



MODEL CODE OF CONDUCT GUIDANCE

CONTENTS

SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT	3
SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT	7
SECTION 3: GENERAL CONDUCT	8
Respect and Courtesy	8
Collective Responsibility	14
Gifts and Hospitality	14
Confidentiality	17
Use of Public Body Resources	19
Dealing with my Public Body and Preferential Treatment	20
Appointments to Outside Organisations	21
SECTION 4: REGISTRATION OF INTERESTS	23
SECTION 5: DECLARATION OF INTERESTS	28
SECTION 6: LOBBYING AND ACCESS TO BOARD MEMBERS	34
Service User Enquiries	34
Lobbying	35
ANNEX A	38
Hearings	38
Sanctions	38
Interim Suspensions	38

GUIDANCE ON THE MODEL CODE OF CONDUCT

SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

The Model Code of Conduct (Code) required by the Ethical Standards in Public Life etc. (Scotland) Act 2000 originally came into force in 2002 and was reviewed and re-issued firstly in 2014, and most recently in 2021. It sets out the principles and rules governing the conduct of members of devolved public bodies. Your public body's code of conduct is based on this Code. Therefore, all subsequent references to the Code in this Guidance should be understood as references to the Code as adopted by your public body.

This Guidance has been produced by The Standards Commission for Scotland (Standards Commission) and contains case illustrations (some of which are based on cases from Scotland, Northern Ireland and Wales, and some of which hypothetical) and examples of factors that members of devolved public bodies (members) may wish to consider when applying the requirements of the Code. In cases where a provision of the Code mirrors that contained in the Councillors' Code of Conduct, examples of complaints concerning councillors have been included.

Members should be mindful, when seeking to apply the Code to their own situation or circumstances, that the lists of factors in the Guidance and examples provided are not exhaustive. All members have a personal responsibility to ensure that they comply with the provisions of the Code.

While members must observe any guidance from the Standards Commission, it is not a substitute for the Code. The purpose of the Guidance is to provide supplementary information to aid members in interpreting the Code. **Members are, therefore, obliged to ensure they have read and understood the provisions of the Code itself. Reading the Guidance should, in no way, be considered a substitute for doing so.**

This document is a standalone version of the Guidance, without the Code embedded. It is intended to provide easy access to the Guidance itself. Separate versions of sections of the Guidance, with the relevant sections of the Code embedded, are available [INSERT LINK](#).

The Standards Commission will continue to review the Guidance on a regular basis to ensure it is relevant and fit for purpose. As such, any feedback, comments, suggestions for improvements and further hypothetical cases are welcome.

Using this Guidance:

- Guidance points are listed under the Headings to the relevant paragraphs of the Code to which they refer.
- Case illustrations are included in italics (with a purple background).

GUIDANCE

- 1 The Code on which your public body's code is based was approved by the Scottish Parliament and is effective from [xx 2021](#).
- 2 This Guidance also comes into effect on [xx 2021](#) and replaces the previous version, which came into effect on 1 February 2014.

- 3 This Guidance is for members of devolved public bodies. By accepting your appointment as a board member, you have accepted that you are obliged to comply with the Code. The aim of this Guidance is to provide supplementary information to help you do so.
- 4 The Code's purpose is not to restrict you; rather to help and guide you in maintaining the required standards of conduct.
- 5 This Guidance is also directed at advisory and co-opted members who sit on, or attend, any meetings (including committee meetings) of the public body. However, although it is good practice for all those who participate in public body decision-making, it should be noted that the Standards Commission has no legal powers to enforce the provisions of the Code against anyone other than those appointed or elected to be members of the devolved public bodies listed in schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.
- 6 Public bodies should make arrangements to deliver training and induction sessions on the ethical standards framework and should strongly encourage all their members and senior employees to attend. Subject to resource limitations, the Standards Commission can support any such training and induction programme. Any request for assistance or support should be directed to the Executive Director.

YOUR RESPONSIBILITIES

- 7 As a board member, you have a responsibility to ensure the effective governance and financial management of your public body within the context of public service delivery and reform for the benefit of the Scottish public.
- 8 The Scottish public has an expectation that members of public bodies will conduct themselves in accordance with the Code and the nine key principles of public life. You must, therefore, comply with the provisions of the Code in all situations and at all times where you are acting as a member, or could objectively be considered to be acting as a member.
- 9 The Code does not apply to your private and family life. In considering whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, would reasonably consider that you were acting as a member of your public body at the time of the events in question.
- 10 It should be noted that this can include when you are engaging in online activity. For example, the Code may apply when you are using social media if you could reasonably be considered or perceived to be acting as a member of your public body. This does not mean that you are prevented from expressing views (including making political comment) in a private capacity, rather that you should be mindful of how you could be perceived when doing so.
- 11 You can express views in your capacity as a member of your public body provided you do so in a way that is compatible with the substantive provisions of the Code, being Sections 3-6 inclusive. This includes the requirements to maintain confidentiality, to respect the principle of collective responsibility (if applicable), and to behave with courtesy and respect.
- 12 It may be helpful, in certain circumstances, to state that you are expressing your own personal view, rather than the view of your public body. You should, however, always be mindful of how you could reasonably be perceived at the time you are doing so and whether your comments could objectively be considered as reflecting the views of your public body. It can be very difficult

to persuade people that you can take a different view, or even have an open mind, in your capacity as a member of a public body from a view you may have expressed in your personal capacity. This is particularly pertinent in respect of using social media where the separation of public and private comments may be unclear to someone reading them.

For example, there could be a scenario in which an individual who is well-known as a board member of a college posted the following to their personal Facebook account:

“Personal comment – MidScotland College is a joke! It’s been underperforming for years, the staff are useless and the chief exec should be sacked immediately!”

Even though they have stated “personal comment” at the beginning of their post, it is likely that a member of the public reading the post would understand it to have been made by the individual in their capacity as board member of the college, given the subject matter.

- 13 You should attend any training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code, this Guidance, and any other guidance and advice notes issued on specific topics by the Standards Commission. You may wish to discuss training and continuous professional development with the Chair of your public body when you are appointed and during any annual performance discussion.
- 14 It should be noted, in terms of the Standards Commission’s Policy on the Application of Sanctions [INSERT LINK](#), that ignoring advice and/or training opportunities that may have prevented a contravention of the Code may be considered an aggravating factor by the Standards Commission when deciding on the appropriate sanction to be applied, following a breach finding.
- 15 Although it is ultimately your personal responsibility to comply with the Code, paragraph 1.9 of the Code makes it clear that, if you are uncertain about how the Code should be interpreted and applied, you should seek advice. Your public body will have a Standards Officer. This is an employee who is either solely, or jointly, responsible for undertaking various duties and responsibilities related to the ethical standards framework, regardless of whether or not they have the formal title of Standards Officer. The Standards Commission has produced an Advice Note on the Role of a Standards Officer, which can be found at [INSERT LINK](#).
- 16 The Standards Officer and other senior employees may have experience of dealing with queries relating to the Code and can give you advice. You may also wish to seek advice from the Chair or an experienced colleague. If applicable, you may also wish to refer to the Scottish Government’s ‘On Board’ Guidance, which can be found at [INSERT LINK](#).
- 17 As it is your personal responsibility to comply with the Code, the fact that you may have sought, and then followed, such advice would not be a defence to a breach of the Code; however a discussion with the Standards Officer or Chair may help to clarify your own thinking. If you are found to be in breach of the Code, the fact you took advice may be taken into account by the Standards Commission as a mitigating factor when deciding on the appropriate sanction. Conversely, a failure to seek and / or follow advice may be considered as an aggravating factor.
- 18 You should always try to seek advice at the first opportunity. You should be mindful that the person from whom you are seeking advice may not have full knowledge of the matter, or your personal circumstances. On rare occasions, for example when an alleged breach is to be considered by the Standards Commission at a Hearing, you may wish to seek external legal advice.
- 19 You are encouraged to promote and support the Code at all times and to encourage others to

follow your example in doing so. Experienced members should consider whether they can act as a mentor to others to help them to understand the Code.

- 20** The Code should be read as a whole. It may be necessary to cross-reference different provisions.

DRAFT

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

- 21** The key principles are for guidance and you should ensure that you always have regard to, and follow, these principles. You should not persuade others to act in a way that would be contrary to the key principles.
- 22** A breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code. However, the key principles can be used by both the Ethical Standards Commissioner's office (in its investigatory role) and the Standards Commission (in its adjudicatory role) to assist with interpretation of alleged breaches of the substantive sections of the Code, being Sections 3 to 6 inclusive.
- 23** It is your personal responsibility to ensure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a member. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly and in accordance with the Code.

