
SECTION 19(6) POLICY AND PROCEDURE

1. Introduction

- 1.1 Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended, outlines the options available to the Standards Commission, on the finding of a contravention of their respective Codes of Conduct by a councillor or member of a devolved public body, at a Hearing it has conducted.
- 1.2 Section 19 obliges the Standards Commission to impose a sanction upon the finding of a contravention. The options available to the Standards Commission under Section 19(1) are to censure, suspend or disqualify the councillor or member.
- 1.3 Section 19(1) is reproduced below.

19 Action on finding of contravention

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

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

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

(i) all meetings of the council or body;

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

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

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

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

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

- 1.4 Section 19(6) provides that the Standards Commission may, on imposing a suspension under subsection 19(1)(b) or (c) on a member of a devolved public body, direct that any

remuneration or allowance deriving from membership of the body that would be payable to the member, not be paid or be reduced as they direct.

- 1.5 The purpose of this document is to outline the factors that a Hearing Panel of the Standards Commission will consider when deciding whether or not to make a direction under Section 19(6). It also outlines the procedures the Standards Commission will follow should a Panel decide to do so.

2. Information required

- 2.1 The Standards Commission will notify the devolved public body in question of any decision it makes, under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to hold a Hearing about one of its members. In accordance with its Hearings Process and Rules, the Standards Commission send the devolved public body confirmation of the date, time and venue at least 21 days before the Hearing. The Standards Commission will ask the devolved public body to revert, at least seven days before the Hearing, with information about any remuneration or allowance deriving from membership of the body to which the Respondent is entitled, including why it is paid and what activities or functions the Respondent is expected to undertake in return.
- 2.2 In its initial notification of Hearing correspondence, the Standards Commission will draw the Member's attention to its power to make a direction under Section 19(6). The Standards Commission will advise the Respondent that they will be entitled to make any representations on this either in writing before the Hearing or at the Hearing itself, should a breach be found.

3. Decision to impose a Direction under Section 19(6)

- 3.1 If a Hearing Panel finds a member of a devolved public body has breached the body's Code of Conduct, it will seek representations from or on behalf of the Respondent in respect of mitigation and sanction, before it proceeds to determine the sanction to be imposed. The Respondent will be entitled to make any representations in respect of Section 19(6) at that stage of the Hearing. Any information provided to the Standards Commission in advance of a Hearing about any remuneration or allowance deriving from membership of the body to which the Respondent is entitled, including why it is paid and what activities or functions the Respondent is expected to undertake in return, will only be provided to the Panel in the event it finds a breach and is considering imposing a full suspension.
- 3.2 The Standards Commission recognises that its power to issue a direction under Section 19(6) reflects that:
 - it is necessary to uphold public confidence in the ethical standards framework;
 - the Respondent's conduct may have brought the body or role of a member into disrepute and that there is a need to reflect this in any decision imposed at a Hearing;
 - there is a need to make it understood that such conduct will not be rewarded and to discourage or deter any future failures to comply with the Code of Conduct.
- 3.3 In making a decision about whether or not to impose a direction that any member of a devolved public body, who is the subject of a full or partial suspension:
 - should not receive any remuneration or allowance deriving from membership of the body that normally would be payable to the member; or
 - should only be paid a reduced amount in terms of any remuneration or allowance deriving from membership of the body that normally would be payable to the member;the Hearing Panel will take into account its reasoning for the finding of breach, the extent of the suspension imposed, and any representations made by or on behalf of the Respondent (either verbally or in writing).
- 3.4 In making a decision to impose a direction under Section 19(6) and in determining the extent of it, the Hearing Panel's starting position will be that, in order to maintain public confidence

in the devolved public body and ethical standards framework, any remuneration or allowance should not be paid to a member who is the subject of a full suspension during the term of the suspension. The Hearing Panel will, however, always consider the principles of fairness, public interest and proportionality. In assessing these principles, the Hearing Panel will consider the following factors and questions. These seek to provide guidance and clarity to the decision-making process. They are not exhaustive, however, and not all the factors / questions may be relevant in every case. The weight to be attached to any of the questions, and the factors identified, will also vary depending on the circumstances of each case.

3.5 Fairness: In considering whether it is fair to issue a direction under Section 19(6), the Hearing Panel will consider:

- Why the remuneration / allowance is paid and what activities or functions it covers.
- Whether the Respondent will be expected to undertake any of the activities / functions during the period of suspension and, if so, to what extent.
- The potential disruption to the devolved public body (for example, if there is a risk of a breakdown in relations between the Respondent and his or her colleagues / officers should the member continue to be entitled to receive remuneration or an allowance).

3.6 Public interest: In assessing the public interest, the Hearing Panel will consider the following questions / factors:

- How serious was the breach?
- What was the impact / consequence or potential impact / consequence of the breach?
- The potential impact on public confidence in the devolved public body and / or the ethical standards framework in Scotland if the member concerned is allowed to continue to receive public funds while suspended.

3.7 Proportionality: In assessing proportionality, the following may be relevant:

- Whether the suspension is partial or full (if it is a partial suspension and the remuneration or allowance is paid for activities other than attendance at meetings).
- The economic impact on the Respondent.

3.8 The following list provides some examples of circumstances where the Hearing Panel might make such a direction but it is, by no means, exhaustive:

- Where the Hearing Panel found that the Respondent deliberately sought personal or political gain (for themselves or someone else) at the public expense, by exploiting their membership of the body.
- Where the Hearing Panel found that the Respondent deliberately sought to misuse their position in order to disadvantage some other person.
- Where the Hearing Panel found that the Respondent deliberately failed to abide by the Code.
- If there have been repeated failures to comply with the Code by the Respondent.
- Where the Hearing Panel found that the Respondent misused the body's resources.
- Where the Hearing Panel has found that the Respondent participated in, or condoned, or any acts of harassment, discrimination, victimisation, bullying or other threatening behaviour.

4. Process to be followed following a direction under Section 19(6) being made

4.1 The Hearing Panel will advise of any direction made under Section 19(6) when it announces its decision on the sanction to be imposed at the Hearing. The Standards Commission will also include this information and the reasons for the decision in its written decision.

4.2 The written decision will be finalised and issued to the Respondent within 14 days of the conclusion of the Hearing.

- 4.3 The Standards Commission will also advise the Chief Executive and Standards Officer of the devolved public body of the decision as soon as possible and, in any event, will send them a copy of the written report within 14 days of the conclusion of the Hearing. The Standards Commission may also choose to advise and send a copy to the complainer(s).
- 4.4 The Standards Commission will ask the Chief Executive of the devolved public body to confirm, within seven days, that steps have been taken to comply with the direction.
- 4.5 The Standards Commission will publish information about any decision made under Section 19(6) on its website and in any media releases and may also chose to disseminate this on its social media platforms.

5. Assistance

- 5.1 Any devolved public body or officer requiring further information about, or assistance in complying with a direction made under Section 19(6) should contact the Standards Commission.

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Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
30/04/19	LJ	N/A	V1.0	Introduction of Policy