



INTEGRITY IN PUBLIC LIFE

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# ADVICE ON THE ETHICAL STANDARDS FRAMEWORK FOR LOCAL AUTHORITY CHAIRS

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## 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide guidance to local authority Conveners and Chairs on their role and responsibilities within the ethical standards framework.
- 1.2 This Advice Note is primarily intended to assist those who chair full Council Committee and Sub-Committee meetings and those who, from time to time, deputise for them. For ease of reference, the term 'Chair' will hereinafter be used throughout this advice note although those fulfilling these roles may be addressed as Lord Provost, Provost, Convenor or other titles.
- 1.3 Chairs have a key role in the ethical standards framework in ensuring local authority meetings are conducted in a constructive and respectful manner, where:
- all elected members present are afforded the opportunity to actively participate and express views on the matters being discussed or determined; and
  - council officers are afforded the opportunity to provide advice as and when required.
- Chairs should lead by example as their conduct can set the tone for a meeting. Doing so can help ensure that, even when robust, discussions are conducted respectfully and in accordance with the standards to which the public is entitled to expect of their elected representatives. It also allows for clear decisions to be reached. Chairs should preside over and manage meetings in an impartial and fair manner.
- 1.4 While this Advice Note aims to assist Chairs, officers and others, by providing information about the role that Chairs may be expected to undertake within the ethical standards framework, it is not intended to be prescriptive. The Standards Commission recognises that governance arrangements (including any Scheme of Governance, Standing Orders and Scheme of Delegation or other guidance) and the extent of the Chair's role are entirely matters for each local authority to determine, subject to any relevant legislative provisions.

## 2. Background

- 2.1 The Standards Commission's functions are provided for by the Ethical Standards in Public Life etc. (Scotland) Act 2000. The 2000 Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with Codes of Conduct, which are approved by the Scottish Ministers.

- 2.2 The role of the Standards Commission is to:
- encourage high ethical standards in public life. This includes promoting and enforcing the Codes of Conduct and issuing guidance to councils and devolved public bodies; and
  - adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 Complaints about potential breaches of the Councillors' Code of Conduct (the Code) by individual elected members are investigated by the Ethical Standards Commissioner (ESC). Following the completion of an investigation, the ESC will submit a report to the Standards Commission.
- 2.4 The Standards Commission will review the ESC's report and determine whether to:
- direct the ESC to carry out further investigations;
  - hold a Hearing; or
  - do neither.
- 2.5 The Standards Commission holds Hearings to determine whether there has been a breach of the Code by any elected member. If the evidence presented to the Standards Commission's Hearing Panel supports, on the balance of probabilities, that a breach of the Code had occurred, the Hearing Panel will make such a finding and will then determine the sanction to be applied, in accordance with the 2000 Act.

### **3. The Chair's Role in relation to the Ethical Standards Framework**

- 3.1 The local authority should ensure that appropriate training on the ethical standards framework, the Code and the guidance issued by the Standards Commission, is given to all elected members, including any Chairs. This includes ensuring training is provided at the point of induction and on a regular basis thereafter.
- 3.2 It is an elected member's personal responsibility to ensure they comply with the provisions in the Code. Chairs are expected, nevertheless, to contribute to the promotion and maintenance of high standards of conduct and a respectful organisation-wide culture, by ensuring they lead by example and encourage their colleagues to adhere to the Code and the key principles of public life in Scotland.
- 3.3 Chairs are also expected to have a good awareness of the Code, as other elected members and officers may seek advice or support from them on the interpretation and application of its provisions. Chairs should familiarise themselves with the content of the Standards Commission's Guidance on the Councillors' Code and any relevant Advice Notes and to draw these to the attention of other elected members. Chairs may also wish to review, and encourage other members to review, the Standards Commission's Standards Updates and decisions so that any relevant learning points that have arisen at recent Hearings are noted (the links to these can be found at the end of this document).
- 3.4 Chairs are asked to note that they can seek advice on the Code or any other aspect of the ethical standards framework from the local authority's Monitoring Officer at any time. Chairs may also wish to engage regularly with the Monitoring Officer in respect of matters concerning compliance with the Code, with a view to securing mutual understanding and appropriate conduct. The Standards Commission's Advice Note on the Role of a Monitoring Officer contains more information on the role and responsibilities of the Monitoring Officer within the ethical standards framework. Chairs can also seek advice directly from the Standards Commission.

