



INTEGRITY IN PUBLIC LIFE

---

## ADVICE FOR MEMBERS OF COLLEGE SECTOR BOARDS

---

|    |                                                                                       |    |
|----|---------------------------------------------------------------------------------------|----|
| 1. | Introduction .....                                                                    | 1  |
| 2. | Standards Commission .....                                                            | 2  |
| 3. | Compliance with the Code .....                                                        | 2  |
| 4. | Understanding Role & Responsibilities .....                                           | 3  |
| 5. | Identifying Potential Conflicts of Interest and Making Declarations of Interest ..... | 5  |
| 6. | Culture of Respect .....                                                              | 8  |
| 7. | Collective Responsibility .....                                                       | 11 |
| 8. | Confidentiality .....                                                                 | 12 |
| 9. | Sources of Information .....                                                          | 13 |

### 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide members of college sector boards with an overview of their responsibilities under the ethical standards framework. It seeks, in particular, to assist such members in recognising and dealing with potential conflicts of interest. This is to help minimise the risk of the impact of any such a conflict on effective governance and to help members ensure they comply with their board's Code of Conduct.
- 1.2 Members have a personal responsibility to observe the rules in their college sector board's Code of Conduct, which is based on a [Model Code of Conduct](#) issued by the Scottish Ministers, with the approval of the Scottish Parliament. This Advice Note is intended to assist board members in interpreting and complying with the provisions in their Code of Conduct. The Advice Note should, therefore, be read in conjunction with that Code. The Standards Commission's [Guidance on the Model Code of Conduct for Members of Devolved Public Bodies](#) and its [Advice Notes](#) also provide advice on how provisions in the Code should be interpreted.
- 1.3 The purpose of the Code is to ensure that all board members use their knowledge and experience to act in their public body's best interests, while adhering to the same, high standards of behaviour. This includes in respect of the matters outlined below.
- 1.4 The Code applies whenever you are acting, or could reasonably be seen as acting, as a member of a college board. This is explained in more detail under Section 3 of this Advice Note.
- 1.5 This Advice Note concentrates on the provisions of the Code that may be the most relevant to members of college sector boards and can cause the most issues in terms of interpretation and

compliance. Some examples have been included, to assist members in relating the provisions to scenarios they may face or situations in which they may find themselves.

## 2. Standards Commission

### 2.1 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 by providing training and answering queries on how their provisions should be interpreted. The Standards Commission's Guidance on the Model Code can be found at:  
<https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>  
The Standards Commission's Advice Notes and other training material (including videos, presentations and e-Learning modules on the Code) can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources>
- adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to determine the sanction to be applied.

### 2.2 Complaints about potential breaches of the Codes of Conduct by councillors and members of devolved public bodies are investigated by the Ethical Standards Commissioner (ESC). Following the completion of an investigation, the ESC will submit a report to the Standards Commission.

### 2.3 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.

### 2.4 The Standards Commission holds Hearings to determine whether there has been a breach of their respective Codes of Conduct by the councillor or member. If, having considered the evidence led and submissions made at the Hearing, the Standards Commission's Hearing Panel concludes, on the balance of probabilities, that a breach of the Code occurred, it will then determine the sanction to be applied. The sanctions available to the Standards Commission are censure, suspension and disqualification.

### 2.5 In the case of a member of a college sector board (a) who is also an employee; or (b) who is an *ex officio* member (such as the college principal), on receipt of a report from the ESC, the Standards Commission shall send the report to the public body in terms of Section 24 of the 2000 Act.

## 3. Compliance with the Code

### 3.1 All public bodies (including college sector public bodies) listed at Schedule 3 of the 2000 Act should ensure that appropriate training on the ethical standards framework, the Model Code of Conduct, and the guidance issued by the Standards Commission is provided to its board members. This includes ensuring training is provided as part of a member's induction and on a regular basis thereafter.

### 3.2 It is, however, a member's personal responsibility to ensure that they comply with the provisions in the Code. Members are also expected to contribute to the promotion and maintenance of high standards of conduct by ensuring they lead by example. Members should adhere to the key principles of public life (which are outlined in Section 2 of the Code) and should encourage their colleagues to do so. Members should note that a breach of the Code can have an impact not just on them as individuals but also on the reputation of, and public confidence in, their public body.

