors' Code of Conduct are provided at Annex B of this document. Other illustrations can be found in the Standards Commission's Guidance on the Model Code of Conduct, which can be found at: <https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>.

4.4 You should remember that you have, or may be perceived as having, a position of power over employees, particularly if they are junior members of staff. This means that they may feel pressured into taking a particular action or decision or to focus on the matter you are concerned with over other work, even if they have tasks that should be completed as a higher priority.

4.5 You may wish to represent the views of a service user on an individual matter, such as a service delivery issue, but you should be aware that employees may feel pressured by a member challenging their actions or appearing critical of some aspect of their work. This is especially the case with junior employees, who may not be used to dealing directly with members. Any concerns about performance should be raised in private with the employee's line manager.

4.6 You should consider, in the first instance, whether any matter you are seeking to become involved in or have asked to be involved in is strategic or operational in nature. If a matter is operational in nature, you should then consider whether this is a matter in which you are required to become involved, in terms of one of the categories listed under paragraph 1.8 above. At all times, you should consider whether the extent of your involvement in operational matters is appropriate. For example, it may be sufficient for you to ask for confirmation that certain human resource related policies and procedures are in place. It may not be necessary or appropriate for you to insist on reviewing or approving the contents of such policies.

4.7 You have a right to receive good quality information from employees on which to base your decisions and undertake your scrutiny role. This information should be proportionate, balanced, comprehensive and understandable. You are entitled to ask questions about operational matters at board meetings and to seek assurances from employees that actions have or are to be taken. You should be careful, however, about the level of detail you are seeking. You should always question whether the amount and nature of the information you are seeking is necessary and proportionate.

4.8 If you do not consider you are receiving the information you require to assure yourself that you are in a position to make informed decisions, you should raise the issue with your public body's Chair or Chief Executive.

4.9 In dealing with employees and members of the public (including service users and stakeholders of the public body), you should always consider both what you are expressing and the way you are expressing it. You should also consider how your conduct could be perceived. You should be able

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

- 4.10 You should bear in mind that any concerns about the behaviour, performance or conduct of an employee should be raised privately with the appropriate senior manager. You should also be careful about how you provide positive feedback to employees. For example, you could note in a board meeting that a report before you is well-written and comprehensive and ask for thanks to be passed on to the author. However, approaching an employee at their desk in an open plan environment and praising them on their work may not necessarily be appropriate. This is because you will not always know the extent of anyone else's involvement in the matter. It could be that they took a disproportionate amount of time to produce the one report that you are praising, or that a manager had to intervene and redraft the majority of it.
- 4.11 You should not become involved in any issues relating to individual employee's pay or terms and conditions of employment (except to the extent you are permitted to do so while serving on a committee delegated to deal with such a task or as otherwise required under one of the categories listed at paragraph 1.9). Similarly, the recruitment of staff is an operational matter and should be left to employees, unless you have specifically been asked to sit on a Panel to appoint a senior member of staff.
- 4.12 You should consider:
- whether you are acting in accordance with the provisions in the Code;
  - whether you are asking an employee to do something that could compromise them or prevent them from undertaking their duties properly and appropriately, including being unable to complete other tasks;
  - whether the nature and amount of any information you are seeking is necessary and proportionate;
  - whether you are asking an employee to act against instructions of management;
  - whether you are bringing any undue influence to bear on an employee to take a certain action, particularly if it is contrary to the law or your public body's policies and procedures (bearing in mind that you may well be perceived by employees as being in a position of power);
  - the nature of an employee's role and their seniority;
  - whether your actions could impact on the mutual bond of trust between members and employees;
  - whether you are asking an employee to do something that compromises them or could compromise them (including exposing them to disciplinary measures);
  - whether your actions result in an employee feeling pressured or threatened or adversely impact on their health; and
  - that while you are entitled to freedom of expression under Article 10 of the European Convention on Human Rights, the right is not absolute. It does not provide any protection if you are simply engaging in gratuitous, offensive or abusive personal attacks on employees, or are harassing, bullying or threatening employees in the course of their employment. The Standards Commission has produced a separate Advice Note for Members on the Application of Article 10 of the ECHR, which can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 4.13 You should note that even if your conduct may not amount to a breach of the Code, it may be that other consequences arise from it, such as exposing your public body to legal action or to a grievance from an employee.
- 4.14 If you sit on any committee of your public body (such as a Human Resources Committee or an Audit and Risk Committee) you should make sure you are familiar with the committee's standing orders and procedures, and the extent of its powers and remit.

