



PARTNERSHIP & RESOURCES PDSP

COUNCILLORS' CODE OF CONDUCT – ANNUAL REVIEW 2017/18

REPORT BY GOVERNANCE MANAGER

A. PURPOSE OF REPORT

To inform members of significant issues in 2017/18 in relation to the Councillors' Code of Conduct.

B. RECOMMENDATIONS

To consider the following recommendations to be made to Council Executive:-

1. To note the summary of the issues arising in relation to the Councillors' Code of Conduct in 2017/18
2. To note that a new date for the annual presentation to members has yet to be fixed
3. To note in particular the continuing interest in "respect" cases and the related issues of enhanced Article 10 rights to freedom of expression in political matters and inappropriate involvement of members in operational matters

C. SUMMARY OF IMPLICATIONS

I	Council Values	Being honest, open and accountable
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Ethical Standards in Public Life etc. (Scotland) Act 2000 and related regulations – members' duties to observe and uphold the Code; council's duties to promote the Code and assist members in its observance
III	Implications for Scheme of Delegations to Officers	N/a
IV	Impact on performance and performance Indicators	N/a
V	Relevance to Single Outcome Agreement	N/a
VI	Resources - (Financial, Staffing and Property)	N/a
VII	Consideration at PDSP	Ongoing

D. TERMS OF REPORT**1 Background**

- 1.1 The maintenance of high ethical standards in public life is crucial to public confidence in public institutions. The Ethical Standards in Public Life etc. (Scotland) Act 2000 created a statutory framework which applies to local authorities and to other devolved public bodies. A statutory Code of Conduct for Councillors (the Code) was approved by the Scottish Parliament, first in 2003, then in 2010 and amended in 2018. It is supplemented by statutory guidance (refreshed in September 2017 and July 2018) and a growing library of Advice Notes on specific issues. The Code is enforced through complaints to the Commissioner for Ethical Standards in Public Life in Scotland (the CES) and onwards to the Standards Commission (the SCS). Members found to have breached the Code may be censured, suspended or disqualified from being a councillor. Complaints alleging breaches of the Code can also be submitted to the council. There is an internal procedure for carrying out those investigations which may divert an issue away from the more formal path but which does not provide a substitute for it.
- 1.2 The council's duties are to raise awareness of the Code; to promote the observance by members of high standards of conduct; to assist members to comply with the Code; and to provide induction and training sessions.
- 1.3 Members' obligations include compliance with the Code and its underpinning statutory rules, having regard to the statutory guidance; attending training and induction sessions; knowing and understanding the Code and Guidance; promoting and supporting the Code and encouraging compliance by others.

2 The CES's year

- 2.1 Table 1 in the appendix summarises the complaints received by the CES during the year. Table 2 is a summary of the cases in which the CES found a breach and referred a case on to the SCS for determination.
- 2.2 The highlights from the CES's year and from the complaint figures:-
- There was again a reduction in the total number of complaints. There is a marked reduction in complaints against councillors in local government elections years (2007, 2012, 2017)
 - The largest category of complaints (as opposed to cases) was of misconduct in dealing with individual applications, mainly planning cases. The majority of those were from someone with a known material interest in the case
 - The largest category of cases (as opposed to complaints) referred on to the SCS was of disrespect. Enhanced Article 10 rights to freedom of expression in political matters featured in many of those
 - The number of complaints from officers reduced again, down now for two consecutive years from an uncommonly high figure in 2015/16 (only 1 complaint this year)

- Complaints are being processed more quickly but the reduction in numbers of complaints has helped that. The sifting process has helped as well, whereby cases felt to have no prospect of success are determined without a full investigation
 - Only three complaints were made against members of devolved public bodies. None of those resulted in a reference on to the SCS for a hearing
- 2.3 The public reporting of cases has changed. Previously, a web summary was published of a reasonably large number of decisions felt to be of wider public interest. Historic web summaries have now been removed from the CES website. In future, only a small number of anonymised decision summaries will be published. The CES's decision may be available on the SCS website when cases are referred on to the SCS for a hearing. This change makes it harder to keep track of and comment on trends amongst "the ones that got away".
- 2.4 Going forward, the CES still pursues the introduction of a Case Management System and sees a risk in continuing to use outdated technology. Its website is to be redesigned and relaunched and should facilitate online complaints. The expectation is that the volume of complaints will increase and return to the level of years pre-2017/18.