SECTION 3: GENERAL CONDUCT

Respect and Courtesy

- 24** You must treat everyone you come into contact with in the course of your work and role as a member with courtesy and respect, even if you disagree with their views. This can include employees, sponsor body officers, members of the public, politicians and fellow members. While you are entitled to express your views and to disagree with others, you must do so in a respectful way. It should be noted that meetings can include virtual meetings or other forms of remote working via platforms such as MS Teams, Skype and Zoom.
- 25** You should ensure you are familiar with the [Equalities Act 2010](#), which provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Equality and Human Rights Commission has produced guidance on the Equalities Act, which can be found [INSERT LINK](#).
- 26** It is very important to note that the rules of good conduct set out in Section 3 of the Code must be observed in all situations where members are acting as members of the public body, including representing the public body on official business. You should be mindful that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. You should treat the Code as being applicable in all situations in which you might be objectively perceived to be acting as a member. Factors to consider include whether:
- you are clear about the capacity in which are you acting;
 - you describe yourself as a member or are otherwise readily identifiable as a member in the situation / circumstances;
 - you are on the public body's premises or at one of its events;
 - you are using a social media platform on which you are identifiable as a member;
 - you are using IT equipment and / or an email account supplied by your public body;
 - your conduct could reasonably be regarded as bringing your position as a member, or your public body, into disrepute;
 - you are engaged in political activity, or comment on political matters and whether these fall within or outwith the scope of the public body's functions;
 - you are representing the public body or speaking on behalf of the public body.
- 27** In making any decision on whether the Code applies, the Standards Commission will consider how a member of the public, with knowledge of the relevant facts, could reasonably perceive you as having been acting as a member at the time of the alleged breach of the Code.

A member shared an article that contained a sectarian comment on their LinkedIn profile. While the LinkedIn profile was a personal one, and did not state explicitly that the individual in question was a member of their public body, the Panel determined that it was apparent from the content of the profile, other posts, and shared items that this was the case. Therefore, the Panel found that it would have been reasonable for an informed member of the public to have perceived that the individual could have been acting in their capacity as a member of the public body. The Panel accepted that the member's position was that they had not read the article in full, and that the member was absolutely appalled by the remark in question, but nevertheless found that there had been a breach of the Code. The Panel agreed that sharing an article of that nature was likely to bring both the member and their public body into disrepute.

A councillor was convicted of sexual assault in respect of an incident that occurred at a Trades Association event. The Panel was satisfied that it would have been reasonable for an informed

member of the public to have perceived that the councillor 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.

A member had sent, and encouraged an employee of his public body with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Panel rejected arguments that the member had been acting in an entirely personal capacity. It found that the member could not completely separate himself from his role as a board member of his public body, and that, when sending or encouraging the employee to send the messages during working hours, he was acting in his official capacity.

- 28** You should always think ahead. If you have any concerns about a potential problem, speak to your public body's Standards Officer or Chief Executive so that advice can be sought and / or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and / or a complaint being made about you. The fact that you have sought advice, or indeed failed to seek advice, may be taken into account at a Hearing.
- 29** The rules of good conduct also apply when you are engaging in online activity, including when using social media. Social media is a term used to describe online technologies, platforms, applications and practices that are used to share information, knowledge or opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites.
- 30** The Standards Commission has produced an Advice Note for Members on the Use of Social Media. This can be found at [INSERT LINK](#)
- 31** The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Before commenting or posting, you should consider very carefully whether:
- you understand the immediate and permanent nature of any comment or post you are about to make;
 - you would make that comment or post in-person, face to face;
 - you have such conviction in what you are about to share that you would be prepared to justify it if challenged at a later date; and
 - you fully understand that even if you delete your post, it may have been screenshotted or retained in some way, or automatically cached online, and that fully deleting content once it has been shared online is almost impossible to achieve.
- 32** Other important factors to consider when using social media include whether:
- you are identifiable as a member by directly referring to yourself as such or indirectly by referring to the public body or through information or images posted;
 - you have complied with any policy your public body has produced on the use of social media;
 - information you are posting is confidential and you only have access to it because you are a member of the public body;
 - you are demonstrating bias or pre-determination;
 - you are using the public body's equipment and / or your public body's information technology network or your own; and
 - you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions.

A complaint alleged that a member had set up a Facebook account under a false name in order to post derogatory comments about employees of the public body. The owner of the account was identified as the posts contained information about specific employees that could only be known by a member. It was therefore established that by posting the messages, the member in question had been acting in their capacity as a member, regardless of whether or not they had identified themselves as such. It was found that the member had breached the respect provisions of the Code.

- 33** You have a right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). You are entitled to express your views and opinions.

You should note, however, that the protection Article 10 affords is not absolute and does not extend to, or excuse, hate speech or egregious offensive and abusive personal attacks.

Therefore, you may wish to think about:

- whether your comments are likely to bring your office or the public body itself into disrepute;
- whether you are treating others with respect and consideration;
- whether making your point in a respectful and constructive manner may have more of an impact in terms of influencing others;
- whether 'liking', re-posting and re-tweeting comments or posts, or publishing links to other sites could be reasonably perceived in the circumstances as endorsing the original opinion, comment or information, including information on other sites;
- whether to allow disagreement on your social media pages;
- the fact that tone can be harder to convey online so consideration should be given to whether humour, irony and sarcasm will be perceived as such;
- whether you have to respond and / or if it is appropriate or helpful to do so;
- whether anything you post could be considered obscene.

- 34** The Standards Commission has produced an Advice Note that outlines the approach it will take when issues that concern the application of Article 10 of the ECHR and the right to freedom of expression arise. It also suggests issues members should consider in order to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code. The Advice Note is available on the Standards Commission's website at [INSERT LINK](#).
- 35** It is unacceptable for a public figure such as a member of a public body to express views which indicate a discriminatory attitude towards people on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity. Instead, you are expected to advance equality of opportunity and to seek to foster good relations between different people.

A complaint alleged that a councillor had shared, on Facebook and Twitter, a blog article which was critical of a union member who had organised an equal pay strike in Glasgow. The article contained references to 'Mein Kampf' and of Hitler having accused 'The Jew' of gradually assuming membership of the trade union movement. It was found that the article promoted negative stereotypes and was antisemitic in nature. The councillor was found to have breached the respect provisions of the Code.

A councillor referred to the complainer as a 'TERF' (Trans Exclusionary Radical Feminist) in a series of tweets and emails. The Panel found that while the term 'TERF' was potentially controversial and could be seen as one of abuse, it could also be used or perceived as simply a descriptor. It was found, however, that it was evident from the Respondent's description, over an extended period of time, of 'TERFS' as being 'scum' and 'hateful and vile', that the councillor intended it to be one of abuse. It was further found that the councillor had directed the term at the complainer as an individual and

that it was about her as a person, rather than simply being a descriptor of her alleged views. As such, it was determined that the reference to the complainer as a 'TERF', in context, amounted to a personal attack on her and that the councillor had failed to behave in a respectful manner. It was further determined that the councillor had used a highly derogatory profanity about a member of the public in another tweet. It was found that using such a word in a public forum such as a tweet was highly offensive and inappropriate, regardless of whether it had been directed at any individual or identifiable group of individuals. The councillor was found to have breached the Code.

A complaint alleged that a member had posted a homophobic comment on the complainer's Facebook page and that he had accessed his account using a mobile phone issued by his public body when doing so. It was found that the comment made by the member had clearly been intended to insult and demean the complainer. The member was found to have breached the Code.

A complaint alleged that a member made a number of allegations and critical comments on his online blog about the complainer, who was a fellow member, which were of a personal and insulting nature. It was found that the comments had been made without factual basis, were disrespectful and were clearly intended to demean the complainer in a public forum. The member was found to have breached the Code.

A complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to the complainer, a police officer, and also made a number of unfounded allegations about him during two telephone calls to a Police Station. It was found that the councillor had made the telephone calls in his capacity as a ward councillor and concluded that the provisions of the Code applied to him at the time of the events in question. It was further found that the comments made by the councillor in the telephone conversations amounted to an unacceptable personal attack on the complainer and that he had breached the respect provisions in the Code.

- 36** The Standards Commission has produced an Advice Note for Members on Bullying and Harassment. The Advice Note is available on the Standards Commission's website at [INSERT LINK](#). It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident. Even if the behaviour is unintentional it can still be classed as a form of harassment. It is the impact of the behaviour, not the intent, that is the key.

A complaint alleged that a member had behaved in a disrespectful manner towards two female fellow members and employees. It was established that the member had made unwarranted and inappropriate physical contact with the fellow members and employees at an official event and had also made remarks towards the employees which were patronising and demeaning. The member was found to be in breach of the Code.

A complaint alleged that a member had sent an email to a number of employees of their public body and posted a Twitter message, describing an employee as 'arrogant, lazy, mentally challenged and has been useless for years'. The impact of the emails led the employee to seek medical and other support and resulted in him taking sickness absence due to stress. The Panel found the emails and tweet to be completely unwarranted and would have adversely affected the employee's ability to carry out his role. The Panel found the member's conduct amounted to a breach of the Code.

- 37** It is understood that there may be tensions in an environment where individuals have different backgrounds and experiences. It is nevertheless essential to ensure that the public has confidence in the public body and the role of its members. This can only be achieved if members behave in a respectful way towards each other and towards the public body's employees.

- 38** The requirement to respect all public body employees includes employees of contractors

providing services to the public body; and employees of any other organisations where it might be reasonably perceived that the public body, and by implication the member, has an influence over that organisation.