- 3.3 Members can seek advice on the Code, or any other aspect of the ethical standards framework, from the Standards Commission at any time. The public body's Chair and its Standards Officer can also provide advice and support to members on the interpretation and application of their Code. The Standards Commission's Advice Note on the Role of a Standards Officer provides information on a Standards Officer's role and responsibilities, within the ethical standards framework, and the duties they may be expected to discharge. These can include ensuring that appropriate training is given to board members on the ethical standards framework, the public body's Code of Conduct and the Standards Commission's Guidance.
- 3.4 It should be noted that the Code of Conduct applies in all situations, and at all times, where members are acting as a board member of the college sector public body, have referred to themselves as a member or could objectively be considered to be acting as a member. This can include when they are using social media. In determining whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, would reasonably consider that the individual was acting as a member of the board at the time of the events in question.

An example of where the Code might apply could be where a member has posted disrespectful comments about the Minister responsible for further education. Even if the member's social media account was marked as personal and they had not referred to their board role in the biography section, they still could be objectively considered to be acting in their capacity as a member if, for example, the account contained posts relating to the college or board business, or even general further education related issues.

A further example of where the Code might apply could be where a member, when presenting at an external event, made reference to their role on the board and publicly criticised the college principal's performance.

#### 4. Understanding Role & Responsibilities

- 4.1 College sector boards comprise of individuals who are appointed, elected or nominated to the board in different ways, including members who are elected or nominated to the board by virtue of them being a member of staff, a student or a member of a trade union. In addition, college principals are *ex officio* members of their boards (i.e. members by virtue of their position as principal).
- 4.2 Members should recognise that the reason that college sector boards are comprised of individuals with different backgrounds, knowledge and experiences is to ensure diversity of thought and to ensure that input from, and the perspectives of, all key stakeholders are considered in any decision-making.
- 4.3 Members should ensure that they understand, respect and take account of differences in each other's backgrounds, knowledge and experiences, so these do not become a barrier to progress and to the effectiveness of the board itself. Doing so also helps make sure matters are discussed in a respectful and constructive manner that, in turn, helps the public body to work effectively.
- 4.4 Members should be clear, nevertheless, that as members of college sector boards, they are required to act in the best interests of the public body, as opposed to the interests of any individual constituency from which they have been appointed, nominated or elected. Such members need to be aware of their obligations to the board and reconcile these with their obligations to their constituency. While such members can raise matters from the perspective of their constituency, they should not promote the interests of, or lobby on behalf of, the constituency when sitting as a member of a college sector board. They are not expected to report back to their constituencies the work and discussions of the board, unless specifically authorised to do so by the public body.

