



**STANDARDS
COMMISSION
FOR
SCOTLAND**

INTEGRITY IN PUBLIC LIFE



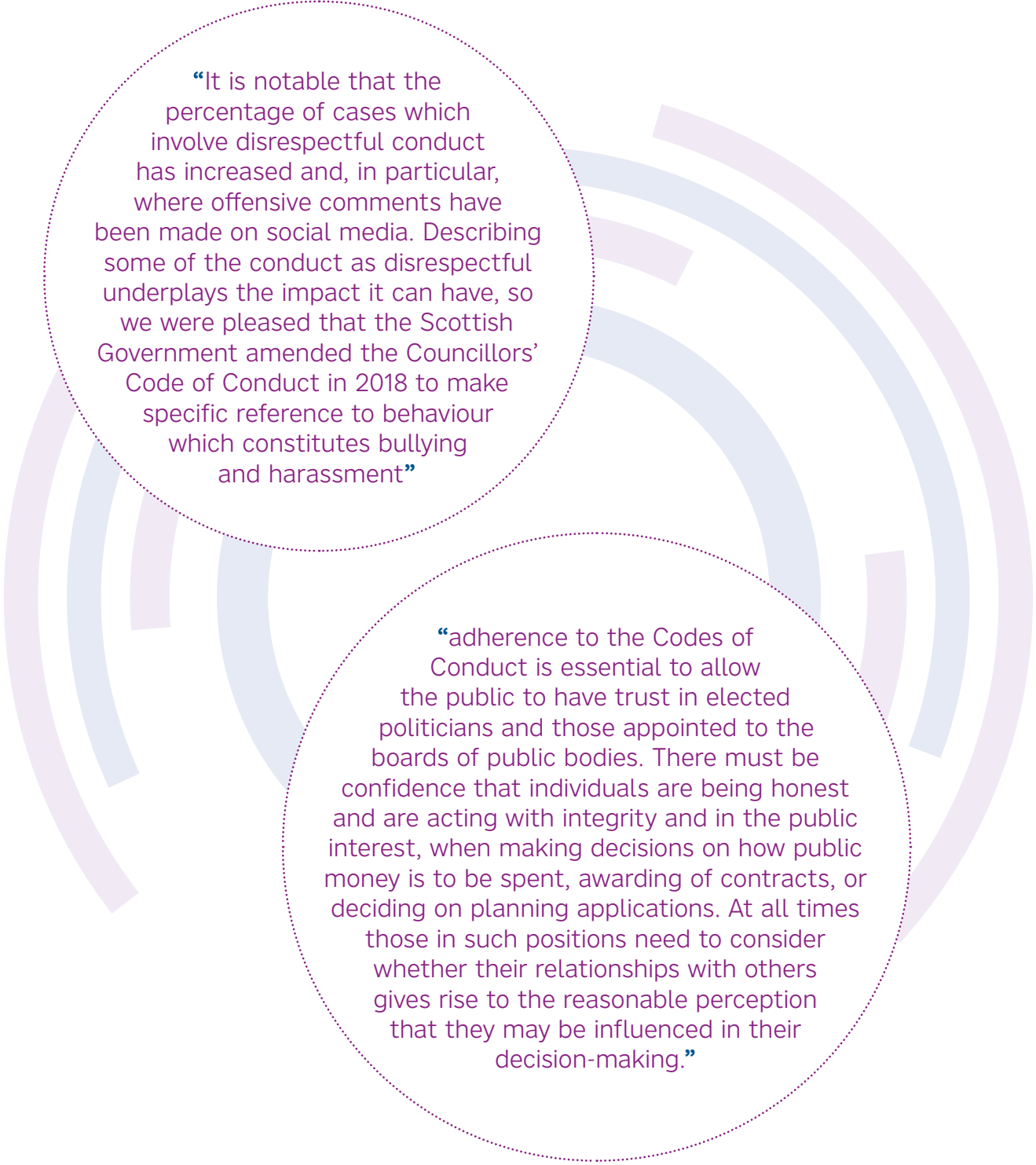
The Standards Commission for Scotland

ANNUAL REPORT 2020/21



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“It is notable that the percentage of cases which involve disrespectful conduct has increased and, in particular, where offensive comments have been made on social media. Describing some of the conduct as disrespectful underplays the impact it can have, so we were pleased that the Scottish Government amended the Councillors’ Code of Conduct in 2018 to make specific reference to behaviour which constitutes bullying and harassment”

“adherence to the Codes of Conduct is essential to allow the public to have trust in elected politicians and those appointed to the boards of public bodies. There must be confidence that individuals are being honest and are acting with integrity and in the public interest, when making decisions on how public money is to be spent, awarding of contracts, or deciding on planning applications. At all times those in such positions need to consider whether their relationships with others gives rise to the reasonable perception that they may be influenced in their decision-making.”

SECTION 1: EXECUTIVE SUMMARY

I am pleased to present the Annual Report of the Standards Commission for Scotland ('the Standards Commission'), which covers the period from 1 April 2020 to 31 March 2021.

The Standards Commission's objectives are outlined in our Strategic Plan for 2020-24, which can be found at:

[www.standardscommissionscotland.org.uk/
corporate-info/strategic-and-business-plans](http://www.standardscommissionscotland.org.uk/corporate-info/strategic-and-business-plans)

This report summarises the progress we have made towards delivering and achieving the stated aims in the first year of the Plan.



Overview

My tenure at the Standards Commission ends on 31 August 2021. I have, therefore, taken the time to highlight aspects of our work since I joined as a member in 2015 and since I was appointed as Convener in early February 2017 and, more broadly, to reflect on compliance with the Codes of Conduct.

Compliance

A key part of the Standards Commission's role is to promote compliance with the Codes. At the outset it should be recognised that, at a time when there have been high profile reports as to confusion and shortcomings regarding the ethical conduct of some individuals in senior positions in the UK, the vast majority of those elected as councillors and appointed to public bodies in Scotland are aware of, and comply with, the standards required of those in public life.

Over the past 6 years the Standards Commission has hosted 24 regional roadshows for councillors and officers, together with some 46 supporting training and education events for specific devolved public bodies and local authorities. In 2020/21 we adapted our training so that it could be held online and successfully held four online training sessions, on the Councillors' Code of Conduct,

for elected members and senior officers of Angus, Borders, Highland and Stirling Councils. Attendees have taken the opportunity to ask questions on how certain provisions in the Code should be interpreted and to discuss illustrations and examples, which were aimed at helping them to relate the obligations under the Code to the scenarios they face and situations they could find themselves in.

We have also developed, published, and disseminated guidance on the Councillors' Code and have produced Advice Notes on a variety of topics, including on:

- ▶ how to identify and declare interests;
- ▶ how to distinguish between a strategic role and any operational work;
- ▶ bullying and harassment;
- ▶ how to balance the requirement to behave with respect towards others, alongside the right to freedom of expression under Article 10 of the European Convention on Human Rights;
- ▶ how to balance the different responsibilities when appointed to arm's-length external organisations and to Health and Social Care Integration Joint Boards.



Enforcement

Set against a background of general good awareness and compliance, there are instances of individual failure to meet the standards required. Sometimes this is inadvertent or careless such as failing to register an interest; other times it is through poor judgement such as failing to declare an interest at a meeting or disclosing information received in confidence. On occasion however the behaviour is a flagrant breach of the requirement to treat other councillors, staff, or the public with respect.

It is notable that the percentage of cases which involve disrespectful conduct has increased and, in particular, where offensive comments have been made on social media. Describing some of the conduct as disrespectful underplays the impact it can have, so we were pleased that the Scottish Government amended the Councillors' Code of Conduct in 2018 to make specific reference to behaviour which constitutes bullying and harassment. Our Hearing Panels can consider an impact statement provided by anyone who has been affected by the respondent's conduct, when determining the sanction to be applied in cases where a breach of the respect or bullying and

harassment provisions in a Code of Conduct has been found.

Over the past six years we have held 63 Hearings and where breaches of the Codes have been found sanctions applied have ranged from censure, suspension for up to one year, and even disqualification.

In 2020/21, the Standards Commission held and concluded 14 Hearings to determine whether 14 councillors had contravened the Councillors' Code of Conduct. These were held at a time when Covid-19 pandemic restrictions were in place, so we developed policies, procedures and guidance that enabled us to hold and livestream 12 of the Hearings online, in accordance with legislative requirements and the Hearing Rules.