- 39** The Standards Commission has produced an Advice Note for Members on distinguishing between their strategic role and any operational work, which can be found at [INSERT LINK](#). In general, if a duty is delegated to an employee, then it is likely to be operational in nature. You may wish to seek information about specific matters, cases or a particular item of work, but you should be aware that employees may feel pressured by a member challenging their actions or appearing critical of some aspect of their work. This is particularly the case with junior employees, who may not be used to dealing directly with members. Any concerns about performance should be raised with the Chair who can then bring them to the attention of the Chief Executive or the employee's line manager, as appropriate.
- 40** Similarly, as a member, while you are entitled (and indeed required) to scrutinise the effective delivery of services and whether operational targets have been achieved, you should be careful not to make public statements which expressly, or by implication, criticise the actions (or inaction) of an individual employee or identifiable group of employees. You should note that the concept of a public statement is very wide and can cover a variety of scenarios such as in published minutes of a board meeting, a comment on a social media platform, or being overheard whilst being in a public area.

For example, in a scenario where you are concerned about the quality of a report before you, you should consider how you raise your concerns. Saying “*I note this report does not contain a risk assessment – I would be grateful if a risk assessment could be undertaken*” would be respectful, whereas saying “*as usual, your report is inadequate and poorly prepared as it does not contain a risk assessment*” could be perceived as being personally critical of the report's author.

A complaint alleged that a member had become inappropriately involved in disciplinary proceedings being brought against an employee of their public body. The member sought to influence the operational decision-making by sending a number of emails to the employee's line manager excusing the employee's alleged misconduct and praising their performance. In trying to interfere with the line manager's performance of their operational duties the member lost sight of their strategic role and overall responsibility to their public body. The member was found to have breached the Code.

A complaint alleged that a member engaged in public criticism of the Chief Executive of their public body by posting information and comments on a stakeholder's Facebook page. The member did not give the Chief Executive an opportunity to respond before publishing the comments on the Facebook page. The member was found to have breached the Code.

A public body was in the process of updating its website's design and content. One of its members sent numerous emails, and made multiple telephone calls, to the public body's IT department questioning the proposed layout, the timescale for the roll-out and the design of other websites in the supplier's portfolio. The member also suggested wording and other content to be used on specific pages and questioned the proposed menu headings for the new site. While the Panel accepted that members would have a strategic role in such a project, and would be entitled to scrutinise its implementation and make some suggestions, the member in question was found to have strayed too far into discussions and decision-making at an operational level. Indeed, the Panel found that the member's interference resulted in delays to the project as employees' time was taken up in dealing with the member's enquiries and suggestions. The member was found to have breached the Code.

- 41 The word 'Chair' in paragraph 3.10 of the Code is not restrictive to that specific term. The provision also applies to anyone holding a similar chairing or convening role. In the interests of brevity, 'Chair' is used in the following parts of this Guidance.
- 42 The role of the Chair in any public body meeting, which includes a committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of employees) are allowed to be expressed. At the same time, the Chair has a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the public body's Standing Orders. This includes determining the point at which conclusions should be reached. It requires a balanced approach to ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. The role of the Chair in reaching such judgements in terms of the public body's relevant rules, regulations or Standing Orders should be supported and respected.

A complaint alleged that a member had failed to respect the Chair and other colleagues during a board meeting. Despite the Chair determining that the matter under consideration had been agreed, the member continued to speak over the Chair, requiring her to adjourn the meeting. Upon reconvening, the member continued to speak over the Chair. A motion was passed in terms of the public body's Standing Orders to suspend the member from the board meeting. Despite this motion, the member initially refused to leave, and it took a further adjournment from the Chair to persuade the member to remove himself. The Panel held that the member had breached the Code.

- 43 You are accountable for your own individual conduct at all times in terms of the Code when you are at meetings where you are representing the public body, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. The Chair has the right to rule on the acceptability of language used, or comments made, during the course of a meeting and to take appropriate action as necessary. This can include requiring the withdrawal of a remark, asking for an apology, or any other action required to allow the meeting to properly proceed.

Factors you should consider include whether:

- your behaviour, including your body language, is courteous and respectful (even when you hold a different view to that of other participants);
- you are treating others with respect and consideration;
- your choice of language in meetings is appropriate and meets the high standards expected by the general public;
- it is appropriate to refer to other members by nicknames or to refer to them in the second person, by using terms such as 'you';
- newspapers, mobile phones, laptops and other devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying;
- your conduct could diminish the public's opinion of, and trust and confidence in, the public body and / or its members.

A complaint alleged that a member had been disrespectful towards a fellow member by making disparaging remarks about their input into a discussion. Their remarks included a personal comment about the other member's intelligence and their suitability to be a board member. It was found that

the member's remarks amounted to a personal attack and were not relevant or appropriate and as such their conduct was held to be a breach of the Code.

A councillor said "sieg heil" when the Chair of a committee curtailed debate on a motion. It was found that the words "sieg heil" are synonymous with the former fascist Nazi regime in Germany and are directly associated with obedience to an oppressive dictatorship. As such, it was found that the councillor's use of them could only be taken as an unacceptable way of protesting about how the Chair had conducted the meeting in respect of the item under consideration. Although the councillor had retracted the comment when asked to do so, it was found that he had breached the Code by failing to show respect to the Chair.

At a board meeting a member had challenged a senior employee's integrity by accusing them of falsifying data in a performance report. The Panel found this behaviour particularly egregious given that the employee in question was not present at the meeting and could not therefore address the accusations. In addition, the concerns had not been raised previously with the employee or their line manager in private. The member was found to have breached the Code.

Collective Responsibility

- 44** As a member, while you should be ready to offer constructive challenge, you must share collective responsibility for decisions taken by the board of your public body as a whole. If you fundamentally disagree with the decision taken by your board, then you have the option of recording your concerns in the minutes of the board meeting. Ultimately, you must either accept and support the collective decision of your board, or resign.
- 45** The principle of collective responsibility only applies where you are acting or perceived to be acting as a member of the public body and when you are in public, for example, when you are giving a statement to the press in your capacity as a board member. The provision is not intended to inhibit or reduce private discussion by members in matters of decision-making and corporate responsibility. In addition, the requirement to respect the principle of collective decision-making and corporate responsibility does not prevent a board from making a subsequent formal decision to alter, delete or rescind a decision (although if it does, the principle will apply to the new decision).

During a board meeting of their public body, a member voiced their disagreement with a decision taken by their board. This disagreement was registered in the minutes of the board meeting. However, following the board meeting, the member posted an angry comment on Twitter criticising their board and stating in very strong terms that they did not agree with the board's decision. The Panel found that while the member was entitled to have their disagreement recorded in the minutes of the board meeting, their conduct in posting the Tweet failed to adhere to the principle of collective responsibility, and as such they were found to have breached the Code.

An NHS Board was seeking to buy land for potential car parking. Having identified a suitable site, the Board decided to make an offer that was slightly above market value, due to concerns about a third-party's interest in the land in question. One board member did not consider that the purchase at the proposed offer price represented best value, and was the only member who voted against the proposal. While the member accepted the majority decision of the Board, she later made adverse comments about the purchase to a local community group. The Panel found that by making such critical comments, the member had breached the Code by acting contrary to the principle of collective responsibility.

Gifts and Hospitality

- 46 The Standards Commission has produced a separate Advice Note for members on Gifts and Hospitality – [INSERT LINK](#).
- 47 In your role as a member, you should never **ask** for any gifts or hospitality. However, you will be **offered** gifts and hospitality: the Code makes it clear that the default position is you should refuse these, except in the very limited circumstances listed at paragraph 3.15 of the Code. It should be noted that acceptance can include accepting the *promise* of a gift or hospitality.
- 48 ‘Gifts’ or ‘hospitality’ can come in many forms. Beyond the everyday things like bottles of wine or offers of lunch they can include benefits such as tickets to sporting or other events; provision of services at a price below that generally charged to the public; incurring personal debts or obligations on your behalf, relief from indebtedness, loan concessions, or other financial inducements.
- 49 **Objective test:** you should always consider whether your acceptance of the gift or hospitality would allow an informed member of the public to think it might lead to your being influenced in your judgement on matters. Furthermore, you should also consider whether you would have been given the gift or hospitality if you were not a board member. In doing so, you should think not just of your own perception, but the perception of others.
- 50 You should also not give or offer a gift or hospitality that is intended to induce someone, for example an employee or fellow member, to act improperly. You should note that in terms of the [Bribery Act 2010](#), the following cases are offences:
- Case 1** is where:
- (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) intends the advantage
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.
- Case 2** is where:
- (a) P offers, promises or gives financial or other advantage to another person, and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- An example of bribery might be where a windfarm operator promises to pay community benefit to an organisation in a councillor’s ward if that councillor votes in favour of granting planning permission in circumstances where it would not otherwise be granted (i.e. if the proper statutory test of considering the provisions of the development plan and all material planning considerations was not applied or if community benefit was wrongly taken into account in determining a planning application).
- You should, therefore, be aware that regardless of any of the provisions in the Code, a gift to someone else which induces you to improperly undertake a statutory duty, such as regulatory decision, is still likely to fall foul of the provisions of the [Bribery Act 2010](#). This could result in a criminal prosecution against you.
- 51 Where anyone is awaiting a decision from, or seeking to do business with, the public body, you should not accept any form of gift or hospitality from them, no matter how small in nature or value. This is irrespective of whether you sit on a committee or working group with an influence on the outcome of such matters, as the perception might be that you could still be in a position to influence colleagues making the decision one way or another. As you have a personal

responsibility to comply with the Code, the onus is on you to ascertain whether the individual or organisation offering you gifts and / or hospitality is awaiting a decision from, or seeking to do business with, your public body.

