



INTEGRITY IN PUBLIC LIFE

## INTERIM SUSPENSION PENDING COMPLETION OF INVESTIGATION POLICY

### 1. INTRODUCTION

- 1.1 Section 21 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended, provides the Standards Commission for Scotland (Standards Commission) with the power to impose an interim suspension on a councillor or member of a devolved public body on receipt of an interim report from the Commissioner for Ethical Standards in Public Life in Scotland (ESC) on an ongoing investigation.
- 1.2 This Policy aims to ensure there is transparency about how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so. The policy also outlines the factors the Standards Commission will consider in making such a determination.
- 1.3 It should be noted that, in making a decision about whether to impose an interim suspension, the Standards Commission is not making findings of fact, nor making findings as to whether any allegations are or are not established. It is sufficient for the Standards Commission to act if it is satisfied that there is a *prima facie* case to do so.
- 1.4 Section 21 is reproduced below, for ease of reference.

#### **21 Interim reports on investigations and action thereon**

- (1) The Commissioner may, and, if so directed by the Commission, shall, submit an interim report on an investigation being conducted by the Commissioner.
- (2) On receiving an interim report, the Commission, if it is satisfied—
  - (a) that the further conduct of the investigation is likely to be prejudiced if the sanction mentioned in subsection (3) below is not imposed; or
  - (b) that otherwise it would be in the public interest to impose that sanction, then it may impose that sanction.
- (3) That sanction is suspending the councillor or member of the devolved public body whose alleged contravention of the councillors' code or, as the case may be, the members' code was the subject of the interim report from the entitlement set out in section 19(1)(c) above for a period not exceeding three months.
- (4) The Commission shall not require to hold a hearing before proceeding to impose that sanction, but shall give the councillor or member an opportunity to make representations on the alleged contravention of the councillors' code or, as the case may be, the members' code and on the interim report.
- (5) The Commission shall put its decision under this section in writing and shall give a copy to—
  - (a) the councillor or member;
  - (b) the council or devolved public body of which that person is a member; and
  - (c) any other person seeking a copy of the decision who has paid the Commission's reasonable charges for providing such a copy.
- (6) A period of suspension imposed under this section ends upon—

- (a) the issue of findings under section 18 above that the councillor or member has not contravened the councillors' code or, as the case may be, the members' code;
  - (b) the imposition of a sanction under section 19 above; or, as the case may be,
  - (c) a decision by the Commission under section 16(c) above not to hold a hearing.
- (7) A period of suspension imposed upon a councillor under this section which would continue until or after the day of the next following ordinary election of councillors ends at the beginning of that day.
- (8) If, however, the councillor is re-elected at that election, the Commission may re-impose the suspension.
- (9) The period for which suspension may be re-imposed under subsection (8) above is that for which it would have continued to apply but for subsection (7) above.
- (10) On the expiry (otherwise than by operation of subsection (6) or (7) above) of a period of suspension, it may be renewed by the Commission for a period not exceeding three months and a renewed period may likewise be further renewed.
- (11) Where, but for suspension under this section—
- (a) a councillor would be entitled to receive basic allowance and special responsibility allowance from the council; or
  - (b) a member of a devolved public body would be entitled to receive a salary or daily or other periodic allowance or other payment having the character of remuneration or an honorarium from the devolved public body,
- the suspension under this section shall not affect that entitlement; but nothing in this subsection authorises the payment or reimbursement of travelling, subsistence or other allowances or expenses.
- (12) In subsection (11) above "basic allowance" and "special responsibility allowance" are the respective allowances referred to in section 18(1)(a) and (c) of the Local Government and Housing Act 1989 (c.42).

1.5 The policy is intended as a guide and the list of considerations outlined below is not exhaustive. The decision will depend on the individual and particular circumstances of each case.

1.6 The Policy applies in cases where the Standards Commission has directed the ESC to submit an interim report and also in cases where the Standards Commission has made no such direction but has nonetheless received an interim report from the ESC.

## 2. RECEIPT OF INTERIM REPORT

2.1 Within three days of receipt of an interim report from the ESC, the Standards Commission will write to the councillor or member concerned and advise them:

- That an interim report has been received, and that the Standards Commission may choose to invoke Section 21 and impose an interim suspension for an initial period of not exceeding three months while the ESC conducts their investigation;
- Of the Standards Commission's power to renew any interim suspension imposed;
- That any interim suspension imposed will not affect the entitlement to receive a basic allowance or special responsibility allowance from the council (in the case of a councillor);
- That any interim suspension imposed will not affect their entitlement to receive a salary, allowance or other remuneration or an honorarium from the devolved public body (in the case of a member of a devolved public body);
- That the imposition of an interim suspension should not be seen as a finding on the validity of any allegations against the councillor or member nor should it be viewed as a disciplinary measure;

- That any differences in the recollections and accounts of witnesses (including the councillor or member concerned) can be explored during the investigation, before being weighed and tested during the subsequent Hearing (should any complaints reach that stage); and
  - That any period of interim suspension imposed will automatically end in any of the following circumstances:
    - If the ESC decides, following investigation, that there has not been a breach of the Code.
    - if the Standards Commission receives an investigation report but decides not to hold a Hearing.
    - if the Standards Commission receives an investigation report, holds a Hearing and imposes a sanction.
- 2.2 Within three days of receipt of an interim report, the Standards Commission will write to the ESC to confirm it will consider the imposition of an interim suspension. If it has not already been provided with such information, the Standards Commission will ask the ESC for an indication as to when she expects to be able to conclude the investigation.
- 2.3 The Standards Commission will invite the councillor / member to submit representations, within five days of the date of the correspondence referred to under paragraph 2.1, on:
- The interim report;
  - Whether they consider it is proportionate and in the public interest for an interim suspension to be imposed; and
  - The potential consequences of a decision to impose an interim suspension.
- 2.4 The Standards Commission will make a decision under Section 21 within three days of receipt of any submissions from the councillor or member, or within three days of expiry of the deadline for submitting representations (whichever occurs sooner).