## 4. Compliance with the Code

- 4.1 The Chair may have to consider whether to intervene during a meeting if it appears that an elected member is breaching or is about to breach the Code.
- 4.2 Chairs may wish to note that a failure by an elected member to comply with the Code can have an adverse impact on both that individual elected member's reputation and also the reputation of the local authority as whole. It can also lead to the risk of legal action against the local authority, with associated resource and cost implications. Examples of this could be if an elected member uses a poor choice of language in a meeting that is being livestreamed, or if they fail to declare a financial interest when making a decision to approve expenditure. A failure to comply with the Code can also have an adverse impact on the effective operation of the local authority and the provision of its services (for example, if an elected member was bullying a senior officer, or was preventing officers from undertaking their roles by constantly interfering or demanding they take a certain course of action).
- 4.3 The Chair may have a role in trying to resolve a matter informally at a meeting if concerns are raised during a meeting about an elected member's conduct. In doing so, they may wish to consider whether it is appropriate to draw elected members' attention to specific provisions in the Code. If the matter is resolved by way of a retraction or apology, the Chair may ask for this to be noted or recorded. If, however, it does not appear the matter can be resolved, the Chair may decide to proceed with the meeting regardless. In doing so, Chairs should consider their own Standing Orders with regards to their powers and can seek advice from a committee officer or senior member of staff, including the Monitoring Officer. If the matter remains unresolved and the apparent conduct is serious in nature, the Chair may wish to inform the Monitoring Officer after the meeting, particularly if they are concerned that the conduct of the member in question could lead to a council decision being challenged or its reputation being adversely affected.
- 4.4 It should be noted that there is no requirement for a Chair, Monitoring Officer (or anyone else) to refer the matter to the ESC as a formal complaint. In making such a decision about whether to report or otherwise escalate the matter, elected members and officers may wish to consider the impact of the alleged conduct on others, the likelihood of it continuing or being repeated, and the potential risk to the reputation of the Council if no action is taken. The potential benefit of having an investigation undertaken by the ESC (being someone who is independent of the Council) and the potential consequences if any attempt to resolve the matter informally is unsuccessful, should also be considered.
- 4.5 Chairs should nevertheless take care not to be overly prescriptive and, on occasions, may choose to accept a degree of immoderate behaviour if doing so will ensure the meeting is conducted in an efficient manner.

## 5. The Chair's Role in respect of some specific provisions in the Code

- 5.1 **Rulings from the Chair:** Paragraph 3.11 of the Code obliges elected members to respect and comply with rulings from the Chair during meetings of the Council, its committees or sub-committees, and any outside organisations to which they have been appointed or nominated by the Council. As a failure to adhere to this provision could in itself be a breach of the Code, Chairs can use their position to remind elected members about this provision and to help ensure elected members comply with other provisions in the Code and, in particular, those outlined below.

