

# STANDARDS UPDATE

ISSUE 38: June 2023

## News

### ***Advice Note for Chairs of Public Bodies***

The Standards Commission has produced an Advice Note for Chairs of Public Bodies. The Advice Note aims to outline the role and responsibilities of the Chair of a Schedule 3 devolved public body, within the ethical standards framework. Schedule 3 devolved public bodies are those listed at Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The Advice Note aims to assist Chairs of devolved public bodies, employees and others, by providing information about the role that Chairs may be expected to undertake within the ethical standards framework. It can be found on the [Advice Notes page](#) of the Standards Commission's website.



### ***Response to Consultation on the National Performance Framework***

The Standards Commission submitted a response, on 31 May 2023, to the Scottish Government's consultation on the National Performance Framework. The consultation and review are designed to ensure the National Outcomes reflect what matters most to communities in Scotland.

The Standards Commission noted that the current 'Human Rights' Vision includes the aim of having "robust, independent means to hold government to account and take an active interest in politics and civic life". The 'Communities' Vision includes the aim that everyone in Scotland is "encouraged to volunteer, take responsibility for our community and engage with decisions about it". The Standards Commission stated that it believed that adherence to the key principles of public life and a commitment to high ethical standards was crucial to these stated aims. The Standards Commission suggested, therefore, the inclusion of indicators that seek to measure: involvement, confidence and perceptions of public bodies and individuals in public life; and engagement with public bodies and involvement and participation in public life. A full copy of the response can be found on the [News page](#) of the Standards Commission's website.

### ***New Animated Videos***

The Standards Commission has produced two new animated videos on social media, and bullying and harassment. These videos can be accessed on the ['E-Learning Modules & Videos'](#) page of the Standards Commission's website.



## Cases Overview

Since the last briefing in March 2023, nine cases were referred to the Standards Commission by the Ethical Standards Commissioner (ESC) about elected members of City of Edinburgh (three cases), Renfrewshire (two cases), Dundee City, Fife, Aberdeenshire and Midlothian Councils. The Standards Commission has scheduled Hearings in two cases concerning a Fife councillor and a Midlothian councillor and conjoined a case with a Hearing already scheduled for a former Dundee City councillor. Decisions on a City Of Edinburgh and a Highland case were pending at our last briefing. The Standards Commission directed the ESC to carry out further investigation in the case involving a former City of Edinburgh Councillor and following receipt of the further investigation report decided to take no action. No action was also taken in the Highland case. The Standards Commission held Hearings in respect of five cases involving councillors from Angus, Highland, Stirling and South Lanarkshire Councils along with two cases concerning a former councillor of Dundee City Council. The outcomes of the Hearings are outlined below. No action was taken in six cases and the written decisions in respect of these cases can be found on the [Cases](#) page of our website.

### ***Stirling Council - LA/S/3571 - Breach***

A Stirling Councillor was found by the Standards Commission to have breached the Councillors' Code of Conduct at a Hearing held in Stirling on 21 June 2023 for behaving disrespectfully towards council officers at a Licensing Board meeting and at two other internal meetings, and for having bullied a senior council officer. The Hearing Panel found that the Respondent had: repeatedly challenged officers at the meetings in an aggressive, excessive and dismissive manner and had behaved in a manner that had caused officers to feel they were being attacked personally and were being belittled and harangued.

In addition, the Respondent was found by the Panel to have become inappropriately involved in operational matters by attempting to pressure officers to take certain courses of action, in respect of issues relating to a development site and regarding the future of a community hall. While the Panel accepted that the Respondent had a right to draw the concerns of his constituents to the attention of officers, it was satisfied that he had gone further than this by repeatedly suggesting actions that he considered should be taken to address the issues he had raised. The Panel noted that the Respondent, as an elected member, was in a position of power and influence over officers and was satisfied that he had attempted to take advantage of this position by trying to direct or pressure officers into taking the actions identified.

# Cases Overview cont.

## *Stirling Council - LA/S/3571 - Breach cont.*

The Respondent was also found to have acted disrespectfully towards an applicant's representative at a Licensing Board meeting. At that meeting, the Respondent was further found to have breached the provisions in the Code that require councillors to act fairly and being seen to act fairly, and to take into account only relevant and material considerations when making decisions on quasi-judicial and regulatory matters (which would include licensing applications).



The Panel was satisfied that a restriction on the Respondent's right to freedom of expression was relevant, sufficient and proportionate, and was required in order to:

- protect the reputation and rights of the officers in question and to ensure that they were free from undue perturbation in order to perform their duties;
- protect the mutual bond of trust and confidence between councillors and officers, to enable the Council to function effectively; and
- to protect the reputation of the applicant's solicitor and the right of the applicant to be given a fair hearing.

