

# STANDARDS UPDATE

ISSUE 45: March 2025

## News

### ***Advice Note for Councillors on Quasi-Judicial and Regulatory Decision-Making***

The Standards Commission has published a new Advice Note for Councillors on Quasi-Judicial and Regulatory Decision-Making. The Advice Note aims to assist councillors in complying with the Councillors' Code of Conduct (the Code) when they are involved in, considering and making decisions on quasi-judicial and regulatory matters. The Advice Note, along with the Standards Commission's other notes on different aspects of the Code, can be found on the [Advice Notes page of our website](#).



### ***Outcome of Appeal against Standards Commission Decision***



At a Hearing held on 26 February 2025, a Sheriff Principal dismissed an appeal brought by a councillor against the Standards Commission's decision to find a breach of the Councillors' Code of Conduct and to impose a two-month suspension in case LA/NL/3978. The appeal was dismissed following a motion raised by the Standards Commission on the basis that it was time-barred as it had not been lodged within the statutory time limit. It is likely, nevertheless, that the Standards Commission would have defended the appeal on its merits had it been submitted on time. However, as it is publicly funded, the Standards Commission considered it was important to minimise its expenditure by seeking dismissal of the appeal as early as possible.

### ***New Standards Commission Member***

The Standards Commission is delighted to welcome its newest Member, Malcolm Bell. A retired senior police officer, Mr Bell was an elected councillor and Convener of Shetland Islands Council for 10 years until 2022, working under and promoting the Councillors' Code of Conduct. Mr Bell is an experienced investigator and has extensive governance experience. Amongst his previous appointments, he was Vice-Chair of NHS Shetland, President of the Scottish Provosts Association, has chaired both child and adult protection committees and was a director of the Improvement Service Ltd for seven years. He is currently a member of the Accounts Commission for Scotland. Mr Bell has been an Honorary Sheriff for 15 years and was recently appointed a Justice of the Peace.



### ***Update from the Ethical Standards Commissioner***

The following is an update from the Ethical Standards Commissioner (ESC):

"At the end of the 2024/25 financial year, the Commissioner and the ESC's Standards team have reflected on the positive progress made against the biannual business plan. We have taken and completed action on initiatives including establishing an ethical standards network with comparable offices in Wales and Northern Ireland to enable resource sharing, networking, benchmarking and the establishment of an external quality assurance framework.

A suite of important guidance explaining [how to make a complaint](#) and [how we investigate](#) is now published online in Easy Read, enhancing accessibility. We have also made great strides in reducing case queues and complaint handling times through pilot internal measures designed to enhance efficiency and build capacity. As a result, our team is now starting to handle complaints in real time. Those measures will be formalised with internal guidance and will be part of a broader overhaul of the Investigations Manual, which will be published in the 2025/26 financial year, introducing revised KPIs and targets."



### ***Standards Officers' Workshop***

The Standards Commission held its annual workshop for public body Standards Officers on 18 March 2025. Topics discussed included: how the composition of some public body boards (and how members were appointed to these) gave rise to inherent conflicts of interest and how these could be managed; and how to assist members to distinguish between strategic and operational matters.

Thanks to all those who attended and took part in the discussion. We hope you found it as useful as we did.



# News cont.

## Videos for Respondents and Witnesses

The Standards Commission has produced a guidance video for Respondents. The video provides an overview of the Hearing process and explains what will happen before, during and after the Hearing. It can be found on the [Information for Respondents](#) page of the website.



The Standards Commission has also produced a video for anyone who has been asked to appear as a witness and give evidence at a Hearing. The guidance video for witnesses and other information about how Hearings are conducted can be found on the [Information for Witnesses](#) page of the website.



## Advice Note for Members of Health and Social Care Integration Joint Boards



Following a consultation, the Standards Commission has reviewed and updated its Advice Note for Members of Health and Social Care Integration Joint Boards (IJBs). The Advice Note aims to provide members of IJBs with an overview of their responsibilities under the ethical standards framework. It seeks to assist members in recognising and dealing with potential conflicts of interest to minimise the risk that such a conflict will erode effective governance and scrutiny arrangements. The [Advice Note can be found here](#).

## Cases Overview

Since the last briefing in December 2024, 28 cases were referred to the Standards Commission by the Ethical Standards Commissioner (ESC) about elected members of Perth and Kinross, South Lanarkshire, West Dunbartonshire, Highland (two cases), City of Edinburgh, Aberdeenshire, Shetland Islands, Dumfries and Galloway, Glasgow City (two cases), North Lanarkshire (three cases), Angus (two cases), Aberdeen City (two cases), Moray, Falkirk and West Lothian (two cases) Councils, a former member of Moray IJB, a former elected member of West Dunbartonshire Council, a Crofting Commission Commissioner, a former member of the Poverty and Inequality Commission, a former member of the Crofting Commission and three former members of South Lanarkshire College.