- 4.5 Members are responsible for overseeing their public body and scrutinising performance to ensure that they are being properly run, with all funds being used appropriately and in accordance with 'best value' principles. Staff, student and trade union board members can inform the board about their constituency's view, policies and priorities and can highlight the potential impact of any decisions. However, their role on the board is not to act as a delegate or to be an advocate for any particular group or constituency. Instead, they are required to act in the best interests of the public body overall when contributing to discussions and when making decisions.
- 4.6 It is important to note that the duty to act in the best interests of the public body does not prevent a member from bringing forward relevant experiences or perspectives from any constituency from which they have been appointed, nominated or elected. Such input is appropriate, provided that decisions are ultimately made independently and on the basis of all relevant information and evidence.
- 4.7 In order to maintain public confidence, it is essential that members not only make decisions, but are seen to be making decisions, both in the best interests of the public body and based on the information provided by employees and matters discussed during any discussion at the board meeting in question. Members should not make or be seen to be making decisions based solely on the interests of any constituency (including any organisation, body or group of which they might be or reasonably be considered as representing).
- 4.8 There is an important distinction between a member gathering views to inform their perspective and independent judgment (which is appropriate) and seeking instructions from an outside constituency or body about how to vote (which is not allowed).
- 4.9 This does not mean members are required to support every proposal or should avoid challenging recommendations made. Challenging decisions with evidence, asking questions for purpose of scrutiny, and highlighting the potential impact on constituents and service users is an important part of acting in the best interests of the public body, because they help the board make better and informed decisions. It should also be noted that it may be that members reach different conclusions about what constitutes the best interests of the public body and best value, while still exercising independent judgement.
- 4.10 The requirement to act in the interests of the public body and to maintain their independence as a board member means members could be required to make decisions that could potentially be inconsistent with, or diverge from, the priorities or potential aims of any constituency from which they have been appointed. This requirement applies both within the boardroom and outside it. No outside body, organisation, or group is entitled to direct how members vote or to hold them accountable for their voting decisions. If members experience pressure of this kind, they should seek support from the Standards Officer or the Chair.
- 4.11 It is important for boards to ensure good governance and accountability in respect of both finance and performance. It is essential, therefore, that members have clear understanding of the strategic aims, roles and responsibilities of the public body of which they are a member, and the requirement to act in its best interests when serving as a member of its board at any given time.
- 4.12 As some members are on the board by virtue of their nomination, election or appointment in another role, the potential for conflicts of interest and associated risks to effective governance and scrutiny can arise. Members may also have personal interests which can cause conflicts. More information on how to identify and manage such conflicts is outlined in the section below.

## 5. Identifying Potential Conflicts of Interest and Making Declarations of Interest

- 5.1 What conflicts of interest are:** Conflicts of interest are not about wrongdoing. They arise when a member, or any person or body with whom they are associated, has a connection to a matter the public body is considering and that connection could reasonably be seen as having the potential to affect their judgement. The key is to identify any potential conflict of interest as early as possible and to manage them openly and appropriately. Following the **three-stage test** outlined in the Code, as described below, helps members do so.
- 5.2** The public must have confidence that members are taking decisions in the public interest and not for any other reason. It is essential, therefore, that members are transparent about any interests which could influence, or could be considered as being likely to influence, their discussion and decision-making as a member of the college sector board. A failure to identify and manage appropriately any conflict of interest that arises will be a breach of the Code. It can also have a detrimental impact on the public body's governance and scrutiny arrangements, as well as its reputation.
- 5.3** In most cases the duty under the Code to act in the public interest will align with a member's duty to act in the best interests of the public body. Where there is a conflict, however, members should assess whether they are required to declare an interest and whether they should withdraw from the discussion and decision-making.
- 5.4** Members must ensure that they can identify potential conflicts of interest. These will include not just the potential for competing interests between the public body and any constituency from which the member has been appointed, but also between them and any other individual, body, group, organisation to which they have a connection.
- 5.5** Members should ensure they are familiar with the three-stage test for identifying and declaring interests under the Code.



- 5.6 Stage 1 – CONNECTION:** For each particular matter members are being asked to consider as a board member, the member must first decide whether they have a connection to that matter. A connection is any link between the matter being considered and the member, or a person or body with whom they are associated. A connection also includes anything that has been recorded on the member's register of interests.
- 5.7** It should be noted that a subject that may apply to a large proportion of the general public would not generally be considered to give rise to a connection for the purposes of the Code. Examples would be being a taxpayer or being in receipt of a state pension or universal credit.
- 5.8** The Code also does not restrict the ability of a public body to benefit from the knowledge and experience of its members. Having knowledge or experience of a matter that is to be considered by a public body is not necessarily a connection.

For example, a board member's knowledge and experience as an IT specialist would not be considered a connection, if an item to be considered by the board was the introduction of a new college wide IT system.

