

STANDARDS UPDATE

ISSUE 29: March 2021

News

Direction on the Eligibility of Complaints

The Standards Commission has issued a Direction to the Ethical Standards Commissioner (ESC) requiring her to carry out an investigation into every complaint about a councillor and member of a devolved public body she receives, unless:

- the conduct referred to in the complaint would not, even if it could be established to have occurred, constitute a contravention of the councillors', or as the case may be, the members' code;
- the councillor or a member of a devolved public body in respect of whom the complaint has been made has passed away prior to the complaint having been made or is an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000; and/or
- the conduct that has or is alleged to have contravened the councillors' or, as the case may be, the members' code occurred (or in the case of a course of conduct ended) more than one year before the complaint was received.

The aim of the Direction is to ensure there is clarity and consistency in respect of the criteria the ESC uses to assess whether complaints are eligible / admissible for investigation.



Standards Officers' Workshop on 15 March 2021

The Standards Commission held its annual workshop for Standards Officers online on 15 March 2021. Thanks to everyone who attended and participated. Discussion topics included:

- The proposed change to the Model Code of Conduct for Members of Devolved Public Bodies;
- Any ongoing conduct related issues and trends, including any concerning respect, confidentiality and distinguishing between strategic and operational matters; and
- How the Standards Commission can best add value in terms of assisting with training and promoting awareness of, and adherence to, the Codes of Conduct.

Participants made a number of helpful suggestions in respect of matters that the Standards Commission should cover in its Guidance and on the Model Code and training material when the revised Code is finalised and issued.



Appeal Decision

At a hearing on 4 February 2021, a Sheriff Principal considered an appeal lodged by a Respondent against a decision made by a Panel of the Standards Commission, at a Hearing on 10 September 2020, to find him in breach of the Councillors' Code of Conduct and to disqualify him.

The Sheriff Principal did not consider, or make any finding, on the Panel's decisions on breach and sanction, but determined that it should not have continued with the Hearing in the absence of the Respondent, who was self-isolating from 9 September 2020 (having been in close contact with an individual who had tested positive for Covid-19).

The Sheriff Principal remitted the matter back to the Standards Commission to consider at a new Hearing. The new Hearing is scheduled to be held on **7 April 2021**.



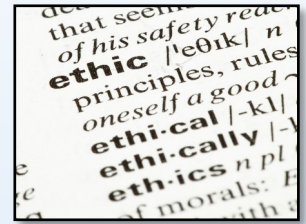
Cases Overview

Since the last briefing in December 2020, no cases have been referred to the Standards Commission by the Commissioner for Ethical Standards in Public Life in Scotland (ESC). The Standards Commission held Hearings in three cases involving elected members of Fife, Shetland Islands and Orkney Islands Councils. The outcomes of the Hearings are outlined on the following page.

Cases Overview cont.

Fife Council - LA/Fi/3278

The Hearing Panel found that the Respondent, Councillor Andy Heer of **Fife Council**, breached the Councillors' Code by disclosing confidential information concerning the re-opening of re-cycling centres following the first coronavirus lockdown. The Panel heard that Councillor Heer, who was a Council appointee to the Board of Fife Resource Solutions (FRS) disclosed, firstly, on a Fife Conservative press release and later, on Facebook, information that had been discussed in the papers for, and at, a special meeting of the FRS Board in May 2020. This was despite knowing the information was to remain confidential until such a time as the Council had agreed to the proposals, that full arrangements for their implementation had been put in place, and for communications to be managed accordingly.



The Panel heard evidence that it was important for arrangements to be put in place including a booking system for the public so that traffic could be managed safely and that staff could be notified of the re-opening of the sites and given appropriate Covid safety training. The Panel found that Councillor Heer, in disclosing the information before these arrangements were made, contrary to the decision made at the meeting, failed to act in the best interests of FRS and in accordance with its rules of conduct as required by paragraph 3.19 of the Councillors' Code of Conduct. The Panel suspended Cllr Heer from attending all meetings of Fife Council, and all meetings of any other body on which he is a representative or nominee of the council, for two months.

Shetland Islands Council - LA/SI/3305



The Hearing Panel found that the Respondent, Councillor Ryan Thomson of **Shetland Islands Council**, breached the Councillors' Code by failing to register properly an interest and shareholding in a company. The Panel noted that, when elected, Councillor Thomson had registered that he was a director of, and received remuneration from, a company called 'Shetland Convenience Stores Limited, trading as Tagon Stores'. The Panel noted that, in May 2018, the company changed its registered name to R & L Thomson (Trading) Shetland Limited and that although Councillor Thomson continued to be a director of the company, he failed to record the change of company name in his Register of Interests. The Panel further noted that Councillor Thomson accepted that he failed to register his shareholding in the company. The Panel accepted, however, that Councillor Thomson's failure to comply with the Code was inadvertent and an oversight. It noted that he had apologised unreservedly. The Panel determined that Councillor Thomson's

conduct did not warrant a more severe sanction than censure. This was because there was no evidence that he had attempted to conceal his interest or that there was any personal gain.

Orkney Islands Council - LA/OI/3265

The Hearing Panel found that, in two Facebook posts published in March 2020, the Respondent, Councillor John Ross Scott of **Orkney Islands Council**, disclosed sensitive information about the Council's response to the coronavirus pandemic. This was despite the information having been provided by officers to elected members at private briefings. Having heard from a number of witnesses, including other councillors, the Panel was satisfied that it was evident to all that information provided at the briefings was to remain confidential until officers had time to prepare its public communications. The Panel agreed that there were legitimate reasons as to why the Council would wish to ensure the information being shared at the briefings was kept confidential at that time, which included that proposals discussed may be adjusted or deferred prior to implementation, and the need to ensure that officers had sufficient time to prepare and manage communications to ensure that the Council's position and response were represented fully, and that messages were drafted in a way that provided some reassurance and did not cause undue fear or alarm. The Panel noted that there was no evidence or suggestion that the Respondent had taken issue with the Council's proposed approach at any of the briefings or that he had sought advice about whether any information he intended to disclose was confidential. The Panel noted that, in disclosing the information in the manner he had, without any supporting commentary, the Respondent was likely to have encouraged interest and questions, some of which would have been directed towards officers. The Panel noted that this, in turn, would have resulted in officers having to take time to respond, as opposed to being able to impart information proactively.



The Panel also found that Councillor Scott disclosed, in another Facebook post in April 2020, that another councillor had passed away, despite having been advised that the news was to be kept private until confirmation had been received that all close family members had been advised of the news. The Panel concluded that the Respondent had breached the privacy and confidentiality provisions in the Code in respect of all three posts. In addition, the Panel agreed that in sharing the news of the other councillor's death, despite being aware that there was a possibility that not all the family members were aware of the news, the Respondent failed to show due regard for their feelings or wishes. The Panel concluded, therefore, that the Respondent had also failed to demonstrate courtesy and respect towards the other councillor's family as required by the Code. The Panel suspended Councillor Scott from attending meetings of the full Council for three 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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