
ANNUAL REPORT ON COUNCILLORS' COMPLIANCE WITH THE ETHICAL STANDARDS FRAMEWORK FOR 2018-19

Report by Service Director Regulatory Services

STANDARDS COMMITTEE

16 January 2020

1 PURPOSE AND SUMMARY

1.1 This report advises Elected Members on compliance with the Ethical Standards Framework for 2018-19.

1.2 The report provides Members with details of Scottish Borders Council's compliance with the Ethical Standards Framework for 2018-19. The report also considers matters relating to Training, Register of Interests and the Hospitality Register and updates Members on progress with the review of the National Code of Conduct for Councillors and the Scottish Borders Community Councils Scheme review (including a review of the Code of Conduct for Community Councillors).

2 RECOMMENDATIONS

2.1 I recommend that the Committee notes:

- (a) the details provided within the report on the Council's compliance with the Ethical Standards Framework for 2018/19, training, registers of interest and hospitality;**
- (b) progress with the review of the National Code of Conduct for Councillors which has delayed work on a review of the SBC Protocol on Councillors' Personal Conduct/Behaviour; and**
- (c) that a report will be brought before the Committee at the appropriate time on the Ethical Standards Framework compliance for 2019/20.**

3 BACKGROUND

- 3.1 Previous work by the Internal Audit service looking at the operation of the Councillors' "Code of Conduct" found that the Council had "*sound procedures in place to manage the Code of Conduct, the Council's Complaints Procedure for the Standards Committee*". To ensure that these procedures and standards were maintained it was determined that it would be good practice to report annually on compliance with the Code of Conduct. A subsequent Internal Audit also recommended that it would be appropriate to report on general compliance with the overall Ethical Standards Framework. This report therefore considers Code of Conduct Compliance, Training, the Register of Interests and Hospitality Register.

4 NATIONAL STATISTICS

- 4.1 The Commissioner for Ethical Standards in Public Life in Scotland's Annual report was laid before Parliament on 29 October 2019. In 2018/19 the Commissioner received a total of 173 complaints (relating to 117 cases) against Local Authority Councillors and Members of Devolved Bodies. This represented an increase in both the number of complaints and number of cases over the previous year.

Complaint against Councillors and Members of Devolved Bodies	18/19	17/18	16/17
Complaints Total	173	146	174
Cases Total	117	80	106

- 4.2 The subject matters which attracted complaints are set out below. There have been some changes to category definitions, specifically relating to how complaints relating to disrespect are recorded and reported. The figures now distinguish between respect towards Councillors and disrespect towards employees and members of the public. The main changes from 2017/18 include significant numerical increases in the number of complaints relating to disrespect and failures to declare an interest but significant reductions in relation to alleged breaches of key principles and misconduct on individual planning applications. There were marked increases in complaints relating to lobbying and "others". The majority of complaints (148 against 123 in 2017/18) were made by members of the public followed by complaints submitted by Councillors (21 against 19 in 2017/18).

		18/19	17/18
A	Disrespect of employees/public	38	31
B	Disrespect of Councillors	22	
C	Failure to declare an interest	13	5
D	Breach of Key Principles	11	39
E	Breach of confidentiality	2	3
F	Misconduct on individual applications	24	39
G	Other complaints	25	11
H	Misconduct relating to lobbying	10	3

I	Failure to register an interest	10	4
J	Misuse of Council facilities	0	2
K	Outwith jurisdiction	18	9

- 4.3 The Ethical Standards Commissioner undertook 31 full investigations into the cases before him in the year. Of those 23 were "non-breach reports" while 8 (4.7% of complaints/6.8% of cases) were referred to the Standards Commission with a finding that there had been a breach of the Code.
- 4.4. Of the eight Hearings conducted by the Standards Commission in 2018/19 six resulted in censure for the Elected Member, one resulted in a suspension from the Regulation and Licensing Committee for 2 months and one resulted in a suspension from Full Council for 3 months.

5 SCOTTISH BORDERS COUNCIL POSITION

- 5.1 In 2018-19 there were five complaints lodged against five Scottish Borders Councillors. Four of those complaints were submitted by a fellow Councillor with just one complaint from a member of the public.
- 5.2 In the preceding five financial years, the number of complaints lodged against Scottish Borders Councillors was as follows:-
- 2017-18 4 Complaints
2016 -17 5 Complaints
2015-16 4 Complaints
2014-15 8 Complaints
2013-14 13 Complaints
- 5.3 The complaints received in 2018-19 covered the following areas:-
- (a) Disrespect towards fellow Councillor (4 complaints)
(b) Disrespect towards employee (1 complaint)
- 5.4 Two of the complaints received were resolved internally following discussion with the relevant parties and one complainant decided not to pursue the complaint further. The two remaining complaints were referred to the Standards Commissioner. One of those cases was determined by the Commissioner not to constitute a breach while the other case remains outstanding. In addition to these cases, a further complaint dating from the 17/18 reporting year remained with the Standards Commissioner for determination during the year. That case was finally determined in November 2019 so will be reported in the 2019/20 report.