- 4.15 If you are asked to become involved in an operational matter, you need to be clear about whether you are simply being asked to assist a service user or stakeholder in respect of how to access the appropriate service or employee, or whether you are being lobbied.
- 4.16 As a member, you have a duty to act in the public interest and undertake a scrutiny role to ensure your public body uses its resources prudently and in accordance with law. Robust challenge and involvement from members in driving improvement of performance at a corporate level, linked to the public body's priorities, is a key element of a commitment to delivering '[Best Value](#)'. You should always bear in mind the need for your public body to continually secure best value in the performance of its functions. This duty applies to every member as well as to employees. In undertaking your scrutiny role, you are obliged to make sure service user and community views are taken into account and that your public body responds to these.
- 4.17 You should note, however, that you are a board member of your public body, with a duty to act in the interests of your public body as a whole and to remember that you are representing it at all times. At the same time, you also need to be aware of any separate responsibilities you may have as a member of an external organisation such as any charity, Health and Social Care Integration Joint Board or Regional Transport Partnership to which you have been nominated or appointed by your public body.

## 5. Assisting Service Users and Stakeholders

- 5.1 If you are approached by a service user or stakeholder for assistance, you should ensure you manage their expectations in terms of the extent to which you can help. For example, you should advise a service user who has sought help with a case that while you can seek information on their behalf, you cannot overturn a decision and that they will need to follow the appropriate procedures for doing so. You should also advise the service user that you cannot seek legal advice from the public body on their behalf or pass on any legal advice provided to the public body.
- 5.2 You should not pursue any casework that is likely to come before you to make a decision, as doing so risks creating a perception that you have allowed the service user special access to the decision-maker and have allowed them to bypass employees and any formal process your public body has in place. Again, you should explain why you cannot do so to any service user who has asked for assistance.
- 5.3 In order to avoid becoming inappropriately involved in operational matters and to prevent any conflicts arising, you should consider exactly what you are being asked to do on behalf of a service user. There should be no difficulty if you have managed the service user's expectations appropriately and are simply:
- advising employees of any issues raised or representations made;
  - helping service users or stakeholders make their views known to the relevant and appropriate employee;
  - seeking factual information on progress on behalf of a service user or stakeholder; and / or
  - advising a service user or stakeholder about whom they should contact and the correct procedure to follow.
- 5.4 Where appropriate, you should advise a senior employee of any issues you have noted or been advised about that concern a specific service user or stakeholder so that the matter can be passed to the relevant team or department to record and deal with as appropriate. You should bear in mind that employees are accountable to their own line managers and, even if you think you have identified an employee who you think is best placed to answer your query, you will not have knowledge of their workload and / or whether they have been asked to prioritise any other tasks.
- 5.5 While you are entitled to ask employees to keep you updated on the matter, you should avoid providing directions or taking any action that could be perceived as you providing directions on how employees should deal with or resolve the issue. For example, while you can suggest matters

that employees may wish to consider, you should be careful that you are doing so in a way that makes it clear that the decision about how they deal with the issue and what action should be taken is a matter for them. Again, you should note that more junior employees may feel compelled to act in accordance with your suggestion, regardless of whether this is compatible with any direction given by a line manager or an internal procedure.

