



INTEGRITY IN PUBLIC LIFE

## ETHICAL STANDARDS FRAMEWORK IN SCOTLAND

### 1. Introduction

- 1.1 The Standards Commission for Scotland (Standards Commission) welcomes the opportunity to submit evidence to the Committee on Standards in Public Life's review on ethical standards in local government in England. We hope the following submission is of assistance to the Committee for comparative purposes.
- 1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) provided a framework to encourage, and where necessary, enforce, high ethical standards in public life. The 2000 Act established the Standards Commission for Scotland and the post of Chief Investigating Officer.
- 1.3 The 2000 Act provided for the Councillors' Code of Conduct which contain the principles and rules governing the conduct of councillors across all Scotland's local authorities, and also a Model Code of Conduct for members of devolved public bodies upon which devolved public bodies base their individual Members' Codes. These Codes are based on nine key principles of public life, comprising of the seven principles identified by the Committee on Standards in Public Life (selflessness, integrity, objectivity, accountability, openness, honesty & leadership); and a further two identified by the Scottish Government (duty and respect).
- 1.4 The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 provided for the establishment of the Commissioner for Ethical Standards in Public Life (CESPLS) who now is responsible for the investigating functions previously undertaken by the Chief Investigating Officer.
- 1.5 The 2000 Act includes, at Schedule 3, a list of public bodies covered by the ethical standards framework. An up to date list of bodies covered by Schedule 3 can be found at: <https://www.legislation.gov.uk/asp/2000/7/contents>.
- 1.6 The Scottish Parliament approved one Code of Conduct which applies to all councillors elected to the 32 Local Authority areas within Scotland.
- 1.7 Each designated devolved public body is also obliged to have a Code of Conduct for their appointed members, to reflect the functions and characteristics of the individual body. These individual Codes are approved by Scottish Ministers and are adapted from the Model Code, which was approved by the Scottish Parliament.
- 1.8 Codes of Conduct currently apply to the following categories of public bodies:

- National Bodies e.g. the Scottish Legal Aid Board
- Regional Bodies e.g. Highlands and Islands Enterprise
- National Health Service Boards
- Health & Social Care Integration Joint Boards
- Further Education Colleges
- National Parks
- Regional Transport Partnerships
- Community Justice Authorities

1.9 The Standards Commission's remit is to encourage high standards of behaviour by councillors and those appointed to boards of devolved public bodies. We do that through the promotion and enforcement of the Codes of Conduct. Our work in terms of promotion involves:

- issuing guidance, advice notes and professional briefings;
- conducting training events and workshops;

which are aimed at improving awareness and understanding of the provisions within the Codes. We also answer queries on how the provision should be interpreted.

1.10 The Standards Commission's enforcement work involves adjudicating on alleged contraventions of the Codes of Conduct, and where a breach is found, applying a sanction.

## **2. Investigation and Adjudication Processes**

2.1 Anyone can make a complaint that a councillor or member of a devolved public body has breached their respective Code of Conduct. Such complaints are investigated by the CESPLS and are adjudicated upon by the Standards Commission. The Standards Commission and CESPLS are separate and independent, with neither organisation having an oversight function in respect of the other. The reason for, and benefit of, the separation of functions between the two distinct organisations is to ensure impartiality, fairness and objectivity in the decision-making process.

2.2 The CESPLS is also responsible for investigating complaints that Members of the Scottish Parliament (MSPs) have breached their Code of Conduct. Where appropriate, the CESPLS will report on the outcome of such an investigation to the Scottish Parliament.

2.3 In addition, the CESPLS regulates the way appointments are made to the boards of Scotland's public bodies by:

- publishing a code of practice to be followed when making non-executive appointments to the boards of public bodies;
- examining the practices used during appointment rounds with a view to ensuring they comply with the code of practice;
- investigating complaints about the public appointments process; and
- monitoring appointments with a view to ensuring they are made fairly and openly and that everyone who may be interested in an appointment has the opportunity to apply.

- 2.4 If, following investigation of a complaint about a councillor or member of a devolved public body, the CESPLS considers there may have been a breach of a Code of Conduct, he will report on the outcome of his investigations to the Standards Commission. The Standards Commission does not have the power to investigate a complaint unless it has been referred by the CESPLS.
- 2.5 On receipt of a report from the CESPLS, the Standards Commission must, in terms of the 2000 Act, decide whether to:
- direct the CESPLS to carry out further investigations;
  - hold a Hearing; or
  - take no action.
- A policy outlining the factors the Standards Commission will consider when making such a decision on a report referred by the CESPLS can be found on our website and includes factors such as whether, in the circumstances, it is in the public interest and proportionate to hold a Hearing.
- 2.6 If the Standards Commission decides to hold a Hearing to determine whether a councillor or member (the Respondent) has breached their relevant Code of Conduct, the Standards Commission will usually do so in public and in the locality of where the Respondent is based in their capacity as a councillor or member.
- 2.7 Section 17 of the 2000 Act enables the Standards Commission to decide what procedures to follow at any Hearing. Members of the Standards Commission agreed the content of the Hearing Rules, which can be found at: <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>. The aim of the Hearing Rules is to ensure that Hearings are managed fairly, efficiently and in an open and transparent manner. The Hearing Rules state the actions the Standards Commission will take after a decision is made to hold a Hearing. They also outline the procedures to be followed by anyone who attends, or is a party to, a Hearing.
- 2.8 In terms of the Hearing Rules, the Hearing Panel can decide to hold a Hearing or part of it in private, if it is satisfied that a decision to exclude the public causes no prejudice or unfairness to either party; and the particular circumstances of the case outweigh the public interest in holding a public Hearing.
- 2.9 The Hearing Panel comprises of three members of the Standards Commission. The CESPLS will present evidence and/or make submissions at the Hearing about why he considers the Respondent has contravened the relevant Code. The Respondent is entitled to attend or be represented at the Hearing and can also present evidence and make submissions. Both parties can call witnesses who give evidence under oath or after making an affirmation. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the Respondent. If the Hearing Panel decides that a Respondent has breached the relevant Code of Conduct, it will then impose a sanction. The Hearing Panel's decision will normally be read out at the Hearing, with a more detailed written decision then

being issued to the parties and published on the Standards Commission's website within 14 days.