- 52** Paragraph 3.15 of the Code sets out the very limited circumstances in which you might accept a gift or hospitality from another person in your role as a member. These would be things such as a pen, or a notepad, or hospitality such as tea or coffee at a local event, or a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference.

For example, as board member of a National Park Authority, you are asked by the Chair and Chief Executive to attend the opening of a new café within the national park. It would be reasonable for you to attend, and to accept an offer of a light lunch.

- 53** Paragraph 3.19 of the Code recognises that there may be situations where, in a role as a member you may be expected to accept gifts on the public body's behalf. These could be, for example, from representatives of a similar body from another country. In those circumstances it may cause embarrassment to refuse to accept the gift: after the event at which the gift is presented, however, you should pass the gift to employees and ask that it be registered.
- 54** Similarly, where you are representing the public body in an official role, you will be expected to accept hospitality associated with that role – a dinner to commemorate the anniversary of an event, for example. If you are invited to such events, you should always check, in advance, with your public body that you can accept the invitation. You should also register the hospitality, making it clear the capacity in which you attended.
- 55** The changes to the Code on gifts and hospitality are designed to avoid any perception that members are using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest (for example, by serious organised crime gangs seeking to obtain contracts and licences to facilitate money laundering).
- 56** The requirement for members to advise their public body's Standards Officer of any offers of any gifts or hospitality from the same source on a repeated basis is important as it is intended to ensure the public body can take action if it appears the same individual or organisation is attempting to influence its board members and decision-making.

A complaint alleged that a councillor had failed to declare hospitality received from a recipient of planning permission who was to make further applications for the same development, during a site visit. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or further hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, following a Council request. This was not regarded as inappropriate for the purposes of the Code.

A complaint alleged that a member had accepted and subsequently failed to declare hospitality received from a law firm that was involved in a tender application to provide legal services to the member's public body. The hospitality involved a trip to watch the Scottish Cup Final at Hampden. It could not be said that the hospitality in question was minor, or that it was associated with the member's duties as a member of their board. In addition, it was found that it should have been evident to the member that there was a possibility that the law firm would submit a tender to provide services to the public body. Although the member was not directly involved in the tender decision, the Panel

found that it was likely that a member of the public would reasonably consider that the hospitality could have led the board member to influence others involved in making the decision. By accepting the hospitality, the member was found to have breached the Code.

Confidentiality

- 57 You have a statutory right, subject to certain statutory exemptions, to the public body's information under the [Freedom of Information \(Scotland\) Act 2002](#). You also have a right to request information where you can show a need to know that information in order to perform your duties as a member.
- 58 You may be provided with some documents and information, in your capacity as a member, for which it is legitimate for a public body to require this to be treated in a confidential way. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing and integrity of a public body, it is essential that you respect the provisions at paragraphs 3.22 to 3.25 of the Code. Information can become confidential in a number of ways, including in terms of the following examples:
- A public body employee, or a member of the public, has asked you to treat it as confidential;
 - The public body has resolved, or is likely to resolve, to treat it as exempt information in terms of Freedom of Information legislation;
 - Information which, under the data protection legislation or the General Data Protection Regulation contains personal data, the release of which would lead to a breach under those provisions.
- 59 Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear, from the nature of the information or from the circumstances in which it was provided to you, that it is confidential. This may include the following types of information.
- commercial information such as information relating to a contract or a contractor's business;
 - personal or sensitive information, such as information relating to an individual's employment or health;
 - information which is confidential as a result of a statutory provision;
 - information discussed in closed or private sections of meetings;
 - legal advice obtained by the public body (either provided by employees or external legal advisers). This will be covered by legal privilege and should not be disclosed without the public body's permission;
 - information received as a result of a relationship where there is an expectation of confidence, such as between a member and a service user; and
 - information about any ongoing investigation being undertaken by the Ethical Standards Commissioner.
- 60 The Public Interest Disclosure Act 1998 (PIDA) allows individuals to disclose certain issues to *particular* external parties (known as "prescribed" individuals or bodies) where there is good reason to believe that internal disclosure will not be taken seriously or will cause the individual making the disclosure to be penalised in some way. This is known as 'whistleblowing'. The PIDA can be found at: <http://www.legislation.gov.uk/ukpga/1998/23/contents>. You should familiarise yourself with the types of matters which should be reported and the reporting procedure that should be followed where any wrongdoing is suspected, as outlined in the Act. A disclosure of confidential information to an external party, such as a media outlet, which is not included in the list of prescribed individuals or bodies is likely to be a breach of the Code.

- 61 You are also a data user and must not breach the data protection principles when handling information. Public body information provided to you must only be used by you for the purpose for which it was provided. Information so held must therefore not be disclosed or in any way used for personal advantage or in such a way as to discredit the public body. This applies even in circumstances where you hold the personal view that such information should be publicly available.
- 62 You should be aware that a breach of confidentiality could result in you being personally liable under data protection legislation. This may result in a potential criminal prosecution, civil liability for damages and / or a fine being imposed by the Information Commissioner, in addition to any reputational damage being incurred by both you and / or the public body.
- 63 You must not provide the media with 'off the record' briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the public body and its committees.
- 64 Sometimes it is a matter of timing, in that information may eventually be released into the public domain. However, you must respect the requirement for confidentiality even if you do not agree with it or consider that the information should be released at an earlier stage.
- 65 In the case of other documents and information, you should seek advice if you are in any doubt as to whether they are confidential. You should exercise judgement regarding what should or should not be made available to outside bodies or individuals.
- 66 As a member, you are in a position of trust and members of the public may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish, at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.
- 67 If you are considering disclosing any information which could reasonably be regarded as confidential, you should always obtain confirmation (preferably in writing) that you have the authority to do so. However, you must be aware that the person who holds the information may not necessarily have the authority to permit any such disclosure.
- 68 You should be aware of the provisions of the data protection legislation. If you hold personal information (such as details of a service user), you may require to be registered as a data controller under data protection legislation. You must abide by the following rules when holding and processing personal data:
- You must only use the information for the purposes for which it was given.
 - You must not share this information with anyone without the consent of the person giving the information.
 - You should not keep the information any longer than you need to.

A complaint alleged that a member disclosed confidential information relating to the health of an employee of their public body to a third party. It was found that the member had breached the Code by disclosing to a third-party information about the employee which was private, personal and sensitive and that was, by its very nature, confidential.

A complaint alleged that a member disclosed, in two Facebook posts, sensitive information about his public body's response to the Covid-19 pandemic. The information in question had been provided by employees at private briefings. The Panel, having heard from a number of witnesses, including other members, was satisfied that it was evident the information was intended to remain confidential until

the public body had prepared its public communications. This was especially important given the nature of the communications, which could have caused undue fear or alarm. The Panel concluded, therefore, that the member had breached the confidentiality provisions of the Code.

A member disclosed to the press the identity of an employee who had made a claim for constructive dismissal against their public body. The member could only have become aware of the information he disclosed by virtue of being a board member, and would reasonably have been aware that the information was sensitive, confidential and not for public disclosure. The Panel concluded that the member had breached the Code.

A board meeting was convened to agree upon an action plan for the sale of part of a public body's property assets. During that meeting a "ballpark" figure that the public body might accept for one of its properties was discussed. Subsequent to that board meeting, one of the members present at the board meeting attended a fishing trip organised by a close personal friend who was a property developer. The member disclosed to their friend that their public body was looking to dispose of part of its property assets, and additionally disclosed the "ballpark" figure that had been discussed during the board meeting. The Panel found that by disclosing this information to their friend, the member had breached the confidentiality requirements of the Code.

A report from a health and social care partnership's Chief Officer, presenting a procurement business case for social care services, was being considered by its board. The report contained information in respect of the tendering exercise and subsequent award of a contract. The information about the award of the contract was disclosed by a board member to a third party after the meeting. In determining whether the member had breached the Code, the Panel noted that while the part of the report containing the information had not been explicitly marked as confidential, it had been discussed in a private part of the meeting. The Panel concluded, as such, that the board member, would have known, or should reasonably have been aware, that the information was confidential and should not have been disclosed. The member, therefore, was found to have breached the Code.

Use of Public Body Resources

- 69** As a general rule, facilities paid for by the public purse, and provided for use in public body business, should only be used for public body business, unless otherwise expressly permitted by the public body itself. It is recognised, however, that some public bodies may allow members occasional personal use of public body provided equipment, such as laptops, mobile telephones and tablets. It is likely that your public body will have written policies on such matters as the use of IT and other equipment for personal and official purposes, support for you and fellow members, and protocols on communications such as press releases. You should make yourself aware of such policies and protocols and familiarise yourself with their contents.
- 70** The Code now explicitly forbids the 'imprudent' use of public body facilities. Given the importance of achieving **best value**, it is important that members are not seen to be using facilities irresponsibly or in such a way that money is wasted. An example of this would be printing documents unnecessarily.
- 71** Facilities must never be used for party-political or campaigning purposes.
- 72** Any expenses claims should be appropriate and necessary to perform your duties as a member of the public body. You should ensure that you are familiar with, and abide by, any policy your public body has in respect of expenses.

