

# STANDARDS UPDATE

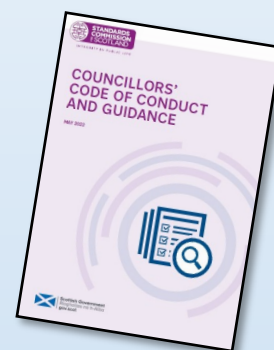
ISSUE 34: June 2022

## News

### ***Combined Code and Guidance published***

The Standards Commission has published a version of its Guidance on the Councillors' Code of Conduct with the Code embedded, which can be found on the [Guidance page](#) of our website. The Councillors' Code is displayed in purple text followed by the relevant parts of the Guidance in black text. The Guidance numbering follows that of the Standards Commission's standalone Guidance document. Case examples are displayed in blue text. It is hoped that the Combined Guidance and Code will assist councillors, officers and members of the public in interpreting the provisions of the Councillors' Code.

A version of the Guidance on the Model Code of Conduct for Members of Devolved Public Bodies, incorporating the Model Code has also been produced and is available on the [Guidance page](#) of the website.



### ***Monitoring Officers' Workshop 2022***

This year's Monitoring Officers' Workshop will be held at the COSLA Conference Centre in Edinburgh on Monday, 24 October 2022. Please save the date if you have not already done so. Please email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk) if you would like to attend either in person, or virtually. If you are able to attend, please advise the Standards Commission of any topics you wish to discuss.

### ***Responses to Councillors and Monitoring Officers Surveys***

The Standards Commission issued surveys to councillors and the Monitoring Officers of all 32 Scottish local authorities in February 2022 to learn about their experiences with the ethical standards framework. Documents outlining the responses received to the surveys can be found on the [Surveys page of our website](#). We intend to use information gathered to inform future training events and to identify the need for any further educational material or guidance. Actions the Standards Commission hopes to take in light of the responses, subject to budget and resources constraints, are outlined in the documents under the headings 'Next Steps'.

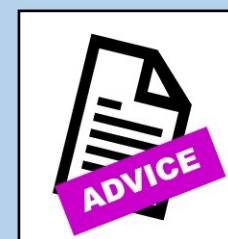


### ***Police Scotland - Serious Organised Crime Awareness***

Police Scotland have produced a slideshow for elected members on serious organised crime, which is available to download from the [Standard Presentations & Training section](#) of our website. It aims to increase councillors' awareness and knowledge of the threat from serious organised crime, the ways in which their council might be vulnerable, and the ways in which they themselves may be vulnerable as individuals.

### ***Summary Advice Note for Councillors on Article 10 of the ECHR***

The Standards Commission has produced and published an advice note that provides a brief summary of a councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights. It is hoped that this will supplement the Standards Commission's Guidance and its more detailed Advice Note for Councillors on the Application of Article 10. Both Advice Notes can be found on the [Advice Notes](#) page of our website.



### ***Follow us on Social Media***

The Standards Commission's Twitter account can be found at [@StandardsScot](#) and our Facebook page at [facebook.com/StandardsCommission](https://facebook.com/StandardsCommission). Please give us a 'Like' and follow to keep up to date with our latest news.

### ***Standards Commission Glossary published***

The Standards Commission has published a glossary of the abbreviations and terms it uses, with accompanying explanations. This can be found on the [About Us](#) page of our website.

# Cases Overview

Since the last briefing in March 2022, eight cases were referred to the Standards Commission by the Acting Ethical Standards Commissioner (Acting ESC) about elected members of Fife, City of Edinburgh (2 cases), Angus, Renfrewshire, Orkney Islands and North Lanarkshire Councils, and a member of the Aberdeen City Health and Social Care Partnership Integration Joint Board.

The Standards Commission held three Hearings in respect of cases concerning councillors from Dundee, Aberdeen City and Angus Councils. The outcomes of the Hearings are outlined below. No action was taken in eight cases, outlined below. The Standards Commission has directed the Acting ESC to undertake further investigation into a complaint involving a councillor from Angus Council.