Even after the pandemic restrictions are lifted it is likely that some Hearings will still be held online as we have included a new provision in our Rules that states that Hearings can be held online in circumstances where there is little factual dispute or where the alleged breach is admitted, and where no witnesses other than the respondent are to give evidence.

Adjudication

A notable action in 2020/21 was that, for the first time, the Standards Commission required to exercise its statutory oversight authority and issued Directions to the Ethical Standards Commissioner. These have the purpose and effect of more clearly separating the investigatory functions of the Commissioner and the adjudicatory functions of Commission.

The background to this is that the Standards Commission must receive a report from the Ethical Standards Commissioner before a decision can be taken as to whether to hold a Hearing. Up until now reports were only submitted where the Ethical Standards Commissioner was of the view that a breach had occurred. In my opinion, whether a breach had occurred should be a matter for the Standards Commission to determine. On receipt of a report, we can decide whether to take no action, or to require further investigation or to hold a Hearing. Commission Hearings are held in public, with submissions from the Ethical Standards Commissioner and the respondent and taking evidence from witnesses. Furthermore, decisions made at Standards Commission Hearings as to whether or not a breach has occurred are subject to appeal. It was a matter of concern that the Ethical Standards Commissioner could conclude there was no breach in a report which was not made public, was not submitted to the Standards Commission and was not the subject of any external review or appeal.

This concern was shared by other Standards Commission members and, following consultation, by other stakeholders. This was especially so, when it became clear that the Ethical Standards Commissioner was deciding that no breach had occurred because, in her view, the behaviour was not sufficiently disrespectful, or it was permitted by the enhanced right to freedom of expression afforded to politicians under Article 10 of the European Convention on Human Rights.

Although the Ethical Standards Commissioner, being an independent officeholder, is responsible for conducting investigations into eligible complaints about councillors and members of devolved public bodies, the Standards Commission has an oversight role and powers of Direction

Over the past six years we have held 63 Hearings and where breaches of the Codes have been found sanctions applied have ranged from censure, suspension for up to one year, and even disqualification.

under the Ethical Standards in Public Life etc. (Scotland) Act 2000, ('the Ethical Standards Act'). It was this power which we exercised for the first time in 2020/21 by issuing Directions with the purpose of:

- ▶ Ensuring the Standards Commission makes the final decision, under Section 16 of the Ethical Standards Act, on all complaints that have been investigated.
- ▶ Providing the Standards Commission with assurance that investigations into complaints about councillors and members of devolved public bodies are being progressed without any undue delays and that the parties to any complaint are provided with regular progress updates. This is to ensure confidence in the overall ethical standards framework is maintained.
- ▶ Ensuring there is clarity and consistency in respect of the criteria the ESC uses to assess whether complaints are eligible/admissible for investigation.

The outcome is that there now is a clear separation between the investigatory and adjudicatory functions and should serve to remove any concerns about fairness of process or inconsistencies between the two organisations as to how the Codes should be interpreted.

Looking Forward

As this report shows we have strong and constructive relationships with our key stakeholders, and many of them including the Scottish Government, the Ethical Standards Commissioner, SOLAR, SOLACE, COSLA and the Improvement Service, were consulted before finalising our Strategic Plan and objectives for 2020/24.

The Standards Commission's Strategic Plan for 2020/24 identifies the following four key aims:

1. To have a positive impact on ethical standards in public life.
2. To pursue continuous improvement in the ethical standards framework and the way we do our work.
3. To pursue and develop strong relationships with our stakeholders.
4. To ensure all stakeholders have easy access to high quality information about the organisation, its work, and any initiatives.

Our Business Plan for 2021/22 outlines its objectives for the forthcoming year that will contribute to the achievement of these aims. In particular, the Standards Commission intends to support these aims by:

- ▮ Obtaining and undertaking detailed analysis of qualitative and quantitative evidence on its work to promote the Codes of Conduct so that it can evaluate its impact in a meaningful way.
- ▮ Following a consultation exercise, to publish and promote Guidance and Advice Notes to support the revised Codes of Conduct for Councillors and Members of devolved public bodies.
- ▮ Continuing to work with the Scottish Government and other stakeholders to promote the revised Codes of Conduct and to increase awareness of the ethical standards framework and how to make a complaint if any provisions in the Codes are contravened.
- ▮ Offering training events for councillors on the Councillors' Code of Conduct, and for the chairs of devolved public bodies on the ethical standards framework.

Underpinning these aims and objectives is the firm belief that adherence to the Codes of Conduct is essential to allow the public to have trust in elected politicians and those appointed to the boards of public bodies. There must be confidence that individuals are being honest and are acting with integrity and in the public interest, when making decisions on how public money is to be spent, awarding of contracts, or deciding on planning applications. At all times those in such positions need to consider whether their relationships with others gives rise to the reasonable perception that they may be influenced in their decision-making. We can be re-assured that in Scotland we have an ethical standards framework to which councillors and Board members must adhere when taking up their roles, with which overwhelmingly they comply, and which is effective when they do not.

I would like to take this opportunity to thank the Standards Commission's members, staff, and stakeholders for their support and to wish everyone the best for the future.



Professor Kevin Dunion OBE, Convener

SECTION 2: ABOUT US

Principles of Public Life

In 1995, the Committee on Standards in Public Life (the Nolan Committee) identified seven principles of conduct underpinning public life and recommended that public bodies should draw up Codes of Conduct incorporating these principles.

The seven Nolan Principles were:

- ▶ Selflessness
- ▶ Integrity
- ▶ Objectivity
- ▶ Accountability
- ▶ Openness
- ▶ Honesty
- ▶ Leadership

The then Scottish Executive took the Nolan Committee recommendations one step further with the introduction of the Ethical Standards in Public Life etc. (Scotland) Act 2000, ('the Ethical Standards Act'), which brought in statutory Codes of Conduct for Councillors and Members of devolved public bodies.

The Scottish Executive also identified nine key principles underpinning public life in Scotland, which incorporated the seven Nolan principles and introduced two further principles, which are:

- ▶ Duty (Public Service) and
- ▶ Respect.

The Codes of Conduct are based on the nine key principles of public life.

Councillors

The Councillors' Code of Conduct applies to all the elected members of every council in Scotland.

Following a review of the original Councillors' Code of Conduct that was led by the Scottish Government and a consultation exercise, a revised Councillors' Code of Conduct was approved by the Scottish Parliament and introduced with effect from July 2018. It is available online at:

www.gov.scot/Publications/2010/12/10145144/0

The Standards Commission provides guidance to Councillors on the revised Code of Conduct. The latest version of this was published and issued to councillors and councils in December 2018.

The Standards Commission's Guidance on the Councillors' Code of Conduct is available online at: www.standardscommissionscotland.org.uk/guidance/guidance-notes

The Scottish Government undertook a consultation on a proposed new version of the Councillors' Code of Conduct in 2020/21. It is anticipated that the revised Code will be put before the Scottish Parliament for approval in 2021/22.

Members of Devolved Public Body Boards

Each devolved public body covered by the framework is required to have its own Code that is based on the Model Code of Conduct approved by the Scottish Parliament. These individual Codes are also approved by Scottish Ministers.

The devolved public bodies covered by the framework are listed in Schedule 3 to the 2000 Act. Details of all those covered by the Codes of Conduct can be found on the Scottish Government's website at: www.gov.scot/publications/public-bodies-covered-by-the-ethical-standards-framework/

The list of devolved public bodies is under constant revision as bodies are created, abolished and merged.

Following a review of the original Model Code of Conduct that was led by the Scottish Government and a consultation exercise, a revised Model Code of Conduct was approved by the Scottish Parliament and introduced with effect from 3 February 2014. It is available online at:

www.gov.scot/publications/model-code-conduct-members-devolved-public-bodies/

The Standards Commission also provides guidance to members of devolved public bodies. The Standards Commission's Guidance on the Model Code for Devolved Public Bodies was issued in December 2014 and is available online at:

www.standardscommissionscotland.org.uk/guidance/guidance-notes

The Scottish Government undertook a consultation on a proposed new version of the Model Code of Conduct in 2020/21. It is anticipated that the revised Code will be put before the Scottish Parliament for approval in 2021/22.

