

STANDARDS UPDATE

ISSUE 28: December 2020

News

Direction to the Ethical Standards Commissioner on the Outcome of Investigations

The Standards Commission has issued a Direction to the Ethical Standards Commissioner (ESC) requiring her to provide a report to the Standards Commission, at the conclusion of every investigation into a complaint about a councillor or member of a devolved public body received on or after 12 November 2020. Such reports are to outline her findings and conclusions as to whether or not there has been a contravention of the relevant Code. The Direction means that the Standards Commission will make the final decision, under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, on all complaints that have been investigated. The Direction ensures there is a clear separation of functions between the investigatory and adjudicatory functions of the two organisations and will hopefully ensure fairness of process and consistency as to how the Codes should be interpreted. The Direction will allow any disputed evidence or representations on how the provisions of the Codes should be interpreted to be tested fully at a Hearing, where evidence is taken on oath or affirmation and where the participants and the Panel can question witnesses and respond to submissions made.



Review of the Councillors' Code of Conduct and the Model Code of Conduct

The Scottish Government is consulting on changes to both the Councillors' Code of Conduct and the Model Code of Conduct for Members of Devolved Public Bodies. The consultation documents on the [Councillors' Code](#) and the [Model Code](#) can be found on the Scottish Government's website. The consultation closes on 8 February 2021 so make sure you submit any response by then.

Committee on Standards in Public Life Public Consultation: Standards Matter 2

The CSPL is carrying out a landscape review of the institutions, processes and structures in place to support high standards of conduct. The review's terms of reference include: reviewing how well ethical standards are upheld in public life in the UK as a whole and the strength of the arrangements for regulating and promoting them; reviewing the principles of public life; and identifying best practice in the regulation of ethical standards and in the promotion of cultures that celebrate and encourage high ethical standards. Information about the consultation can be found on the [Government's website](#). The deadline for responding is 29 January 2021. A copy of the Standards Commission's response can be found on the [news page](#) of our website.

**Standards
Matter 2**

Committee on
Standards in
Public Life



Monitoring Officers' Workshop

The Standards Commission held its annual workshop for Monitoring Officers online, on 26 October 2020. Topics that were discussed included the proposed changes to the Councillors' Code of Conduct; how to promote and encourage compliance with the respect and bullying / harassment provisions the Code; and how the Standards Commission can best add value in terms of assisting with training and its adjudicatory processes. We are grateful to everyone who attended and hope you found the discussions as informative and useful as we did.

Cases Overview

Since the last briefing in September 2020, three cases were referred to the Standards Commission by the Commissioner for Ethical Standards in Public Life in Scotland (ESC) about elected members of Fife, Shetland Islands and Orkney Islands Councils. The Standards Commission has scheduled online Hearings for all three cases. The Standards Commission held Hearings in six cases involving elected members of Moray, Aberdeen City (two cases), Fife (two cases) and East Renfrewshire Councils. The outcomes of the Hearings are outlined below.

Moray Council - LA/Mo/3132

The Hearing Panel found that the Respondent, Councillor Shona Morrison of **Moray Council**, breached the Councillors' Code by failing to register that she was a remunerated member of the Board of NHS Grampian and for failing to formally declare the membership as an interest at a meeting of the Council. The Panel heard that Councillor Morrison did not declare a formal interest when an item of business on the agenda relating to a formal response from the Council, which was to be sent to the Chief Executive and the Chair of NHS Grampian, regarding a consultation on the future of children's services at a hospital in Elgin was to be discussed. While Councillor Morrison stood down as Chair while the item was being discussed, she did not leave the Chamber. The Panel determined that Councillor Morrison's conduct did not warrant a more severe sanction than censure. This was because there was no evidence that she had attempted to conceal her interest or that there was any personal gain. Furthermore, if Councillor Morrison had registered and declared the interest as required, the specific exclusion in the Code which applied would have allowed her to take part in the discussion and decision-making.

Cases Overview cont.

Aberdeen City Council - LA/AC/2276

The Hearing Panel found that the Respondent, Councillor Marie Boulton of **Aberdeen City Council**, breached the Councillors' Code by disclosing confidential information concerning the Council's budget at a public meeting of the local Community Council. The Panel found that Councillor Boulton advised members of the community council that the Council was looking at having to save £45 million over the following year in order to address a budget gap. The Panel noted that the figure of £45 million had been included in a confidential budget pack provided to councillors in advance of a Council budget discussion. The Panel noted that sometimes confidentiality is a matter of timing, in that information may eventually be released into the public domain. In this case, the Panel considered that while information that there was a budget gap was in the public domain at the time of the community council meeting, it was not satisfied the figure of £45 million was readily accessible and identifiable. The Panel accepted that Councillor Boulton had not intended to disclose the information and had only done so under scrutiny at the meeting, in order to manage expectations about potential expenditure. The Panel censured Councillor Boulton.