- 5.2 It should be noted, however, that Chairs are themselves subject to the Code and any assessment of whether another elected member has contravened paragraph 3.11 would involve consideration of whether the ruling in question made by the Chair, in the specific circumstances, was clear, appropriate and reasonable.
- 5.3 **Respect, bullying and harassment:** Chairs have a key role in promoting a respectful culture and should lead by example and remain calm. Chairs should ensure all elected members are able to participate and express their views. Chairs should encourage diversity of thought and try to make it clear to colleagues that there is nothing wrong with them disagreeing with each other, provided they express their opposing view in a respectful manner.
- 5.4 Chairs should consider stepping in if they witness any poor conduct, in order to prevent a situation from escalating. They can do so by intervening and reminding the individual concerned of the obligation to be respectful. In some cases, if the conduct is particularly egregious, the Chair may wish to address the conduct directly, ask the individual to desist and offer them the opportunity to proffer an apology. If a situation is particularly heated, the Chair may also wish to consider whether it would be appropriate to insist on a short adjournment so they can seek advice from officers and give any individuals involved the opportunity to regain their composure.
- 5.5 Chairs should consider whether they need to address any such conduct after the meeting to protect others, prevent any further harm or reputational damage and / or to try to prevent a recurrence. They may wish to consider seeking advice from the Monitoring Officer or, if appropriate, by communicating privately with the elected member in question (or their Group Leader or group whip), and anyone affected by the conduct, as soon as practicable.
- 5.6 **Relationships with officers:** The Code states that elected members should not undermine any individual employee or group of officers, or raise concerns about their performance, conduct or capability in public. Chairs should, therefore, intervene if an elected member is undermining officers or expressing concerns about their individual performance or conduct. The Chair should advise the elected member that any concerns about any identifiable officer must be raised in private with the Chief Executive or relevant Head of Service.
- 5.7 Chairs should ensure that they attend and participate in any pre-agenda process and meeting, as required.
- 5.8 **Inappropriate involvement in operational matters:** Chairs can have a role in ensuring elected members do not become inappropriately involved in operational matters by checking that elected members and officers share a common understanding regarding any agenda items in terms of which aspects of a matter are strategic and which are operational in nature. Chairs may wish to review meeting agendas in advance to check whether matters being discussed are at an appropriate level and that elected members are being provided with sufficient, timely and relevant information to allow them to undertake their strategic and scrutiny roles effectively, without becoming too focused, either individually or as a committee, on matters that are operational in nature. It should be noted, however, that unless the Council agrees to a report coming back on an issue through a workplan or motion, it is not for elected members (including Chairs) to determine what reports are and are not included in meeting agendas. It is for officers to bring reports for members to consider and make a decision. An example of inappropriate involvement in operational matters is where a Chair demands that the contents of a report or its recommendations are changed when they are being consulted on the report in their capacity as Chair.
- 5.9 Chairs may also wish to intervene if:
- discussions become operational in nature;

- officers are being asked to provide detail at a level beyond that required for elected members to undertake their role; or
- officers are being told how to perform activities that are wholly operational in nature.

Chairs may wish to draw elected members' attention to the Standards Commission's Advice Note for Councillors on distinguishing between their Strategic Role and any Operational Work.

- 5.10 Confidentiality:** Chairs can have a role in ensuring elected members do not disclose confidential information. They can do so by, for example, ensuring that elected members and officers share a common understanding regarding which matters on the agenda for discussion at the meeting are confidential, and how any papers or specific information within papers that are confidential will be marked as such, including when the meeting moves into a private session. Chairs can also reiterate, at meetings, that a matter that is about to be discussed, or a decision that has been made, is confidential. Chairs may wish to ensure agreement that the meeting should proceed to consider an exempt paper and explain why information has been deemed confidential, so that elected members understand the reasoning behind any decision not to make it public and, if applicable, the date or point at which it will cease to be confidential.
- 5.11 Identifying and declaring relevant interests:** Chairs should ensure that they follow any procedures in place to provide for a consistent approach in respect of seeking and recording declarations of interest at the start of all meetings. Chairs can remind elected members that it is their personal responsibility to ensure that they declare any interests, as required by Section 5 of the Code. Elected members should be reminded that they should not rely on their colleagues, the meeting Clerk, legal advisers or the Monitoring Officer to advise them that they may have an interest. This is because other elected members and officers may not be aware of the extent of the elected member's connection to, or interest in a matter, or may not recall it.
- 5.12** Chairs should also remind any elected member who has declared an interest in a matter that they must leave the room (or any online meeting platform) until the discussion and any decision-making on the matter has concluded. Chairs should manage the meeting to ensure that elected members leave at the appropriate time and are then invited back timeously for the next agenda item.
- 5.13** If any elected member is unclear as to whether they have a declarable interest in any matter to be considered at the meeting, the Chair should encourage them, where possible, to seek any advice or support from the Monitoring Officer or Committee Clerk in private beforehand. This will afford the Monitoring Officer or Clerk the opportunity to ask any relevant questions, obtain necessary information and give the matter proper consideration, so that they are able to provide informed advice.
- 5.14 Making quasi-judicial and regulatory decisions:** The decisions elected members take on quasi-judicial and regulatory matters will often have a significant impact on the applicant and others. As paragraph 7.2 of the Code sets out, there may be formal legal routes to challenge a decision made on a quasi-judicial or regulatory matter. As many of the decisions will be controversial, they may be subject to intense scrutiny. A failure to observe the terms of the Code, or the perception that elected members have not done so, could result in a challenge against the Council's decision, with associated cost implications. A successful challenge can have an adverse effect on the Council's reputation, as well as that of the Committee and elected members as individuals. Even if any such challenge is ultimately unsuccessful, it is likely that the Council will still incur costs. Chairs therefore have a role in trying to ensure elected members comply with the Code in any meeting where quasi-judicial and regulatory matters are being discussed and determined. It should be noted that Section 7 of the Code applies to the whole decision-making process, not just at the Council or Committee meeting where the final determination is made.