**It should be noted that the Acting ESC now refers reports on all concluded investigations to the Standards Commission, regardless of whether the investigation suggests the Code was breached. The final decision on breach is then made by the Standards Commission.**

## Dundee Council - LA/D/3580 - Hearing Held - No Breach

The Hearing Panel heard that it was not in dispute that the Respondent made public accusations that the Complainer, a public law solicitor, had bullied and intimidated trans people and that his employer, a prominent charity law centre, had used public money to defend transphobia. The Panel found that the Respondent made public and serious accusations about a member of the public, without sufficient justification. The Panel found that the conduct in question had been disrespectful and amounted to harassment.

The Panel was, however, satisfied that the Respondent was commenting on matters of public concern, namely issues concerning the debate on gender recognition and trans rights. In the circumstances, the Panel considered the Respondent would attract the enhanced protection of freedom of expression afforded to politicians under Article 10 of the European Convention on Human Rights (ECHR). The Panel concluded that finding a breach of the Councillors' Code of Conduct, and the consequent imposition of a sanction, was not justified.



## Aberdeen City Council - LA/AC/3600 - Hearing Held - No Breach

The complaint before the Panel alleged that in making certain comments in a newspaper article and accompanying video about the restoration of a historic building in Aberdeen, the Respondent failed to respect council employees and criticised their conduct and capability in public. The Panel determined, however, that the Respondent had not raised any matters relating to the conduct or capability of any identifiable employee or employees in public, as it did not consider, in this case, that it was reasonable to conclude that members of the public in Aberdeen would have been able to readily or easily identify any employees involved in the restoration project.

The Panel was satisfied that the Respondent's criticisms were directed against the administration for the choice of method of restoration it made; rather than being about the conduct or capability of any of the employees involved in executing the work. The Panel considered it was entirely possible to distinguish criticism of decisions made by the political administration from criticism of the employees who had undertaken the restoration work in accordance with those decisions, and noted that failing to distinguish between such classes of criticism could prevent opposition councillors from undertaking their important scrutiny role. The Panel concluded that the Respondent's conduct did not amount to a breach of the Code.

## Angus Council - LA/AN/3561 - Hearing Held - No Breach

The complaints concerned allegations of disrespect by the Respondent in connection with the operation of an anonymous Twitter account named "Lady Whistledown AngusFreeofSNP". The Panel heard that it was not in dispute that the Respondent had operated the Twitter account anonymously and posted the comments attributed to him until a local newspaper published an article on 23 June 2021 linking him to the account. The Panel heard that the Respondent had deleted the majority of the posts on the account before the newspaper published a further story the following day reporting that, after further denials, he had admitted that he was behind the account.

The Panel noted that it had only been possible to recover some of the posts published on the account. The Panel found that, in a number of these, the Respondent had been disrespectful towards both members of the public and fellow councillors. The Panel determined, therefore, that his conduct amounted, on the face of it, to a breach of the Code.



The Panel noted, however, that before coming to a final decision, it was required to consider the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights. The Panel considered that the Respondent's comments were not sufficiently shocking, offensive and gratuitous as to justify a restriction on his right to freedom of expression, being ultimately satisfied that the Respondent was attempting to make political points, albeit in an inappropriate manner. As such, the Panel concluded overall that a breach of the Code could not be found.

## Dumfries and Galloway Council - LA/DG/3514 - no action

The complaint concerned an exchange alleged to have taken place between the complainer and the Respondent relating to a local development trust. Having taken into account both public interest and proportionality considerations, and in particular the serious nature of the allegation, the Standards Commission decided to hold a Hearing, originally scheduled to take place on 17 May 2022. However, following receipt and review of new information contained in the Complainer's complaint form which corroborated the Respondent's position that he was not acting as a Councillor during the alleged exchange, the Standards Commission reconsidered its initial decision to hold a Hearing, determining it to be highly unlikely that a Hearing Panel would find that the Respondent was acting, or could reasonably be perceived as acting, as a councillor during the alleged exchange.

The Standards Commission considered, in light of its conclusion in respect of the new information, it was unlikely the Code applied to the Respondent at the time of the incident in question. As such, it followed that it was not likely that a breach of the Code would be found at any Hearing. The Standards Commission therefore determined it was neither proportionate nor in the public interest to hold a Hearing. The Standards Commission determined to take no action on the referral.