- 5.6 If you record or keep a note of any issues raised or advice you give to a service user, you should be careful to do so in a manner that is compatible with your public body's protocols and policies on the processing of personal data.
- 5.7 If you have been asked by a service user to help with concerns they have about your public body's services or any decision it has made and / or you have identified a mistake or problem, you can ask employees to review what has happened, and what is being done to resolve the issue and / or what is being done to prevent it happening again. You should ensure the service user is aware, however, that asking a member for help is not a substitute for any formal complaint process. If appropriate, you should recommend the service user make use of your public body's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the [Scottish Public Services Ombudsman](#), should they wish to do so. You should also make service users aware that if a decision has been made in accordance with your public body's policy, it may not be appropriate for it to be reviewed.
- 5.8 You should decline to get involved if you are approached by any employee in respect of any matters relating to their employment with your public body. You should advise the employee concerned to contact their line manager, trade union or follow the appropriate internal procedures for raising any such issues. The exception to this would be any disclosure made by an employee that could fall within the terms of [The Public Interest Disclosure Act 1998](#). The Act allows individuals to disclose certain issues to particular external parties (known as 'prescribed' individuals or bodies) where there is good reason to believe that internal disclosure will not be taken seriously or will cause the individual making the disclosure to be penalised in some way. This is known as 'whistleblowing'. You should familiarise yourself with the types of matters that should be reported and your public body's reporting procedures.
- 5.9 While you may have some experience in a particular field, you should never assume or should be wary of assuming that you have more knowledge than employees who receive specific training and who should have a good, and up to date, awareness of your public body's policies and procedures relating to the tasks they are performing, as well as the current legal framework they are operating in. Employees may also have access to more relevant and material information that has influenced the way they approach the issue.
- 5.10 If you consider an employee is not providing you with information to which you have a right to access, you should raise your concerns with the appropriate senior manager.
- 5.11 If you are concerned that a service user is making or has made a fraudulent claim, you may be obliged to report the matter. You should, therefore, ensure that your service users are aware that not all information they provide to you can be kept confidential.

## 6. Further Sources of Information

- 6.1 The Standards Commission has published guidance and advice notes on how to interpret, and act in accordance with, the provisions in the Code, including those relating to relationships with employees. This guidance can be found on the Standards Commission's website at: [www.standardscommissionscotland.org.uk/guidance/guidance-notes](http://www.standardscommissionscotland.org.uk/guidance/guidance-notes).
- 6.2 The Standards Commission also publishes written decisions of Hearings on its website. These can be found at: [www.standardscommissionscotland.org.uk/cases/case-list](http://www.standardscommissionscotland.org.uk/cases/case-list).

- 6.3 The Scottish Government’s publication “On Board: a guide for members of statutory boards” contains useful information and guidance for members of the boards of public bodies in Scotland, and can be found at: <https://www.gov.scot/publications/board-guide-members-statutory-boards-2/>
- 6.4 If you have any queries or concerns about how to interpret or act in accordance with the provisions in the Code, you should seek assistance from the public body’s Chair, Chief Executive, or Standards Officer. Further information can also be obtained from the Standards Commission via email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk).



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## ANNEX A: EXAMPLES OF WHEN A MEMBER BECOMES INAPPROPRIATELY INVOLVED IN AN OPERATIONAL MATTER

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It should be noted (as outlined) under paragraph 1.8 above), that what may be strategic and what may be operational can vary between different public bodies, depending on their size and the sector in which they operate. There are, however, many examples of areas where members may inappropriately seek to get involved in operational matters, including where a member:

- becomes involved in an individual staffing matter.
- insists on attending an operational meeting with an outside body, or an internal employee working group where members are not normally present.
- insists on reviewing internal policies and suggests minor grammatical or formatting changes and / or insists on approving the content of policies that concern operational matters. For example, it may be sufficient to agree that the public body should have a policy on flexible or hybrid working for staff, without approving the detail of such a policy.
- insists that their public body's policy is varied to benefit an individual service user.
- tries to overturn a casework decision that has been delegated to employees to make.
- seeks to become involved in the drafting of an internal process document being put in place to support a wider policy.
- demands that the contents of a report or its recommendations are changed when being consulted on it as a Chair of a committee.
- asks a junior member of staff to undertake a certain task, without their line manager's knowledge or consent.
- demands to sign off responses to all media enquiries and public communications regardless of content or context.
- tries to direct or alter the evaluation of a tender, grant application, or any other evaluation.
- seeks access to confidential internal human resources reports about individual employees.
- seeks to negotiate directly with trade unions and, in doing so, undermines agreed collective bargaining and the employees involved.
- seeks to alter and approve an operational plan.

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## ANNEX B: HEARING EXAMPLES (RELATING TO COUNCILLORS)

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A councillor became involved in a social care case on behalf of a constituent. This involved making suggestions and judgements about matters such as where his constituent should be housed, contact between the constituent and her children, and the rehabilitation of one child.