- 5.9 If a member has identified that they have a connection to a matter to be considered by their board, they must move on to stage two.
- 5.10 **Stage 2 – INTEREST:** In considering whether to declare an interest in any item to be considered by the board, members must consider the objective test at paragraph 5.5 of the Code. The objective test is whether a member of the public, with knowledge of the relevant facts (being the matter to be discussed and the nature of the connection) would reasonably regard the connection to the particular matter as being so significant as to be likely to influence the member's discussion or decision-making.
- 5.11 It should be noted that having a view in advance on a matter to be considered at a meeting (and discussing such a view with colleagues, employees or service users) would not in itself create a personal conflict. Members are entitled to express views and opinions and doing so before a meeting would not in itself create a declarable interest.
- 5.12 If the objective test is met and they have a declarable interest, the member must move on to stage three.
- 5.13 **Stage 3 – PARTICIPATION:** Members must declare any relevant interest and withdraw from the room while the item is being considered, discussed, and voted upon. It is not sufficient for the member to retire to the back of the room or any public gallery. If the meeting is being held online, members should retire to a separate breakout room or leave and re-join after the discussion on the matter has concluded. It is not sufficient for the member to turn off their camera and / or microphone for the duration of the matter. The requirement to leave the room (whether in-person or online) is to avoid giving rise to any perception that the member remains in a position to influence the outcome of the deliberations on the item.
- 5.14 Members should consider making a transparency statement if they have a connection to a particular matter to be discussed but, having applied the objective test, they do not consider it would amount to a declarable interest. This can be helpful if they are concerned that members of the public may not be aware of the relevant facts. In such cases, the member should use the following wording: "I have a connection to this item by reason of... However, having applied the objective test I do not consider that I have an interest to declare. This is because...".
- 5.15 Members appointed, nominated or elected from a particular constituency must be mindful that the requirement for them to act in the interests of the board while carrying out their duties as a member of it may require them to make decisions that could potentially be inconsistent with, or diverge from, the priorities or stated aims of their constituency.

An example of a connection could be where the board is being asked to approve the overall annual budget. A staff board member is likely to have a connection, given their salary will be paid from the overall budget. It is unlikely, however, someone with knowledge of the relevant facts (being the overall scope of matter being discussed) would reasonably regard the connection to the particular matter as being so significant as to be likely to influence the member's discussion or decision-making. That is because a specific individual's salary would be so insignificant in terms of the overall budget and, therefore, would be unlikely to have any influence on how the member considered the matter.

It is likely that staff and trade union board members could also have a connection if the board was being asked to agree a voluntary severance proposal as, again, any such decision could affect them personally. Any such members would be required, therefore, to apply the objective

test to decide whether their connection could amount to a declarable interest. In doing so, a 'relevant fact' may be the specific matter the board is being asked to determine. If, for example, it was simply being asked to agree that a voluntary severance scheme should be introduced, then the members concerned may consider that their connection would not be reasonably considered to be so significant as to be likely to influence their discussion or decision-making. If, however, the board was to consider the terms for voluntary severance, such as who would be eligible and how many weeks' salary would be offered, and a member was potentially eligible to apply, then they may consider that their connection would reasonably be considered as sufficiently significant as to be likely to influence their discussion or decision-making. This could be the case even if the scheme was to apply to large proportion of the college's staff.

Another example of a connection could be if the board was being asked to consider a restructuring proposal being presented by the Executive Team. Staff, student and trade union members would be likely to have a connection, as any decision may have implications for them personally (for example, it may involve changes to the department in which they work or study). The members would be required, therefore, to apply the objective test to decide whether their connection to the particular matter being considered by the board could amount to a declarable interest. It should be noted that the test is not whether the member feels they can make any decision objectively and on its merits; the test is one of how others may perceive their ability to do so. If the objective test is met, the member concerned would have to declare the interest and leave the room. They would not be allowed to take part in the discussions or any voting on the matter.

An example of where a member might have a personal connection that could, in turn, amount to a declarable interest could be where their partner was due to enrol as a student and, as a member of the college's Finance and Resources Committee, they were being asked to consider the annual Tuition Fee Schedule.

A further example of a declarable interest could be where a board was being asked to appoint a new non-executive member, and a member was friends with the nominated candidate. If, however, the member was not friends with the candidate, but merely knew them from working for the same organisation several years ago, it may be that the objective test would not be met. In that scenario, the member could choose to make a transparency statement explaining why they did not consider the objective test was met. Such a statement could be helpful for reasons of transparency and also to prevent a potential complaint being made if the member was concerned that others present or members of the public might not have knowledge of the relevant facts (being that they had only known the nominated candidate on a professional basis and had not had contact with them for some time).

