

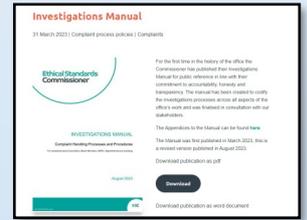
STANDARDS UPDATE

ISSUE 39: September 2023

News

Eligibility Criteria for Complaints about Councillors and Members of Devolved Public Bodies

The Standards Commission issued a Direction, on 1 March 2021, to the former Ethical Standards Commissioner (ESC) outlining the criteria for assessing the eligibility of complaints about councillors and members of devolved public bodies. Following consultation and agreement with the current ESC, the Standards Commission has rescinded the Direction. The eligibility criteria are now outlined in the ESC's Investigation Manual, a copy of which can be found on his [website](#).



Suspension Guidance

The Standards Commission has reviewed its Suspension Guidance, which outlines the extent of the activities in which a councillor should engage while they are the subject of a suspension (either one imposed as an interim measure while an investigation being undertaken by the ESC is ongoing, or a full one imposed after a breach finding is made at a Hearing). A copy of the Guidance can be found on the [Hearing Rules and Guidance page](#) of our website.

Update from the ESC

In future, the ESC will give a brief office update in this space. For this issue, the ESC is sharing news that the office has recruited and inducted new team members into the investigations team following an extensive workforce planning exercise. The team has made progress with the complaints backlog, with complaints received up to June 2023 being allocated for assessment or investigation. The ESC website has a new page dedicated to keeping stakeholders informed about complaint handling times, available [here](#). The ESC will publish progress against the targets and KPIs consulted on in the Investigations Manual at the financial year end. For any queries, please email investigations@ethicalstandards.org.uk.



**Ethical Standards
Commissioner**

Cases Overview

Since the last briefing in June 2023, 11 cases were referred to the Standards Commission by the Ethical Standards Commissioner (ESC) about elected members of City of Edinburgh (two cases), North Lanarkshire, Aberdeen City (two cases), Aberdeenshire, East Lothian, Stirling and Fife Councils, a board member of NHS National Services Scotland and a former board member of NHS Western Isles. The Standards Commission has scheduled Hearings in three cases concerning North Lanarkshire, City of Edinburgh and Aberdeenshire Council councillors. The decision on an Aberdeen City Council case is pending. The Standards Commission held Hearings in respect of three cases involving councillors from Midlothian and South Lanarkshire Councils, along with a case involving a former councillor from Fife Council. The outcomes of the Hearings are outlined below. No action was taken in seven cases and the written decisions in respect of these cases can be found on the [Cases](#) page of our website.

Fife Council - LA/Fi/3614 - Breach

A former Fife councillor was found by the Standards Commission to have breached the Councillors' Code of Conduct for being disrespectful towards the secretary of a community council at a community council meeting held in August 2021. The former councillor was censured.

The Panel heard that the former councillor had attended the community council meeting in her then capacity as an elected member of Fife Council. Having noted the largely consistent accounts provided by several witnesses to the Ethical Standards Commissioner during his investigation, the Panel concluded that the former councillor had shouted at the secretary and behaved in an aggressive, disparaging and dismissive manner towards him at the meeting in August 2021. As such, the Panel found that the former councillor had failed to treat the secretary with courtesy and respect, as required by the Code.

The Panel was concerned that the former councillor had not demonstrated any insight into the effect of her behaviour on others. The Panel was also concerned that she had failed to show any understanding that, as an elected politician, she was in a role with inherent influence and was in a position of

Cases Overview cont.

Fife Council - LA/Fi/3614 - Breach cont.

power over community councillors, who were acting in an unpaid and voluntary capacity. The Panel noted that the Respondent was no longer a councillor and, as such, the option to suspend her was not available. The Panel therefore censured the Respondent. In doing so, the Panel noted that a censure is a formal recording of its severe and public disapproval of the Respondent's conduct.

Midlothian Council - LA/Mi/3803 - No breach

The complaint before the Panel concerned a conversation between the Respondent and the Complainer (a fellow Midlothian councillor) at an event in September 2022. The Panel noted that conflicting accounts of the conversation had been provided, both to the ESC during his investigation and at the Hearing. The Panel noted that there was no dispute that the Respondent mentioned, during the conversation, that he wanted to arrange a date with the Complainer, but had quickly clarified he had meant an upcoming photoshoot, as opposed to any romantic or otherwise non-platonic date. The Panel noted that there was also no dispute that the Complainer mentioned that she would wear a red top to the photoshoot, being her understanding of the Respondent's political party's colour. The Panel noted, however, that while the Complainer contended that the Respondent proceeded to look at her chest and suggested that she also wore red underwear, the Respondent categorically denied having done so.



The Panel noted that it was obliged to determine whether, on the balance of probabilities, it was more likely than not whether the alleged behaviour had occurred. The Panel found both the Complainer and Respondent to be credible and reliable witnesses. The Panel noted that various witnesses had testified to the Complainer being upset after the conversation and agreed this served to support her version of events. The Panel nevertheless noted that the only witness who had overheard the conversation between the Complainer and Respondent had been clear in her testimony, on oath before the Panel and in all previous accounts, that the Respondent had not mentioned the Complainer's underwear. Given this and the fact that the Panel was unable to choose between the Complainer's and Respondent's versions of events, it was unable to conclude, on balance, that it was more likely than not that the Respondent had made the comment as alleged. The Panel considered it was possible that the complainer had misheard what was said.

The Panel therefore was unable to conclude overall and on the balance of probabilities that the Respondent had breached the Code.

South Lanarkshire Council - LA/SL/3558b - Breach

A South Lanarkshire Councillor was found by the Standards Commission to have breached the Councillors' Code of Conduct by disclosing confidential information in a Facebook post. The Hearing Panel found that the Respondent had received via email in October 2020, in her capacity as a councillor, internal briefing documents pertaining to the work of a council cross-party working group. The email advised the documents, which related to the proposed closure of certain council leisure facilities, were of a confidential nature. On 30 April 2021, the Respondent's party Group Leader issued a news release criticising the perceived lack of transparency surrounding the proposed closures, which was emailed firstly to the Respondent's party group, and later to the wider party membership in the local area, along with encouragement to share the press release. The next day, following an email from the Respondent's election agent, who had indicated his hope that the Respondent could use the information to her advantage, the Group Leader reiterated the confidentiality of the materials. On 4 May 2021, the Respondent published a Facebook post in which she shared information about the facilities, one of which was specifically named.



The Panel found that the Respondent should have been aware that the information regarding the future of the facilities was not to be disclosed, given the reminders that had been issued about its confidentiality. The Panel did not consider that the sharing of the information in question among members of the Labour Group and wider Labour Party membership removed the requirement for the confidentiality of the council's documents to be maintained until they were ready to be released by the Council. The Panel further found that the Respondent had disclosed the information a week before a Scottish Parliament election, in which she was standing as a candidate. Having reviewed all the available evidence, the Panel was satisfied on balance that the Respondent had disclosed confidential information, in breach of paragraph 3.16 of the Code, and further that she had done so for personal or party political advantage, in breach of paragraph 3.17 of the Code.

While the Panel noted that the requirement for councillors to refrain from disclosing confidential information was a key requirement of the Code, it determined that a censure was the appropriate sanction in light of the circumstances of the case and the extensive mitigation provided.

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

Edinburgh

www.standardscommission.org.uk

EH99 1SP

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