- 73** The provisions at paragraphs 3.26 and 3.27 of the Code apply at all times and not just when you are acting as a member of the public body. Other factors to consider include:
- whether you are either explicitly or impliedly consenting or allowing others to use public body facilities improperly;
 - how the resource you are using is funded (for example, who pays for any transport or administrative support); and
 - whether the resource is being used for carrying out official public body business or for activity which has expressly been authorised by the public body or whether you are using it for something else as well.

A complaint alleged that a councillor had used Council facilities to send an email in relation to an application for planning permission submitted by his own company. He was found to have breached the provision in the Code concerning the use of Council facilities.

A complaint alleged that a member used his public body's email account and computer to submit a tender application to another public body on behalf of his private consultancy business. It was found that the member had breached the provision in the Code which prohibits the improper use of public body facilities.

A complaint alleged that a member asked employees in her public body's print room to print a substantial number of posters and flyers advertising a function being held to raise money for an external charity. While it was noted that the print room employees could have declined the request, the fact that it was made by a board member had made it difficult for them to do so. The Panel accepted that while the member had gained no personal benefit, she was nevertheless found to have breached the Code.

Dealing with my Public Body and Preferential Treatment

- 74** As a member, you must not only avoid conduct which seeks to further your own particular interests, or the personal interests of others, but you must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment was being sought. You should note that *seeking* preferential treatment can be a breach of the Code, regardless of whether any action is taken as a result. Factors to consider include:
- whether you are asking employees to act in a way that suggests you are seeking preferential treatment for yourself or others;
 - whether you are asking an employee to undertake work or do a task that is outwith their normal duties (unless prior approval has been given by the employee's line manager). As a member, you are in a position of influence and, as such, it may be difficult for an employee to refuse a request, even if they have concerns that it may not be appropriate for them to agree.
- 75** Paragraphs 3.28 to 3.30 of the Code are designed to ensure there is transparency in your dealings with employees of the public body. There is an onus on you to advise employees of any connection you may have to a matter when seeking advice or information whether within or outwith a formal meeting of the public body or its committees. This applies equally in circumstances where employees are seeking advice or information from you. You should not assume that employees will be aware, or will remember, any personal interest you have in a matter, when you are seeking their advice or information. It is important that you identify any connection as it may be that it is inappropriate for the employee to provide you with advice or information on the matter, if your connection is one that could amount to declarable interest.

For more information on what is meant by “connection” and a “declarable interest” in this paragraph, see the further guidance provided under Section 5 (Declaration of Interests).

A complaint alleged that a member of an NHS board sought preferential treatment when contacting employees about a close relative’s place on a waiting list for hospital treatment. In contacting the employee, the member had sought information which would not normally be available to members of the public. The member had also sought to exert influence in asking that the relative’s treatment be expedited. It was found that the member’s actions amounted to attempts to seek preferential treatment and that they were in breach of the Code.

A member asked an employee for their login details so they could log into a case management system in order to check the progress of a complaint made by a close friend. The employee in question refused to share the login details. However, the member was found to have breached the preferential treatment provision of the Code by virtue of their actions in seeking to gain entry to a case management system that they would not otherwise be allowed to access. While the member would have been entitled to ask for an update on the status of the complaint, the case management system contained personal data and confidential information to which the member was not entitled.

A councillor, as a partner of a firm, submitted a planning application for a wind turbine. The Panel heard that the councillor had sent two emails from his council email address, signed off by him as a councillor, to members of the planning committee that was due to consider the application. In his emails, he put forward a number of points in favour of the planning application. The Panel concluded that members of the public would reasonably conclude that, by sending the emails from his council email address and signing off as a councillor, he was using his position as a councillor to seek preferential treatment. The councillor was found to be in breach of the Code.

Appointments to Outside Organisations

- 76** Public bodies may, on occasion, appoint or nominate their board members to outside bodies. If you are appointed or nominated to an outside body, you are still bound by the Code but you will also have responsibilities as a member of the outside body. These responsibilities will potentially include personal liabilities and may also raise questions of conflict of interest. Conflicts of interest may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Public bodies will therefore need to consider this issue carefully when appointing board members to outside bodies. You need to consider carefully whether you can accept such appointments in each case.
- 77** You should be aware that you may need to register, in terms of Section 4 of the Code, your membership of another body. That membership could also amount to an interest that would require to be declared in terms of Section 5 of the Code.
- 78** If you are appointed or nominated by your public body to an outside body, you will assume legal responsibilities, as an individual, if you are a director or a trustee. As a director of a company, by virtue of the Companies Acts, and / or as a charity director or trustee under the Charities (Scotland) Act 2005 if the outside body is a registered charity. The [Office of the Scottish Charity Regulator has up to date guidance on the latter scenario](#). If appointed or nominated to an outside body, you should ensure that you are clear about the role and the responsibilities you will have to it as a member. You will have to act in the outside body’s best interests and will be bound by the provisions in any code of conduct it has adopted, when acting as a member of it.
- 79** If you have any doubts about your responsibilities or concerns about the impact of an appointment to an outside body on your ability to abide by provisions in your public body’s Code,

you should seek early advice in advance of accepting appointment or meetings at which the appointment is to be made. Advice can be sought from the public body's employees or, if appropriate, from employees of the outside body.

DRAFT

SECTION 4: REGISTRATION OF INTERESTS

- 80 This section of the Code is intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of you or your family, friends or personal associates.
- 81 The Register is intended to be a public record of those interests which you know you have that might, by their nature, be likely to cause conflicts with your role as a member.
- 82 The fact that you subsequently declare the interest at a specific meeting would not necessarily be a defence to a complaint that you breached Section 4 of the Code by failing to register it if required to do so. Accordingly, you should be as transparent as possible in the interests that you register.
- 83 The Register should cover the period from 12 months before your appointment and your whole term of office. For example, if you were appointed as a member in May 2017, your Register should cover the period commencing May 2016 and include the full subsequent term of office. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office. However, you should amend the Register to reflect the change of circumstances, e.g. 'management consultant from xx/xx/2017 until xx/xx/2020.'
- 84 You should be aware that the **Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (2003 Regulations)** [REFERENCE WILL BE UPDATED WHEN REGULATIONS ARE UPDATED] indicates that employees of the public body must retain the record for a period of five years after the date a member ceases to be in office.
- 85 In terms of the 2003 Regulations, you are required to update your entries in the Register of Interests within one month of your circumstances changing. While your public body may issue a reminder annually or even on a more frequent basis, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or your circumstances changing. You should also ensure that you review all your entries in the Register at least once a year, even if you think nothing has changed.
- 86 For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. You should, however, always be mindful of the need to ensure a member of the public should be able to understand the nature of the entry in your register without having to undertake any research. A failure to include sufficient information for an entry to be understandable could amount to a breach of the Code. For example, if you are registering employment you should include the full name of your employer and not just an abbreviation.

Category One: Remuneration

- 87 The level of remuneration, or how much you receive, does not matter in terms of whether an entry needs to be made under this category, the question is only whether you have received remuneration. This means paid work, no matter how casual or trivial in nature, requires to be registered.
- 88 You do not need to state the exact job title of any remunerated post you hold as an employee, but you should provide a description that allows a member of the public to understand the type

of role. For example, you could state you have a 'customer service role' or that you are a 'finance officer'.

- 89** 'Undertaking' is defined in Annex B of the Code as (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit. 'Body corporate' will include such things as companies, limited liability partnerships (LLPs) and, potentially, Scottish Charitable Incorporated Organisations (SCIOs). 'Unincorporated associations' would include clubs, societies, and such things as fishermen's mutual associations. The key as to whether the interest is registrable under this category is whether you carry out work for the undertaking for which you receive some form of 'remuneration,' i.e. wage, salary, share of profits, fee, expenses or other monetary benefit or benefit in kind.
- 90** Paragraph 4.5 of the Code confirms you do not have to register any work which you carry out on behalf of the public body in your capacity as member.
- 91** Paragraph 4.10 of the Code indicates that you should register 'any other work' besides a trade, profession or vocation. Such work might include freelance work which you undertake for a particular sector, or a paid consultancy, or educational or training courses you provide in return for payment.

Category Two: Other Roles

- 92** If you have been appointed as a member of an outside body (including where you have been nominated or appointed by your public body), you should ensure that the membership is registered in your Register of Interests either under Category One: Remuneration (if the position is remunerated) or under Category Eight: Non-Financial Interests (if the position is not remunerated).
- 93** If you hold an unremunerated directorship in an undertaking, and you are remunerated by a parent or subsidiary of that undertaking, you should register the unremunerated directorship under 'Other Roles.' For the sake of transparency, you should register the name and registration number of both undertakings, and the relationship between the two. Your remuneration in the parent or subsidiary undertaking should be registered under Category One: Remuneration.

Category Three: Contracts

- 94** This category is for where you as an individual, or an undertaking you have a substantial interest in (see below) has an upcoming or ongoing contract with the public body for the supply of goods and services. This category may overlap with Category One: Remuneration. If so, you should add an entry under both sections, for transparency.

An example of the detail required would be as follows:

Director and shareholder of cleaning company which has a contract with MidScotland College to valet the college's vehicle fleet. Contract start date: 1 February 2010.

Category Four: Election Expenses

- 95** 'Donations' towards election expenses would include those received via crowdfunding, if individual contributions (including all those from the same source) are more than £50.