SECTION 2: KEY PRINCIPLES

The Ethical Standards Act required Scottish Ministers to issue a Code of Conduct for councillors and a Model Code of Conduct for members of devolved public bodies. The Codes as issued are based around nine key principles, which underpin the standards expected of those in public life.



DUTY

Holders of public office should uphold the law and act in accordance with the law and the public trust placed in them. They should act in the interests of the council or public body.



SELFLESSNESS

Holders of public office have a duty to act solely in terms of the public interest. They must not act in order to gain financial or other material benefit for themselves, family or friends.



INTEGRITY

Holders of public office must not place themselves under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.



OBJECTIVITY

Holders of public office must make decisions solely on merit when carrying out public business.



ACCOUNTABILITY AND STEWARDSHIP

Holders of public office are accountable for their decisions and actions to the public. They have a duty to consider issues on their merits, taking account of the views of others and must ensure that the council or public body uses its resources prudently and in accordance with the law.



OPENNESS

Holders of public office have a duty to be as open as possible about decisions and actions they take, giving reasons for their decisions and restricting information only when the wider public interest clearly demands.



HONESTY

Holders of public office have a duty to act honestly. They must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.



LEADERSHIP

Holders of public office have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the council and its councillors or the public body and its members in conducting public business.



RESPECT

Holders of public office must respect all other holders of public office and employees of the council or public body and the role they play, treating them with courtesy at all times.

SECTION 2: ABOUT US

Who We Are

The Standards Commission is an independent body separate from both the Scottish Government and the Scottish Parliament. Our purpose is to encourage high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and those appointed to the Boards of devolved public bodies.

The Commission consists of a Convener and four Commission Members who are appointed by the Scottish Parliament, supported by a team of three members of staff.



Why We Exist

We are a statutory body established under the Ethical Standards Act.

This legislation provides a framework to encourage and, where necessary, enforce high ethical standards in public life.

The Ethical Standards Act created a framework whereby councillors and members of devolved public bodies are required to comply with Codes of Conduct. It provides that complaints about breaches of these Codes are to be investigated by the Commissioner for Ethical Standards in Public Life in Scotland (ESC) and adjudicated upon by the Standards Commission.

What We Do

We have two key strands of work:

- ▶ A proactive role in developing and promoting the ethical standards framework, including producing Guidance and Advice Notes to help councillors and members of devolved public bodies comply with their respective Codes of Conduct; and
- ▶ An adjudicatory role in determining whether there has been a contravention of a Code of Conduct, and where a breach is found, to then determine the appropriate sanction.

What We Do Not Do

We do not investigate complaints. Complaints are received and investigated by the ESC, which is a separate organisation.

A breakdown of the separate roles undertaken by the ESC and Standards Commission is provided on the following page.

We do not determine, or deal with, complaints about Members of Parliament, Members of the Scottish Parliament or officers of councils and devolved public bodies. We also do not determine, or deal with, complaints about councils and devolved public bodies as entities.

Contact Us

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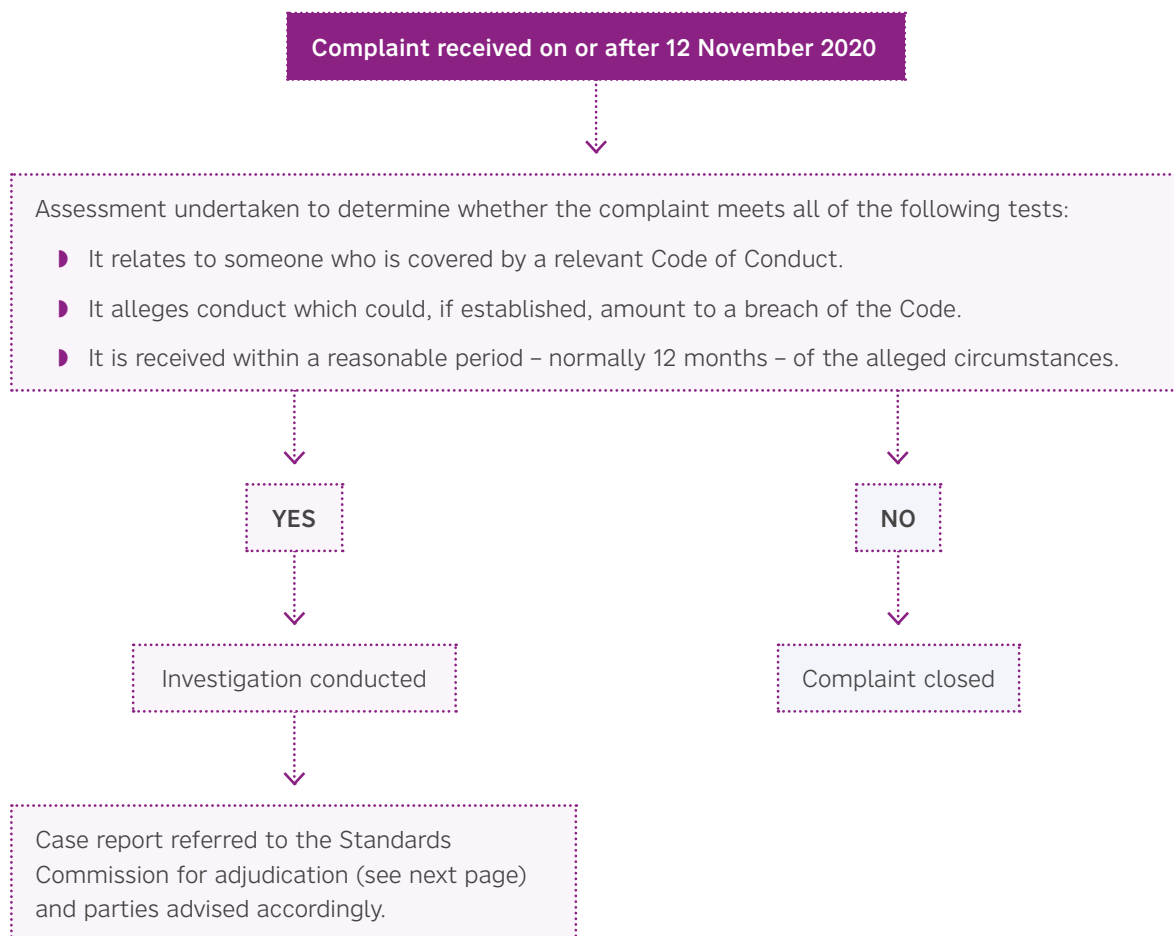
Facebook: facebook.com/StandardsCommission