- 2.10 The 2000 Act obliges the Standards Commission to impose a sanction if a Hearing Panel has found there has been a contravention of a Code of Conduct. The sanctions available to the Hearing Panel are to censure, suspend (for up to one year) or disqualify the Respondent (for up to five years) from being a councillor or a member of the public body in question (disqualification can also be applied in respect of any other devolved public body of which the member is a member). The Hearing Panel, when imposing a suspension on a member of a devolved public body, can also direct that any remuneration or allowance is not paid or is reduced.
- 2.11 The Respondent, council and devolved public body concerned have the right to appeal to the Sheriff Court against a finding where a suspension or disqualification has been applied. Such an appeal can be made on the following grounds:
- that the finding was based on an error of law;
  - that there was procedural impropriety in the conduct of any Hearing held;
  - that the Standards Commission has acted unreasonably in the exercise of its discretion; or
  - that the finding was not supported by the facts found to be proved.
- An appeal can also be made that the sanction imposed was excessive; and (if the sanction was suspension) that the Standards Commission acted unreasonably in the exercise of its discretion.
- 2.12 The Standards Commission held 12 Hearings in 2017/18 (from 1 April 2017 to 31 March 2018). A summary of these Hearings is attached at Annex A. All 12 Hearings were held in public. In 2017/18, the average time from receipt of a report from the CESPLS to the issuing of written Hearing decision was 12 weeks.

### **3. The Codes of Conduct**

- 3.1 The Codes of Conduct are based on the nine key principles, which are included within the Codes for guidance. Councillor and members of devolved public bodies should ensure that they have regard to, and follow, these principles. However, a breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code of Conduct.
- 3.2 Both the Councillors' Code of Conduct and the Model Code of Conduct for Members of Devolved Public Bodies can be found on the Standards Commission's website at: <http://www.standardscommissionscotland.org.uk/codes-of-conduct>. The Codes contain provisions concerning:
- 1) General conduct. These include provisions:
    - obliging them to respect their colleagues, the public and officers;
    - obliging them to comply with rules concerning remuneration, allowances and expenses;
    - on the acceptance of gifts and hospitality;

- concerning confidentiality requirements;
  - on the use of the Council or devolved public bodies facilities;
  - on appointments to partner organisations; and
  - on dealings with and responsibilities to, the council or devolved public body.
- 2) The registration of interests. These include:
- Remuneration;
  - Related Undertakings;
  - Contracts;
  - Election Expenses;
  - Houses, Land and Buildings;
  - Gifts and Hospitality; and
  - Non-financial Interests.
- 3) The declaration of interests. These include:
- Financial Interests;
  - Non-Financial Interests; and
  - Financial Interests of Other Persons.

4) Lobbying and Access

In addition, the Councillors' Code contains:

- 5) Provisions on Taking Decisions on Quasi-Judicial or Regulatory Applications and
- 6) A Protocol for Relations between Councillors and Employees of Councils.

- 3.3 The current Councillors' Code of Conduct was issued on 1 December 2010 and the current Model Code of Conduct was issued on 1 February 2014.
- 3.4 The provisions on the registration of interests are supplemented by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, which state that any interests that require to be registered must be so registered within one month after the date of any declaration of acceptance or date of appointment. Any change must also be registered within one month of it taking effect.
- 3.5 The Standards Commission is provided with specific powers, under both Codes, to grant dispensations, on receipt of an application, in relation to the existence of financial and non-financial interests, which would otherwise prohibit the councillor or member from taking part and voting on a matter coming before them.
- 3.6 The Standards Commission has granted dispensations to both individuals and to categories of individuals. A recent example was one granted to councillors who are appointed by their Council to be a member of a Health & Social Care Integration Joint Board, which is established under the Public Bodies (Joint Working) (Scotland) Act 2014. This is so councillors, as voting members of the Integration Joint Board, do not have to declare their interest when discussions on general health and social care issues arise and can participate in discussions and voting on these issues. The Standards Commission has also granted a similar dispensation under the Model Code for voting members of Integration Joint Boards who are members of Health Boards.

- 3.7 When determining an application for a dispensation, the Standards Commission will consider whether it would be in accordance with both the spirit and intent of the Code to grant it; and whether sufficient reasons for the request have been provided, including what the effect or consequence would be if it was not granted.

#### **4. Issues to Note**

- 4.1 The following issues may be of interest to the Committee.
- 4.2 Private / Public Capacity: A councillor or member of a devolved public body must be acting in that capacity or be reasonably understood / perceived to be doing so to be covered by the ethical standards framework and Codes of Conduct. They would not be covered if they are clearly acting in a private capacity, no matter how egregious the conduct / even if it would clearly bring the council or body into disrepute. For example, if a councillor swore at a member of the public while attending a Council meeting, his or her conduct would be covered by the Code. If, however, they did so while using Council facilities (such as a gym) in a private capacity, it is unlikely the Code would apply.
- 4.3 This distinction can sometimes be difficult to draw; for example, if a councillor was disrespectful to a neighbour during a conversation about council services. In particular, the distinction can sometimes be blurred when councillors or members are using social media. The Standards Commission has found breaches of the Codes of Conduct in respect of social media postings where the Respondents concerned are clearly identifiable as councillors or members from the posting or from the social media account itself.
- 4.4 Right to Freedom of Expression: The Standards Commission has found the exercise of balancing the right to freedom of expression that councillors and members enjoy under Article 10 of the European Convention on Human Rights ECHR (particularly in light of the enhanced protection afforded to politicians), with provisions in the Codes of Conduct to be somewhat difficult (particularly those concerning confidentiality, respect and relations with officers). While the Standards Commission cannot and would not want to restrict robust political debate and scrutiny, it is mindful that the Codes contain provisions that are intended to protect officers from offensive and abusive verbal attacks or unwarranted comments that prevent them from performing their duties; to prevent the disclosure of information received in confidence; and to ensure public confidence in the council, devolved public body or democracy itself is not undermined.
- 4.5 In order to be as transparent and consistent as possible in its decision-making, the Standards Commission has produced advice notes on how it will deal with this balancing act at Hearings. The advice notes can be found at: [www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings](http://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings).

- 4.6 Remit: The Standards Commission does not have any remit in respect of complaints made about MSPs (or MPs), who are subject to different Codes of Conduct and potential sanctions. This means that there can be very different outcomes for councillors / members and MSPs for analogous behaviour. It is arguable that this may inhibit understanding of, and confidence in, the overall ethical standards framework.
- 4.7 As noted above, a breach of one or more of the key principles does not in itself constitute evidence of a breach of a Code of Conduct. For a complaint to be investigated it has to contain an allegation of a contravention of a specific paragraph or paragraphs of a Code. Again, it is arguable that this may undermine confidence in the framework given that members of the public are entitled to have an expectation that councillors and members of devolved public bodies should act in accordance with the principles (and may assume they will face sanction if they fail to do so).
- 4.8 Complaint Motivation: The Standards Commission accepts that complaints can often be made purely for political purposes, which can lead to the perception that the ethical standards framework is being used for political advantage. We consider, however, that a breach of a Code is exactly that, regardless of the motives of the complainer.
- 4.9 Complex Provisions and Personal Responsibility: The Standards Commission is of the view that some of the provisions in the Codes (particularly ones in the Councillors' Code concerning the declarations of interests), are complex and difficult to understand. Councillors and members of devolved public bodies have a personal responsibility to comply with the Codes, which means that they can be found to be in breach, even if they have acted in accordance with advice provided by officers. The Standards Commission considers the fact that it is required to issue guidance and advice, and to answer queries from those covered by the Codes and senior officers on how to interpret provisions, is indicative of this. While training is normally provided by the Council or devolved public body as part of any induction process, the Standards Commission accepts that the sheer volume of other material and topics covered at induction may mean it is difficult for councillors and members to keep in mind all information provided.
- 4.10 In addition, recent changes to public sector landscape and the ways that decisions are made and implemented such as the introduction in Scotland of:
- Health & Social Care Integration Joint Boards (which allow NHS boards and local authorities to integrate health and social care services);
  - Regional transport partnerships (which aim to strengthen the planning and delivery of regional transport by bringing together local authorities and other key stakeholders to take a strategic approach to transport in each region of Scotland); and
  - City Region Deals (designed to stimulate economic growth and create jobs in certain geographic areas, primarily by investing fairly significant sums of money, mainly in large-scale infrastructure projects, by bringing together the UK and Scottish Governments, different local authorities and other stakeholders such as private sector partners)