- 5.16 In terms of being a member of an outside body, the Code states that members may also have a connection where they have a personal conflict, by reason of either their actions or their legal obligations.

An example of where a member may have a personal conflict, and therefore a declarable interest, by reason of their actions could be if the member, having previously made critical comments in the press about the Scottish Funding Council's evaluation framework, was due to take part in a decision to seek additional funding for a capital project.

An example of where a member may have a personal conflict as a result of legal obligations would include where they are a charity trustee, and the board is being asked to make a decision on whether the college should partner with the charity. Even if it appears, on the face of it, that such a partnership may benefit both organisations, the member's obligation, under the Charities and Trustee Investment (Scotland) Act 2005, to act in the best interests of the charity may conflict with their role as a member and the requirement for them to act in the best interests of the college.

- 5.17 Members should not rely on or expect employees or colleagues to remind them to make declarations even if they think (or know) that others present are aware of their interests, including that they are an elected or nominated member from a particular constituency. It is solely a member's own personal responsibility to make declarations of interest as required. If a member is in any doubt at a meeting, or when reviewing the agenda and papers before a meeting, they should ask for help from the Chair, Standards Officer or governance professional. It should be noted that the Code requires members to disclose or declare their personal interests both in formal and informal dealings with employees and other members and not just in formal board or committee meetings.
- 5.18 If the Chair or other board members consider that a fellow member has a declarable interest that has not been declared, they should consider raising the matter with the fellow member and advise them that they are concerned the member may be in breach of the Code. If the individual then refuses to declare the interest and leave the room, and the Chair is concerned about the potential impact of them participating, in terms of the propriety of the decision or the potential risk to the reputation of the board or college, they may wish to seek advice from the Standards Officer about whether the matter should be continued and / or for their advice to be recorded. It should be noted that a failure to listen and adhere to advice could be an aggravating factor, should a formal complaint be made, and a breach of the Code subsequently be found by the Standards Commission.
- 5.19 Members should consider whether agendas for meetings raise any issues of declaration of interest and, if so, they should make their declaration of interest as early as possible at a meeting where that interest arises. If a member only identifies the need for a declaration of interest to be made when the discussion on a particular matter is underway, they should declare the interest as soon as they realise it is necessary.
- 5.20 Members should begin their statement with the words "I declare an interest" and identify the item or items of business to which it relates. Members do not need to give a detailed description of the interest, but their statement must contain sufficient information to enable those present to understand the nature of it.

## **6. Culture of Respect**

### **Respect, Bullying and Harassment**

- 6.1 The Code makes it clear that the requirement for members to treat everyone with courtesy and respect includes in person, in writing, at meetings and when they are online. The conduct expected of members online is no different to the conduct they should employ in other methods of communication, such as face-to-face meetings and letters.
- 6.2 In dealing with colleagues, employees and members of the public, members should always consider both what they are expressing and the way they are expressing it. Members should also consider how their conduct could be perceived. Members should be able to undertake a scrutiny role and make contributions to discussions and debates in a constructive, respectful, courteous, and appropriate manner without resorting to personal attacks, being offensive, abusive or unduly disruptive.
- 6.3 Before commenting or posting on social media, members should consider very carefully whether the Code would apply and, if so, they should understand the immediate and permanent nature of any comment or post they are about to make. Members should bear in mind the potential impact on the reputation of the public body and principle of collective responsibility. Members should also be careful that they are not disclosing any confidential information.