SECTION 2: OVERVIEW OF COMPLAINTS INVESTIGATION AND ADJUDICATION PROCESSES

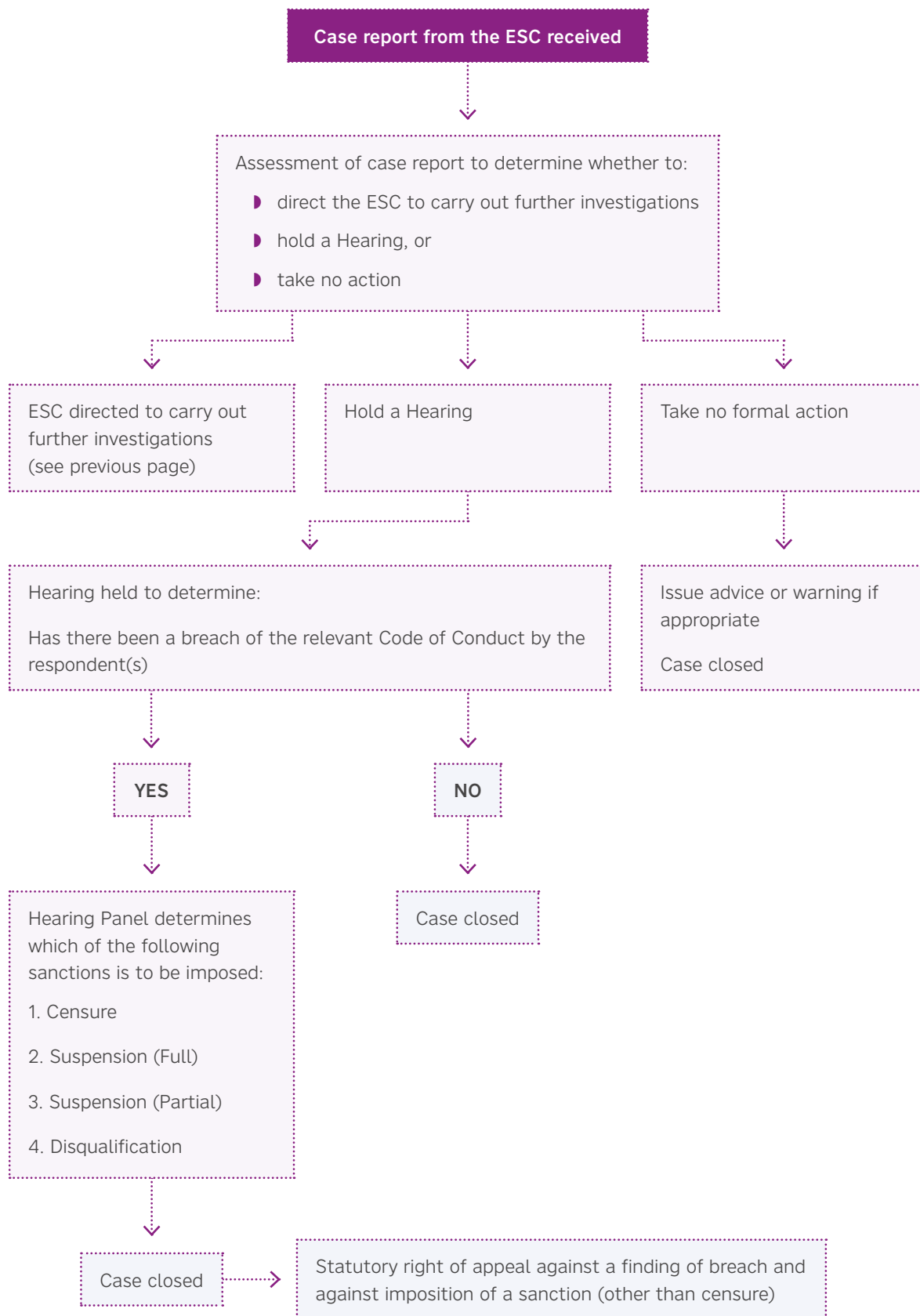
The Investigation and Adjudication Processes changed on 12 November 2020 after the Standards Commission issued a direction to the Ethical Standards Commissioner (ESC) under Section 10 of the Ethical Standards Act. The direction required the ESC to send all eligible complaints received on or after 12 November 2020 to the Standards Commission for adjudication.