Category Five: Houses, Land and Buildings

- 96 If you are required to register an interest under category five (in terms of paragraph 4.18 of the Code), you are required to provide your public body's Standards Officer with the full address of the house, land or buildings. What is published on the public body's website or made publicly available does not necessarily require to be as detailed (and it is sufficient for you to just identify the Council ward - for example, you could state that you own a residential property in the West End ward, Dundee).

Category Six: Interest in Shares and Securities

- 97 'Shares and securities' is intended to cover all types of financial investment models, including stocks, bonds, options, investment trusts, and other forms of part ownership including equity and debt ownership.
- 98 You will have a registrable interest, in terms of paragraph 4.20(a) of the Code if, at any time, you own, or have an interest in more than 1% of the issued share capital of a specific company or body.
- 99 You will have a registrable interest, in terms of paragraph 4.20(b) of the Code if, at the relevant date, the market value of any shares and securities in any one specific company or body you own or have an interest in is greater than £25,000. The "relevant date" is defined in Annex B of the Code as the date you were appointed as a member, and on 5 April each year following your appointment.
- 100 For example, you are appointed as a board member of MidScotland College on 7 June 2021. For the purposes of paragraph 4.20(b) of the Code, 7 June 2021 is the first "relevant date" on which you must consider the market value of your shares and securities. If, on 7 June 2021, the market value of any shares and securities in any one specific company or body you own or have an interest in is greater than £25,000, you must register that shareholding. Thereafter, the next "relevant date" on which you must consider the market value of your shares and securities is 5 April 2022, and then 5 April each following year.
- 101 An interest under shares and securities will also include investments made under self-invested pension plans. However, you do not need to declare an interest in your public body's pension fund (if applicable).
- 102 In relation to paragraph 4.20 of the Code you will have a registrable interest as a trustee, (either as an individual or jointly with other trustees), where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust's value or the value of that benefit is greater than £25,000.

Category Seven: Gifts and Hospitality

- 103 Parts 46 to 56 of this Guidance discuss the provisions in the Code on Gifts and Hospitality, and that the default position now is you should refuse these, except in very limited circumstances. However, if you have accepted gifts and hospitality under previous versions of the Code which allowed you to accept them, these should remain on your Register.

Category Eight: Non-Financial Interests

- 104 When considering whether you have a registrable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think

could influence your actions, speeches, decision-making or voting in the public body. An example of this might be membership of a society. You should consider whether such membership might lead members of the public to reasonably think it could influence your actions, speeches, decision-making or voting, in terms of paragraph 4.22 of the Code. If so, you should register the interest.

105 In order to ensure you are being as transparent as possible, you should consider erring on the side of caution. You are reminded that any non-financial interest registered under Category Eight of the Code, is a connection in terms of Section 5 of the Code. That means you will have to consider whether it also needs to be declared, if the objective test is met, in terms of paragraph 5.5 of the Code.

106 You should bear in mind that the examples of possible non-financial interests stated in paragraph 4.22 of the Code are illustrative only and are not an exhaustive list of potential non-financial interests.

Category Nine: Close Family Members

107 Paragraph 4.23 of the Code is intended to help ensure that your public body complies with accounting standards that require a public body's accounts to disclose the possibility that its financial position may have been affected by any related party transactions. While you are also required to declare the financial interests of others under paragraph 5.5 of the Code, if the objective test is met, there is a risk that your public body's finance team may not realise you have done so when preparing the accounts. You are, therefore, required to register the interest of any close family member who has transactions with your public body or is likely to have transactions or do business with it.

108 The Code does not define what is meant by "close family member" as this will depend on your individual circumstances, but it is likely that a spouse, partner, parent, child and / or any other relative you live with would be considered a close family member. You do not need to disclose the family member's name or any other personal data in the register; it is sufficient for you to identify the relationship and nature of the transaction. For example, *"my son is a partner in a law firm that has a contract to provide legal services to the health board"*.

109 The fact that a close family member may be employed by your public body would not be considered a transaction or business for the purposes of Category Nine. Therefore, while such a connection could amount to a declarable interest under Section 5 of the Code, it would not require to be registered.

A complaint alleged that a councillor failed to register a financial interest in respect of her remunerated employment as an office manager with a member of the Scottish Parliament. The Panel noted that the councillor had publicly announced, via a posting on a social media site, that she would be working for the MSP. While it was accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment, the councillor was nevertheless found to have breached the Code.

A member failed to register that they received a payment for writing an article in a trade magazine. While the article, and associated payment, were one-offs, the article was published and payment was received after the member's appointment to the board of her public body. The Panel accepted that the failure to register was inadvertent, but nevertheless found that a breach of the Code had occurred.

A member failed to ensure his one-third shareholding in a company was registered correctly and timeously. While the Panel accepted that there was no intention to mislead or deceive, and that neither the member nor the company had gained any benefit from the oversight, he was nevertheless found to have breached the Code.

A board member of a Regional Transport Partnership (RTP) failed to register his membership of a prominent cycling pressure group. The Panel found that a member of the public with knowledge of the membership of the pressure group might reasonably think that the member's actions and decision-making at the RTP would be influenced by that interest. As such, the Panel determined it was an interest that should have been registered as a non-financial interest under Category Eight.

DRAFT

SECTION 5: DECLARATION OF INTERESTS

- 110** The requirement for members to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a member's role and denies the public the opportunity to consider whether a member's interests may or may not influence their discussion and decision-making.
- 111** Should you be in any doubt about the legal implications of your participation in a public body discussion or decision, you should seek the advice of the Standards Officer, Chair or Chief Executive before taking part.

Stage 1: Connection

Paragraph 5.1

- 112** In your work as a member, you will have connections with a great number of people and organisations. In the same way, your financial affairs, employment and property holdings - or those of people close to you - will sometimes mean that you have a connection to a matter in which your public body is involved in some way.
- 113** Such connections will not always amount to an interest which you should declare. However, you should always consider whether, in the context of your role as a member, there is the possibility that they do. You should always err on the side of caution, and if you are in any doubt you should consult your public body's Standards Officer.

Paragraph 5.2

- 114** The Code cannot provide for every type of relationship that could result in a connection as this will depend on the facts and circumstances; for example, how close you are to the individual in question and how often you see them. It should be noted, however, that certain relationships such as spouse, partner, cohabitee, flatmate, close friend, parent or child are likely to result in a connection.
- 115** It is impossible to list every type of connection you might have with a matter involving the public body. However, some common examples would include:
- The public body considering some form of financial assistance or decision which could have a direct effect on an organisation you, your partner, or someone close to you works for;
 - Your membership of another body or organisation that is seeking to agree a contract with your public body;
 - Some form of personal connection with a person making an application, or a complaint, to public body.
- 116** The Code does not restrict the ability of a public body to benefit from the knowledge and experience of its members. Having knowledge or experience of a matter that is to be considered by your public body is not necessarily a connection. For example, if your public body is considering tenders received for the provision of a new IT system, your knowledge and experience as an IT specialist would not be considered a connection.

Paragraph 5.3

- 117** Paragraph 5.3 of the Code makes it clear that anything you have registered as an Interest in terms

of Section 4 of the Code (Registration of Interests) would be considered a connection for the purposes of Section 5.

Paragraph 5.4

- 118** You should also be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles. Membership of a body you have been appointed or nominated to by the public body, as its representative, would not normally be a connection.
- 119** However, this does not apply where the matter being considered by your public body is quasi-judicial or regulatory in nature. An example of where you would have a connection as a member of a different body would be where the other body has applied for a licence or consent from your public body, or is an objector to such an application – whether or not you actively participated in the decision by the other body to make the application or objection.
- 120** In terms of being a member of an outside body, the Code also states you may have a connection where you have a personal conflict, either by reason of your actions, connections (other than your membership of the outside body), or legal obligations.
- 121** An example of where you have a personal conflict by reason of your actions could be where, before being appointed to your board, you made critical comments in the press about another organisation's wastefulness in terms of expenditure. Following your appointment, that organisation is now making a funding application to your public body. It is likely, in this situation, that your actions have resulted in you having a personal conflict.
- 122** An example of where you have personal conflict by way of a connection (other than your membership of the outside body) would be where your partner works for the outside body, and the body is seeking funding from the public body for its operations that could have an impact on your partner's job.
- 123** Examples of where your legal obligations might mean you have a personal conflict would include where you are either a director of a company or a charity trustee. Both the Companies Acts and the Charities (Scotland) Act 2005 impose obligations on you to act in the best interests of the company or charity, and those obligations may conflict with your role as a member. If you are in doubt as to what your legal obligations are to the outside body, you should seek advice from its legal advisers.

Stage 2: Interest

Paragraph 5.5

- 124** Having decided that you have a connection to a particular matter, you should apply the objective test to that connection to decide whether it amounts to an interest that requires to be declared.
- 125** The **objective test** outlined in paragraph 5.5 of the Code assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the connection as so significant that it would be likely to prejudice your discussion or decision-making in your role as a member. If the answer is yes, the connection is an interest which you should declare.
- 126** At all times when applying the objective test, you should be aware that it is just that – objective.

The test is not what you yourself know about your own motivations and whether the connection would unduly influence you: it is what others would reasonably think, if they were in possession of the relevant facts.