The Hearing Panel found that the councillor was not simply articulating his constituent's concerns but was instead inappropriately trying to use his role to engage in, and exert influence over, direct operational management.

While the Hearing Panel acknowledged the councillor had a responsibility to represent his constituent, it considered in so doing, he had lost sight of his other responsibilities as a councillor and his obligation under the Code to respect the different roles of councillors and officers. The councillor pursued the interests of his constituent without any objective consideration of the children's interests or the paramount duty the Council had to ensure their safety and welfare, and despite not being qualified to make decisions to judgements in this regard.

The Hearing Panel found that the councillor had an expectation that actions should be taken in response to his engagement. The Hearing Panel considered that while his involvement may not have had any effect on the outcome of decisions, this had clearly been his intention.

The Hearing Panel noted that the councillor failed to accept that he had an inherent influence in his role as an elected member. The Hearing Panel considered it was disingenuous to suggest it was open to officers to simply ignore his enquiries and requirements. The Hearing Panel further considered that the inappropriate level of involvement, enquiries and correspondence from the Respondent could have had an adverse impact on resources, given that officers had felt obliged to respond.

The Hearing Panel concluded that the councillor's involvement in direct operational management and questioning of the professional judgement of officers amounted to a contravention of the Code. The councillor was suspended from all meetings of the Council for six months.

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Before being elected, a councillor had been a spokesperson for a lobbying group who were opposed to a refurbishment of a school on its existing site. The councillor stood down from the position after the election, but had continued to receive and send emails to members of the group, which included two of his close relatives. The councillor had, however, failed to declare his involvement as a non-financial interest and had failed to declare the non-financial interests of the close relatives, at meetings where a planning application in respect of the school was considered.

The Hearing Panel noted that the councillor's pre-election position as spokesperson for the group; his post-election public support for a new build site and his opposition to the refurbishment of the existing school; and the fact that he had continued to exchange emails about the matter meant that his involvement with the group had continued after his election as a councillor. The Hearing Panel concluded that, essentially, the councillor could be perceived as advocating for a cause. He should have declared his involvement and that of his relatives as non-financial interests, refrained from taking part in the planning decision and withdrawn from the room. The Hearing Panel found that the councillor had breached the Code. The councillor was suspended from a planning committee of the Council for two months.

A councillor became involved in a dispute with his neighbour over the erection of a garden structure, which the councillor felt overshadowed his own garden. The councillor contacted key senior officers involved with planning and requested information or actions that would not be available to an ordinary member of the public. On one occasion, the councillor attempted to call-in his neighbour's planning application.

The Hearing Panel found that the councillor had used his position as a councillor to seek information not normally available to members of the public from senior officers of the Council, and attempted to exert influence in asking that the matter be dealt with urgently.

The Hearing Panel noted that although there was no evidence that the councillor attempted to put pressure on officers to reach a particular outcome in respect of the planning application, nor that his actions had any bearing on the decision that was ultimately made, officers may have felt under pressure to comply with such a request.

The Hearing Panel determined that the councillor's actions in requesting information not normally available to members of the public, in asking officers to deal with the matter urgently, and in failing to distinguish between himself as a potential objector and his role as a councillor when attempting to call-in the application, amounted to attempts to seek preferential treatment, and constituted a breach the Code. The councillor was censured.

A councillor sent council officers a number of emails, over a year-long period, regarding perceived issues with the usage of a road in connection with the development of a block of flats. The emails included directions to officers to fence-off an area, instruct the developers to cease using certain parking spaces, and to issue parking tickets.

While the Hearing Panel accepted that the councillor had a right to draw his constituents' concerns to the attention of officers, it was satisfied that he had gone further than this by repeatedly suggesting that officers take specific actions to address the issues raised. The Panel considered that, in doing so, it was evident the councillor had become inappropriately involved in operational matters.

The Panel noted that as an elected member, the councillor was in a position of power and influence over officers. The Panel was satisfied that the councillor was attempting to take advantage of this position by trying to direct or pressure officers into taking the actions outlined above. The Panel concluded, therefore, that the councillor had also breached the Code's Protocol for Relations between Councillors and Employees.

The councillor was suspended for five months (it should be noted the councillor was also found, at the Hearing, to have breached further provisions in the Code in respect of other conduct found to be established).