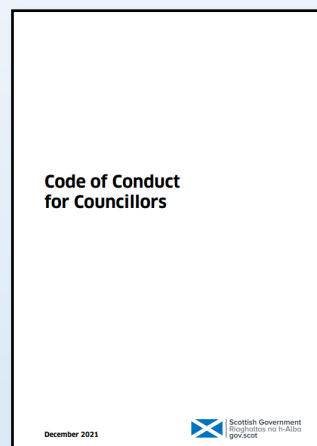
# Cases Overview cont.

## *Fife Council - LA/Fi/3544 - no action*

The complaint related to two issues involving three Councillors. The first issue of complaint was that the Respondents failed to declare an interest in relation to a planning application at a planning committee meeting, the alleged interest being that they were from the same political party as one of the objectors to the planning application. The second issue of complaint was that two of the Respondents carried out an unofficial site visit that did not comply with the Council's policies.

The Acting ESC advised that aside from being members of the same political party as the objector in question, he found no evidence that any of the Respondents appeared to have a close relationship with the objector. As such, the Acting ESC concluded that it could not be said that any interest they had in the matter was sufficiently close and significant as to meet the objective test under paragraph 5.7 of the Code. In relation to the second issue of complaint, the Respondents who conducted the unofficial site visit adhered to the procedures set out by the Council's Site Visits and Inspections Guidelines, and as such had acted in accordance with paragraph 7.23 of the Code.

The Standards Commission was not satisfied, on the face of it, that the conduct as established would amount to a breach of the Code and concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined to take no action on the referral.



## *City of Edinburgh Council - LA/E/3542 - no action*

The complaint concerned an allegation that the Respondent, in a letter sent to the Chief Executive of City of Edinburgh Council, copied to and shared with others, publicly criticised the conduct and capability of an identifiable council officer. The Acting ESC advised that a Freedom of Information (FoI) request was made to the Council in relation to the 'Spaces for People' scheme. The information published on the Council's website in its response to the FoI request included the unredacted names of council officers, among them the council officer allegedly criticised by the Respondent. That response was subsequently removed, redacted and republished on the Council's website. Extracts from the Respondent's letter were published online in a newspaper article, bringing the Respondent's comments into the public domain.



The Acting ESC was not able to find any evidence that the Respondent had shared the letter with the press and was satisfied that when the letter was sent to the Chief Executive and when the news story was then published, the unredacted FoI response was not available online. As such, the council officer's name was not in the public domain and they were not identifiable from the letter or news story alone. While it could be recognised that the contents of the letter could be understood as being critical of a council officer's conduct or capability, the Acting ESC also recognised that the letter was intended for the Council's Chief Executive and those leadership figures copied into the letter, and not for the wider public.

The Acting ESC concluded that the Respondent's conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. The Standards Commission determined, therefore, that it was neither proportionate, nor in the public interest, for it to hold a Hearing and decided to take no action on the referral.

## *Renfrewshire Council - LA/R/3579 - no action*

The Acting ESC advised that the first issue of complaint alleged that the Respondent falsely accused the Complainer of vandalising windows on his home, in an article published in the Daily Record. The second issue of complaint alleged that the Respondent told a fellow elected member (Councillor C) that the Complainer had vandalised his windows.

The Acting ESC reported no evidence was found during the investigation to support the allegation that the Respondent told the press that the Complainer was responsible for breaking his windows. In relation to the second issue of complaint, the Acting ESC advised Councillor C had confirmed the Respondent had not told him that the Complainer was responsible. The Acting ESC noted that the Respondent could not be held accountable for the way any further information about the conversation may have been reported. The Standards Commission was not satisfied, on the face of it, that the conduct complained of had occurred and concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.



## *City of Edinburgh Council - LA/E/3595 - no action*

The Acting ESC advised that the Respondent posted a blog, on his Twitter account, about why it was important to wear a helmet when cycling. In a post commenting on the blog, the Complainer stated "Meanwhile teenage girls won't cycle because they don't look cool with a helmet." The Respondent replied to the Complainer's comment: "That's a bit of a sexist comment tbh."