### 3. DECISION TO IMPOSE AN INTERIM SUSPENSION

- 3.1 In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the councillor or member and will consider whether it is satisfied:
- That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the councillor or member may try to interfere with evidence or witnesses); **OR**
  - That it is otherwise in the public interest to take such a measure.
- 3.2 **Public interest:** In assessing the public interest, the Panel will consider the following questions. These questions seek to provide guidance and clarity to the decision-making process. They are not exhaustive, however, and not all the 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.
- How serious is the alleged breach?
  - What is the alleged impact / consequence or potential impact / consequence of the alleged breach?
  - What are the potential consequences of allowing the councillor or member to continue to act as such while the investigation is ongoing?

- Is there any suggestion that an interim suspension is required to protect witnesses or to ensure that they are not inhibited from co-operating with the ESC's investigation?
- Would the imposition of an interim suspension be a proportionate act in the specific circumstances of the case?

3.3 **Consequences of not imposing an interim suspension:** In assessing the this, the Panel will consider factors such as:

- The possibility of harm (including physical, mental and reputational) to the complainer(s), the councillor or member's colleagues or officers of the council or devolved public body.
- The potential disruption to the council or devolved public body (for example, if there is a risk that the councillor or member continuing to act could cause a breakdown in relations between the councillor / member and his or her colleagues / officers).
- The potential for any behaviour that could amount to breach continuing during the course of the investigation.
- The potential impact on public confidence in the council, devolved public body and / or the ethical standards framework in Scotland if the councillor / member concerned is allowed to continue to act as such while the investigation is ongoing.

3.4 **Proportionality:** In assessing whether imposing an interim suspension is proportionate, the following may be relevant:

- Whether, if found established at a Hearing, the alleged breach would be sufficiently serious or significant as to be likely to lead to a suspension or disqualification (as opposed to censure).
- Whether there is any evidence or suggestion that the councillor or member is incapacitated to the extent they are unlikely to continue acting regardless of whether or not an interim suspension is imposed.
- The potential impact of an interim suspension on the councillor or member.

3.5 The Standards Commission can impose an interim suspension, in the first instance, for a period of up to three months. In determining the length of any interim suspension to be imposed, the Panel will take into account any information from the ESC as to how long she may take to conclude the investigation and any representations received from the councillor or member.

#### 4. PROCESS TO BE FOLLOWED FOLLOWING A SECTION 21 DECISION BEING MADE

4.1 The Standards Commission will produce a written report outlining whether an interim suspension has been imposed, the length of the interim suspension if one is imposed, and the reasons for its decision. The Standards Commission will advise the councillor / member concerned and the ESC of the decision as soon as possible and, in any event, will send them the written report within three days of the decision being made.

4.2 The Standards Commission will also advise the Chief Executive and Monitoring or Standards Officer of the council or devolved public body of the decision as soon as possible and, in any event, will send them a copy of the written report within three days of the decision being made. The Standards Commission may also choose to advise and send a copy to the complainer(s).

4.3 The Standards Commission will clearly state in the written report that the imposition of an interim suspension should not be seen as a finding on the validity of any allegations against the councillor or member nor should it be viewed as a disciplinary measure.

4.4 The Standards Commission will advise the ESC of the date of expiry of the interim suspension and ask her to provide an update, on the timescale for the likely completion of the investigation.

The ESC will be asked to provide the Standards Commission with notice that an investigation remains ongoing 14 days before the expiry of the period of interim suspension if it is apparent to her that the investigation will not conclude within that timescale.

- 4.5 If the investigation does not conclude within the period of the interim suspension, the Standards Commission will consider renewing it, in terms of Section 21(10). In making a decision about whether or not to renew the interim suspension, a Panel of the Standards Commission will again consider the factors as outlined under section 3 above. The Panel will not specifically seek any further representations from the councillor or member, but will take any received into account when making its decision.
- 4.6 The Standards Commission will advise the councillor or member, the ESC, the Chief Executive and Monitoring or Standards Officer of the council or devolved public body of any decision to either renew an interim suspension. The Standards Commission may also choose to advise the complainer(s) accordingly.
- 4.7 The Standards Commission will publish information about any decision made under Section 21 on its website and may also chose to disseminate this on its social media platforms. In doing so the Standards Commission will clearly state that the imposition of an interim suspension should not be seen as a finding on the validity of any allegations against the councillor or member nor should it been viewed as a disciplinary measure.
- 4.8 As the Panel making the interim decision has not made any findings of fact, nor findings as to whether any allegations are or are not established, members of it may subsequently be members of any Hearing Panel that is convened to consider whether the councillor or member has contravened their respective Code of Conduct (if the matter is referred by the ESC following the conclusion of the investigation).



### **SECTION 21 POLICY – INDICATIVE MILESTONE DATES**

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
06/11/18	LJ	N/A	V1.0	Implementation of Policy
01/04/19	EM	V1.0	V1.1	Review, update CESPLS abbreviation to ESC
30/10/19	LJ	V1.1	V1.2	Minor amendments to wording made following review by Standards Commission. New paragraphs 1.3 and 4.8 added. Paragraph 3.1 amended to reflect decision to delegate interim suspension decisions to Panel of three members.