The Standards Commission has scheduled Hearings in three cases concerning Highland and Falkirk councillors and a member of the Crofting Commission. The decision on an Aberdeen City Council case is pending. At our last briefing, the Standards Commission had directed the ESC to carry out further investigation in a case involving a Highland Councillor and following receipt of the further investigation report, scheduled a Hearing for 15 April 2025. The Standards Commission held a Hearing in respect of a case concerning a councillor from Midlothian Council, along with two cases involving councillors from Aberdeen City and Argyll and Bute Councils. The outcomes of the Hearings are outlined below. No action was taken in 24 cases and the written decisions in respect of these cases can be found on the [Cases](#) page of our website.

### Midlothian Council - LA/Mi/4131 - No Breach

The complaint concerned a remark made by the Respondent to a council employee, Ms A, in March 2024 when in a committee room, while Ms A was replenishing the coffee machine. The Panel noted that it was not in dispute that the Respondent's remark to Ms A concerned how she was using her hands quickly to replenish the machine, albeit there was a dispute about exactly what was said. The Panel noted that while Ms A's position was that the Respondent's remarks had clearly been a sexual innuendo, given the movement of her hand at the time; his position was that he had merely been trying to compliment her by saying she was quick at her job. The Panel noted that Ms A had immediately reported the comment to colleagues. The Panel agreed Ms A would have nothing to gain from raising concerns about the incident and, further, that the actions she took afterwards were consistent with her having taken the remark to be a sexual innuendo. The Panel found Ms A credible and was satisfied she had understood the Respondent to have made an inappropriate remark towards her, that left her feeling uncomfortable and distressed.



The Panel also found the Respondent to be a credible and reliable witness and accepted his evidence that he had not intended any comment as a sexual reference. The Panel noted Ms A had previously advised the ESC that she did not think the Respondent had thought about what his comment could mean, or could be interpreted. The Panel noted that, at another public Hearing, the Standards Commission had not upheld a previous complaint that alleged the Respondent had directed an inappropriate comment towards a female councillor. The Panel noted that Ms A had given evidence to the effect that, at the time of her conversation with the Respondent, she was aware of some rumours, albeit she was unaware of the precise nature of the complaint. Having listened carefully to her evidence, the Panel was of the view it was likely that Ms A may have been influenced, albeit not consciously, by rumours relating to the previous case when concluding the Respondent's remark to her was of a sexual nature.

The Panel could understand why, given this, it would not have been unreasonable for Ms A to have taken the reference to her hand action to have been a sexual innuendo. However, given its finding that the Respondent's evidence was credible, and in the absence of any other witnesses to the exchange between the Respondent and Ms A (and in particular to exactly what was said and how), the Panel was unable to conclude, on balance, that it was more likely than not that the Respondent had intended his comment as a sexual innuendo, rather than as a compliment. The Panel was of the view that the Respondent's willingness to apologise was not an indicator of guilt. The Panel considered, instead, it could just be an indicator that he accepted Ms A was upset and wanted to try to resolve the situation.

The Panel considered the comment being made in the context of refilling a coffee machine would not necessarily be considered sexual, even if, as stated, the sachets were being removed from a strip. The Panel accepted the Respondent's evidence that he had said something to the effect of "the job like that", meaning he had also referred to the task Ms A was fulfilling when commenting on her hand action. In the circumstances, the Panel was of the view that, on balance, it was not reasonable to conclude the Respondent's comment could only be a sexual innuendo. As such, the Panel was unable to conclude overall and on the balance of probabilities that the Respondent had breached the Code.

# Cases cont.

## Aberdeen City Council - LA/AC/3986 - No Breach



An Aberdeen City Councillor was found not to have breached the Councillors' Code at a Hearing held online, in respect of an allegation she had behaved disrespectfully towards and discriminated against, a fellow councillor during a council meeting in October 2023. The Panel heard that, at the meeting, in response to a comment made by the Complainer (another elected member), the Respondent referred her as a "new Scot" and suggested that, as such, the other councillor "maybe doesn't know about" actions she (the Respondent) contended the SNP Government had taken with a view to mitigating against austerity measures, such as the introduction of the bedroom tax.