can mean that councillors, in particular, are often appointed or nominated to outside bodies, which are covered by different Codes of Conduct. This gives rise to potential conflicts of interests, which are not easily resolved. For example, a councillor appointed by his or her local authority to a regional transport partnership is expected to act in the interests of the regional transport partnership when acting in that capacity. The councillor is then expected to return to the local authority and vote on planning or regulatory matters that are impacted by decisions taken by the regional transport partnership. Similarly, a councillor appointed by his or her local authority to the local Health & Social Care Integration Joint Board may be involved in budget discussions suggesting, for example, different reductions in services to that proposed by local authority. While, as noted above, the Standards Commission can issue dispensations in order to enable participation in discussions and voting on certain matters, doing so can add further complexity.

- 4.11 Deterrence / Compliance: The Standards Commission has held a disproportionately high number of Hearings about non-party affiliated councillors (compared to the overall number of such independent elected members). It is difficult to identify any specific reason for this, although the Standards Commission notes it could be because they are more likely to engage in disreputable behaviour as a means of seeking publicity. It could also be because party affiliation means that councillors are more likely to comply with the provisions in the Codes as a result of having ready access to advice or because they are held more accountable by colleagues.
- 4.12 Respondents do not have to attend or be represented at Hearings although they are entitled to submit written representations in respect of breach and / or mitigation. It may be that some choose not to attend in order to try to avoid, or reduce, the opportunity for any negative publicity. However, Hearing Panels can (and do) take into account whether a Respondent has engaged with the investigation and adjudication processes when determining any sanction to be imposed.
- 4.13 Reliance on Complaints: Neither the CESPLS nor the Standards Commission has the power to instigate an investigation. The process is, therefore, reliant on a complaint being received. So unless there is a complaint, the CESPLS cannot institute an investigation and the Standards Commission cannot hold a Hearing or impose a sanction even if poor conduct is suspected or publicly alleged. In Scotland, most complaints relate to councillors. In 2017, the CESPLS received 161 complaints of which 158 related to councillors, meaning that less than 1% concerned members of devolved public bodies. This may be due to the adversarial nature of politics, and the public nature of local authority decision-making. It could, however, also be the result of a lack of awareness that complaints can be made about members of devolved public bodies or the consequence of a reluctance make such a complaint.

## **5. Strengths and Weaknesses of Ethical Standards Framework**

- 5.1 We consider the ethical standards framework in Scotland has a number of strength and weaknesses. In particular, the ones outlined below may be of interest to the Committee.



## **Strengths**

- 5.2 **Independence**: We consider a strength of the ethical standards framework in Scotland is the independence of the CESPLS and Standards Commission from each other and from the Government. This helps give the public confidence that complaints will be dealt with in a fair and impartial manner.
- 5.3 **Awareness**: We are confident that there is a good awareness of the Councillors' Code and how to make a complaint amongst councillors and local authority officers. The Standards Commission's Hearings are normally held in public in the locality of where the councillor or member is based, and often attract a good deal of media coverage (particularly in the local press), which enables the public / electorate to have confidence that action is taken when individuals fail to meet the standards expected of them. It also increases awareness of the complaints process. This is particularly important at a time when the behaviour of those in public life is under increased scrutiny as a result of the publicity surrounding bullying and harassment claims and also about intimidatory behaviour on social media.
- 5.4 **Expectations**: We consider the fact that the Codes of Conduct outline the standards of conduct demanded of those in public life, means that those elected, appointed and nominated to public office can have a clear understanding of what is expected of them. It also means the public can have confidence that certain standards of conduct are expected of those elected or appointed to represent their interests, regardless of the local authority or nature of the devolved public body's business.
- 5.5 **Hearings**: We are confident that the Hearings process allows for the fair and efficient adjudication of complaints, in that both parties (the CESPLS and Respondent) are entitled to be represented; to make submissions; to call witnesses; and to lead any relevant evidence, before a determination is made. The average time taken by the Standards Commission from receipt of a report from the CESPLS to the issuing of the written Hearing decision was 12 weeks in 2017/18. We consider this length of time is reasonable as it affords the parties sufficient time to prepare their cases and to call witnesses, without drawing out the process unnecessarily. The Standards Commission has the power to determine its own Hearings procedures, meaning that adjustments can be made if it is considered fair and proportionate to do so (for example, a Hearing can be held partly in private if a witness is vulnerable).
- 5.6 **Sanctions**: In addition to potential adverse publicity resulting from the public nature of Hearings, the sanctions available to the Standards Commission should a breach be found can act as a deterrent as they can have a significant impact both professionally and financially on a Respondent. It can also have a substantial political impact given a suspension or disqualification can, for example, change the political composition of a local authority's administration.
- 5.7 In addition, the Standards Commission's power to impose a sanction means that there is less of a reliance on the electorate to be aware of, and vote out, local government councillors who fail to meet the expected standards. This can be of importance as, for

example, a councillor might breach the Code and, in doing so, may fail to act in the overall public interest but nevertheless be perceived as acting in the interests of constituents in his or her ward.

