



INTEGRITY IN PUBLIC LIFE

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# ADVICE ON THE ETHICAL STANDARDS FRAMEWORK FOR INDEPENDENT COUNCILLORS

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## 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide guidance to independent (non-political party affiliated) councillors on their responsibilities under, and how to seek assistance with, any aspect of the ethical standards framework.
- 1.2 While the guidance in this Advice Note is relevant to all councillors, it has been developed specifically with independent members in mind. This is because they are unlikely to have access to the advice and peer support normally available to those representing a political party.
- 1.3 All councillors have a responsibility to comply with the Councillors' Code of Conduct and lead by example to help ensure that, even when robust, discussions are conducted respectfully and in accordance with the standards the public is entitled to expect of elected representatives.
- 1.4 While this Advice Note aims to assist councillors by providing information about aspects of the ethical standards framework that may be relevant to them, 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) are for each local authority to determine, subject to any relevant legislative provisions.

## 2. The Ethical Standards Framework

- 2.1 The Standards Commission's functions are provided for by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act). 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 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 Councillors' 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.
- 2.6 The local authority's Monitoring Officer has a key role in the ethical standards framework and, in particular, in providing advice and support to councillors to assist them in complying with the Councillors' Code. The Standards Commission's Advice Note on the Role of a Monitoring Officer (linked below) contains more information on the role and responsibilities of the Monitoring Officer within the framework.
- 2.7 The Monitoring Officer should ensure that appropriate training on the ethical standards framework, the Councillors' Code, and the guidance issued by the Standards Commission is provided to all elected members. This includes ensuring training is provided at the point of induction and on a regular basis thereafter.
- 2.8 It is an elected member's personal responsibility to ensure they are aware of, and comply with, the provisions in the Code. Councillors should ensure they attend the training provided by their local authority on the ethical standards framework, the Councillors' Code and the Guidance issued by the Standards Commission.
- 2.9 Councillors should also familiarise themselves with the content of the Standards Commission's Guidance on the Councillors' Code and any relevant Advice Notes. Councillors may also wish to review the Standards Commission's quarterly Standards Updates (which should be circulated by the Monitoring Officer) and decisions so that any relevant learning points that have arisen at recent Hearings are noted.
- 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>

### **3. Support for Independent Councillors**

- 3.1 Councillors should seek advice from the Monitoring Officer if they have any questions in respect of the Code and how it should be interpreted, or the ethical standards framework more widely.

Councillors should further note that they can also seek advice on the Code, or any other aspect of the ethical standards framework, from the Standards Commission at any time.

- 3.2 Independent councillors should contact the Monitoring Officer for advice if they wish to form a recognised group.

#### 4. Compliance with the Code

- 4.1 Councillors 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 a whole (regardless of whether or not they are a member of the Administration). It can also lead to the risk of legal action against the local authority, with associated resource and cost implications. An example of this could be if an elected member fails 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).

- 4.2 There is no requirement for any elected member, council officer (or anyone else) to refer a potential breach of the Code to the ESC as a formal complaint. In deciding whether to report or otherwise escalate any potential breach by another elected member, councillors 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.

- 4.3 As anyone can make a complaint to the ESC, councillors should not put any pressure on officers to do so. Officers are required to remain politically neutral and work alongside all elected members. Asking or directing them to make a complaint about another elected member can, therefore, place them in a difficult or even untenable situation.

#### 5. Responsibilities of councillors in respect of some specific provisions in the Code

- 5.1 **Respect, bullying and harassment:** All elected members have a key role in maintaining a respectful culture and should lead by example. While there is nothing wrong with elected members disagreeing with each other, they should take care to express any opposing views in a respectful manner (including when on social media). Councillors should always behave respectfully towards their colleagues, officers and members of the public and should refrain from engaging in any conduct (in person, in writing and online) that could amount to bullying or harassment.

- 5.2 If any councillor witnesses, or is the subject of, any such conduct they may wish to consider seeking advice from the Monitoring Officer or Standards Commission. In some circumstances, and if appropriate, they may wish to consider raising the matter privately with the elected member in question or that elected member's Group Leader (if applicable), to try to deescalate the situation or prevent any recurrence or further harm.

- 5.3 **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. If a councillor has any concerns about the performance, conduct or

capability of an identifiable officer, they should raise these in private with the Chief Executive or relevant Head of Service.