In reaching its view that the Respondent did not intend her remark to be offensive or discriminatory, the Panel noted she was responding to a point made by the other councillor, rather than choosing to target her out of the blue. The Panel further noted the Respondent had been shocked and surprised by the reaction in the Council Chamber, and apologised publicly at the meeting, immediately after concerns about her use of the term 'new Scot' were raised. The Panel noted that this shock and surprise likely stemmed from the Respondent's understanding and previous use of the term in a solely positive capacity. The Panel noted that it had been suggested that the Respondent's tone was sarcastic. While it did not necessarily agree that was the case, the Panel did not consider it was unusual for councillors, as elected politicians, to use irony or sarcasm to question an opposition colleague's awareness or understanding of an issue, during a debate, to try and score a political point. The Panel was of the view that questioning or criticising a political opponent's awareness of a matter, was a common feature and component of a democratic debate. As such, it did not consider that the Respondent's conduct, in doing so, would in itself meet the threshold for disrespect in terms of the Code, regardless of the tone used.

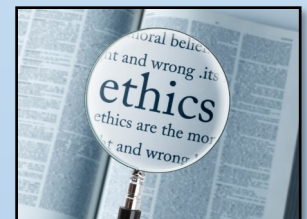
The Panel noted that evidence provided showed that the term 'new Scot' was one used in both Scottish Government and Aberdeen City Council publications, with a delivery plan for the 2024-26 "New Scots Refugee Integration Strategy" being published in July 2024, having been initially launched by the Government in 2013 and updated in 2024. The Panel considered this demonstrated that, in and of itself, the term was not necessarily or even commonly understood or perceived as derogatory or discriminatory. The Panel nevertheless accepted it could have such connotations and, indeed, that a number of those present at the meeting had understood it as such. As such, the Panel agreed it was important for it to consider, whether anyone who heard the Respondent's remark, with knowledge of the circumstances in which it had been used (during a heated political debate) and to whom it had been directed, would reasonably understand it to be offensive or discriminatory, regardless of her motivation in making it. (continued on next page).

In making this assessment, the Panel did not accept that the use of 'new Scot' would be readily or reasonably understood to be a reference to the other councillor's race, ethnicity or skin colour; or that it amounted, or could be taken to amount, to a public assertion that the other councillor was ignorant due to any protected characteristic. This was because the Panel considered it was entirely plausible a white individual who had recently moved to Scotland from, for example, somewhere in Europe, or even another part of the UK, could be referred to as a 'new Scot', given they were new to Scotland. Indeed, the Panel noted that the "New Scots Refugee Integration Strategy" did not distinguish between race, ethnicity or skin colour.

The Panel agreed it was apparent from the context in which it was used, being the questioning of whether someone who may not have lived in the country was aware of a policy in place at the time and its impact, that the Respondent was not questioning the other councillor's potential knowledge based on any protected characteristic. Given this, the Panel did not accept that the Respondent had sought to distinguish the other councillor on the grounds of her race. The Panel also did not accept, in light of this context and the different ways in which the term 'new Scot' is used, that most individuals, with full knowledge of the Respondent's remark and the circumstances in which it was made, would reasonably or readily consider it to be offensive or discriminatory. As such, the Panel was unable to conclude overall, and on the balance of probabilities, that the Respondent had breached the Code.

## Argyll and Bute Council - LA/AB/3953 - Breach

A Hearing Panel suspended an Argyll & Bute Councillor for two months after he was found to have made disrespectful and discriminatory comments about a child in telephone conversations with an officer from the Council's Education Department in January 2023. The Panel found that, during the telephone calls, the Respondent effectively made a serious accusation on his own behalf (as opposed to just passing on what his constituents had allegedly told him), The Panel accepted the Council officer's evidence, which was supported by a contemporaneous file note that, during the calls, the Respondent had stated that: because the child cross-dressed, it was likely he put video recording equipment in a girls' changing room in a local school; and that people who cross-dressed were more likely to be sexually deviant.



The Panel also accepted the officer's evidence that it was evident, from the timing and context in which it was made, that the Respondent, when making the second remark (to the effect that people who cross-dressed were more likely to be sexually deviant), was doing so in the context of the discussion about the child. As such, even if it was also a general opinion about individuals who cross-dress, it was not plausible to perceive it, reasonably, as being an entirely separate and distinct statement.