- 5.15 Chairs may wish to remind their fellow elected members that they must make quasi-judicial and regulatory decisions objectively and with an open mind at meetings where they are being considered. As such, they cannot pre-judge or pre-determine the matter and cannot make any decision on it based on any prior discussions or agreements with their political party or group. If there is evidence, or concerns have been raised, to suggest that an elected member has said or done anything before the meeting, which could reasonably give rise to a perception they have pre-judged or pre-determined a matter, the Chair may wish to ask them to consider declaring an interest and withdrawing while it is being considered.
- 5.16 Chairs may wish to remind their fellow elected members that decisions on quasi-judicial and regulatory matters should be made in accordance with the law and the Council's policies and should be based solely on the merits of the case. The Chair should therefore consider intervening if they are of the view that a fellow elected member is raising irrelevant and inappropriate matters. The Chair should make time, for example by taking a short adjournment, so advice can be sought from the relevant council officer if there is any doubt as to whether something is a material or relevant consideration.
- 5.17 Elected Members are also obliged, under Section 7 of the Code, to deal fairly and impartially with all parties involved in the application. They must not demonstrate bias or be seen to demonstrating bias. As such, Chairs should intervene if any elected member is behaving in a way that could give rise to a perception of unfairness or bias (such as making disrespectful comments about a party to an application). If supporters of, or objectors to, any application have been allowed to make verbal representations at the meeting, Chairs should ensure that they are treated with courtesy and respect when doing so. This does not mean they need to be given a defined or equal, amount of time to make their representations, or be permitted to make submissions on irrelevant matters. Chairs should ensure, however, that elected members do not constantly interrupt or 'badger' someone who is making representations, or be dismissive or rude towards them. Chairs should lead by example by listening carefully to any representations being made, and avoiding taking any action (such as scrolling on a phone or tablet) that could give rise to a perception they are not doing so.
- 5.18 If a member of a committee is acting as an advocate either for or against an application and, having declared an interest, is making representations, in accordance with any agreed Council procedure, the Chair may need to remind them that they can only remain in the meeting, while that item is being discussed, for the purpose of acting as the representative. The Chair may need to remind the elected member that, when their representations are complete, they must leave the meeting room to avoid any perception that they are influencing or trying to influence the remaining members of the Committee.
- 5.19 The Code obliges elected members, when considering quasi-judicial and regulatory matters, to take into account professional advice given to them by council officers. As officers may need to provide technical and legal advice, to ensure elected members comply with legislation, guidelines and the Code, Chairs should ensure they are afforded the opportunity to do so. Where appropriate, Chairs may wish to remind elected members that the provision of such advice should not be perceived as an attempt to fetter elected members' decision-making discretion and, therefore, that officers should not be criticised on that basis.

## 6. Further Information

- 6.1 The Guidance and Advice Notes can be found at:  
<https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>

<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>

The Standards Updates can be found at:

<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings-and-advice-notes>

Written Decisions of Hearings can be found at:

<https://www.standardscommissionscotland.org.uk/cases/case-list>

No Action Decisions can be found at:

<https://www.standardscommissionscotland.org.uk/cases/cases-referred-by-the-esc>

