THE APPLICATION OF SANCTIONS

1. INTRODUCTION

1.1 Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) outlines the options available to the Standards Commission, on the finding of a contravention (breach) of the applicable Code of Conduct by a councillor or member of a devolved public body, at a Hearing it has conducted.

1.2 Section 19 obliges the Standards Commission to impose a sanction upon the finding of a contravention. The Standards Commission cannot, therefore, choose not to apply one.

1.3 The options available to the Standards Commission are to censure, suspend or disqualify the councillor or member. The relevant part of Section 19 is reproduced below:

19 Action on finding of contravention

(1) Where the members of the Commission conducting a hearing find that a councillor has contravened the councillors' code or a member of a devolved public body the members' code, they shall impose one of the following sanctions—

(a) censuring, but otherwise taking no action against, the councillor or member;

(b) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend one or more but not all of the following—

(i) all meetings of the council or body;

(ii) all meetings of one or more committees or sub-committees of the council or body;

(iii) all meetings of any other body on which the councillor or member is a representative or nominee of the council or body;

(c) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend meetings of the council or body and of any committee or sub-committee thereof and of any other body on which the councillor or member is a representative or nominee of the council or body;

(d) in the case of a councillor, disqualifying the councillor for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;

(e) in the case of a member of a devolved public body, removing the member from membership of the body and disqualifying the member, for a period not exceeding five years, from membership of the body.

1.4 The purpose of this policy is to outline the factors the Standards Commission may consider when making a determination under Section 19.

1.5 The policy aims to help achieve clarity, consistency, awareness and transparency in relation to decision-making in respect of sanctions. It will be reviewed by the Standards Commission on an annual basis.

1.6 The policy is intended as a guide and, as such, the list of considerations outlined below is not exhaustive. The decision on the sanction to be imposed will depend on the individual and particular circumstances of each case.

1.7 Section 17 of the 2000 Act provides a Hearing shall be conducted by not fewer than three members of the Standards Commission. Reference is made to 'the Standards Commission' in this policy, however, the Hearing Panel makes decisions at Hearings, including determining any sanction to be applied, on behalf of the Standards Commission.

1.8 Section 19(6) of the 2000 Act provides that the Standards Commission may, on imposing a suspension on a member of a devolved public body, direct that any remuneration or allowance deriving from membership of the body that would be payable to the member, not be paid or be reduced. A separate policy outlining the factors that the Standards Commission will consider when deciding whether or not to make a direction under Section 19(6) can be found on the Standards Commission's website at www.standardscommissionscotland.org.uk/cases/hearing-rules. The procedures the Standards Commission will follow should it decide to do so are also outlined in that policy.

2. SANCTIONS

2.1 The sanctions that can be imposed on the councillor or member of a devolved public body (who is known at the Hearing as 'the Respondent'), following a finding of a breach of the applicable Code of Conduct, are as follows:

- **Censure**: Censure is a formal recording of the Standards Commission's severe and public disapproval of the Respondent.

- **Suspension**: This can be a full or partial suspension. A full suspension means that the Respondent is suspended from attending all meetings of the council or public body. Partial suspension means that the Respondent is suspended from attending some of the meetings of the council or public body. The Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and the Health Boards (Membership and Procedure) (Scotland) Amendment Regulations 2016 provide that any Respondent who is the subject of a suspension is also disqualified from being a member of any Health Board or Health and Social Care Integration Joint Board.

- **Disqualification:** Disqualification means that the Respondent is disqualified for the period determined (of up to 5 years) from being a councillor or member of the specific devolved public body in question. A disqualification means, effectively, that a councillor is removed from office.

2.2 The Standards Commission has produced rules on the extent of the activities in which a councillor can engage while subject to a period of full suspension (either on the finding of a breach of the Councillors' Code of Conduct at a Hearing or as an interim measure while an investigation about their conduct is ongoing). The rules can be found on the Standards Commission's website at www.standardscommissionscotland.org.uk/cases/hearing-rules.

3. KEY PRINCIPLES & AIMS

3.1 The Standards Commission will adhere to the following key principles when determining the sanction to be applied:

- While it is important to be as consistent as possible, and while the Standards Commission may consider the terms of its previous decisions, any such previous decisions should not be considered as binding, and the appropriate sanction will depend on the facts and circumstances of each individual case.

- Decisions will be made on an impartial, fair and proportionate basis.