- 127** There may be instances where, having applied the objective test, you consider the connection is so remote and insignificant that you do not think it amounts to an interest. An example might be where a charity you occasionally donate to is seeking funding from your public body, or when a neighbour you have little social contact with works for a company that has a contract to provide cleaning services for the building where your public body's offices are located.

A complaint alleged that a member of a public body sat on the appointment Panel for the recruitment of a new Chief Executive, despite being a close friend of one of the candidates. Having reviewed all evidence, including that given by witnesses at the Hearing, the Panel determined that there was no breach of the Code. This was because there was no evidence that the member's association with, or connection to, the candidate in question went beyond a professional relationship or that they had engaged in any contact outside a work setting. The Panel concluded that a member of the public, with knowledge of these relevant facts, would not reasonably regard the member's connection as being so significant that it would be considered as being likely to influence their discussion or decision-making. As such, the connection did not amount to an interest that would require to be declared for the purposes of Section 5 of the Code.

A member of a health board took part in a discussion about snagging issues in respect of the construction of a new hospital, despite having previously been engaged in a claim for legal damages against a subsidiary of the same construction company, in respect of a private property. Having applied the objective test, the Panel determined that while the member had a connection to the company, this did not amount to a declarable interest. This was because the Panel did not consider that a member of the public, with knowledge of the relevant facts (being the fact that the legal dispute had concluded and was against a subsidiary company), would reasonably regard the member's connection to the matter as being sufficiently significant as to be likely to influence her discussion on the snagging issues in her role as a member.

- 128** Section 3 of the Code sets out the very limited circumstances in which you would accept gifts and hospitality. The test set out at paragraph 3.16 of the Code is very closely related to the objective test in this section, and it would be unusual for a gift or hospitality you had properly accepted to be so significant that it would constitute an interest.
- 129** When making a declaration and / or deciding whether or not to do so you should consider whether the information you are giving is sufficient for those at the meeting to understand why you are making a declaration. For example, it may be sufficient to say 'I declare an interest as my partner is a member of the organisation making the application.' You might not necessarily need to provide details about how long your partner has been a member and in what capacity.
- 130** You must disclose or declare your personal interests both in formal and informal dealings with public body employees and other members, not just in formal board or committee meetings. This is an important consideration especially when you are seeking advice from public body employees or other sources. You should not assume that employees and others will know or remember what your interests are.
- 131** You should be mindful of the need to protect the confidentiality of another person's business or financial interests when making a declaration. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

A complaint alleged that a member took part in a discussion at a NHS Board meeting on review of child health and medical paediatric inpatient services at a local hospital, where a freedom of interest (Fol) request and press coverage were considered. This was despite being aware that an Fol request had been submitted to the Health Board on behalf of his employer, who was a Member of the Scottish Parliament. The employer, who had an interest in retaining certain services under consideration, had previously raised the issue in the Scottish Parliament and had made public statements in the press. The Panel found that the member had failed to apply the objective test as, had he done so, he would have realised that in taking part in the discussion, where issues and concerns that were similar to those raised by his employer could be raised, a member of the public with knowledge of the relevant facts might reasonably conclude that he could be influenced by his employer. The Panel concluded that the nature of an employee / employer relationship could not reasonably been considered to be remote or insignificant. The member was found to have breached the Code.

A complaint alleged that a member had not declared an interest at a board meeting where reports were presented about the public body's contribution towards the funding of certain voluntary organisations, which included her employer. This was despite her employer having been mentioned specifically in reports considered at the meeting in question. It was found that the member should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meeting. She was found to have breached the Code.

The board of a college was considering a plan for the restructuring of the college's academic faculties. Though the exact details of the restructuring were not yet finalised, it was likely that the plan would result in a number of job losses. A board member, who had a close friend employed as a lecturer in one of the faculties potentially under threat by the restructuring, failed to declare that friendship as an interest. By failing to declare the interest, the Panel found that the member had breached the Code. Though it was not certain that the restructuring would have resulted in the loss of his friend's job, a member of the public, with knowledge of the relevant facts, could reasonably have regarded the member's friendship as being likely to prejudice the discussion and decision-making related to the restructuring.

Stage 3: Participation

Paragraph 5.6

- 132** If you decide that you should declare an interest, you should do so at the earliest opportunity. If you only realise a declaration is necessary when the discussion in respect of a matter is underway, you may wish to consider whether you should provide a brief explanation why you had not realised you had an interest at the outset of the meeting.
- 133** Thereafter, when the item is being considered, you should leave the room. It is not sufficient for you to retire to the back of the room or the public gallery. If the meeting is being held online, you should retire to a separate breakout room or leave and re-join after the discussion on the matter has concluded. It is not sufficient for you to turn off your camera and / or microphone for the duration of the matter.
- 134** You should not give anyone reason to doubt that you are no longer in any position to influence the outcome of deliberations on the relevant item either directly or indirectly. This means that you should refrain from remote contact by text or email with your member colleagues whilst they are engaged in considering the item.

A member who was involved in a decision regarding whether to retain paediatric A&E services at a specific hospital, made a declaration of interest stating that their partner was a nurse in the A&E

department in question. The member's declaration was noted and they were asked to leave the meeting, which was being held online. However, instead of fully leaving the online meeting, they merely switched off their camera, and were therefore still able to see and hear the meeting. The member then proceeded to send multiple messages to their colleagues on the board, outlining further arguments as to why the A&E services should be retained. The Panel found that the member had breached the Code.

Part of the agenda for a public body's board meeting dealt with consideration of a proposed memorandum of understanding between the public body and a university. At the outset of the board meeting, a member, who was also Chancellor of the university in question, declared their interest in the memorandum. When the agenda point arose, the member excused themselves from the board meeting and left the room, returning only when discussion of the memorandum had completed. The member's declaration, together with the fact they had left the meeting, was documented in the board minutes.

- 135** Where the only interest is in relation to an item included in an agenda which is before the public body or one of its committees, for noting or formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.
- 136** You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code. The Standards Commission has produced an Advice Note for Members on How to Declare Interests. The Advice Note is available on the Standards Commission's website [INSERT LINK](#).
- 137** You may wish to check that any declaration of interest you have made at a formal meeting is recorded in the minute with the relevant agenda item identified.

For example: "Ms A declared an interest in relation to the funding application at Agenda Item 16 as she is a director of the company making the application. Ms A therefore left the room and took no part in the discussion or decision-making on that item".

Paragraph 5.7

- 138** You may wish to think about whether you should indicate why you have considered making a declaration but have chosen not to, on the grounds that your connection does not amount to an interest. It may be, for example, that you are confident you do not have an interest, but know that other people could be aware of your connection to the matter without having knowledge of all the relevant facts.
- 139** In those circumstances you might want to make a transparency statement. For example, you could state 'I have a connection to this item by reason of... However, I have applied the objective test and do not consider I have an interest to declare because...'. If you think it would be helpful, you can ask that the committee staff clerking the meeting to note your transparency statement in the minutes. Similarly, you may wish, for the sake of transparency, to state that you were offered, but turned down, a gift or hospitality.

Paragraph 5.8

- 140** The Standards Commission is able to consider requests for dispensations in certain circumstances, either in relation to you as an individual or to a class or description of members who are affected by a particular category of interest.

141 Any application for a dispensation should be submitted either by email to enquiries@standardscommission.org.uk or by mail to the Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP, setting out in detail all the relevant information including the reasons why a dispensation is sought. Factors to consider before making the application include whether:

- it would be in accordance with both the spirit and intent of the Code to grant the dispensation; and
- you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

142 The Standards Commission will respond as soon as it reasonably can after receipt of all information and will normally be able to provide a response within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members work on a part-time basis so this may not always be possible and, therefore, applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.

143 If a dispensation is granted, you should consider stating this at the meeting, and asking for this to be recorded in the minutes.

Paragraph 5.9

144 There is no definition for what may constitute a 'frequent' declaration of interest in terms of paragraph 5.9 of the Code, as this will depend entirely on the specific facts and circumstances of each case and how often the matter in which you have an interest is discussed by the public body. For example, declaring the same interest at four meetings of a public body that only meets on a quarterly basis might be considered 'frequent'. However, this may not necessarily be the case if the public body met twice a month and discussed the matter at each meeting.