### **Weaknesses**

- 5.8 Time taken to investigate a complaint: It can sometimes take quite a long time for a complaint to be investigated and referred to the Standards Commission which can, in some instances, mean a delay of a year or more between the behaviour in question taking place and a Hearing being held. This can have an impact on the quality of evidence (as it may no longer be available or a witness' recollection of events becomes less clear); as well as potentially having a detrimental impact on the Respondent and any complainer. Public confidence in the ethical standards framework may also be adversely affected.
- 5.9 There are a number of reasons why investigations can be lengthy; for example, if the CESPLS experiences difficulties in arranging interviews with witnesses or if witnesses are reluctant to co-operate or are slow to provide information and evidence required. It may be that the CESPLS is waiting for a court action or police investigation to conclude. In addition, the CESPLS will normally only investigate a complaint made within one year of the alleged breach occurring. This can mean that an individual making a complaint may decide to lodge a complaint in order for it to be investigated but then add to it as further instances of poor conduct occur (in order to try to establish a court of conduct), which again may delay the process.
- 5.10 The time taken to investigate and adjudicate on a complaint can also mean that the Respondent is no longer a councillor or member by the time the Hearing is held. In such cases, the Standards Commission only has the power to censure or disqualify the Respondent.
- 5.11 Sanctions: Any suspension ceases when a councillor is re-elected (so that a finding does not interfere with the democratic process), meaning that the actual length of a suspension can, in practice, be determined by factors other than those the Hearing Panel will usually take into account, such as when the complaint was made, the length of time taken by the CESPLS to investigate and proximity of the conclusion of the Hearing to the date of the election. This does not, however, prevent a Hearing Panel from either imposing a period of suspension that leads up to the date of the election but noting the period would have been longer had it not been for the election; or from imposing a period of suspension of its choosing but noting the period would nevertheless cease on the date of election. These options enable the full period of suspension to be recorded, which might help act as a deterrent or to help avoid any perceptions of inconsistency in decision-making.
- 5.12 Under the 2000 Act, the Standards Commission must impose a sanction if a breach is found. Unlike the Scottish Parliament's Standards, Procedures and Public Appointments Committee (which considers alleged breaches of the MSPs Code), the Standards Commission does not have the option to admonish a Respondent or to

choose not to impose a sanction if a technical breach with no deliberate intent is found.

- 5.13 **Reliance on Complaints:** As noted above, the investigation and adjudication processes are reliant on complaints being made. Other councillors, members and officers are often in the best position to identify potential breaches of the Codes, but may be reluctant to do so out of fear of repercussions, embarrassment or because of political pressure (for example, if they are in the same political party as the potential Respondent). While the 2000 Act provides that investigations shall, so far as possible, be conducted confidentially, the CESPLS does not accept anonymous complaints on the grounds that the concept of natural justice means that the Respondent is entitled to know who has made the complaint and what it entails. The exception to this is whistleblowing complaints (see section 8 below). The Standards Commission will, however, redact the name of a complainer from the published written decision (unless they are a councillor, member of a devolved public body or MSP).

## **6. Changes under consideration**

- 6.1 Scottish Ministers are currently considering proposals to strengthen both the Councillors' and Model Codes of Conduct to reinforce provisions that oblige councillors and members of devolved public bodies to treat colleagues, officers and member of the public with courtesy and respect (when acting as a councillor or member, when on council or public body business and when representing the council or public body), to make it clear they cover inappropriate behaviour such as harassment and bullying and that any such behaviour will not be tolerated.
- 6.2 In addition, consideration is being given to making more wholesale changes to the section of the Councillors' Code of Conduct concerning declarations of interests, in order to make these clearer and easier to understand. This is seen as of particular importance given the concerns that these provisions will become even more difficult to interpret as the public service delivery landscape becomes increasingly complex, with councillors being nominated or appointed to more and different external organisations.

## **7. Arrangements for Declaring Interests and Managing Conflicts**

- 7.1 As noted under Section 3 above, the Codes of Conduct contain provisions about the types of interests that must be declared. These include financial and non-financial interests, along with the financial Interests of other persons. The Codes state that councillors and members must always comply with an objective test which is: 'whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your decision or decisions-making in your role'.

- 7.2 The provisions concerning declarations of interests apply not only to meetings or committee meetings of the Council or Devolved Public Body but to any dealings with officers, meetings with other councillors / members, party group meetings, Joint Boards or Committees, and any other formal or informal meetings where the councillor or member is representing the Council or Devolved Public Body.
- 7.3 Unless a specific exclusion or dispensation applies, the councillor or member is obliged to declare any interest as soon as is practicable at the meeting. They are also obliged to withdraw from the room until the discussion and voting on any relevant matter they have a declarable interest in has concluded.
- 7.4 Councillors and members must declare the financial interests of
- A spouse, civil partner or co-habitee;
  - A close relative, close friend or close associate;
  - An employer or partner in a firm;
  - A body (or subsidiary or parent of a body) of which they are a remunerated member or director;
  - A person from whom they have received a registrable gift or registrable hospitality;
  - A person from whom they have received a registrable gift or registrable hospitality or registrable election expenses.
- The Codes specifically state that 'relative', 'friend' or 'associate' is not defined and the objective test should be considered regardless of the precise nature of the relationship.
- 7.5 The Councillors' Code of Conduct contains general exclusions in respect of interests a councillor has as a tax payer or in relation to the Council's public services; in respect of the setting of Council tax; in respect of matters concerning a councillor's remuneration, allowances, expenses, support services and pension; and as a council house tenant. In addition, there are specific exclusions, which apply to councillors nominated or appointed by their Council to certain categories of outside body. In such circumstances, the councillor will still need to declare his or her interest in the outside body when matters relating to it are being discussed at Council, but can take part in the discussion or voting (provided it is not on a quasi-judicial or regulatory matter where the outside body is the applicant or has a material interest).
- 7.6 The Standards Commission has published guidance on the Codes, including detailed guidance on how to interpret the provisions concerning declarations of interests. The guidance can be found at: [www.standardscommissionscotland.org.uk/guidance/guidance-notes](http://www.standardscommissionscotland.org.uk/guidance/guidance-notes).
- 7.7 In addition, the Standards Commission has produced the following advice notes on the topic:
- Advice for Councillors on How to Declare Interests;
  - Advice for Members on How to Declare Interests;
  - Advice for Councillors on Arm's Length External Organisations; and
  - A Flowchart on Making Declarations of Interest.

These advice notes can be found at: [www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings](http://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings).

## **8. Whistleblowing Arrangements**

- 8.1 The ethical standards legislation requires that complaints should be submitted in writing and signed. The CESPLS will not normally progress an anonymous complaint. However, the name of the complainer may be withheld in certain, limited circumstances.
- 8.2 The CESPLS is a prescribed person under the Public Interest Disclosure Act 1998, meaning protection is provided for employees who pass on information to him concerning wrongdoing, in the circumstances outlined in the Act. A complaint can only be accepted by the CESPLS if it relates to the conduct of a councillor or of a member of a public body within his remit. The CESPLS recommends that an employee follows their organisation's internal whistleblowing policy before contacting him, unless the individual has concerns that they may be victimised for raising their concern, or that it may be covered up. They can also contact the CESPLS if they believe their concern has not been dealt with properly through their employer's whistleblowing policy.
- 8.3 If the CESPLS decides to investigate the complaint, he is required to make the person about whom it is made aware of the conduct alleged. In whistleblowing cases, the identity of the complainer will not be disclosed but potential complainers are advised that there is a risk that circumstances of the complaint may allow someone to guess who they are. Potential complainers are also advised that it may not be possible to investigate their complaint in as thorough a manner as other complaints if doing so would mean their identity was disclosed. This means there is a risk that such a complaint cannot be established to the requisite standard.