3 The SCS's year

3.1 Some of the highlights from the SCS's activities for the year are:-

- It reported its busiest year ever in terms of the hearings it held and cases it concluded. It held 12 hearings. Those involved 13 councillors. No hearings involved members of other public bodies. There were findings of breach in 11 of the 12 hearing cases
- Unusually, it decided not to proceed to a hearing in a case referred on by CES. It agreed that *prima facie* there had been a breach but the evidence had been uncovered by CES in another investigation and no complaint about the newly-discovered facts had been made
- It continued to improve the speed with which it deals with cases referred on by CES. The average time from referral to decision was 12 weeks (down from 16 weeks last year). The longest took 19 weeks and the shortest took 6 weeks
- It held four post-elections road-shows for councillors and one for Standards Officers of devolved public bodies
- It issued revised Guidance for councillors on their Code of Conduct and Advice Notes for councillors and others about enhanced Article 10 right to free expression in connection with political issues (October 2017); and on How to Declare Interests (August 2017)
- It continued to issue quarterly Professional Briefings and it built on its presence on twitter (@StandardsScot)

- 3.2 The sanctions it imposed in the 11 breach decisions comprised 9 censures; 1 full suspension (from all meetings); and 1 partial suspension (from designated committees). No disqualifications were imposed. The SCS commented in 4 censure cases that if suspension or disqualification had been possible then suspensions would likely have been imposed.. Because the respondents were no longer councillors, suspension and disqualification were not available as sanctions.
- 3.3 Table 3 in the appendix summarises the SCS hearing cases for the year.
- 3.4 Looking forward, the SCS identified these issues and areas of activity:-
- Issuing advice for councillors on distinguishing between policy-making and operational management and avoiding straying into the latter (done in July 2018)
 - Holding a Workshop for IJB members and Standards Officers (done on 24 September 2018)
 - Holding more roadshows for councillors in 2018/19 (now arranged for early 2019)
 - Amending Codes of Conduct to make more explicit that bullying and harassment will not be tolerated and will be a breach of the Code (done for councillors in July 2018)
 - Working with the Scottish Ministers to revise more extensively the Codes of Conduct for councillors and public body members
- 3.5 The SCS expects that parliamentary time will be found to amend the Model Code for devolved public bodies by adding an express reference to bullying and harassment. That has been done already for the Councillors' Code. It is also still hopeful of persuading the Scottish Government to find parliamentary time to embark on a wider review and revision of the Code. It is at the moment welcoming suggestions for change from officers and from members.
- 3.6 The SCS is also dealing with its first substantive appeal to the courts against the findings in one of its cases. It was determined by the SCS after the reporting year end. It concerned a Fife councillor sitting at a licensing committee who made comments regarding the character of an applicant which were felt to be gratuitous and disrespectful. The decision is awaited.

4 The council's year

- 4.1 Training for members was concentrated in the post-election induction programme. A series of (comparatively) short sessions was provided on the different components of the Code. They were in general well-attended, especially by newly-elected members. Other more targeted sessions were provided during the year.
- 4.2 The annual presentation on the year 2016/17 was given on 7 November 2017. 22 members attended for at least part of the session, and 14 officers were present. The annual report was made to P&R PDSP in December 2017 and to Council Executive in January 2018.
- 4.3 The council's updated history of involvement with the CES and the SCS, and of its internal procedures, is shown in Tables 4, 5 and 6 of the appendix.

4.4 Six complaints were made and determined through the council's internal complaints procedure. Two of those six complaints related to the same circumstances and so five cases were dealt with as follows:-

- Personal and insulting comments made on social media. The councillor was held not to have been acting as a councillor and so the complaints were not upheld
- Failure to deliver on undertakings given to members of the public. On investigation it was found that the undertakings given had been honoured and so the complaint was not upheld
- Inaccurate words attributed to another councillor in a quotation given to and published by the local press. It was held to be covered by the enhanced Article 10 protection in relation to political matters or matters of public concern
- Failure to engage with constituents to their satisfaction. The complaint was not upheld because the Code does not impose performance standards on members in relation to how they choose to perform their duties
- Aggressive words and behaviour in a meeting. The complaint was not upheld

4.5 No complaints against West Lothian councillors were made to the CES during the year.

4.6 One complaint made in 2016/17 against a (now former) West Lothian councillor was determined by the SCS in 2017/18 after a hearing in the Civic Centre. It concerned a failure to declare personal interests in a voluntary organisation, and the interests of the organisation itself, in business affecting council funding of that organisation. The former councillor was censured. The full findings of the SCS were reported to full council as required by the 2000 Act. No comments, questions, motions or amendments resulted.