The Panel concluded that the Respondent's conduct was serious and, giving due consideration to the impact it had on others, the appropriate sanction should be a reasonably lengthy suspension. Having taken into account the mitigatory factors outlined above, the Panel concluded that a five month suspension was warranted and justifiable in the specific circumstances of the case.

## *South Lanarkshire Council - LA/SL/3558a - Breach*

A South Lanarkshire Councillor Joe Fagan was found by the Standards Commission to have breached the Councillors' Code of Conduct by disclosing confidential information to the press. The Hearing Panel found that in his capacity as a member of a cross-party working group on South Lanarkshire Leisure and Culture, the Respondent had received, on 21 April 2021, an internal briefing paper that broadly recommended the closure of some leisure facilities. On 30 April 2021, the Respondent sent various press outlets a news release advising that his party was concerned about a lack of transparency over the potential closure of community leisure and cultural facilities across the council area. The Respondent shared the news release with other councillors in his political party and encouraged them to share it. Having received an enquiry from a journalist on 4 May 2021, the Respondent then sent the journalist a list outlining the facilities that had been identified for potential closure. It was not in dispute that the Respondent provided this list himself, using information from an internal briefing paper provided to the working group. After the Council's Head of Corporate Communications sent the journalist an email noting that the working group was meant to be working confidentially and that the list the journalist had was not the list of facilities recommended for closure, alternative use or asset transfer, the Respondent then sent the journalist a screenshot of a colour-coded table from the internal briefing paper of 21 April 2021, which contained a colour-coded list of the facilities.



The Panel found that while the briefing paper had not been marked explicitly as confidential in all of its iterations, it was clear from the context in which it had been provided and the set-up and purpose of the working group that it was to be treated as such. The Panel found that the Respondent was fully aware that the working group's role in considering the future of the leisure facilities was confidential when he disclosed the information to the press. The Panel further found that the Respondent had disclosed the information a week before a Scottish Parliament election. Having reviewed all the available evidence, the Panel was satisfied on balance that he had done so, at least in part, for party political advantage, in breach of the provision in the Code that states that confidential information should not be used for personal or party-political advantage, or to discredit the council.

While the Panel noted that the breach was of a serious nature, it determined that a two month suspension was an appropriate sanction in light of the extensive mitigation provided. The Panel was, however, disappointed to note the quotes attributed to the Respondent that appeared in the press following the Hearing, which appeared to indicate that he did not understand that there are legitimate reasons as to why certain information is deemed confidential for a period of time and why it should not be disclosed during that period. The Panel warned that any future breach of the confidentiality provisions in the Code by the Respondent would be treated with the utmost seriousness.

## *Dundee City Council - LA/D/3745 and LA/D/3742 - Breach*

A former Dundee City Councillor was found to have breached the Councillors' Code at a Hearing held in Dundee on 6 June 2023. The Hearing Panel heard at it was not in dispute that the former councillor posted a comment on Twitter in April 2022, in response to a tweet posted by the complainer (a member of the public), that stated: "with absolutely no respect whatsoever, get to f\*\*k, TERF". The Panel heard that there was also no dispute that former councillor referred to another member of the public as a "c\*\*\*\*" in a comment posted on Twitter in March 2022. The Panel heard that, having been advised in an email from a senior council officer that complaints about their Twitter posts had been made, the former councillor replied by stating that the council officer should "Go and tell someone who gives a f\*\*\*". The Respondent referred in their response to their assumptions about the officer's personal characteristics, including his race, gender identity and sexual orientation.

In respect of the tweets, the Panel accepted that it was the Respondent's belief that both members of the public had expressed what they considered to be transphobic views. The Panel considered, however, that even if this was a genuinely held belief, it did not mean that the Respondent was entitled to direct profanities and derogatory terms towards them in a public forum. The Panel considered that the use of such terms in public about members of the public, by someone who was then in a position of authority and responsibility, was disrespectful. The Panel noted that even if the Respondent had felt compelled to comment, they could have expressed their views and opinions without resorting to profanities and personal abuse.

The Panel further found that the Respondent had been disrespectful to the council officer in their emails. The Panel agreed that not only did the officer have every right to contact the Respondent to advise them that complaints about them had been received, it was also fair and courteous for him to have done so. The Panel was satisfied that the officer's emails were entirely professional and respectful, both in tone and content, and considered that the Respondent's replies were entirely inappropriate and disrespectful. As such, the Panel concluded that the Respondent had contravened the requirement under the Code for councillors to treat everyone (including members of the public and council employees) with courtesy and respect. The Panel was satisfied that the Respondent had indicated that their refusal to engage was based, at least in part, on their assumptions about the officer's personal characteristics, including his race, gender identity and sexual orientation. The Panel concluded, therefore, that the Respondent had also, on the face of it, contravened the provision in the Code that states that councillors must not discriminate unlawfully on the basis of the various protected characteristics, under the Equality Act 2010.