- 5.4 **Distinguishing between Strategic and Operational Matters:** The Code requires elected members to refrain from becoming inappropriately involved in operational matters. If in any doubt, councillors can ensure they do not do so by checking whether other elected members and officers share their understanding about which aspects of any matter or item to be discussed are strategic and which are operational in nature. Councillors should refrain from asking officers to provide detail at a level beyond that required for elected members to undertake their role and from telling officers how to perform activities that are wholly operational in nature. Councillors should note that the Standards Commission's Advice Note for Councillors on Distinguishing between their Strategic Role and any Operational Work contains further information and examples on this topic. The Advice Note can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 5.5 **Access to Information:** Council officers are required to engage with all councillors, including independent councillors, in a fair and even-handed manner. This means independent councillors can expect officers to provide them with the information, support, and professional advice they need to make informed decisions. While this is usually similar to that which would be provided to a political group, it will be resource dependent. Independent councillors should recognise, for example, that it may not be a proportionate or appropriate use of resources for officers to provide, during the Council's annual budget preparation phase, the same information they provide to party groups to enable them to prepare their draft budgets. The Code notes that officers can provide information and advice in relation to matters of council business to political groups. Officers are, however, expected to foster positive and productive working relationships with all councillors, and should ensure that independent councillors are treated in the same manner and given the same opportunities as elected members who are representing political parties.
- 5.6 Under common law, all councillors have the right to inspect council documents reasonably necessary for their duties. This does not mean, however, that councillors can demand to see any and all information held by their council. The right is based on a "need to know" principle, meaning that councillors must be able to provide a valid reason as to why they are seeking access to specific information. This is particularly the case if it relates to committees or sub-committees of which they are not a member. Councillors should, therefore, ensure that they articulate clearly the reasons why they need specific information, particularly if the information is deemed, or could be considered to be, confidential. The Improvement Service and Standards Commission have produced a joint Advice Note for Councillors on the Right of Access to Information Held by the Council. The Advice Note can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 5.7 **Use of Council Resources:** The Code states that elected members should only use council resources for carrying out their duties in accordance with their council's relevant policies. Council resources must not be used (a) imprudently (without thinking about the implications or consequences); (b) unlawfully; (c) for any campaigning activities or matters relating to these; or (d) improperly. It should be noted that council resources can include officers' time and assistance, as well as facilities, stationery and IT equipment.
- 5.8 **Confidentiality:** The Code prevents elected members from disclosing confidential information. Councillors can ensure they do not inadvertently do so by checking with officers, if they are unsure if any information passed or disclosed to them is confidential. Councillors should ensure

they understand which matters on the agenda for discussion at any meeting are confidential, and how any papers or specific information within papers that are confidential will be marked as such.

- 5.9 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. Councillors should be aware, therefore, that a failure to adhere to this provision could in itself be a breach of the Code.
- 5.10** However, 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.
- 5.11 Identifying and declaring relevant interests:** It is the personal responsibility of all elected members to ensure that they declare any interests as required by Section 5 of the Code. Councillors 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** If any councillor is unclear as to whether they have a declarable interest in any matter to be considered at the meeting, they should seek any advice or support from the Monitoring Officer or Committee Clerk in private, as soon as possible, 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. Councillors can also seek advice from the Standards Commission.
- 5.13 Constituent Enquiries:** Dealing with constituent enquiries is a key part of an elected member's role, and helps ensure the Council is open, accessible and responsive to the needs of the public. Councillors should be mindful of the need to treat everyone with respect when responding to constituents. Councillors should note, however, that in some cases they will not be able to assist, and it may be that there is nothing further to be gained by responding. Councillors should note that the Code does not require them to respond to each and every enquiry nor does it require them to respond within a prescribed timescale. It is sometimes the case that a constituent simply will not accept what they have been told or that an elected member is unable to help them further. Councillors should note they can seek advice from the Monitoring Officer about the resources and support available if they are being subjected to any abuse or harassment by constituents or others (including on social media).
- 5.14 Lobbying and Access:** Community engagement is also a key part of an elected member's role, as it helps them identify the community's needs and determine Council priorities. As part of their ward work, councillors may become involved in, or lead, local campaigns. This could involve anything from campaigning against a library closure to supporting investment in a renewable community energy scheme. In supporting such local campaigns, councillors should always try to balance ward interests against wider council interests. Councillors must also be aware, however, that there is a distinction between community engagement and a single-issue campaign about a regulatory decision (see below).
- 5.15 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 beyond the Council to

challenge a decision made on a quasi-judicial or regulatory matter. Additionally, 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 resource and cost implications. A successful challenge can have an adverse effect on the Council's reputation, as well as that of its committees and elected members as individuals. Even if any such challenge is ultimately unsuccessful, it is likely that the Council will still incur costs.