3.2 When applying sanctions, the Standards Commission will aim to take into account the interests of the public and:

- Preserve the ethical standards framework.
- Promote adherence to the Codes of Conduct.
- Maintain and improve the public's confidence that councillors and members of devolved public bodies will comply with the Codes and will be held accountable if they fail to do so.
- Achieve credible deterrence.
- Provide clear reasons for its decisions, in order to ensure transparency.

4. ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

4.1 The Standards Commission notes that any sanction it imposes in relation to a contravention of a Code of Conduct that, on the face of it, interferes with the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as enshrined in the Human Rights Act 1998, can itself also be an interference with a Respondent's Article 10 rights.

4.2 This means that any restriction on a Respondent's right to freedom of expression, resulting from a finding of a contravention of a Code of Conduct and imposition of a sanction will require to be justified by Article 10(2). Article 10(2) allows restrictions on the freedom of expression that are necessary in a democratic society for, amongst other reasons, the protection of the reputation or rights of others. Any such restriction must be for relevant and sufficient reasons, and must be proportionate to the legitimate aim being pursued.

4.3 In considering the application of a sanction in cases where the Article 10 issues arise, the Standards Commission will consider:

1. whether the interference (i.e. the proposed sanction) is the minimum necessary, or whether less restrictive means could be employed; and
2. whether the benefit of that least necessary measure outweighs its adverse impact on the Respondent's right to freedom of expression. For example, the Standards Commission will consider whether any benefit in applying a sanction in order to protect the mutual bond of trust and confidence between elected members and officers (which enables local government to function effectively), will outweigh any impact on the Respondent.

5. FACTORS THAT CAN BE CONSIDERED

5.1 When determining the sanction to be imposed, the Standards Commission will consider any submissions made, any evidence led in mitigation, and any representations on sanction. This could include evidence about the personal circumstances of the Respondent both at time of contravention and at the Hearing.

5.2 The Standards Commission will reflect on, and use, previous decisions to support its decision-making. The sanction to be applied will, however, depend on the individual facts and circumstances of each case.

5.3 In particular, the Standards Commission will consider the nature and seriousness of the breach, along with any aggravating and mitigating factors. The weight to be attached to any such factors will be determined on a case by case basis. It should be noted that the list of factors below is not exhaustive and not all will be present and / or relevant in each case.

5.4 **Nature and seriousness:** In assessing the nature and seriousness of the breach, the Standards Commission may consider the following:

- The extent and significance of the contravention.

- The duration and frequency of the failure or actions that were the subject of the contravention.
- Whether there was any repetition of the conduct / behaviour.
- The impact (including loss or harm) or potential consequence of the breach to others.
- The extent of any impact on other individuals, groups or on the relevant council or public body.
- The benefit or intended benefit of the breach to the Respondent.
- Whether there is any evidence of deliberate intent.

5.5 **Aggravating factors** are ones which may increase the severity or culpability of the breach. The Standards Commission will consider whether there is evidence of any of the following aggravating factors:

- Repeated behaviour over a long period of time.
- Deliberate conduct.
- Dishonesty and / or concealment.
- Evidence of gain or benefit to Respondent.
- Previous contraventions by same Respondent.
- No understanding, reflection, insight and / or acceptance of actions.
- Lack of remorse and / or no apology.
- Failure to co-operate with investigation and / or adjudication process.
- Any attempt to interfere inappropriately with the investigation process or to influence a witness.
- Any attempts to undermine the adjudicatory or Hearing processes.
- Failure to take any opportunity to rectify.
- Continuing with the conduct or behaviour after it being brought to Respondent's attention and/or the complaint being made.
- Ignoring of advice or training opportunities that may have prevented contravention.
- Discrimination based on a person's membership or presumed membership of a group defined by any of the following characteristics:
  - age;
  - disability;
  - race, colour, nationality (including citizenship), or ethnic or national origins;
  - religion or belief, or, in the case of a social or cultural group, perceived religious affiliation or belief;
  - sexual orientation;
  - gender reassignment / transgender identity;
  - marital / civil partnership status or pregnancy/maternity; and/or
  - sex / variations in sex characteristics.

5.6 **Mitigating factors** are ones that may lessen the severity or culpability of the breach. The Standards Commission will consider whether there is evidence of any of the following mitigating factors:

- Any admission of breach (particularly at an early stage).
- Whether the Respondent self-referred the matter to the Ethical Standards Commissioner.
- Limited duration of contravention.
- Limited impact of contravention.
- Inadvertent breach.
- No gain or benefit to Respondent.
- Action taken to rectify and/or apologise (particularly at an early stage).
- Demonstrating understanding, reflection, insight and / or acceptance of actions.
- Co-operation with investigation and / or adjudication process.
- Evidence Respondent acted on incorrect advice.
- No repetition since contravention occurred.
- Evidence of good character, public service.