The Standards Commission noted that the Respondent had not made any personal remark about the Complainer himself and further noted that the Acting ESC, in his report, had reached the conclusion that the Respondent had merely proffered an opinion and that his conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. The Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

# Cases Overview cont.

## ***Aberdeen Health and Social Care Partnership - NHS/ACH/3584 - no action***

The complaints concerned the Respondent's conduct at a meeting of the Integration Joint Board (IJB), held to address public concern regarding the management of a medical practice, which had been put out to tender. The Complainers alleged that the Respondent made a number of incorrect claims at the meeting. The Acting ESC advised that it was unclear whether the Respondent had deliberately given false information to the meeting about whether there were other practices where staff had resigned and the timing of the resignations. The Acting ESC advised that, in any event, he had found that other participants at the meeting had corrected the Respondent, so those present at the meeting were informed immediately of the factual position.

The Standards Commission noted that neither presenting a different opinion nor making a factual mistake is inherently disrespectful. The Standards Commission further noted that the Acting ESC, in his report had reached the conclusion that the Respondent's conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion. The Standards Commission was not satisfied that the aspects of the complaint that the Acting ESC had found to be factually established, taken either separately or together, could amount to a breach of the Code. The Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing and determined, therefore, to take no action on the referral.

## ***Orkney Islands Council - LA/OI/3588 - no action***

The complaint concerned allegations that in a letter to a local newspaper on 29 July 2021, an email of the same date, and a Facebook post on 21 July 2021, the Respondent misrepresented the Complainer's position regarding parking permits in Kirkwall and failed to treat him with respect. The Acting ESC concluded in his report that in terms of the letter and email, the Respondent's conduct did not amount to a breach of the Code, noting that while robust language was used, it did not amount to disrespect or discourtesy. With regards to the Facebook post, the Acting ESC concluded that although the Respondent had, on the face of it, contravened the Code by failing to treat the Complainer with courtesy and respect, it would be difficult to justify a restriction on the Respondent's right to freedom of expression under Article 10 of the ECHR as the Respondent's conduct was not sufficiently serious, abusive or offensive.

The Standards Commission agreed with the Acting ESC's conclusions regarding the letter and the email, noting that it did not consider, on the face of it, that the alleged conduct could amount to a breach of the Code. With regards to the Facebook post, the Standards Commission agreed with the Acting ESC that, on the face of it, the Facebook post could be reasonably perceived to be discourteous or disrespectful. The Standards Commission noted, however, that the Facebook post did not appear to have reached a wide audience, and that it had been superseded by the publication of the letter (and the Complainer's response to the letter), limiting its impact and practical consequence. In considering Article 10 protection, the Standards Commission agreed that it was very unlikely that the conduct in question would be found to be sufficiently serious, offensive or abusive as to justify a restriction on the Respondent's enhanced right to freedom of expression.

Having taken all factors into account, including the nature of the potential breach and the likelihood of the Respondent's conduct being protected by his enhanced right to freedom of expression, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

## ***North Lanarkshire Council - LA/NL/3557 - no action***

The complaint alleged that by visiting a development site, having a photograph taken and retweeting a news release before a council committee meeting, the Respondent had breached the provisions of the Code relating to lobbying, fairness and pre-determination. The Acting ESC reported that while it was accepted the site visit took place, there was no evidence that the Respondent had been lobbied or otherwise influenced in a way that impacted on her subsequent vote. The Acting ESC also reported that the news release contained a quote attributed to the Respondent, but that the quote neither related directly to the development, nor did it outline the Respondent's position in advance of the meeting. In addition, it was noted that the news release was issued early, due to an error on the part of the council.

The Acting ESC therefore concluded that the Respondent had not pre-judged or demonstrated bias before the meeting, and could not reasonably be perceived as doing so, and furthermore that the Respondent's appearance and circulation of the photograph, given that the photograph confirmed only the existence of the development, could not be interpreted as her pre-judging or indicating support or otherwise in advance of the meeting. Having reviewed matters and found no reason to depart from the Acting ESC's conclusion that there was no evidence of a breach of the Code, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing and determined, therefore, to take no action on the referral.

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

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

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