- 6.4 Members should note that ‘liking’, ‘reacting’, ‘tagging’, re-posting and sharing comments or posts, or publishing links to other sites could be seen as supporting the original opinion, comment or information, including information on other accounts or sites. The Standards Commission has produced an Advice Note for Members of Devolved Public Bodies on the Use of Social Media that provides more guidance on factors members should consider when using social media.
- 6.5 Members must treat all individuals with courtesy and respect when carrying out their duties as a board member. Members must not participate in, or condone, acts of harassment, discrimination, victimisation or bullying. This can include, but is not limited to:
- unwelcome physical, verbal or non-verbal conduct;
  - intimidatory behaviour including verbal abuse or the making of threats;
  - making someone’s working life difficult;
  - disparaging, ridiculing or mocking comments and remarks;
  - deliberately excluding an individual from conversations, work or social activities, in which they have a right or legitimate expectation to participate; and
  - ignoring a fellow member’s contribution to a debate, talking over them or being dismissive of their views.
- Further information can be found in the Standards Commission’s Advice Note for Members on Bullying and Harassment.
- 6.6 As members are in a position of trust and power, others may bring inappropriate behaviour to their attention. Members can assist by becoming familiar with what is meant by harassment, discrimination, victimisation and bullying and the impact these can have on individuals or groups.
- 6.7 If a member is a witness to any acts of bullying, harassment, discrimination or victimisation, they should encourage the victim to seek support and assistance, referring, where appropriate, to their organisation’s applicable policies (such as any on safeguarding or wellbeing), and make it clear that they will offer them assistance and provide evidence if they decide to make an informal or formal complaint. Members should challenge inappropriate behaviour as it happens and consider raising the issue with the Chair or submitting a formal complaint to the ESC.
- 6.8 As noted above, the composition of college sector boards allows for different voices and stakeholder input to be considered in decision-making. Members can demonstrate they understand the value of the different perspectives by ensuring that they listen to, and take account of, the views of other members. Members are perfectly entitled to disagree with their colleagues; they are simply required to express any opposing views in a respectful manner. If a member wants to say why they disagree, they should focus on the issue and not the individual.

#### **Relations with employees and distinguishing between strategic and operational matters**

- 6.9 Members should be aware of the inherent influence their role brings and ensure that they are demonstrating respect for employees and are encouraging their colleagues to do the same.
- 6.10 Members should also be aware of the role that employees play and ensure they are not compromising this by behaving in a manner that could result in employees feeling threatened or intimidated, which in turn could prevent them from undertaking their duties properly and appropriately. Members must not bring any undue influence to bear on an employee to take a certain action, particularly if it is contrary to the law or the applicable college’s policies and procedures.
- 6.11 Members have a right to high quality information and are entitled to seek further information to enable them to undertake their scrutiny and strategic objective setting roles effectively. Members are entitled to challenge employees and colleagues but must not do so in a personal

or offensive manner. Members should note that the Code states that any issues relating to behaviour, performance or conduct of an employee should be raised in private with the appropriate senior manager. If a member has concerns about the behaviour, performance or conduct of an employee, they may wish to consider discussing these with the Chair in the first instance, with a view to trying to establish if these concerns are shared by any other members and / or if the matter has already been raised with the appropriate senior manager.

- 6.12 As a general rule, the role of members is to scrutinise and hold senior 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.
- 6.13 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 or inappropriately involved, either individually or as a board, on matters that are operational in nature.
- 6.14 As noted above, members have a right to receive good quality information from employees on which to base their decisions and undertake their scrutiny role. This information should be proportionate, balanced, comprehensive and understandable. Members 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. Members should be careful, however, about the level of detail they are seeking. Members should always question whether the amount and nature of the information they are seeking is necessary and proportionate.
- 6.15 If members do not consider they are receiving the information they require to assure themselves that they are in a position to make informed decisions, they should raise the issue with the Chair.
- 6.16 Members should also be aware that if they are repeatedly raising the same issue or asking repetitive questions about operational matters, it is likely they are being, or will be perceived as being, directive and becoming inappropriately involved. It may be helpful in such a situation for the member in question to ask for a separate discussion with the Chair to see if they can help resolve the matter.
- 6.17 Members may well be approached by service users for assistance (this could be someone they do not have a relationship with but could also potentially be a friend or family member). Members can direct the service user to the appropriate employee or team. They can also raise the enquiry with the relevant employee or team and can seek information on progress or ask questions about how a service has been delivered on behalf of a service user. Members must be careful, however, to avoid straying into operational management by, for example, directing employees to take a certain course of action or prioritise the needs of a specific service user. Members should be mindful that they are in a position of influence and that employees may feel pressured into responding to them as a matter of priority, even if the enquiry is not urgent.
- 6.18 Members should also be aware of the distinction between a request for help and a complaint; and, in the latter case, should recommend that the service user makes use of the public body's formal complaints procedure. Members should be careful if they are approached by employees of the college for help and should decline to get involved in anything which relates to their status as an employee (such as performance or attendance management).

