



INTEGRITY IN PUBLIC LIFE

## RESPONSE TO COMMITTEE ON STANDARDS IN PUBLIC LIFE CONSULTATION STANDARDS MATTERS 2

### 1. Introduction

- 1.1 This submission is made on behalf of the Standards Commission for Scotland (Standards Commission), as an organisation with responsibility for promoting and upholding ethical standards in public life.
- 1.2 The Standards Commission welcomes the opportunity to respond to the Committee on Standards in Public Life's landscape review of the institutions, processes and structures in place to support high standards of conduct. We hope the following submission is of assistance. Any enquiries on this response should be sent to [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk).
- 1.3 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 in Scotland. The 2000 Act established the Standards Commission for Scotland and the post of Chief Investigating Officer, which is now the Commissioner for Ethical Standards in Public Life in Scotland (ESC).
- 1.4 The 2000 Act provided for the creation of a Councillors' Code of Conduct that contains the principles and rules governing the conduct of councillors across all Scotland's local authorities, and 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).
- 1.5 The Scottish Parliament approved a Code of Conduct, which applies to all councillors elected to the 32 Local Authority areas within Scotland.
- 1.6 Each designated devolved public body in Scotland is also obliged to have a Code of Conduct for their appointed members, to reflect the functions and characteristics of the individual organisation. These individual Codes are approved by Scottish Ministers and are adapted from the Model Code, which was also approved by the Scottish Parliament. 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>.
- 1.7 Codes of Conduct currently apply to the following categories of public bodies:
  - Individual Public Bodies e.g. the Scottish Legal Aid Board, the Scottish Police Authority and NHS 24
  - 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

1.8 The Standards Commission's remit is to encourage high standards of behaviour by councillors and those appointed to boards of devolved public bodies in Scotland. 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 quarterly updates; and
- 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 provisions should be interpreted.

1.9 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.

1.10 The ESC is responsible for investigating complaints that councillors and those appointed to boards of devolved public bodies in Scotland have breached their Code of Conduct and for then referring the matter to the Standards Commission for adjudication. The ESC is also responsible for regulating appointments to the boards of public bodies in Scotland, which should be undertaken in line with a Code of Practice, and for investigating complaints about members of the Scottish Parliament (MSPs).

## **2. Standards of Conduct in the UK**

**How well do you think ethical standards - as enshrined by the Seven Principles of Public Life - are upheld in public life today?**

The Standards Commission's remit extends to 1,227 local government councillors (from 32 Councils) and some 1,300 members of devolved public bodies. Over the past four years, however, on average only 12 cases have been referred annually as potential breaches of a Code. While this suggests a good level of adherence to the Codes, the system relies on poor conduct (such as a failure to declare an interest) being identified and reported. The Standards Commission is confident, from its engagement with stakeholders, that councillors have good awareness of their Code and the ethical standards framework and are not unwilling to report potential breaches by political opponents. There is, understandably, a reluctance on the part of officers to report councillors, out of a fear that relationships may be damaged or of repercussions. It is thought that there is not a particularly strong awareness of the right to make a complaint, and how to do so, amongst members of the public.

The Standards Commission is also concerned, from enquiries it receives and anecdotal evidence, that there could be issues with members of public bodies failing to comply with their Codes. To try to determine the extent of this, we undertook a survey of members of devolved public bodies in 2018. The intention was to establish whether the lack of complaints about members of devolved public bodies was the result of a high level of adherence to the Codes of Conduct (based on the Model Code of Conduct) or whether poor conduct was simply going unreported. The Standards Commission also sought to establish the extent of awareness amongst members of certain provisions in the Codes. The majority of respondents advised that they considered they had received

adequate training on their Code and that there were not any provisions within it that they found potentially confusing or difficult to understand. Where topics were identified by respondents as being challenging or problematic; these primarily related to the provisions on declaring interests and the extent to which the Code applied when members were using social media. The data suggested that while a majority of respondents indicated they were 'entirely clear' about what interests required to be declared, a substantial minority reported that they were only 'reasonably' or 'not entirely' clear. Members were asked whether they were aware of, or had experienced, any disrespectful conduct by a fellow board member, such as conduct that could be described as bullying or harassment. While the majority of respondents confirmed they had not, a sizeable minority (16%) advised that they had. Examples of disrespectful behaviour provided included being dismissive of other members and using inappropriate language towards other members and officers.