SECTION 6: LOBBYING AND ACCESS TO BOARD MEMBERS

- 145** As a member you will be approached by those wishing to make their views known. This is perfectly legitimate, and should be encouraged, as it is important that individuals are able to engage with public bodies.
- 146** Paragraph 6.1 of the Code sets out some of the ways in which you, as a member, may be lobbied. You may be lobbied by a service user on a personal issue, such as the service your public body is providing. Equally, you may be approached by someone seeking financial or other benefit from the public body, either by way of a contract for goods or services, or some form of licence or consent.
- 147** It is easy for the lines between these categories to become blurred, particularly when you are dealing with casework or regulatory applications, such as planning or licensing. While there can be legitimate reasons for engaging with individuals and organisations, it is important to recognise that the integrity and reputation of the public body's decision-making process depends on openness, transparency and following proper process. There is a risk that private meetings with lobbyists, particularly those which fall outwith the public body's procedures, and where employees are not involved, are perceived as undermining this.
- 148** This risk is particularly high where, normally, the lobbyist would be expected to deal with public body employees as part of an established or formal process. If you are seen as facilitating this type of approach, there may be a perception that you have allowed the lobbyist special access to the decision-maker, bypassing the employees. For this reason, if you are approached by anyone about a pending decision of any kind, you should pass any information that you consider relevant to the Chief Executive, Standards Officer or other relevant senior employee of the public body, at the earliest opportunity, to ensure that they are aware of it.
- 149** Paragraph 6.5 of the Code notes that if you have concerns about the approach or methods used by any person or organisation in their contacts with you, you can seek the guidance of the Chair, Chief Executive or Standards Officer. You can also seek advice from a colleague or external advice, as you deem appropriate.
- 150** Discussing the information you have received from lobbyists with employees will give you an opportunity to establish if it something that they were not aware of, and/or if it is relevant to any decision you will be making. It may be that lobbyists will present information in a way which is favourable to their case but without giving you a complete picture. Employees can give you professional advice on what may or may not be a relevant consideration in respect of any decision you will be making.
- 151** Even if you do not make casework or regulatory types of decisions, there are still likely to be issues under the Code which you will need to consider. In particular, it would be a breach of the Code for you to lobby employees who are making decisions on casework or contracts, either on your behalf, or on behalf of others.

Service User Enquiries

- 152** As a member of a public body, you have a representative role and, as such, may be approached by service users. Allowing service users to advise you of their views, including any concerns, helps ensure the public body is perceived as being open, accessible and responsive to the needs of the public. When you respond, you should be mindful of the need to treat everyone with respect, and to otherwise promote the key principles detailed at Section 2 of the Code. In some cases,

however, you may feel that there is nothing further to be gained by responding to a service user. In those circumstances, you should politely inform the service user that is the case.

- 153** It is legitimate for you to take up a service user's enquiry with the relevant employee, although you should at all times follow the public body's policies on the processing of a service user's data. You can ask questions about how a service has been delivered, and can seek information on progress on behalf of a service user, but you should be careful not to stray into operational management (for more advice on this, please see the Standards Commission's Advice Note for members on distinguishing between their strategic role and any operational work, which can be found at [INSERT LINK](#)).
- 154** You should be aware of the distinction between a service user's request for service (or for information about a service), and a complaint about a service received. In the latter case you should recommend the service user make use of the public body's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the Scottish Public Services Ombudsman, if necessary and as appropriate.
- 155** Inevitably there will be occasions where the service user looking for your help is also a public body employee. Whilst they are entitled to do so as a private individual in the same way as any other service user, you should decline to get involved in anything which relates to their status as an employee (such as performance or attendance management). You are a member of the organisation that employs them, and employment matters should be handled by their line manager, or their union representative as appropriate.

Lobbying

- 156** Paragraph 6.7 of the Code notes that it is important that you understand the basis on which you are being lobbied in order to ensure that any action taken in connection with a lobbyist complies with the standards set out in the Code and the Lobbying (Scotland) Act 2016. This Act aims to increase public transparency about lobbying and defines particular types of communication as 'regulated lobbying'. From 12 March 2018 anyone who engages in regulated lobbying must record details of their activities on a Lobbying Register website. Regulated lobbying only involves lobbying when it takes place face-to-face with:
- Members of the Scottish Parliament;
 - Members of the Scottish Government (including the Scottish Law Officers);
 - Junior Scottish Ministers; the Permanent Secretary of the Scottish Government; and Scottish Government Special Advisers.
- 157** Private meetings with lobbyists - whether professional lobbyists or members of the public seeking your support - can undermine public trust in decision-making processes, and can also have consequences for the lobbyist. For example, a private meeting could disqualify them from the tender process if they are bidding for a public body contract. Private meetings could also involve offers of hospitality, which could lead to a breach of the gifts and hospitality provisions at paragraphs 3.13 to 3.21 of the Code.
- 158** If you are approached by a lobbyist, it is likely that they are seeking your involvement as a lobbyist in turn, whether as a decision-maker or otherwise. It is important to recognise that there is a difference between lobbying on behalf of a commercial or personal interest, and lobbying for a policy change or benefit which affects a group of people, a community, or an organisational sector. You should always consider what will benefit the public body and its service users as a whole, not just any narrow sectoral interest.

- 159** You must not, in any case, accept any paid work in which you give advice on how to influence your public body. An example could be if a member of the Standards Commission provided paid consultancy services to a political party in respect of how to best respond to complaints and represent its members at Hearings convened to consider potential breaches of Codes.
- 160** In all situations, care is needed. You should be guided by the Code and, in particular, consider:
- Could anything you do or say be construed as you having been improperly influenced to take a particular stance on an issue?
 - Are you giving, or could you be perceived as giving, preferential access to any one side of an argument?
 - When seeking information on the progress of a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support?
 - Are you reaching your own view on a matter having heard all the relevant arguments and evidence (including the guidance of public body employees) and not simply agreeing or complying with any view expressed by your member colleagues?
- 161** If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard all the evidence. However, you can:
- make it known to employees what representations you have received;
 - assist service users in making their views known to the relevant employee;
 - seek factual information about the progress of a case; and / or
 - advise those that are lobbying who they can contact (i.e. the relevant employee).

A board member had introduced a change to her public body's funding application policy, which was subsequently approved by the board. Following board approval, a service user sent the member an email complaining about the policy change. The member referred the service user's email to the Chief Executive for an employee response. The service user complained that the member's failure to respond indicated that she did not want to engage with him and had denied him access. The Panel noted, however, there was no specific obligation under the Code for individual members to respond to all who seek to lobby them. The Panel considered that the member had acted appropriately in referring the email to the Chief Executive so that the appropriate employee could respond. As such, it determined that the complaint did not amount to a breach of the Code.

A complaint alleged that a councillor had been involved in a 'secret' meeting with some local residents. The outcome of the meeting resulted in a Traffic Regulation Order (TRO) which ultimately led to the introduction of parking restrictions. The complainer alleged that, by attending the meeting, the councillor had failed to be accessible to the public and had demonstrated bias in favour of some residents. It was established, however, that the councillor had been accompanied at the meeting by an officer from the Council's Roads Services. No evidence was found that the councillor had indicated support for or against the making of the TRO, and as such his conduct did not give rise to a breach of the Code.

A complaint alleged that a Health Board member had held an individual meeting with a supplier of medical equipment, despite knowing that the supplier was involved in an ongoing tender process. The member met with the supplier alone, without taking an employee of his public body, and without informing his board in advance that he was meeting the supplier. At the next meeting of the board, the tender applications were discussed and the supplier in question was awarded the contract. The Panel found that by meeting with the supplier, alone, and subsequently taking part in the discussions

and decision-making over the tender, the member had breached the Code. It was likely that a member of the public, with knowledge of the relevant facts, would perceive that the member had offered preferential treatment to the supplier compared to the other suppliers involved in the tender. A member of a board involved in the provision of grant funding accepted payment from a lobbying organisation. At a subsequent board meeting, convened to discuss and decide upon a round of funding, the member posed a number of critical questions and made derisive comments regarding many of the funding applicants. The member did not criticise or comment upon an application for funding by a body which transpired to be a client of the lobbying organisation. The Panel found that by accepting the payment from the lobbying organisation, the member had breached the Code, and it was clear from his actions in the board meeting that in return for the payment he was attempting to accord preferential treatment to the lobbying organisation's client.

DRAFT

ANNEX A

BREACHES OF THE CODE

Hearings

- 162** The Standards Commission, after receiving a report from the Commissioner for Ethical Standards in Public Life in Scotland, (ESC), can decide to hold a Hearing (usually in public) to determine whether a breach of the Code has occurred and, if so, to determine the appropriate sanction. A policy outlining the factors the Standards Commission will consider when making such a decision on a report referred by the ESC can be found at [INSERT LINK](#).
- 163** Details of the procedures followed at a Standards Commission's Hearing are outlined in its Hearings Process Guide and Rules, which can be found at [INSERT LINK](#). In certain circumstances and following the agreement of parties involved in the Hearing the Standards Commission may use an Abbreviated Hearing Process.
- 164** The decision as to whether or not a breach of the Code has occurred will normally be made by consensus of the three Members comprising the Hearing Panel. However, in the event that no consensus can be reached, the decision can be taken by majority.

Sanctions

- 165** Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (2000 Act) obliges a Hearing Panel to impose a sanction. This can be either a censure, suspension, or disqualification.
- 166** The Standards Commission's policy outlining the factors a Hearing Panel will consider when making a decision on the sanction to be imposed can be found at [INSERT LINK](#).

Interim Suspensions

- 167** Section 21 of the 2000 Act gives the Standards Commission power to impose an interim suspension on a councillor on receipt of an interim report from the ESC about an ongoing investigation. A policy in relation to interim suspensions and how decisions are reached on them has been developed and can be accessed here [INSERT LINK](#). A useful flowchart outlining the interim suspension process can be found here [INSERT LINK](#).
- 168** The decision to impose an interim suspension should not be seen as a finding on the merits of a complaint, nor as a disciplinary measure. Guidance on what activities a councillor can engage in when they are subject to either a full or an interim suspension can be found here [INSERT LINK](#).



Standards Commission for Scotland

Room T2.21, The Scottish Parliament

Edinburgh, EH99 1SP

Tel: 0131 348 6666

Email: enquiries@standardscommission.org.uk

Twitter: @StandardsScot