## ANNEX A

### SUMMARY OF HEARINGS 2017/2018

Summaries of all Hearings conducted during the past year are set out below - the full written decisions can be accessed at:

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

A number of the cases referred to below raised issues concerning the application of Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of expression. The Standards Commission for Scotland has produced Advice Notes for Councillors and Members of Devolved Public Bodies on the Application of Article 10 of the ECHR and the approach Hearing Panels will take when issues that concern the right to freedom of expression arise. These can be found at:

<http://www.standardscommissionscotland.org.uk/education-and-resources/advice-notes>

Case	LA/NL/1940 – North Lanarkshire Council
<b>Complaint</b>	The complaint alleged that the Respondent failed to register her remunerated employment, as an office manager with a MSP, within one month as required by the Councillors' Code of Conduct.
<b>Decision</b>	<ol style="list-style-type: none"><li>1. Paragraph 4.3 of the Code requires councillors to register any remunerated employment. Paragraph 4.7 of the Code requires them to provide the name of the employer along with nature of the business and post held. Regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 requires councillors to update their register of interests within one month of their circumstances changing.</li><li>2. The Hearing Panel found, and it had had been admitted, that the Respondent failed to register her remunerated employment with the MSP within one month, as required.</li><li>3. The Panel concluded that the Respondent had breached paragraphs 4.3 and 4.7 of the Code.</li></ol>
<b>Sanction</b>	<p>The Panel censured the Respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"><li>1. Accepted the Respondent's written statement to the effect that she had not intended or tried to conceal her remunerated position. This was demonstrated by a post she had made on a social media site, soon after her appointment, indicating that she would be working for the MSP.</li><li>2. The Panel also noted the Respondent's submission that she had not been offered training on the Councillors' Code of Conduct and that she had taken steps to rectify her failure to register the employment as soon as the matter was brought to her</li></ol>

	<p>attention.</p> <p>However, the Panel:</p> <p>3. Emphasised the registration of interests is a fundamental and absolute requirement of the Code. While the Panel noted there was no intent to conceal the employment, it nevertheless considered that failure to register remunerated employment in an official register of interests removed the opportunity for openness and transparency. This could deny a member of the public the opportunity to consider whether a councillor’s interests may or may not influence their decision-making process.</p>
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<b>Case</b>	<b>LA/E/1737 &amp; LA/E/1751 – City of Edinburgh Council</b>
<b>Complaint</b>	The complaints alleged that two councillors (the Respondents) behaved in a disrespectful manner towards officers by publicly identifying them in the context of inferred misconduct.
<b>Decision</b>	<p>1. The Hearing Panel found that the Respondents had been discourteous and disrespectful by publicly identifying five Council officials at a meeting of the Council’s Governance, Risk and Best Value Committee in the context of a discussion about accountability for alleged failings in the management of a Community Centre building project. Although the names were disclosed without either Respondent making any critical comment, a clear inference could be drawn from the reading out of the names that those staff may have had some responsibility for any failures in respect of the Council’s management of the project.</p> <p>2. However, the Panel found that the Respondents had legitimate grounds for concern about the project and for taking the view that the Committee would not commission further reports without being convinced there were still officials employed by the Council who could assist with inquiries. The rationale of identifying staff was to achieve that purpose.</p> <p>3. In the particular circumstances of this case, the Panel took the view that, as local politicians taking part in a discussion on matter of public concern, the Respondents should be afforded the enhanced protection of freedom of expression under Article 10 of the European Convention on Human Rights. The Panel also found that the Respondents’ right to this enhanced protection when performing their scrutiny role in an open and transparent way was not outweighed by the benefit of protecting officers from the potential inference that they had been involved in any of the alleged failings.</p> <p>4. The Panel concluded that whilst it was regrettable that the five officers were named, this did not constitute a breach of the Councillors’ Code of Conduct in light of the application of the enhanced protection enjoyed by the Respondents to the right to freedom of expression.</p>

<b>Sanction</b>	Not applicable.
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<b>Case</b>	<b>LA/WL/1824 – West Lothian Council</b>
<b>Complaint</b>	The complaint alleged that the Respondent had failed to comply with the provisions of the Councillors’ Code of Conduct in terms of the requirements to register remunerated employment and also in respect of declaring her own non-financial interests, and the financial interests of others at Council meetings.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel noted that the Respondent acknowledged that she had failed to take steps to register her remunerated employment, as Manager of a private company limited by guarantee, until 2 months after her appointment.</li> <li>2. The Panel noted that the Respondent accepted that she had not declared an interest at a meeting of the Council Executive where it was decided to divert funds to the Social Enterprise Network, despite her employer being a member of the Network and, therefore, a potential recipient of the additional funding. As such, the Panel considered the Respondent should have declared the financial interest of her employer and taken no further part in the discussions and decision-making.</li> <li>3. The Panel further noted that it was not in dispute that the Respondent had not declared any interest at three meetings of the Council’s Voluntary Organisations Policy Development and Scrutiny Panel during which reports were presented about voluntary organisations, including her employer, moving to a new accredited system of quality standards. The Panel noted that the Respondent’s employer was specifically mentioned in reports considered by the Panel at the meetings in question and considered that the Respondent should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meetings.</li> <li>4. The Panel concluded that the Respondent had breached paragraphs 4.2, 5.7 and 5.10 of the Code.</li> </ol>
<b>Sanction</b>	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Noted the submissions on behalf of the Respondent in mitigation and, in particular, that she was motivated by trying to act in the interests of her constituents and service users in respect of her work with the company concerned.</li> <li>2. Noted that while it was a late notification, the Respondent had taken steps to rectify her register of interests within approximately one month of the required timescale.</li> </ol> <p>However, the Panel:</p> <ol style="list-style-type: none"> <li>3. Emphasised the registration and declaration of interests are fundamental</li> </ol>



	requirements of the Code and that a failure to register and declare interests appropriately removes the opportunity for openness and transparency in a councillor's role. This could deny a member of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.
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<b>Case</b>	<b>LA/NL/1936 – North Lanarkshire Council</b>
<b>Complaint</b>	The complaint alleged that the Respondent had contravened the requirement in the Councillors' Code of Conduct to register a right of ownership over a property.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel determined that the Respondent failed to include in her Register of Interests a property in Motherwell, despite having become a part owner of the property in 2012. The Respondent had previously indicated that she did not consider she had to register an interest in the property as there continued to be a life-rent over it in favour of the previous owners.</li> <li>2. The Panel noted that paragraph 4.18 of the Councillors' Code of Conduct requires councillors to register any property ownership. Paragraph 4.19 of the Code requires them to provide the address of the property or to otherwise give a sufficient description to identify it.</li> <li>3. The Panel determined that while the Respondent's interest in the property was limited until the end of the life-rent, the land register title nevertheless demonstrated that she had become a part owner in 2012. As such, the Respondent should have registered her interest in the property.</li> <li>4. The Panel concluded that the Respondent had breached paragraphs 4.18 and 4.19 of the Code.</li> </ol>
<b>Sanction</b>	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Accepted the Respondent's failure to register the interest may have been based on a misunderstanding of the legal position.</li> </ol> <p>However, the Panel:</p> <ol style="list-style-type: none"> <li>2. Considered that the requirement to register ownership of property is an integral part, and absolute requirement, of the Councillors' Code of Conduct as it provides the opportunity for openness and transparency in a councillor's role and affords members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.</li> </ol>