The data suggested that the adequacy of training may have a positive impact in terms of reducing bullying, harassment and dismissive behaviour by board members. It indicated that members of Territorial Health Boards and Health & Social Care Integration Joint Boards had more experience of disrespectful behaviour than members of other bodies. The data also indicates that a significantly smaller percentage of members of Health & Social Care Integration Joint Boards consider their board had a culture of collective responsibility than other categories of devolved public body. Members were also asked about how reluctant they would be in making a complaint about a fellow board member. A substantial minority (43%) of respondents advised they would either be 'very' or 'somewhat' reluctant to do so. It is evident from the comments provided that a large proportion of members would only consider making a formal complaint about another member if the potential breach was serious and the matter could not be resolved informally / internally.

### Do you believe that there have been any notable shifts in approaches or attitudes to ethical standards in public life in recent years?

Over the last six years, the Standards Commission has experienced an increase in cases referred to it for adjudication. We are unsure, however, whether this is result of an increased awareness of the ethical standards framework, of the ESC applying a lower threshold when investigating complaints and / or because of changes in behaviour. While fewer cases concerning breaches of the rules on registering interests and on gifts and hospitality are being referred, there has been a significant increase in ones concerning a lack of respect (to officers, the public and colleagues), bullying and harassment and failing to declare interests (although majority of the failure to declare interests cases that are upheld tend to be inadvertent and not an attempt to conceal). The Standards Commission has also noticed an increase in issues concerning use of social media, both in terms of abuse directed at politicians and their own posts / responses.

### What do you see as the most significant threats to ethical standards in public life today?

A significant threat is the perception that ethical standards are not taken seriously by politicians at the highest levels (i.e. MPs, Ministers), particularly in terms of integrity, identifying and declaring conflicts of interest and behaving respectfully towards others. We are concerned about the potential impact this could have on local politicians and others in public life, in Scotland, in terms of them questioning why they are subject to higher standards and a stricter enforcement regime. We are also concerned that public confidence in politicians and those in public life can be adversely affected by high profile cases and media reporting of poor ethical standards. Poor conduct can also have a

negative impact on the effective working relationships and, in turn, the effective running of councils and public bodies.

### **3. The Seven Principles of Public Life**

Do the Seven Principles of Public Life accurately describe the appropriate ethical responsibilities for those in public roles, including both political and non-political office-holders?

Would you amend or replace any of the principles or their descriptors? If so, how?

While we consider that the seven principles adequately cover most of the appropriate ethical responsibilities for those in public roles, we would urge the Committee to consider the adoption of the further two, already in place in Scotland (the extra two having been added by the Scottish Executive (now Scottish Government)). These are:

- Duty (public service) - holders of public office should uphold the law and act in accordance with the law and the public trust placed in them. They should act in the interests of the council or public body; and
- Respect - holders of public office must respect all other holders of public office and employees of the council or public body and the role they play, treating them with courtesy at all times. Similarly, they must respect members of the public when performing duties as a councillor or member of the public body.

The Standards Commission considers that the first is an essential reminder that politicians and others in public life must act in accordance with the law and should act in the best interests of public and not, for example, their political party or, in the case of a member of a public body, the interests of another public body or a personal interest. We further consider that the addition of respect could help improve the standards of public debate, which in turn could increase public confidence in those in public life.

### **4. The UK's arrangements for regulating standards**

Are you confident that the UK's arrangements for regulating ethical standards are robust and effective?

The Standards Commission is confident that the arrangements for regulating ethical standards for councillors and members of devolved public bodies in Scotland are independent and relatively effective and robust. Work currently being undertaken to improve the arrangements include:

- The Scottish Government is currently consulting on changes to both the Councillors' and Model Codes of Conduct. The revisions are intended to ensure the Codes remain relevant. In particular, it is proposed that the Codes will be written in first person, with plain English being adopted wherever possible, to encourage individuals covered by them to take ownership and to ensure they are as understandable and accessible as possible. There will be a greater emphasis on addressing bullying and harassment and other unacceptable behaviour, and stronger rules around accepting gifts.
- The Standards Commission intends to continue making improvements to its Hearing processes. This includes holding more online (with livestreaming) where possible and introducing measures to allow Hearing Panels to hear the impact alleged poor conduct has had on others.