Fife Council - LA/Fi/3125

The Hearing Panel found that the Respondent, Councillor Brian Thomson of **Fife Council**, breached the Councillors' Code by failing to declare his non-financial interest as a Council appointed member of the St Andrews Links Management Committee when the Council's North East Fife Area Committee considered an application by the St Andrews Rail Link Campaign for funding from the Local Community Planning Budget to pay for VAT on a transport feasibility study. The Panel considered that a member of the public would be reasonably entitled to conclude that Councillor Thomson would be unlikely to support an application for funding for a study that could help facilitate the creation of a rail link, being something that could have a detrimental impact on the golf courses and recreational areas run by the Trust. The Panel did not consider that the failure warranted a more severe sanction than censure, however, as it was satisfied that the breach was inadvertent, and that there was no personal gain or attempt to conceal the Committee membership.

East Renfrewshire Council - LA/ER/3271

The Hearing Panel found that the Respondent, Councillor Jim Swift of **East Renfrewshire Council**, breached the Councillors' Code by failing to conduct himself in an appropriate manner during an exchange with a fellow councillor at the Council offices. The Panel found that Councillor Swift had called the councillor a "wee fat ugly liar", and in doing so, had been discourteous and disrespectful towards her. The Panel further found that Councillor Swift had shouted at the councillor during the exchange and that his demeanour, tone and body language were aggressive and intimidating. The Panel was satisfied that as Councillor Swift's conduct was unwelcome and would have left the councillor feeling humiliated and intimidated, his behaviour also amounted to harassment. The Panel suspended Councillor Swift from attending full Council meetings for one month. While the Panel considered that the Respondent should have acted with restraint and considered how his conduct could have affected the complainer, it did not consider that the Respondent's conduct warranted a more serious sanction. This was because it was satisfied that the incident was a one-off, was of limited duration and that there was no evidence of any previous transgressions by the Respondent. The Panel further noted that there had been no personal benefit to the Respondent and the events in question had been confined to one day.

Aberdeen City Council - LA/AC/3199

The Hearing Panel found that the Respondent, Councillor Alan Donnelly of **Aberdeen City Council**, breached the Councillors' Code of Conduct and imposed the maximum suspension of one year. The suspension followed Councillor Donnelly's conviction in December 2019, for sexual assault in respect of an incident that occurred in November 2018 at a Seven Incorporated Trades Association event in Aberdeen. The Panel was satisfied that it would have been reasonable for an informed member of the public to have perceived that Councillor Donnelly was acting as a councillor at the event, given both the public nature of it and because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel therefore concluded that the Code applied. The Panel was satisfied that, by sexually assaulting an individual at the event, Councillor Donnelly had harassed the individual and had failed to treat him with courtesy and respect, as required by the Code. In determining the sanction to be applied, the Panel noted that only a conviction giving rise to a period of custody of three months precludes the holding of the office of councillor in terms of Section 31 of the Local Government (Scotland) Act 1973. The Panel noted that the Sentencing Sheriff in Councillor Donnelly's case, having heard the full account of the circumstances and its impact, had not considered the events in question that led to the conviction necessitated a custodial sentence and that the supervision period imposed on Councillor Donnelly had ended and he was no longer on the Sex Offenders' Register.

Fife Council - LA/Fi/3039 & 3075

The Hearing Panel found that the Respondent, Councillor Tony Miklinski of **Fife Council**, breached the Councillors' Code of Conduct by failing to treat two members of the public with courtesy and respect. The Panel found that the Respondent's conduct also amounted to harassment. The Panel noted that the complaint concerned a dispute between a local residents group and the owners of a country house about using it as a wedding venue. Councillor Miklinski provided advice to the residents group. The Panel found that Councillor Miklinski made unfounded and serious allegations about the owners on the residents group's Facebook page. In addition, the Panel found that Councillor Miklinski supplied incorrect and unverified information, which had the potential to damage the owners' business, in an email to a wedding guest. In doing so, the Panel determined that Councillor Miklinski had failed to treat the owners with courtesy and respect. It concluded that, in respect of the Facebook post, Councillor Miklinski had also engaged in behaviour towards the owners that amounted to harassment. The Panel suspended Councillor Miklinski from attending full Council meetings for a period of two months.

Details of the outcome of cases, including full written decisions and information about scheduled Hearings, can be found in the [Our Cases](#) section of our website.

For further information on the support we can offer councillors and members of devolved public bodies, please either speak to your Monitoring Officer or Standards Officer or look out for information on our website. Alternatively, please contact us:

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