<b>Case</b>	<b>LA/As/1963 &amp; 1993 – Aberdeenshire Council</b>
<b>Complaint</b>	The complaints alleged that the Respondent had contravened the provisions in the Councillors' Code of Conduct relating to using council facilities, seeking preferential treatment and lobbying other councillors, in relation to an application for planning

	permission submitted by his company.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel determined that the Respondent sent two emails from his Council email address, which were signed off by him as a councillor, to seven members of an area Planning Committee putting forward some points in favour of a planning application a firm he was a partner of had submitted.</li> <li>2. The Panel found that the Respondent had acted inappropriately in using his council facilities to send the emails and determined that in doing so, he had contravened the provision in the Code which states that Council facilities should only be used for carrying out Council duties or for incidental personal use authorised by the Council.</li> <li>3. The Panel further determined that members of the public would reasonably conclude that, in signing off his emails as a councillor, the Respondent was using his position to seek preferential treatment and, in making representations, outwith the Committee forum and the correct procedure, in favour of the application was also seeking to privately lobby other councillors about the planning application.</li> <li>4. The Panel concluded that the Respondent had breached paragraphs 3.16, 3.19 and 7.10 of the Code.</li> </ol>
<b>Sanction</b>	<p>The Panel suspended the Respondent for a period of six months, from all committees and sub-committees of the Council that make decisions on quasi-judicial or regulatory matters. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Acknowledged the Respondent's early acceptance that he had breached paragraph 3.16 of the Councillors' Code of Conduct and that he should have done things differently.</li> <li>2. Took into account the Respondent's previously unblemished record.</li> </ol> <p>However, the Panel:</p> <ol style="list-style-type: none"> <li>3. Found that the Respondent had disregarded advice from a senior officer warning him of the potential repercussions of not separating his personal interests from his role as a councillor in respect of the planning matter.</li> <li>4. Was concerned that the Respondent had not seemed to accept that his actions in sending the emails amounted to seeking preferential treatment for his family business and also to the lobbying of other councillors.</li> <li>5. Was concerned that the Respondent, who had been a councillor for 10 years, with experience including membership of quasi-judicial and regulatory committees had displayed such conduct and demonstrated a lack of knowledge and understanding of the requirements of the Code.</li> <li>6. Found that there had been a serious breach by the Respondent of the Code in respect of using his position as a councillor to further his own personal interest in a</li> </ol>

	planning matter. The Panel considered such conduct had the potential to result in decisions on planning matters being legally challenged and could erode public confidence and trust in local government and the democratic process itself.
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<b>Case</b>	<b>LA/E/1924 – City of Edinburgh Council</b>
<b>Complaint</b>	The complaint alleged that the Respondent had contravened the courtesy and respect provisions in the Councillors’ Code of Conduct when he made serious allegations of wrongdoing by a fellow councillor in an online public blog.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel found that the Respondent had made a number of allegations and critical comments on his online blog about the complainer, a fellow councillor, which were of a personal and insulting nature. The Panel further found that the comments were clearly intended to impugn and demean the complainer in a public forum.</li> <li>2. The Panel noted that the Respondent had subsequently proffered an unqualified apology to the complainer, in which he had accepted the allegations and imputations he had made in the blog were entirely false and without foundation.</li> <li>3. In the particular circumstances of this case, the Panel took the view the comments in question did not amount to a value judgement and that the Respondent should not, therefore, be afforded the enhanced protection afforded under Article 10 of the European Convention on Human Rights for political expression. The Panel concluded that the Respondent’s comments had been made without factual basis, were disrespectful and amounted to a personal attack.</li> <li>4. The Panel determined that the Respondent had breached paragraphs 3.1 and 3.2 of the Councillors’ Code of Conduct.</li> </ol>
<b>Sanction</b>	<p>The Hearing Panel noted that, having found a breach of the Code, it was obliged to impose a sanction. The Panel further noted that as the Respondent was no longer a councillor, the only options available were censure or disqualification. The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Took account of the Respondent’s submissions that he was attempting to act in the public interest, by putting his concerns into the public domain.</li> <li>2. Acknowledged the Respondent’s early acceptance that he had breached paragraph 3.1 and 3.2 of the Councillors’ Code of Conduct and that he should not have used the language he did.</li> </ol> <p>However, the Panel:</p> <ol style="list-style-type: none"> <li>3. Found that the Respondent’s comments amounted to an unjustified personal attack on a fellow councillor.</li> <li>4. Considered that the manner in which the Respondent had raised his concerns were</li> </ol>

	inappropriate and, as such, could have undermined public confidence in local government.
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<b>Case</b>	<b>LA/G/1942– Glasgow City Council</b>
<b>Complaint</b>	The complaint alleged that the Respondent had contravened the courtesy and respect provisions in the Councillors’ Code of Conduct by being disrespectful to a police officer during two telephone calls to a local Police Station.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel was satisfied from the evidence before it that the Respondent had made comments of an abusive, insulting and personal nature to the complainer, a police officer, and had made a number of unfounded allegations about him during two telephone calls to Maryhill Police Office.</li> <li>2. The Panel further found that the Respondent made the telephone calls in his capacity as a ward councillor and concluded, therefore, that the provisions of the Code applied to him at the time of the events in question.</li> <li>3. The Panel found that the comments made by the Respondent in the telephone conversations were gratuitous, offensive and abusive in nature and amounted to an unacceptable personal attack on the complainer. The Panel further found that the Respondent was aware that the accusations he made during the telephone calls were unfounded.</li> <li>4. The Panel noted that the Respondent’s comments had been made in one to one telephone conversations, as opposed to a public forum, and not taken place in a political context or in respect of a debate on a question of public interest. In the circumstances, the Panel was satisfied that the Respondent should not be afforded the enhanced protection under Article 10 for political expression.</li> <li>5. The Hearing Panel concluded that the Respondent had breached paragraphs 3.1 and 3.2 of the Code.</li> </ol>
<b>Sanction</b>	<p>The Panel noted that, having found a breach of the Code, it was obliged to impose a sanction. The Panel further noted that as the Respondent was no longer a councillor, the only options available were either censure or disqualification. The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Took account of the comments the Respondent made in a letter to the Standards Commission and, in particular, his commitment to serving his community.</li> </ol> <p>However, the Panel:</p> <ol style="list-style-type: none"> <li>2. Found that the Respondent’s comments amounted to a personal attack on a public servant. The Panel considered that public servants have a right to be protected from unwarranted personal attacks of this nature.</li> <li>3. Noted that it would have considered imposing a suspension had the Respondent</li> </ol>