6 REGISTER OF INTERESTS

- 6.1 The Elected Members' Registers of Interests are published on the Council's website and are also available to view in paper format from Democratic Services. The Registers are reviewed every six months and are amended according to the information provided by Members. They are maintained in accordance with the Ethical Standards and Public Life etc. (Scotland) Act 2000 (Register of Interest) Regulations 2003, as amended. Members are also required to comply with Section 4 of the Code of Conduct whereby the Registers are updated when a Registerable Interest changes. Members were reminded of these requirements following the Local Government Elections in May 2017 and again on 8 February and 27 August 2018.

7 HOSPITALITY REGISTER

- 7.1 Elected Members are required to complete a Hospitality Register on a monthly basis. All Elected Members must declare hospitality/gifts offered (valued at over £50), whether accepted or not.
- 7.2 Members are required to send a completed monthly pro-forma return (including nil returns) to Democratic Services, who maintain the Members' Hospitality Register. All forms are scanned electronically and published on the Council's website. In addition, a summary sheet of all responses for the current financial year is kept with the paper copy of the Register for ease of reference.
- 7.3 A quarterly report is submitted to the Service Director Regulatory Services in his role as Monitoring Officer.

8 TRAINING

- 8.1 Section 5 of the Ethical Standards in Public Life etc (Scotland) Act 2000 ("The 2000 Act") requires Councils to:-
 - (a) Promote the observance by its Councillors of high standards of conduct; and
 - (b) Assist them to observe the Councillor's code.
- 8.2 The current Guidance on the Code of Conduct states that:

"Councils should make arrangements to hold or attend training and induction sessions on Ethical Standards, and they should strongly encourage attendance by all of their Councillors and senior officers at such sessions".
- 8.3 Training on the Ethical Standards Framework was provided to Members as part of the Induction training held in May 2017 and a further briefing was also provided to Councillor Penman who was subsequently elected following a By-Election.
- 8.4 Members are provided as a matter of course with links to briefing papers produced by the Commissioner for Ethical Standards including recent case reviews. Members are also advised of the publication of any revised Guidance on the Councillors' Code of Conduct and to the availability of that guidance on the Standard Commission's website. Recent revisions have included an Amendment of the Code in July 2018 and the provision of guidance on Bullying and Harassment and Membership of Arms Length Organisations.

www.standardscommissionscotland.org.uk/guidance/guidance-notes
- 8.5 An ongoing programme of further monthly briefings and training events continues to be provided covering a wide range of subject matters including, where appropriate, guidance on Conduct related issues. An electronic library of Member Guidance providing access to relevant information is also available to Members.

9 WORK PROGRAMME

- 9.1 The Monitoring Officer's previous report for years 2017/18 advised that two pieces of work were to be undertaken in the forthcoming year – a review of the Council's own Protocol on Councillor's Personal Conduct/Behaviour and a review of the Community Council Code of Conduct which is embedded in Scottish Borders Council's Community Council Scheme.

- 9.2 Work on the review of the Community Council Scheme is now underway. It is anticipated that this will be brought to Council in Autumn 2020.
- 9.3 In early 2019 the Scottish Government announced its intention to undertake a comprehensive review of the National Code of Conduct. That work has also commenced and again it is anticipated that proposals will be forthcoming during 2020. As the Local Code will have to have regard to the National Code there is considered to be little merit in progressing with that work until the terms of the new National Code are known.

10 IMPLICATIONS

10.1 Financial

There are no costs attached to any of the recommendations contained in this report.

10.2 Risk and Mitigations

The Council is under a duty in terms of Section 5 of the 2000 Act to promote the observance by its Councillors of high standards of conduct and assist them to observe the Councillors' Code. If the Council fails to provide appropriate guidance and advice and take cognisance of any lessons learned from complaints received there is a risk of Members breaching the code. This could result in reputational damage for the Council and possible censure or suspension for individual Councillors. This risk is managed in the Corporate Risk Register to ensure adequate monitoring and oversight

10.3 Equalities

There are no equality issues arising from this report.

10.4 Acting Sustainably

There are no sustainability issues arising from this report.

10.5 Carbon Management

There is not considered to be any impact on carbon emissions.

10.6 Rural Proofing

There are no rural proofing issues arising from this report.

10.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to either the Scheme of Administration or the Scheme of Delegation are required as a result of these proposals.

11 CONSULTATION

- 11.1 The Chief Executive, Clerk to the Council, Chief Officer Audit and Risk, Service Director HR and the Chief Financial Officer have been consulted and their comments taken into account in the preparation of this report.

Approved by

Brian Frater

Service Director Regulatory Services Signature

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Background Papers: None

Previous Minute Reference: None

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. SBC can also give information on other language translations as well as providing additional copies.

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