Examples of inappropriate involvement are where a member:

- seeks to become involved in the drafting of an internal process document being put in place to support a wider policy;

- becomes involved in an individual staffing matter;
- tries to direct employees to take a certain action in respect of an individual student (this could be someone who has approached them for assistance or someone with whom they already have a relationship); and / or
- insists on attending an operational meeting with an outside body, or an internal employee working group where members are not normally present.

Further examples of where a member can become inappropriately involved in operational matters include when they try to seek additional information from employees on a particular area of college activity in which they have an interest or where, as an elected or nominated member, they seek information about something that is being planned by management. It should be noted that members do not necessarily have a right to request executive information over and above that which the board, as a collective, requires to see in order to be able to undertake its strategic objective and scrutiny roles, and make informed decisions. Members should ensure that any additional information is sought through the appropriate channel, which will usually be when a matter is being discussed at a board or committee meeting.

- 6.19 Further information and examples of areas where members may inappropriately seek to get involved in operational matters can be found in the Standards Commission's Advice Note for Members on Strategic and Operational Matters.

## 7. Collective Responsibility

- 7.1 The Code requires members to respect the principle of collective responsibility for decisions taken by the board as a whole, once made. This provision is not intended to inhibit discussions or constructive challenge by members in matters of decision-making and corporate responsibility. Members may be required to take decisions on difficult issues and, when doing so, will often have genuine, and strongly held, differences of opinion. Once issues are thoroughly debated, however, decisions should be taken and the majority vote should prevail. Members should note that continuing with a conflict, when it has become apparent that other members will not change their minds, can waste time and be demotivating and futile.
- 7.2 Members should bear in mind that while issues can and should be debated robustly, stakeholder confidence in the college can be lost, if they then express division outside the boardroom by, for example, talking to the media or officers or posting on social media. This is because confidence and trust can be eroded if a board is perceived as being divided, with its members criticising each other.
- 7.3 If a member fundamentally disagrees with the decision taken by the board, then they have the option of asking for their concerns or dissent to be recorded in the minutes of the board meeting. If a member remains discontented, they may wish to ask the Chair of the board for a meeting to discuss their concerns. Ultimately, though, if a member's concerns are not resolved to their satisfaction and they cannot accept and support the collective decision of the board, they will need to consider whether it is appropriate to resign.
- 7.4 It should be noted that even if a board member has their dissent from a decision recorded in the minutes of the meeting at which the decision in question was made, they are still bound by the principle of collective responsibility and any confidentiality requirements. This means that when the decision was made public, the member could confirm publicly that they had dissented, since this would be in the minutes and a matter of public record. The member should not, however, say anything that would bring the college or board into disrepute.

Examples of potential breaches of the collective responsibility provision in the Code could include a member making disparaging remarks about or denouncing a decision made by their college in the media.

Another example of where a potential breach could arise could be a situation where a trade union member of a board, who was also the spokesperson for their trade union, was commenting on a decision that the board had been involved in or had made. If the member was, for example, announcing a vote of no confidence in the college board and its management in respect of the decision or was criticising its impact, the member could potentially be in breach of the Code. That may not be the case, however, if the member was merely commenting on the potential impact of the decision on trade union members and made it clear that they were doing so in their capacity as the trade union spokesperson (and that they were speaking on behalf of it, as an entity, and not as an individual).

A further example could be a situation where a staff member of a board was supporting a colleague at an employment tribunal. While the staff member might question a management decision or procedure taken, on behalf of their colleague, they would still be bound by the principle of collective responsibility and should not, therefore, criticise a decision taken by the board (even if they had dissented from the decision when it was made).