	still been a councillor.
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<b>Case</b>	<b>LA/ED/1863– East Dunbartonshire Council</b>
<b>Complaint</b>	The complaint alleged that, over the course of some months, the Respondent had engaged in an inappropriate course of conduct towards a relatively junior officer of the Council. The Respondent was also alleged to have disclosed confidential information relating to the health of the officer to a third party.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel found that the Respondent had engaged in an inappropriate course of conduct towards a relatively junior officer of the Council which included trying to develop a personal friendship with her. This was despite being aware of the distinction between the officer’s role and his own perceived position of power and influence as Convener of Education with budgetary oversight over the Service in which she was employed.</li> <li>2. The Panel noted that the Respondent had continued to pursue a social relationship with the officer, despite his interest in doing so not being reciprocated and that the Respondent had, on occasions, resorted to subterfuge to secure meetings with the officer. The Panel determined that, in doing so, the Respondent failed to exercise caution and had failed to interact with the individual officer, and officers of the Council in general, in an atmosphere of mutual trust and respect.</li> <li>3. The Panel further determined that the Respondent had disclosed information about the officer to the third party was private, personal and sensitive and that it was, by its very nature, confidential.</li> <li>4. The Panel therefore determined that the Respondent had breached paragraphs 3.3, 3.5, 3.14 and 3.15 of the Code.</li> </ol>
<b>Sanction</b>	<p>The Panel noted that, having found contraventions of the Code, it was obliged to impose a sanction. The Panel further noted that as the Respondent was no longer a councillor, the only options available to it were either censure or disqualification. The Panel censured the Respondent. The Panel confirmed that it would have imposed a suspension had that option been available to it. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Noted the comments the Respondent’s contention that the breach of confidentiality was inadvertent and also his early acceptance that he had contravened the Code.</li> <li>2. Noted the Respondent’s assertion that he had not intended to show disrespect, discourtesy or a lack of consideration to the officer and that he now accepted his actions had caused her distress.</li> </ol> <p>However, the Panel:</p> <ol style="list-style-type: none"> <li>3. Noted the Respondent had continued with his course of conduct over a period of five months despite being advised by five officers that his behaviour was</li> </ol>

	<p>inappropriate. The Panel was concerned that the Respondent had not recognised, at the time, that his conduct was disrespectful and had also not recognised the impact his behaviour would have on the officer and other officers.</p> <p>4. Did not accept the Respondent's behaviour was inadvertent. The Panel was particularly concerned that the Respondent had resorted to concealment and dishonesty as he sought to develop his relationship with the officer and representation of it to others.</p> <p>5. Was critical that the Respondent had disclosed confidential medical information about the officer, which he had only received by virtue of his role as a councillor.</p> <p>6. The Panel considered the Respondent's conduct amounted to a serious breach of the Code. It had the potential to undermine the relationship of mutual trust and respect between councillors and officers and could also have discredited the Council.</p>
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<b>Case</b>	<b>LA/R/1946 &amp;1973 – Renfrewshire Council</b>
<b>Complaint</b>	The complaints alleged that the Respondent had failed to comply with the provisions of the Councillors' Code of Conduct by behaving in a disrespectful manner towards the Provost and other elected members at a meeting of Renfrewshire Council.
<b>Decision</b>	<p>1. The Hearing Panel watched excerpts of a webcast from the Council meeting and found that the Respondent had talked or shouted over the Provost, who was chairing the meeting, on several occasions in an aggressive manner, despite the Provost making it clear she wished him to stop (to the extent that she had been required to adjourn the meeting to restore order).</p> <p>2. The Panel concluded that the Respondent had failed to show respect to the Chair at the meeting of the Council by repeatedly ignoring her directions, by challenging her decisions and by speaking over her. The Respondent had also failed to comply with a ruling she had made.</p> <p>3. The Panel noted that, by his own admission, the Respondent used the meeting to indulge in the opportunity to air long held personal grievances and to obtain publicity. The Panel further found that the Respondent also directed a number of offensive and personal remarks towards individuals during the course of the meeting and also used the meeting to make a number of serious allegations.</p> <p>4. The Panel determined that while the Respondent had made his comments and accusations in a Council meeting, they did not directly relate to the agenda items being considered and were instead offensive, insulting and gratuitous personal asides and attacks. The Panel concluded, therefore, that his comments did not attract the enhanced protection of freedom of expression afforded to political expression under Article 10 of the ECHR.</p> <p>5. The Panel, having given careful consideration to the particular facts and specific circumstances of the case, determined that the Respondent had breached</p>

	paragraphs 3.1 and 3.2 of the Code.
<b>Sanction</b>	<p>The Panel suspended the Respondent's entitlement to attend all meetings of the Council, and of any committee or sub-committee thereof, for a period of seven months. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Considered it had been the Respondent's personal responsibility to comply with the Code at the time. The Panel noted that the Respondent had failed to do so, despite having signed a declaration confirming he would comply with its requirements.</li> <li>2. The Panel noted that the Respondent had indicated that he refused, for 'theological reasons', to read the Code. The Panel found that the Respondent was entirely dismissive of the ethical standards framework, including the Code, the Commissioner for Ethical Standards and the Standards Commission.</li> <li>3. The Panel was of the view that councillors should undertake a scrutiny role, represent the public and any constituents; and make political points in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and, or, unduly disruptive.</li> <li>4. The Panel determined that the Respondent's behaviour was deliberate and serious in nature and was in furtherance of his own personal grievances. The Panel considered that the manner in which the Respondent had raised his views was unacceptable and, further, that his comments amounted to personal attacks on fellow councillors. As such, his behaviour could have undermined public confidence in local government.</li> <li>5. The Panel found that the Respondent had been disrespectful towards the Provost, as chair of the meeting and had, on numerous occasions, failed to comply with her rulings and had disrupted proceedings. As such, his sustained conduct at the meeting inhibited the Council from functioning effectively and was a threat to reputation of the Council and the role of an elected member.</li> </ol>

<b>Case</b>	<b>LA/E/2028 – City of Edinburgh Council</b>
<b>Complaint</b>	The complainant alleged that the Respondent failed to timeously register that he held shares in a business as required by the Councillors' Code of Conduct.
<b>Decision</b>	<ol style="list-style-type: none"> <li>1. The Hearing Panel noted the Respondent accepted that he had failed to include in his Register of Interests a shareholding in a company that owned a hotel until April 2017, despite having completed Notice of Registrable Interest forms on three previous occasions.</li> <li>2. The Panel noted that paragraph 4.2 of the Code requires councillors to register any interests, while paragraph 4.20 of Code states that councillors have a registrable interest if they have an interest in shares comprised in the share</li> </ol>