5 Significant messages

5.1 Although there were the usual CES and SCS cases about failure to register and failure to declare interests, the more noteworthy cases relate to (a) the "respect" obligation, (b) the blurring of lines by members between their strategic/policy role and operational management, and (c) a failure to properly distinguish between their own personal interests and their councillor role.

5.2 This year's SCS hearing cases are not as egregious as the two cases featured last year (Breslin in Argyll & Bute and Drummond in Clackmannanshire) but the same themes continue this year. These trends have been recognised and the messages have been reinforced in 2018/19 by the SCS Advice Notes on (a) Distinguishing between Members' Strategic Role and Operational Work and (b) Bullying and Harassment.

E. CONCLUSION

1 The number of complaints against West Lothian Council in 2017/18 was higher than in recent years. Their most significant aspect is the use of social media. That is an area which is difficult to directly influence by advice from officers and by other members since it happens outwith the normal run and place of council business.

- 2 An awareness of issues relating to the Code of Conduct will help members in applying the Code to their council work and will assist officers in their dealings with members and their working relationships.

F. BACKGROUND REFERENCES

- 1 Councillors' Code of Conduct and Guidance
http://www.standardscommissionscotland.org.uk/uploads/files/1542107127180709CCfCouncillorsGuidance_July2018FINAL.pdf
- 2 SCS Annual Report 2017/18 -
<http://www.standardscommissionscotland.org.uk/uploads/files/1533553773180723SCfSAnnualReportFINALLAYING.pdf>
- 3 CES Annual Report 2017/18 -
<http://www.ethicalstandards.org.uk/publications/publication/862/cespls-annual-report-and-accounts-201718>

Appendices/Attachments: 1. Summary of complaints and statistics

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Date of meeting: 28 November 2018

APPENDIX 1

Table 1 – CES cases

Where two figures are shown the first is the number of complaints received. The second, in brackets, is the number of cases dealt with after complaints are combined and/or respondents grouped together.

	13/14	14/15	15/16	16/17	17/18
Against everyone	311 (146)	692* (111)	245 (132)	174 (106)	146 (80)
Against councillors	298	680	202	165	134
Against non-councillors	13	12	33	9	3
From members of the public	257	663	202	110	123
From councillors	44	20	36	54	19
About planning	131	81	85	35	39
About registration of interests	14	4	4	6	4
About declarations of interests	43	26	19	22	5
About disrespect	23	33	75	63	31
Completed	291	692 (99)	214 (111)	224	176 (90)
Dropped, not competent	219	135 (73)	157 (82)	111	121 (59)
No breach	67	17 (14)	49 (22)	95 (55)	43 (23)
Breach found and referred on	5	540 (12)	8 (7)	18 (14)	12 (8)

* The number of complaints in 2014/15 was skewed by a large number made against the same councillors arising from the same facts (sending a letter stating the council's position on the independence referendum along with annual council tax notices).

Table 2 – CES cases referred to SCS

No.	Complaint Number	Nature of Complaint	Decision	Sanction imposed
1	LA/G/1942	Made loud, aggressive and disrespectful comments	Breach	Censure
2	LA/ED/1863	Disclosure of confidential information	Breach	Censure
3	LA/R/1946, 1973	Disrespect of councillors	Breach	Suspension from Council and Sub-committee meetings for seven months
4	LA/AB/1972/A-B	Failure to declare an interest		Standards Commission for Scotland – take no action
5	LA/E/2028	Failure to register an interest	Breach	Censure
6	LA/Fi/2044	Used official mail to make a request for assistance in the distribution of election literature	Breach	Censure
7	LA/DG/1929	Disrespectful posting on social media	Breach	Censure
8	LA/Fi/2050*	Disrespect towards applicant for licence	Breach	Suspension from the Licensing Committee for 2 months