5.7 The Standards Commission will also take into account any evidence to the effect that the Respondent has resigned or been removed from their post when determining the appropriate sanction. It will also consider whether an interim suspension had previously been imposed on the Respondent under Section 21 of the 2000 Act and, if so, the length of the suspension. A policy on how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so can be found at:
251001 Interim Suspension Policy 2025 v1.pdf

5.8 In cases where the Standards Commission has found a breach of the respect and / or bullying and harassment provisions in a Code of Conduct, it may also consider any impact statement received from someone affected by the Respondent's conduct. In doing so, the Standards Commission will be mindful of, and will take into account, the fact that the information in any such a statement has not been given under oath or tested.

5.9 The Standards Commission notes that Section 31 of the Local Government (Scotland) Act 1973 provides that a person shall be disqualified from being member of a local authority if they have been convicted of a criminal offence and have received a sentence of imprisonment (whether suspended or not) for a period of three months or more; this legislation was enacted at a time when the use of short sentences was relatively common. The Standards Commission will be mindful that that current sentencing policy is to seek alternatives to custody, with a presumption against the use of short custodial sentences. Therefore, in cases where a Respondent has been convicted of a criminal offence while:

- they were acting in the capacity of a councillor or member of a devolved public body;
- had identified themselves as a councillor or member of a devolved public body; and / or
- where they could reasonably be perceived as acting as a councillor or member of the devolved public body,

disqualification will always be considered as a possible disposal. While the Standards Commission will take into account any and all relevant mitigating and aggravating factors presented, it will be mindful that, in such cases, a conviction has the potential to bring the Respondent's position as a councillor or member, their council or devolved public body, and the ethical standards framework itself into disrepute.

5.10 In determining the length of any period of suspension for a Respondent councillor, the Standards Commission will also consider, and give weight to, the timing and proximity of any period the local authority is in recess. This could mean, for example, that the start date of any period of suspension is delayed. This is to ensure that the suspension is appropriate and proportionate; and that any interference with the Respondent's Article 10 rights is the minimum necessary, while achieving the aims of maintaining standards in public life.

5.11 In determining the extent of any suspension (for example, whether it should cover all meetings of the council and its committees or just full council meetings), the Standards Commission will consider not only the nature and seriousness of the breach but also when and where it occurred and its impact (including loss or harm) or potential impact. The Standards Commission will outline, in its written decision, the extent of the suspension and the activities in which the Respondent can and cannot engage while suspended.

5.12 In determining the length of any disqualification, the Standards Commission will also consider, and give weight to, the timing and proximity of local government elections. This is in order to ensure that the disqualification is appropriate and proportionate; and that any interference with the Respondent's Article 10 rights is the minimum necessary, while achieving the aims of maintaining standards in public life.

6. PROCEDURE

6.1 If time permits, the Chair of the Hearing Panel will normally state the sanction to be applied and (if applicable) when it will be effective from and when it will end, at the conclusion of the Hearing. The Chair will also provide a brief explanation of the reasons for the sanction and the choice of effective from date. If applicable, the Chair will also confirm that any period of interim suspension previously imposed will automatically end.

6.2 A suspension or disqualification will normally be effective from the day after the date of the written decision, unless otherwise specified at either the Hearing or in the written decision. Any suspension will end at midnight on the end date.

6.3 A full written decision will be sent to the parties and the Chief Executive of the council or devolved public body within 14 days of the conclusion of the Hearing. The written decision will be dated and will be issued by email to the parties and the Chief Executive of the council or devolved public body on that day. The written decision will also be published on the Standards Commission's website within 14 days of the conclusion of the Hearing.

6.4 In cases where the application of Article 10 of the ECHR has been considered, the written decision will specifically state that the Standards Commission has taken into account the need to justify, in terms of Article 10(2), any sanction imposed and will provide a description of how it has assessed the proportionality of the sanction relative to the contravention.

7. APPEALS

7.1 Section 22 of the 2000 Act provides that a councillor or member of a devolved public body who has received a sanction (other than censure) may appeal to the sheriff principal of the sheriffdom in which the relevant council or devolved public body has its principal office. Section 22 states that appeals shall be lodged within 21 days of the:

1. sending of the finding (written decision).
2. imposition of the sanction.
3. imposition of a suspension on consideration of an interim report.

7.2 Where the Standards Commission has imposed a sanction, the Respondent will be provided with a copy of Section 22 when the written decision is issued.