Current Overview Of Process

1. Commissioner for Ethical Standards in Public Life etc. (Scotland)

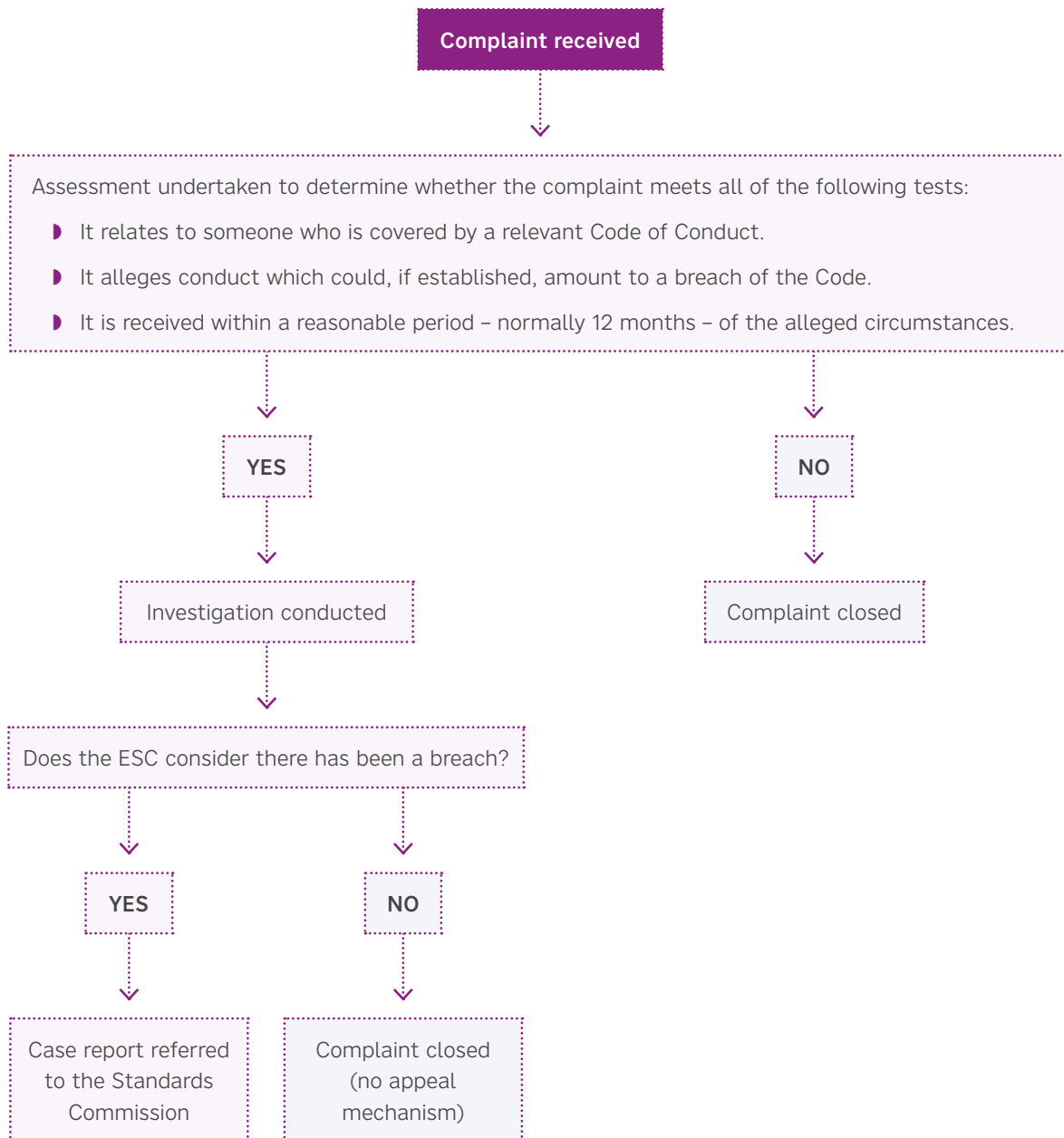


2. Standards Commission for Scotland

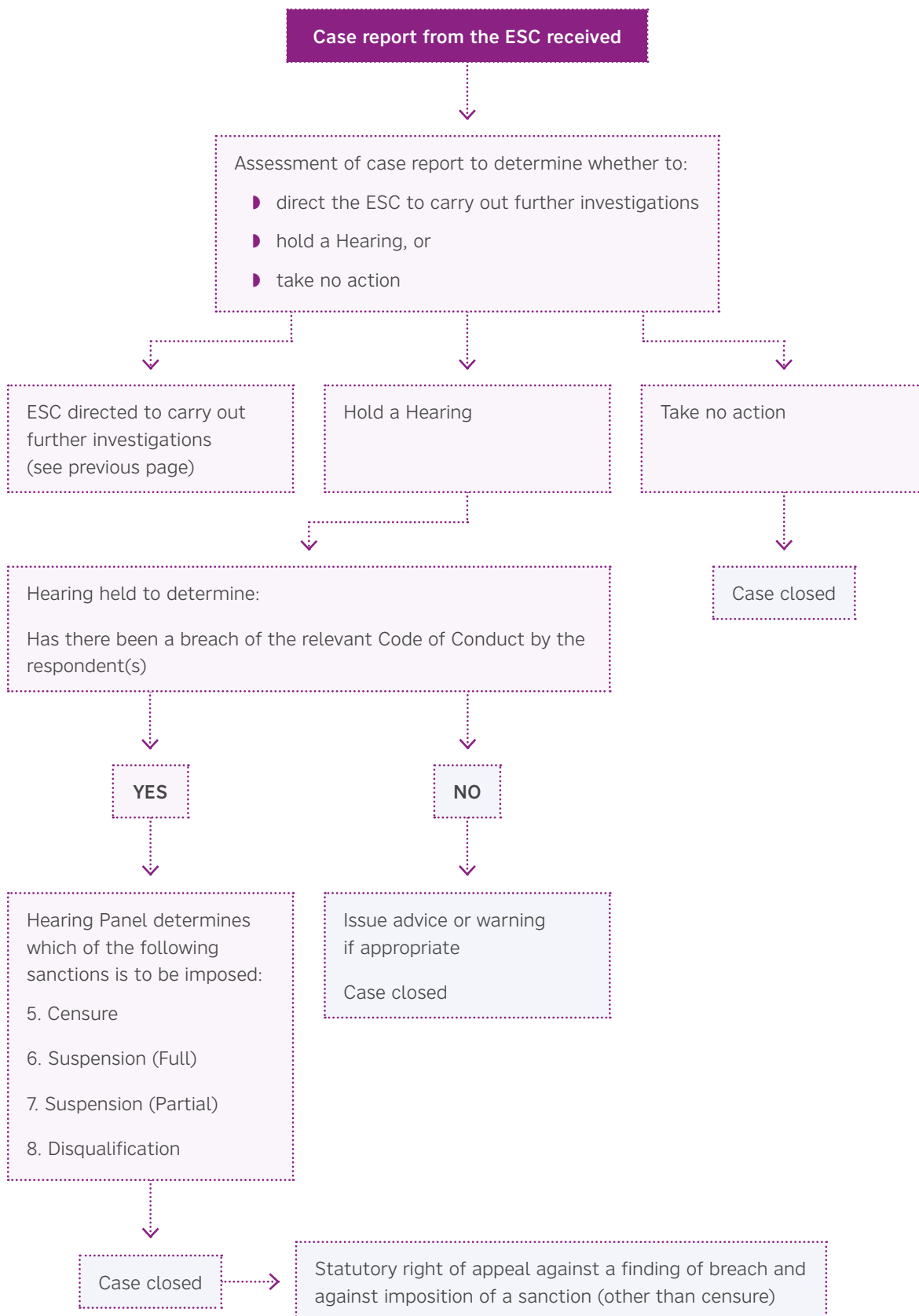


Overview of Former Process (For Complaints Received Before 12 November 2020)

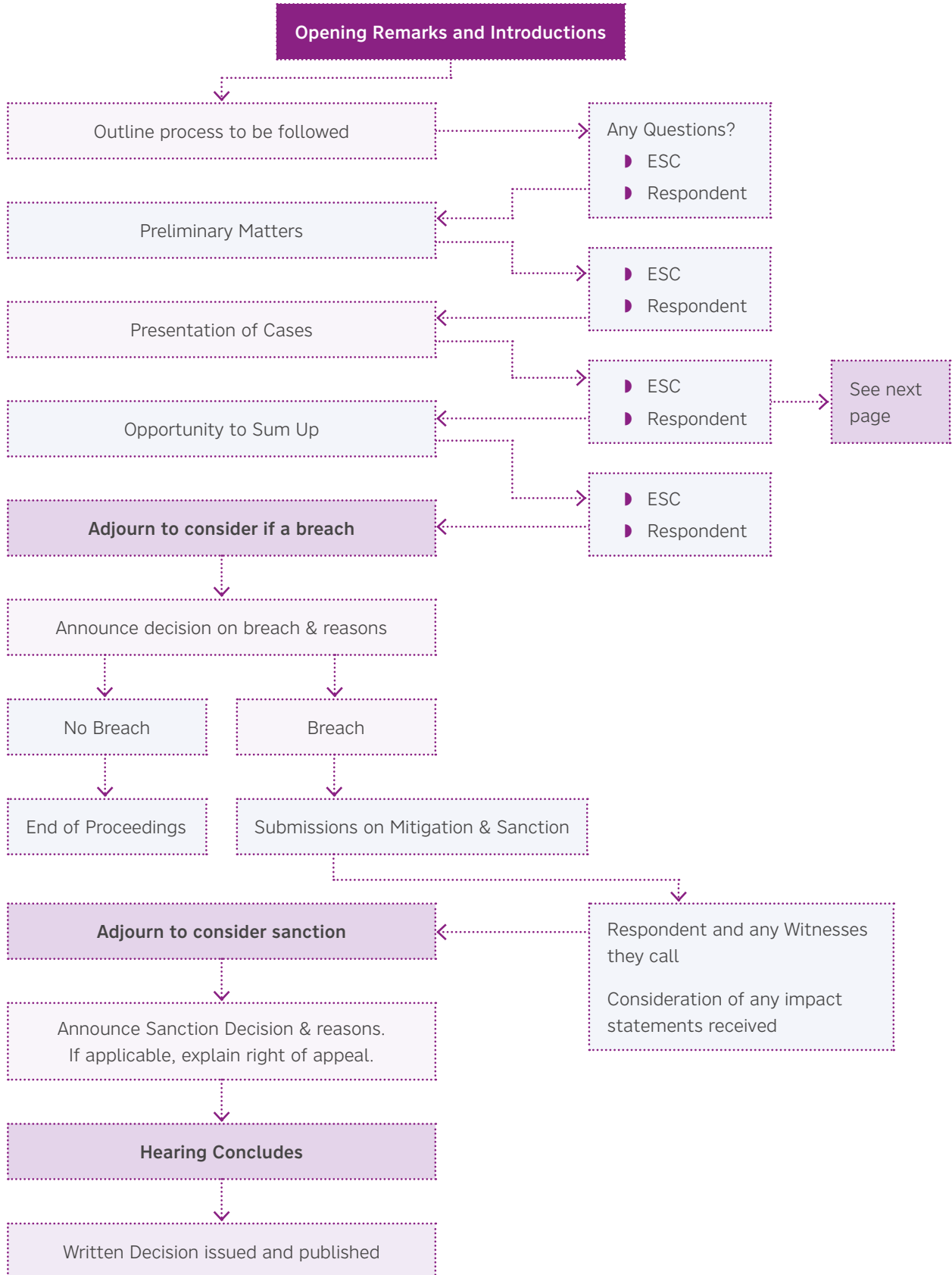
1. Commissioner for Ethical Standards in Public Life etc. (Scotland)



2. Standards Commission for Scotland



Hearing Process



Presentation of Cases

ESC: Outline background to complaint and outcome of investigation

Lead any witnesses

Opportunity to cross examine witnesses by respondent/respondent's representative

Opportunity to re-examine by ESC

Any questions from Hearing Panel

Submissions as to whether there was a breach of the Code

Panel: Question any witnesses Standards Commission has cited, opportunity to cross examine by respondent/respondent's representative



Respondent:

Outline background

Lead any witnesses

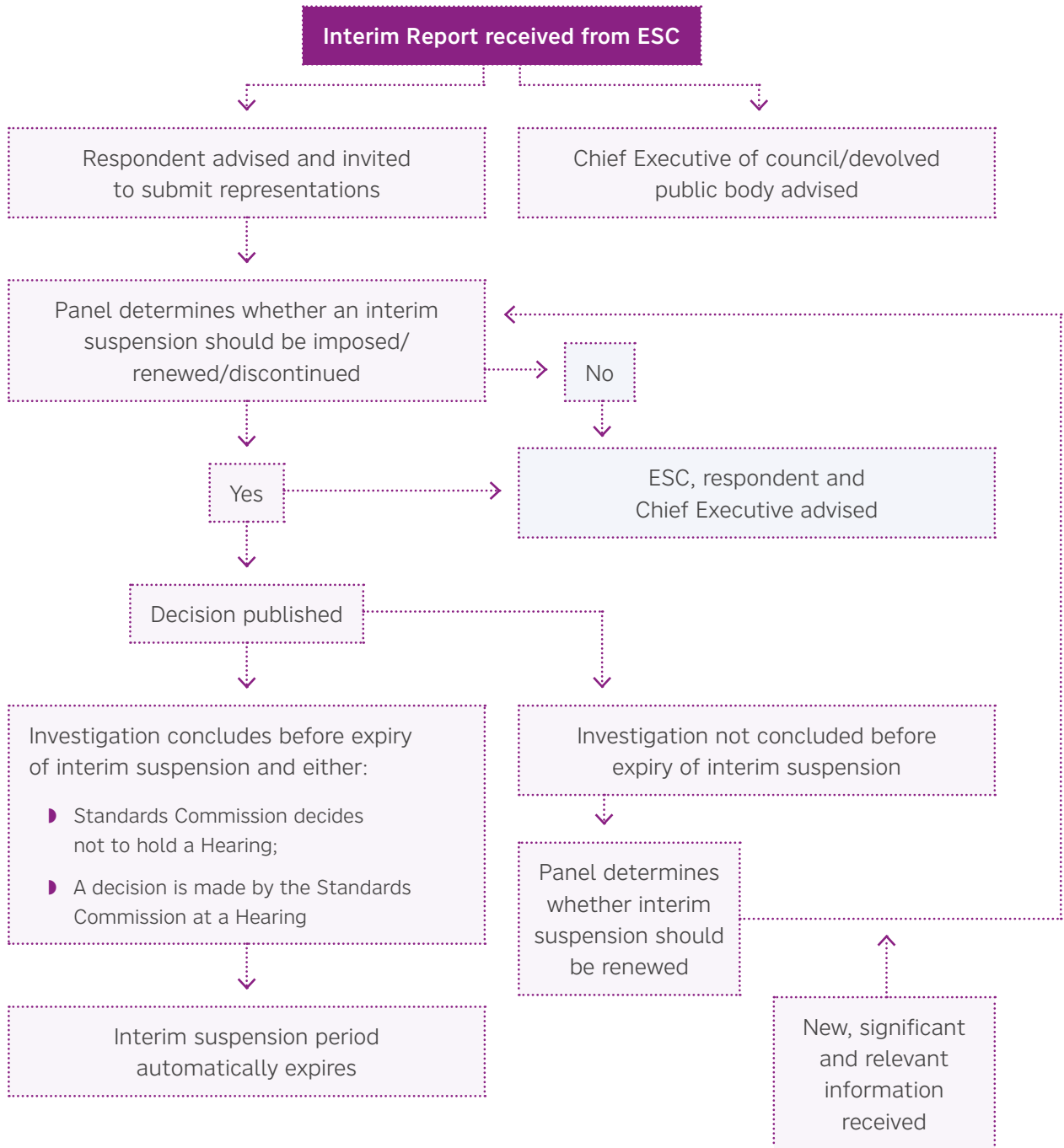
Opportunity to cross examine witnesses by ESC

Opportunity to re-examine by respondent/respondent's representative

Any questions from Hearing Panel

Submissions as to whether there was a breach of the Code

Interim Suspension Process



SECTION 3: PERFORMANCE SUMMARY

This section highlights the work undertaken in 2020/2021 towards our strategic objectives, as outlined in our Strategic Plan for 2020 to 2024.

Progress Against Strategic Objectives

Holding and concluding 14 Hearings to determine whether 14 respondents had contravened the Councillors' Code of Conduct. In those cases where the Hearing Panel found that a breach of the Code had been committed, appropriate sanctions were then applied.

Promoting the Scottish Government's consultation on the review of the Councillors' Code of Conduct and Model Code of Conduct for Members of Devolved Public Bodies.

Using our powers of direction under the Ethical Standards Act to oversee how the investigation of complaints about councillors and members of devolved public bodies were conducted.

Developing policies and procedures that enabled us to hold 12 of the 14 Hearings online, in accordance with legislative requirements and the Standard Commission's Hearing Rules, when travel restrictions arising from the coronavirus pandemic were in place.

Producing, issuing and publishing Guidance for the public on the Councillors' Code of Conduct.

Holding four online training sessions, on the Councillors' Code of Conduct, for elected members and senior officers of Angus, Borders, Highland and Stirling Councils.

STRATEGIC OBJECTIVE 1 – ‘IMPACT’



We will have a positive impact on ethical standards in public life by:

- ▶ Providing thought leadership by establishing and promoting a network to drive collaboration between all organisations who seek to ensure integrity in public life.
- ▶ Improving our profile and developing an effective communications strategy so that we can take all opportunities to be a strong and consistent voice for the importance of the ethical standards framework and compliance with the Codes of Conduct.
- ▶ Facilitating research, and assisting with programmes to train and educate on best practice, to drive up standards.
- ▶ Obtaining and undertaking detailed analysis of qualitative and quantitative evidence on our work to promote the Codes of Conduct so that we evaluate our impact in a meaningful way.

In working to meet this objective in the past year, we:

- ▶ Held and concluded 14 Hearings to determine whether 14 councillors had contravened the Councillors’ Code of Conduct. In all those cases where the Hearing Panel found that a breach of the Code had been committed, appropriate sanctions were then applied. Further details can be found in Sections 4 and 5 of this Report.
- ▶ Developed policies and procedures that enabled us to hold 12 of the 14 Hearings online, in accordance with legislative requirements and the Standard Commission’s Hearing Rules, when travel restrictions arising from the coronavirus pandemic were in place.
- ▶ Issued and published written decisions of all Hearings, which included the reasons why a breach had or had not been found and, if applicable, why a specific sanction had been applied, within an average of five working days of the conclusion of the Hearing.
- ▶ Conducted all Hearings within an average of 15 weeks from receipt of a report from the ESC. This was despite receiving 14 referrals in a seven-month period, with three cases referred in one week and five cases referred in one month (June 2020), and despite four Hearings being adjourned at the respondent’s request.
- ▶ Renewed an interim suspension imposed on a councillor, under Section 21 of the Ethical Standards Act, following receipt of an interim report from the ESC about an ongoing investigation into complaints about their conduct. The interim suspension remained in place until the Hearing was held, breach of the Code found and a sanction applied.
- ▶ Held four online training sessions, on the Councillors’ Code of Conduct, for elected members and senior officers of Angus, Borders, Highland and Stirling Councils.
- ▶ Responded to enquiries received from councillors, members of devolved public bodies, the media, the public and officers of councils and devolved public bodies on the ethical standards framework and how the Codes of Conduct should be interpreted. We provided a substantive response to all enquiries within the timescales outlined in our Service Charter.
- ▶ Produced, issued and published Guidance for the public on the Councillors’ Code of Conduct. The Guidance explains what the Code does and does not cover, so that members of the public can see what is expected of a councillor and what could constitute a potential breach of the Code. It also outlines how members of the public can raise concerns about a potential breach of the Code and provides information about the complaint process.
- ▶ Issued and published a response to the Committee on Standards in Public Life’s consultation “Standards Matter 2”, being a landscape review of the institutions, processes and structures in place to support high standards of conduct. The response contained the Standards Commission’s views on the UK’s arrangements for regulating ethical standards and how the key principles of public life can best be embedded within a public sector organisation’s working culture.
- ▶ Created and published blogs on our website in respect of topical ethical standards issues.

STRATEGIC OBJECTIVE 2 – ‘IMPROVEMENT’



We will pursue continuous improvement in the ethical standards framework and the way we do our work by:

- ▶ Making recommendations to amend the governing legislation so that we can deal with breaches of the Codes of Conduct in the most effective and proportionate manner.
- ▶ Working with others to ensure there is consistency in terms of the standards expected of all individuals in public life.
- ▶ Helping to resolve, or mitigate, any tensions in the ethical standards framework arising from the design of public bodies, including any inherent conflicts of interest.
- ▶ Influencing the content and format of the Codes of Conduct to ensure they remain fit for purpose and are as accessible and user-friendly as possible.
- ▶ Reviewing and revising our Guidance, Advice Notes and other educational material to ensure they continue to add value and assist councillors and members to adhere to the provisions in the Codes.