*Concluded and referred to the SCS in 2017/18 but determined by SCS in 2018/19. Case appealed to the Sheriff Principal

Table 3 – SCS cases

Main complaint	Case	Decision	Sanction
Registration of interests	LA/NL/1940	Breach	Failure to timeously register paid employment as MSP's office manager Censure – employment had been public knowledge and not been concealed
	LA/WL/1824	Breach	Failure to register paid employment, failure to declare own and employers' interests at meetings Censure – no direct financial benefit resulted
	LA/NL/1936	Breach	Failure to register property interest Censure – accepted misunderstanding of the position in light of the property interest involved
	LA/E/2028	Breach	Failure to register a shareholding in a company Censure – failed to appreciate requirement applied to dormant company and active company, did not accept a form had been submitted making the change
	(LA/AB/1967, 1969, 1972, 1979 & 1986)	No hearing, no breach	Information uncovered through CES investigations into other complaints against the same councillors. No complaints had been made by anyone on these new facts. On the face of it, breach had occurred. SCS decision to take no further action, no hearing held:- <ul style="list-style-type: none"> • from the terms of the complaint there was good public awareness of the councillors' interests • no evidence or suggestion that there had been any practical consequence or impact of the apparent breach • not in the public interest or proportionate to hold a Hearing
Disrespect	LA/E/1737	No breach	Disrespect to officers by naming them at Audit Committee meeting in the context of misconduct No sanction – in the circumstances, just fell within acceptable Article 10 bounds
	LA/E/1924	Breach	Disrespect to fellow councillor by allegations of serious wrongdoing in an online blog Censure because suspension not available – unjustified personal attack made in an inappropriate way, fell outside Article 10 protection

	LA/G/1942	Breach	<p>Disrespect to a police officer by making unfounded allegations during telephone calls on council business</p> <p>Censure because suspension not available – unjustified personal attack on a public servant made in an inappropriate way, not covered by Article 10 protection</p>
	LA/ED/1863	Breach	<p>Disrespect and inappropriate and unwanted personal and social behaviour towards a junior officer, and disclosure of confidential medical information regarding the officer</p> <p>Censure because suspension not available – inappropriate behaviour towards officer despite it not being reciprocated and warnings from senior officers</p>
	LA/R/1946 and 1973	Breach	<p>Disrespect towards fellow councillors at council meeting</p> <p>Suspension from all meetings for 7 months – deliberate misconduct at public meeting, airing personal grievances, making personal attacks, failure to heed warnings and comply with Chair's rulings</p>
	LA/DG/1929	Breach	<p>Disrespect by posting discriminatory remarks (sexual orientation) on Facebook</p> <p>Censure because suspension not available – personal attack using demeaning and discriminatory words, not covered by Article 10 protection</p>
Misuse of facilities	LA/As/1963 and 1993	Breach	<p>Misuse of council facilities, seeking preferential treatment and lobbying other councillors (planning application by own company)</p> <p>Suspended for 6 months from regulatory committees</p>
	AL/Fi/2044	Breach	<p>Misuse of council facilities</p> <p>Censure – used council computer and email account for party political and campaigning reasons despite standard pre-election advice</p>

Table 4 – Council complaints to CES (numbers)

2004/05	4
2005/06	6
2006/07	4
2007/08	1
2008/09	7
2009/10	6
2010/11	1
2011/12	2
2012/13	6
2013/14	3
2014/15	2
2015/16	4
2016/17	1
2017/18	0
Total	47

Table 5 - Council complaints to CES (Subject matter)

Conduct in the Chamber	11
Payment of allowances	1
Key principles generally (respect)	9
Principles of leadership & accountability	2
Principle of respect regarding employee of other public body	1
Dealing with planning applications/declarations of interest	14
Use of council facilities	3
Declaring financial interests/withdrawal from meeting	4
Lobbying on planning applications	1
Other (matters not relevant to Code)	1
Total	47

Table 6 – Internal complaints

2011/12	4
2012/13	6
2013/14	4
2014/15	1
2015/16	3
2016/17	1
2017/18	6
Total	25