- 5.16 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.
- 5.17 Elected members are obliged to make quasi-judicial and regulatory decisions objectively and with an open mind. As such, they cannot pre-judge or pre-determine the matter and cannot make any decision on it based on any prior discussions with their constituents, other members of the public or organisations that have an interest in the outcome.
- 5.18 Elected members must also make decisions on quasi-judicial and regulatory matters in accordance with the law and the Council's policies and based solely on the merits of the case. Councillors should refrain, therefore, from raising any irrelevant or inappropriate matters. They should seek advice from council officers if they have any doubt as to whether something is a material or relevant consideration.
- 5.19 Elected Members are further 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 be demonstrating bias. Elected members may be contacted by constituents or community councils about a particular application. If approached, councillors should avoid expressing a view that indicates they have closed their mind on the matter before any meeting where the application is to be considered or determined.
- 5.20 If a councillor has:
- become involved in a single-issue campaign about a quasi-judicial or regulatory decision;
  - indicated (outwith the committee forum) support for, or opposition to, the matter on which they are due to make a decision; or
  - agreed to represent constituents, an applicant or any objector,
- they must declare an interest and cannot participate as a decision-maker in the application, attempt to influence officers, or lobby other councillors involved in the application.

## **6. Being the Subject of a Complaint**

- 6.1 Anyone can make a complaint to the ESC about an alleged breach of the Code. Being the subject of such a complaint can be distressing, daunting and potentially time consuming, even if it is frivolous, vexatious or totally without merit. The Standards Commission recognises that this could particularly be the case for independent councillors who will not have access to assistance a political party might provide and / or support from party or group colleagues (albeit they may have access to their Council's Employee Assistance Programme).
- 6.2 Councillors should ensure that they respond to any enquiries or requests for information from the ESC's office honestly and timeously. It should be noted that the ESC is required, in terms of the 2000 Act, to conduct investigations as confidentially as possible. Councillors should, therefore, refrain from disclosing information about the investigation, complaint or Complainer. If councillors have any questions about the investigation process or the progress of any complaint that has been made against them, they should contact the ESC's office.

- 6.3 Councillors may also wish to seek advice from their Council’s Monitoring Officer. While a Monitoring Officer will not be able to provide specific advice about what a councillor should say in response to a complaint, they may be able to provide advice about how the Code should be interpreted and, potentially, how a response might be framed. The Standards Commission has produced an Advice Note on the Role of a Monitoring Officer, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 6.4 On receipt of a report from the ESC, the Standards Commission will determine whether it is in the public interest and proportionate to hold a Hearing. It will not seek information from the Respondent (the councillor who is the subject of the Hearing) or Complainer before doing so. If the Standards Commission decides to take no action on the complaint, it will write to advise both parties accordingly. The Standards Commission will then publish a ‘no action’ decision on its website. This will be anonymised, meaning the Respondent’s name will not be included. If the Standards Commission decides to hold a Hearing or to direct further investigation, it will write to the Respondent to advise them of this decision and the next steps to be taken.
- 6.5 It is common for Respondents to represent themselves at Standards Commission’s Hearings. The Standards Commission is committed to ensuring a Respondent is not disadvantaged when doing so and has produced Guidance for Unrepresented Respondents, which can be found on the ‘Information for Respondents’ page of its website at: <https://www.standardscommissionscotland.org.uk/cases/information-for-respondents>
- 6.6 If they are to be the subject of a Hearing, councillors are encouraged to review the guidance and other materials on the ‘Information for Respondents’ page. It should be noted that Respondents can contact the Standards Commission at any time before the Hearing on 0131 348 6666 or by email to [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk) if they have any questions about how the Hearing will be conducted or what is expected of them (both before and during the Hearing).