The Panel found the Respondent effectively made serious accusations on his own behalf (as opposed to just passing on what his constituents had allegedly told him), being both that the child had undertaken a potentially criminal act and was also likely to be 'sexually deviant'. The Panel was not provided with any evidence to show this accusation was based on anything other than how the Respondent understood the child occasionally dressed. The Panel agreed that the Respondent would, or reasonably should have, been aware that as the person responsible for investigating the matter, the officer would be obliged to share this with the child's parents given it concerned their then 15-year-old child. While the Panel accepted the Respondent may not have expected his own opinion about individuals who cross-dress would be shared, it considered he should have been aware this was a possibility, given these had been proffered in support of his accusation that the child in question was likely responsible for putting video recording equipment in the girls' facilities. The Panel considered that making such an accusation in the circumstances was disrespectful towards the child and, as such amounted to a breach of paragraph 3.1 of the Councillors' Code.

The Panel was further satisfied from the evidence that the Respondent's accusation was based on an understanding that the child was transgender, or because he was under the misapprehension that anyone who cross-dressed must be transgender. The Panel agreed, that in making an unsubstantiated accusation on the basis of a protected characteristic, perceived or otherwise, the Respondent failed to foster good relations between different people. The Panel concluded, therefore, that there was also a breach of paragraph 3.2 of the Code. The Panel agreed that, as an elected politician, the Respondent was in a position of power and authority. The Panel was of the view that in making a very serious and unsubstantiated accusation on his

# Cases cont.

## *Argyll and Bute Council - LA/AB/3953 - Breach cont.*

own behalf, from a position of power, before the concerns raised by his constituents had been investigated, the Respondent engaged in inappropriate, offensive and intimidating behaviour. The Panel agreed that such behaviour had the potential to make the child and his parents feel humiliated and insulted. The Panel concluded, therefore, that the Respondent had also breached paragraph 3.3 of the Code, which requires councillors to refrain from bullying and harassment.

The Panel acknowledged that the Respondent was entitled to his political views and, further, that he had every right to pass on concerns his constituents may have had to council officers. The Panel was concerned, however, that he had gone beyond this by making a serious, unfounded and gratuitous accusation of potential criminality against a then 15-year-old child, simply because of how he allegedly and occasionally dressed. The Panel was also concerned that the Respondent had not shown any insight into the potential impact of his conduct, particularly on the child and his family. It noted that he had not proffered any apology. In the circumstances, the Panel concluded, on balance, that a two-month suspension was the appropriate sanction.

## *Highland Council - LA/H/4078 - Breach*

Following a Hearing held online, a Highland councillor was found to have breached the provision in the Councillors' Code of Conduct that requires councillors to register certain non-financial interests.

The Hearing Panel found, and noted that it was not in dispute, that the Respondent failed to record membership of the Lochaber National Park Working Group in her Council Register of Interests until July 2024, despite having been a member since at least October 2023. The Panel noted that the group was an informal one, comprising of local volunteers, who believed that Lochaber should submit an application to the Scottish Government to be designated as a National Park. The Panel nevertheless noted the group had organised community consultation events, set up a website and social media pages, ran a survey, and submitted a 'conditional nomination document' to the Scottish Government in February 2024, as part of the National Park designation process. The Panel noted that the Respondent was named and identified as a councillor in the conditional nomination document.

The Panel was of the view in this case, the relevant facts for the purpose of the application of the objective test were that:

- There was evidence that the suggestion that Lochaber should seek national park status had generated strong feelings locally, both for and against the proposal. The Panel considered, therefore, that there was public interest in the group and, as such, the public might view its aims as having the potential to affect a community served by the Council.
- The Council provided funding to an organisation that supported the group. As such, it was a community group that benefitted from a decision taken by the Council.
- The Respondent was identified as a councillor in the nomination document, which suggested her status as an elected member was considered relevant.

The Panel considered that it would be reasonable for members of the public, with knowledge of these relevant facts, to consider they were sufficiently significant as to be likely to potentially influence the Respondent's discussion and decision-making at Council. This was because it would be reasonable for members of the public to conclude it was likely the Council could be asked to support (financially or otherwise) any nomination application. The Panel concluded, therefore, that the Respondent's membership of the group was a non-financial interest that required to be registered, within a month.

The Panel noted, in mitigation, that the Respondent had apologised for her failure to register membership of the group within the required timescales. It was satisfied that she had not attempted to conceal her interest and that there was no personal gain. In the circumstances, the Panel concluded that a censure was an appropriate sanction.



***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:**

Room T2.21

0131 348 6666

Scottish Parliament

[enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)

Edinburgh

[www.standardscommission.org.uk](http://www.standardscommission.org.uk)

EH99 1SP

[LinkedIn](#)

[facebook.com/StandardsCommission](https://facebook.com/StandardsCommission)