	<p>capital of a company, where the nominal value of the shares was greater than 1% of the issued share capital of the company.</p> <p>3. The Panel determined that the Respondent's shareholding should have been registered, regardless of whether or not the company was dormant.</p> <p>4. The Panel therefore concluded that the Respondent had breached paragraphs 4.2 and 4.20 of the Code.</p>
<b>Sanction</b>	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <p>1. Noted the Respondent's position was that when the company had become active in 2016 he had submitted details of his ownership so that this could be included in his Register of Interests.</p> <p>However, the Hearing Panel:</p> <p>2. Noted the Council had no record of having received such a submission and that the Respondent accepted he had not checked to confirm whether his Register of Interests had been updated to record the interest.</p> <p>3. Was concerned that the points made by the Respondent failed to recognise that the requirement under the Code to register a shareholding did not distinguish between an active and dormant company. The Respondent's submission also failed to recognise that the Code required an interest to be registered regardless of whether or not the company or any assets it owned was located in the Council area.</p> <p>4. Considered that the requirement to register a significant interest in an company, including a shareholding of more than 1% or of a value greater than £25,000 is an integral part, and absolute requirement, of the Code as it provides the opportunity for openness and transparency in a councillor's role and affords members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.</p>

<b>Case</b>	<b>LA/Fi/2044 - Fife Council</b>
<b>Complaint</b>	The complaint alleged that the Respondent used his Council email account and computer to send an email asking for help in delivering party political campaign leaflets, in contravention of the Councillors' Code of Conduct.
<b>Decision</b>	<p>1. The Hearing Panel noted that the Respondent accepted that he had used his Council email identity, account and computer to send an email to the Chair of a Community Trust in April 2017 containing a request for assistance in delivering party political campaign leaflets.</p> <p>2. The Panel noted the Respondent had assisted the Community Trust with a number of issues and that the request had been sent within a chain of email</p>



	<p>correspondence about an existing issue, being the realignment of a public footpath. The Panel noted the Respondent's position was that he had made a 'serious albeit inadvertent mistake', in sending what was intended to be a personal note requesting assistance from the Chair of the Community as part of the chain.</p> <p>3. The Panel determined that the Respondent had breached the provision in the Code which prohibited the use Council facilities for party political or campaigning purposes.</p> <p>4. The Panel therefore concluded that the Respondent had breached paragraph 3.16 of the Code.</p>
<b>Sanction</b>	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> <li>1. Noted the Respondent's early acceptance that he should have been more careful and should not have used his Council email identity, account and computer to seek assistance in distributing election literature; and his apology for doing so.</li> <li>2. Acknowledged the Respondent's position that his actions were the result of an inadvertent lapse, as opposed to any deliberate attempt to exploit his relationship with the Community Trust.</li> <li>3. Noted the Respondent's recognition and clear insight into the potential perception of his actions.</li> </ol> <p>However, the Hearing Panel:</p> <ol style="list-style-type: none"> <li>4. Noted that the Council's Chief Executive issued guidance to all elected members on earlier in the ear reminding them that Council facilities and resources should never be used for party political or campaigning purposes. The Hearing Panel considered this reminder and the proximity of the Local Government and General elections should have put the Respondent on notice that he was required to take extra care during the election period.</li> <li>5. Considered that the prohibition on using Council facilities and resources for party political or campaigning purposes was an important part of the Code as it provided the public with confidence that public resources were being used appropriately. A breach of this provision had the potential to bring the Council into disrepute.</li> </ol>

<b>Case</b>	<b>LA/DG/1929 – Dumfries and Galloway Council</b>
<b>Complaint</b>	The complaint alleged that the Respondent posted an inappropriate and offensive comment on the complainer's Facebook page and, in doing so, contravened the courtesy and respect provisions in the Councillors' Code of Conduct.

<p><b>Decision</b></p>	<ol style="list-style-type: none"> <li>1. The Hearing Panel determined, on the balance of probabilities, that the Respondent posted a comment on the complainer’s Facebook page, below a photo of her and another individual (Mr A), which read ‘thankfully you two deviants were dealt the blow you deserve by the decent people of Dumfries’.</li> <li>2. The Panel noted the complainer was well known as having been the Chairperson of the Dumfries &amp; Galloway LGBT + Group and considered that the use of the word ‘deviants’ was a reference to her sexuality and to Mr A’s support for the local LGBT+ community.</li> <li>3. The Panel considered that the Respondent had, by his own admission, not distinguished between his personal and public role when accessing the Facebook account. The Hearing Panel noted that the Respondent’s only interaction with the complainer had been as a councillor and that they did not have a personal relationship. As such, the Hearing Panel concluded the Respondent was acting in the capacity of a councillor or would have been perceived as such when posting the comment.</li> <li>4. The Panel determined that the common use of the word ‘deviant’ was as a derogatory reference in terms of an individual’s sexuality. The Panel found that its use by the Respondent in the posting amounted to a personal attack on the complainer and Mr A, which were clearly intended to impugn and demean them. The Panel was therefore satisfied that the Respondent failed to observe the rules of good conduct by behaving in a disrespectful manner towards the complainer and Mr A.</li> <li>6. The Panel found, therefore, that the Respondent’s behaviour amounted to a contravention of paragraphs 3.1 and 3.2 of the Code.</li> <li>7. The Panel did not accept the posting had been made in the context of commenting on a political matter and, as such, the Respondent did not benefit from the enhanced protection of freedom of expression afforded to politicians under Article 10 of the European Convention on Human Rights. The Panel concluded that the Respondent’s comments were gratuitous, offensive and abusive in nature and amounted to a personal attack on the complainer and Mr A. As such, the Panel determined that the imposition of a restriction in the circumstances was relevant, sufficient and proportionate.</li> <li>8. The Panel further considered that the Respondent had breached the Council’s Acceptable Use of ICT Facilities policy by using a Council issued mobile phone to post an inappropriate and offensive comment. As such, the Hearing Panel determined the Respondent had also contravened paragraph 3.16 of the Code.</li> <li>9. The Panel therefore concluded that the Respondent had breached paragraphs 3.1, 3.2 and 3.16 of the Code.</li> </ol>
<p><b>Sanction</b></p>	<p>The Panel noted that as the Respondent was no longer a councillor, the only options available were censure or disqualification. The Panel censured the Respondent but made it clear they would have imposed a suspension had that option been available.</p>

	<p>In reaching their decision, the Panel:</p> <ol style="list-style-type: none"><li>1. Noted the contribution the Respondent had made to public life in approximately 30 years as a councillor.</li><li>2. Further noted the character references submitted by associates and former colleagues of the Respondent, including ones to the effect that he was not homophobic.</li></ol> <p>However, the Panel:</p> <ol style="list-style-type: none"><li>3. Considered the language used in the posting was wholly unacceptable and unjustified and noted the complainer's position that she felt threatened by it.</li><li>4. Agreed with the Commissioner that those in public life must take steps to ensure their behaviour does not open the door for intimidation and that they must uphold high ethical standards.</li><li>5. Noted that the Respondent had not taken responsibility for his behaviour or demonstrated any insight into the potential impact of it.</li></ol>
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