The Panel considered that the Respondent's Twitter comments could have an impact on the rights and reputations of the individuals to which they had been directed. The Panel further considered that the Respondent's use of profanities and slurs in posting comments in public, when using an account where they were readily identifiable at the time as being a councillor, brought the standards of public debate below a minimum level, that rendered a

# Cases Overview cont.

## Dundee City Council - LA/D/3745 and LA/D/3742 - Breach cont.

restriction on their freedom of expression necessary. Turning to the email exchange, the Panel accepted that the Respondent was entitled to advise the council officer that they no longer wished to have contact with him or to receive information about any complaint made about them. The Panel agreed, however, that the Respondent could have done so in a respectful manner, without referring to the assumed personal characteristics of the Complainer. The Panel again considered the content of the emails to be sufficiently offensive and gratuitous as to justify a restriction on the Respondent's right to freedom of expression.

The Panel was satisfied, therefore, that the imposition of a restriction on the Respondent's right to freedom of expression in the circumstances was relevant, sufficient and proportionate in respect of both complaints. The Panel concluded, therefore, that it was satisfied that the findings of breach, and the subsequent application of a sanction, would not contravene Article 10.

The Panel noted that the Respondent had been found, on the face of it, to have breached the respect provisions of the Code at two previous Hearings and that, despite this, they had engaged in similar and entirely unacceptable conduct. The Panel further noted that the Respondent had failed to show any remorse or to demonstrate any understanding or insight into the impact of their conduct on others. The Panel concluded, as such, that a lengthy suspension would be the appropriate sanction. The Panel noted, however, that it could not impose a suspension as the Respondent was no longer a councillor. The Panel therefore had no choice but to censure the Respondent.

## Highland Council - LA/H/3755 - No Breach

A Highland Councillor was found not to have breached the Councillors' Code at a Hearing held in Inverness. The allegation was that the Respondent participated in the consideration of a planning application for a windfarm at a meeting of the council's North Planning Applications Committee in April 2022, despite having previously expressed support for the application.

The Panel noted that the Respondent had met with the applicant company, but accepted that this had been well before both the planning committee meeting and lodging of the specific application in question. Additionally, the meetings with the company were information-giving meetings open to any interested party. The Panel noted that councillors are entitled to attend such meetings, provided they do not express support for or against any application that is due to be considered in advance of any planning committee meeting in which they are due to participate. In this case, there was no evidence or suggestion that the Respondent expressed support for or against the application at the meetings he attended with the company.

The Panel was satisfied that the application for a windfarm at the site in question submitted in 2021, that was being considered at the meeting on in April 2022, was different to an earlier application (which had been considered and rejected by the Scottish Ministers in 2015), in that the later project was reduced in scope, in that it concerned fewer turbines and covered a smaller area of the site. While the Panel considered that a letter the Respondent sent to the Scottish Government could be said to demonstrate that he was broadly supportive of the project to develop a windfarm at the site, the Panel did not consider that it either demonstrated he had completely closed his mind or was not prepared to consider the merits of the specific and different application before the planning committee at its meeting in April 2022. The Panel was therefore satisfied that the Respondent had not failed to ensure he was acting fairly, or failed to avoid any suspicion of pre-judging, bias or a lack of fairness in relation to the application, that would have required him to declare an interest and withdraw from consideration of the matter.



## Angus Council - LA/An/3690 - No Breach

At a Hearing held on 1 May 2023, an Angus councillor was found by the Standards Commission to have published a post on Facebook incorrectly stating that another elected member had referred, at a Licensing Board meeting, to a very serious assault on a female by her male ex-partner as 'just another domestic'. The Panel found that it was not in dispute that not only had the other elected member (who is no longer a councillor) not made the remark as presented, he had also acknowledged the seriousness of the incident in question earlier in the meeting and had expressed sympathy for the victim. The Panel accepted, on balance, that the Respondent had not deliberately misquoted the other elected member. The Panel was of the view, however, that the Respondent should have taken much more care in ensuring that she was reporting the other elected member's position correctly, particularly given the emotive nature of the subject and the likelihood that it could provoke a strong reaction from anyone viewing the post. The Panel was satisfied that, by failing to take such care and, as a consequence, by misrepresenting the other elected member's position, the Respondent's conduct in posting the comment amounted, on the face of it, to a contravention of the requirement under the Code for councillors to treat everyone with courtesy and respect.

The Panel accepted, nevertheless, that the Respondent was entitled to the enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights afforded to politicians commenting on matters of public interest (being how she had interpreted another politician's attitude towards domestic violence). The Panel found that the Respondent's post and comments were not sufficiently offensive, personally abusive or gratuitous as to justify the restriction on that enhanced right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail. As such, the Panel concluded overall that a breach of the Code could not be found.

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

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

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