While the Ethical Standards Commissioner (ESC), being an independent officeholder, is responsible for conducting investigations into eligible complaints about councillors and members of devolved public bodies, the Standards Commission has an oversight role and powers of Direction under the Ethical Standards Act. The Standards Commission has been required to use these powers in the past year, in order to be able to undertake its oversight role effectively. Our work in 2020/21 in respect of this objective included:

- ▶ Issuing a Direction requiring the ESC to provide a report to the Standards Commission, at the conclusion of every investigation into a complaint about a councillor or member of a devolved public body received on or after 12 November 2020, outlining her findings and conclusions as to whether or not there has been a contravention of the relevant Code. The Direction means that the Standards Commission will make the final decision, under Section 16 of the Ethical Standards Act, on all complaints that have been investigated. It ensures there is a clear separation of functions between the investigatory and adjudicatory functions of the two organisations and helps reduce any concerns about fairness of process or inconsistencies between the two organisations as to how the Codes should be interpreted. The Direction allows any disputed

evidence or representations on how the provisions of the Codes should be interpreted to be tested fully at a Hearing (if one is to be held), where evidence is taken on oath or affirmation and where the participants and the Panel can question witnesses and respond to submissions made. It also makes the procedures for the adjudication of complaints about councillors and members of devolved public bodies more consistent with the approach taken in respect of complaints about MSPs.

- ▶ Issuing a Direction to the ESC requiring her to carry out an investigation into every complaint about a councillor and member of a devolved public body received, unless:
 - the conduct referred to in the complaint would not, even if it could be established to have occurred, constitute a contravention of the relevant Code of Conduct;
 - the individual who is the subject of the complaint has passed away prior to it having been made or is an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000; and/or
 - the conduct that has or is alleged to have contravened the relevant Code occurred (or in the case of a course of conduct ended) more than one year before the complaint was received.

The aim of the Direction is to ensure there is clarity and consistency in respect of the criteria the ESC uses to assess whether complaints are eligible/admissible for investigation.

- ▶ Issuing a Direction requiring the ESC to provide interim reports for investigations on all complaints about councillors and members of devolved public bodies for which a period of three months had already expired, to include:
 - a summary of the investigative work undertaken;
 - an explanation as to what requires to be done to complete the investigation; and
 - an indication of when it is expected that a final report will be issued.

The purpose of the Direction is to provide the Standards Commission with assurance that investigations into complaints about councillors and members of devolved public bodies are being progressed without any undue delays and that the parties to any complaint are provided with regular progress updates in order to ensure confidence in the overall ethical standards framework is maintained.

- ▶ Continuing to participate in a Working Group established by the Scottish Government to review the Councillors' Code of Conduct and Model Code of Conduct for Members of Devolved Public Bodies and, in particular, leading on the drafting of the amended version of the general conduct section and annexes to the Codes. We assisted the Government in preparing the documents for the public consultation on the revised Codes by drafting explanatory notes outlining the key changes and the reasons for them.
- ▶ Establishing a process under which Hearing Panels can consider an impact statement provided by anyone who has been affected by the respondent's conduct, when determining the sanction to be applied in cases where a breach of the respect or bullying and harassment provisions in a Code of Conduct has been found.
- ▶ Holding a strategic and development day to review and decide how to evaluate the impact of the Standards Commission's promotional

and adjudicatory work. We thereafter agreed an evaluation framework and associated timetable.

- ▶ Amending the Standards Commission's section 16 policy to make it clear that no action will be taken if it is satisfied that any admitted breaches of a Code referred to it for adjudication are inadvertent and technical in nature.
- ▶ Revising our Advice Notes for councillors on Distinguishing between Strategic and Operational Matters, the Application of Article 10 of the European Convention on Human Rights, and Bullying and Harassment to ensure these remained relevant and fit for purpose.
- ▶ Reviewing and revising the Standards Commission's Hearing Rules to provide for the possibility of holding the Hearing online (regardless of whether any travel restrictions in place), in cases where little or no facts are in dispute. Changes were also made to clarify the nature and timing of information to be provided by and to the Standards Commission.
- ▶ Updating the Standards Commission's policy on the Application of Sanctions to include references to impact statements and to additional factors a Hearing Panel will consider in cases where a respondent has been convicted of a criminal offence while acting in the capacity of a councillor or member of a devolved public body (or where they could reasonably be perceived as acting as such).
- ▶ Increasing our engagement with respondents before Hearings to ensure all information is provided and any queries and procedural issues are resolved timeously.
- ▶ Reviewing and updating various governance arrangements, including our Service Standards; Equalities Impact, Risk Management, Finance and Procurement policies; and the Terms of Reference for our Human Resources and Audit and Risk Committees.
- ▶ Undertook a full staffing review and subsequent recruitment exercise.

STRATEGIC OBJECTIVE 3 – ‘STAKEHOLDERS’



We will pursue and develop strong relationships with our stakeholders by:

- ▶ Identifying and seeking ways of working with all individuals and organisations who are potentially affected by the ethical standards framework
- ▶ Improving our engagement with devolved public bodies to help them to increase awareness amongst their members of the provisions in the Codes of Conduct and how to complain about any failure to adhere to these
- ▶ Working with chairs and conveners of devolved public bodies and local authority committees to try to prevent issues and breaches of the Codes from arising at meetings
- ▶ Actively seeking feedback on our educational material, policies and procedures and collaborating with other regulators and partner bodies across the UK to share experiences and inform best practice
- ▶ Seeking to share services, where possible, to ensure best value

The Standards Commission identified that actions to achieve this objective included developing the skills and competencies of its Members and staff; identifying and taking forward opportunities to work jointly or in partnership with other public bodies; and making good use of resources and striving for operational efficiency, best value and continuous improvement.

Our work to achieve this objective in the past year included:

- ▶ Consulting with COSLA, SOLACE, SOLAR and the ESC on the oversight Directions issued under the Ethical Standards Act.
- ▶ Holding online workshops with Monitoring and Standards Officers to discuss:
 - the proposed changes to Codes of Conduct for councillors and members of devolved public bodies;
 - any ongoing conduct related issues and trends; and
 - how the Standards Commission can best add value in terms of assisting with training and promoting awareness of, and adherence to, the Codes.
- ▶ Using our social media platforms to promote awareness of the ethical standards framework, the provisions in the Codes of Conduct and the Standards Commission’s role, remit and work (including any forthcoming events and decisions made at Hearings). We increased our followers on Twitter by a further 25%.
- ▶ Following a request from a stakeholder to do so, we extended an existing dispensation for both councillor and health board members of health and social care integration joint boards to enable them to take part in any review, either by their council or Health Board, of the relevant IJB Scheme.
- ▶ Promoting the Scottish Government’s consultation on the review of the Councillors’ Code of Conduct and Model Code of Conduct for Members of Devolved Public Bodies.
- ▶ Participating in Commissioners and Ombudsman’s Group, FOISA Network Group and Data Protection Officer meetings.
- ▶ Sharing ideas and best practice with Northern Ireland Ombudsman in respect of holding online Hearings.
- ▶ Attending liaison meetings with SOLAR to discuss opportunities for improvement in respect of raising awareness of the provisions in the Codes of Conduct in light of emerging trends and issues.
- ▶ Continuing to work on shared services agreements and approaches with the SPCB in respect of data protection officer, information technology and internal audit services.
- ▶ Agreeing and publishing a Data Sharing Agreement with the ESC.

STRATEGIC OBJECTIVE 4 – ‘CLARITY’



We will ensure that all stakeholders, including members of the public, have easy access to high quality information about the organisation, its work and any initiatives it is undertaking by:

- ▶ Promoting the ethical standards framework, the Codes of Conduct and how to make a complaint so that everyone is aware of the standards expected of those in public life, and are able and confident to report poor behaviour
- ▶ Ensuring all case related decisions are clearly explained and well-reasoned
- ▶ Using digital technology to ensure all educational material and information about good practice and Hearings are published and disseminated as widely as possible
- ▶ Promoting the importance of good behaviour and integrity in decision-making to help attract and encourage the highest quality candidates to apply for public appointments and to seek election as local government councillors

In 2020/21, the Standards Commission identified that actions to achieve this objective would include publishing information on current issues arising in respect of the ethical standard framework and how provisions in the Code have been interpreted at Hearings in Standards Updates or via standalone communications, and promoting Hearings to be held and Hearings decisions in the media, on our website and on social media platforms.