## 8. Confidentiality

- 8.1 The Code states that members must not disclose confidential information or information that should reasonably be regarded as being of a confidential or private nature. The Code further states that members are only entitled to use confidential information to undertake their duties as a board member. They must not use such information in any way for personal advantage or to discredit their public body (even if they are of the view that the information should be publicly available).
- 8.2 It should be noted that information can become confidential in a number of ways and, while sometimes the confidential nature of the material will be explicit (for example, if a document is marked 'confidential'), in other cases, it will be clear, from the nature of the information or from the circumstances in which it was provided, that it is confidential.
- 8.3 If a member is also a member of an outside organisation, or is an elected or nominated member, they may have access to information that should not be disclosed to the outside organisation or their constituency. This means that if a member is provided with confidential information, such as information disclosed in a closed or private section of a board meeting, or legal advice obtained by the public body (either from employees or external legal advisers), they should not disclose or release it to any other outside organisation or individual without consent. That remains the case even if the information or decision directly concerns, or could impact upon, that outside organisation or individual. If a member is in any doubt about whether information is confidential, they should seek advice from the Standards Officer or Chair before disclosing it.

Examples of confidential information can include, but are not limited to:

- the content of documents marked as confidential or non-disclosable;
- commercial information such as information relating to a contract or a contractor's business;
- personal or sensitive information, such as information relating to an individual's employment or health;
- information which is confidential as a result of a statutory provision;
- information discussed in closed or private sections of meetings;
- legal advice obtained by the public body (either provided by employees or external legal advisers); and
- information received as a result of a relationship where there is an expectation of confidence, such as between a member and a service user.

An example of where a board member might breach the confidentiality requirements of the Code could be where the board has considered a report containing information in respect of a

tendering exercise and subsequent award of a contract, and information about the award of the contract is then disclosed by the member to a third party after the meeting (and before any public announcement about the contract is made).

A further example could be where a staff, student or trade union member of a board discloses confidential information the board has been discussing about a potential restructuring exercise to their staff colleagues before the senior management team and board have agreed the information should be disclosed to employees. The member could be in breach of the Code even if it is their personal view that the information should be made public, or even if the member knows that their staff colleagues have heard rumours about the potential restructure and are expecting feedback.

- 8.4 It is acknowledged, nevertheless, that the fact that there are staff, student and trade union members on boards means there is an expectation of partnership working with those members' constituencies. It is accepted, for example, that a trade union member may be put under pressure by senior trade union colleagues to disclose any knowledge they may have about a decision made by the board that could have major implications for the trade union. Boards are, therefore, encouraged to be as transparent as possible and to only classify information as confidential in cases where there is a very good reason for it not to be disclosed at that time. Boards should, where possible, determine and make clear how long members will be expected to maintain confidentiality in respect of a particular decision or matter, and should be transparent about their reasoning in this regard.

## 9. Sources of Information

- 9.1 The Standards Commission can provide further advice and support on the Code and how it should be interpreted. The Standards Commission's contact details are:

Email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)

Telephone: 0131 346 6666

- 9.2 The Standards Commission has produced Advice Notes for Members on the various topics, including:

- The Use of Social Media
- How to Declare Interests
- The Role of the Standards Officer
- Conduct at Online Meetings
- Bullying and Harassment
- Distinguishing between Strategic and Operational Matters
- Relations Between Members and Employees

The Advice Notes can be found on the Standards Commission's website at:

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

- 9.3 Further sources of information that members may find to be of assistance include:

- Scottish Government's "On Board" Guidance: <https://www.gov.scot/publications/board-guide-members-statutory-boards-2/pages/5/>
- The Scottish Government's Governance Hub: <https://governancehub.scot/>
- The College Development Network's Code of Good Governance for Scotland's Colleges and its Guidance for Board Members in the Public Sector: <https://www.cdn.ac.uk/governance-key-documents/>
- Ministerial Guidance for College Sector Board Appointments: <https://www.gov.scot/publications/college-board-appointments-guidance/>

- The Office of the Scottish Charity Regulator’s Guidance and Good Practice for Charity Trustees: [https://www.oscr.org.uk/media/3621/v10\\_guidance-and-good-practice-for-charity-trustees.pdf](https://www.oscr.org.uk/media/3621/v10_guidance-and-good-practice-for-charity-trustees.pdf)