- The Standards Commission further intends to undertake work to more adequately evaluate the impact of its adjudication and promotional work to understand whether (and, if so, how and why) this has an impact in terms of changing behaviours.

The Standards Commission notes, however, that there are numerous other UK wide arrangements for regulating ethical standards. The Standards Commission is concerned that the complexity of these arrangements could result in inconsistencies in approach and a risk of confusion.

### Are there any areas of public life where regulation on issues of ethical standards is not strong enough?

As noted above, the ESC is responsible for investigating complaints that MSPs have breached their Code of Conduct. The ESC will prepare a confidential report describing her investigation and giving her opinion on whether the MSP has breached the Code. The report is then sent to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament. Where the ESC finds the Code was not breached, the Committee will normally note the report. Alternatively, the Committee may request further investigation or they may decide not to accept the ESC's findings. Where the Commissioner finds there has been a breach of the Code, it will consider the report in full (initially in private). The Committee will invite the MSP to submit representations, which will also be considered in private. The Committee's decision on whether to accept the ESC's finding of a breach of the Code will be announced in public. The Committee may then recommend a penalty to the Scottish Parliament.

The Standards Commission considers that greater independence could add value to this arrangement as it could help reduce any perception of 'cronyism'.

## 5. Best practice in standards regulation

### What makes an effective standards regulator?

We consider an effective standards regulator is one that is well respected, well-known, fair, transparent, proportionate and consistent. It is one that can impose sanctions that are, and are perceived as being, both as a proper deterrent and punishment. An effective regulator is also one that can, and does, act promptly to resolve a situation / provide a remedy.

The Standards Commission considers its independence from Government and any political influence further adds value, in terms of how it is perceived. We consider that this is enhanced by the separation between our functions and those of the ESC (in terms of the investigative and adjudicative functions).

### Do the UK's standards regulators have the right powers and remit to act effectively?

The Standards Commission considers it has the right powers and remit to act effectively.

### Should the independence of standards regulators be enhanced and protected, and if so, how?

The Standards Commission comprises a Convener and four Commission Members, who are appointed by the Scottish Parliament, and staff it appoints itself. While the Standards Commission is funded by the Parliamentary Corporate Body, it is independent of the Parliament and Government. We consider this enables us to be, and to be perceived as being, free from political influence. We

consider this is important and should be protected, in order to ensure we maintain stakeholder and public confidence that our adjudication decisions are made objectively, based solely on the facts and circumstances of each case.

## **6. Creating ethical cultures**

**How can the Seven Principles best be embedded within a public sector organisation's working culture?**

The key principles are embedded in both the Councillors' and Model Codes of Conduct. The Codes only apply, however, to councillors and members of devolved public bodies and not to officers or to the organisations as entities. We consider the principles can best be embedded by increasing awareness of what these are, and the importance of them, amongst all individuals appointed to, or employed by, a public body. We consider that those responsible for leading the organisation (be it the Chair, Convener, Chief Executive, senior officers and party leaders) have a key role to play in increasing awareness and leading by example. This can then be supported by having arrangements in place for the independent investigation and adjudication on complaints about unacceptable ethical conduct.

**What are the most significant obstacles to embedding high ethical standards in a public sector organisation?**

We consider the most significant obstacles are a lack of awareness of the importance of adhering to the principles and high ethical standards and a lack of credible sanctions being applied to those who fail to meet these (or a perception that is the case) as a punishment and / or a deterrent. We consider that complacency can be an issue, in terms of individuals inadvertently falling foul of the standards by, for example, taking a decision in the best interest of a colleague or political party and not that of the public, or not being transparent about decision-making for fear it may cause embarrassment or negative press coverage. The survey of members of public bodies we undertook in 2018 also demonstrated that there can also be an issue in terms of individuals not wanting to report poor conduct, either because they do not want to be seen as a troublemaker, they are worried their concerns will not be taken seriously or that calling out the behaviour of a colleague could lead to someone being side-lined or even bullied. In addition, we are of the view that ethical standards cannot be embedded if sufficient time is not set aside for training and follow-up / refresher type sessions about what they involve. Newly elected councillors in Scotland receive training on numerous matters, including everything from how to use council equipment to planning and licensing law. There is a great deal to take in and understand, so even if training on the Code of Conduct is provided at the outset, councillors may not necessarily remember what is expected of them, meaning high ethical standards are not embedded in the culture.