In meeting this objective in 2020/21, we:

- ▶ Published and issued quarterly Standards Updates, which included news about the work of the Standards Commission and future events, along with information about decisions made at Hearings.
- ▶ Disseminated and published media releases in respect of all Hearings held and any scheduled, and on an interim suspension decision.
- ▶ Published news articles on our website and regular posts on our social media sites in respect of issues affecting the ethical standards framework, work being undertaken by the Standards Commission and our educational material.
- ▶ Reviewed and further developed our British Sign Language Plan, which was developed in accordance with the requirements of the British Sign Language (Scotland) Act 2015.
- ▶ Produced and published a British Sign Language video on the Councillors’ Code of Conduct and the complaint process to follow if there are concerns it has been contravened.
- ▶ Undertook a full internal annual review of the management of Hearings and the decisions made (including the clarity of the final written determination). This included conducting surveys of participants and attendees on how Hearings are organised, run and managed. We used the review, any suggestions made and any other feedback obtained, to improve processes and decision-making procedures and templates. This included making revisions to the Hearing Rules and our public information literature, to ensure that they all continued to be accessible and fit for purpose.
- ▶ Held pre-Hearing meetings when appropriate and proportionate to do so, in order to resolve any procedural issues in advance of Hearings. Doing so helped to ensure that the focus of the Hearings remained on the production and analysis of relevant evidence and that they were conducted in as fair, impartial and efficient a manner as possible. It also meant the parties had the opportunity to raise questions and ensure they understood the process that would be followed.
- ▶ Completed work to ensure our website is fully compatible with the accessibility requirements specified in the Public Sector Bodies (Website and Mobile Applications) Accessibility Regulations 2018.
- ▶ Responded to all Freedom of Information requests within statutory time limits. We attended data protection and FOISA network meetings with other Officeholders to discuss and share best practice.
- ▶ Completed a review of our Records Management Plan, which was subsequently approved, following assessment, by the National Records of Scotland as being fully compliant with statutory requirements.

SECTION 4: CASE STATISTICS

Introduction

Complaints that a councillor or a member of a devolved public body (the respondent) has contravened their Code of Conduct are made to, and considered by, the Commissioner for Ethical Standards in Public Life in Scotland (the ESC).

Before 13 November 2020, if the ESC concluded, at the end of her investigation, there has not been a breach of the Code, she would advise the respondent and complainer accordingly. The Standards Commission did not have the power to challenge or ask the ESC to review any finding that there has not been a breach of a Code. If, following an investigation, the ESC concluded there may have been a breach of a Code, she would refer the matter to the Standards Commission for adjudication.

Having consulted with the ESC, SOLAR, SOLACE and COSLA, a Direction on the Outcome of Investigations was issued to the ESC, under Section 10 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, ('the Ethical Standards Act'), on 12 November 2020. The Direction required the ESC to send reports on all complaints that had been investigated to the Standards Commission for it to make a final decision, regardless of whether or not she considered there had been a breach of the Code. The Direction required the ESC to advise the parties that the Standards Commission would determine the complaint. The Direction ensures there is a clear separation of functions between the investigatory and adjudicatory functions of the two organisations and reduces any concerns about fairness of process or that there are inconsistencies in how the Codes are being interpreted. The Direction also allows any disputed evidence or representations on how the provisions of the Codes should be interpreted to be tested fully at a Hearing (if one is to be held), where evidence is taken on oath or affirmation and

where the participants and the Panel can question witnesses and respond to submissions made. The implementation of the Direction should also make the procedures for the adjudication of complaints about councillors and members of devolved public bodies more consistent with the approach taken in respect of complaints about MSPs.

On receipt of the case report, the Standards Commission has three options, under Section 16 of the Ethical Standards Act, which are:

- ▶ to direct the ESC to carry out further investigations;
- ▶ to hold a Hearing; or
- ▶ to do neither (take no action).

The Standards Commission has published a policy outlining the factors it will consider when making such a decision on a report referred by the ESC. A copy of the policy can be found on the Standards Commission's website at:

www.standardscommissionscotland.org.uk/cases

The Standards Commission will write to the respondent, the ESC, the Chief Executive of the relevant council or devolved public body (copied to the Monitoring Officer or Standards Officer), and the individual or individuals who made the complaint to advise them of its decision in respect of the report.

Decisions on Case Reports

The ESC referred 14 reports to the Standards Commission between 1 April 2020 and 31 March 2021 where she determined that a breach of a Code of Conduct may have occurred. The Standards Commission held Hearings in respect of each of these reports. The table below shows the decisions taken by the Standards Commission in respect of reports referred by the ESC.

Table 1: Decisions taken by Standards Commission on Reports received between 1 April 2020 and 31 March 2021

Decision	No. of Reports	No. of Councillors or Members involved in the Reports	
		Councillors	Members
Hold a Hearing	14	14	0
Direct the ESC to carry out further investigations	0	0	0
Do neither	0	0	0
TOTAL	14	14	0

Hearings held in 2020/2021

Two of the reports referred by the ESC concerned the same respondent and were, therefore considered at a conjoined Hearing. A further Hearing was held in 2020/21 in respect of a breach report received from the ESC before 1 April 2020. As a result, the Standards Commission held a total of 14 Hearings between 1 April 2020 and 31 March 2021. Two of these Hearings were held in person at a council venue in the respondent's local authority area. The remaining 12 Hearings were held online due to the existence, at the time, of coronavirus related travel restrictions. The online Hearings were livestreamed on the Standards Commission's website.

Decisions made at Hearings

Table 2 outlines the decisions made at the 14 Hearings held in 2020/21.

Table 2: Outcomes of Hearings conducted and concluded by the Standards Commission between 1 April 2020 and 31 March 2021

Decisions	No. of Hearings	No. of respondents involved in Hearing
Finding of breach	13	13
Finding of no breach	1	1
TOTAL	14	14

Sanctions Imposed at Hearings

The sanctions available to the Standards Commission if it determines, at a Hearing, that a breach of a Code of Conduct has occurred are:

- ▶ Censure;
- ▶ Suspension; and
- ▶ Disqualification

Having found a breach, the Standards Commission is obliged, under Section 19 of the Ethical Standards Act, to impose a sanction. The Standards Commission has published a policy outlining the factors it will consider when deciding the sanction to be imposed. A copy of the policy can be found on the Standards Commission's website at: www.standardscommissionscotland.org.uk/cases/hearing-rules.

A **censure** means the Standards Commission recognises the respondent has breached the Code and formally records the Standards Commission's severe and public disapproval of the respondent's conduct.

A **suspension** can be full or partial, and can be for a period of up to one year. A full suspension means that the respondent is not entitled to attend any meetings of the council or devolved public body, any of its committees and sub-committees, and also any meetings of any other body of which the respondent is a representative or nominee of the council or devolved public body. The Standards Commission has produced guidance to provide clarity on the extent of the activities in which a councillor can engage while they are subject to a period of full suspension (either on the finding of a breach of the Councillors' Code of Conduct at a Hearing or as an interim measure while an investigation about their conduct is ongoing). This guidance can be found on the Standards Commission's website at: www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

A partial suspension means that the respondent is not entitled to attend certain specified meetings or committee of the council or devolved public body. For example, they may be suspended from

meetings of a council's licensing committee for a period of three months.

Disqualification means that the respondent, if a councillor, is prohibited, for a period not exceeding five years, from being a councillor and from being nominated for election or being elected, as a councillor. This has the effect of vacating that councillor's office.

In cases where the respondent is a member of a devolved public body, disqualification means they are removed from membership of the body and are prohibited from being a member of the body for a period not exceeding five years. The Standards Commission, on removing and disqualifying a member from one specific devolved public body, can also direct that the individual is removed and disqualified from any other devolved public body of which they are a member.

The table below outlines the sanctions imposed by the Standards Commission at the Hearings held between 1 April 2020 and 31 March 2021.

Table 4: Sanction decisions made at Hearings between 1 April 2020 and 31 March 2021

Sanction	No. of Hearings	No. of respondents involved in the Hearings
Censure	6	6
Suspension – full	1	1
Suspension – partial	5	5
Disqualification	1	1
No breach and, therefore, no sanction	1	1
TOTAL	14	14

Decisions on Interim Reports and Interim Suspensions

Section 21 of the Ethical Standards Act provides the Standards Commission with the power to impose an interim suspension on a councillor or member of a devolved public body following receipt of an interim report from the ESC about an ongoing investigation.

In determining whether to impose an interim suspension, a Panel of the Standards Commission will consider the following:

- ▶ whether the allegations being investigated by the ESC could potentially amount, if established, to a breach of the applicable Code of Conduct; and
- ▶ whether the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken; or
- ▶ that it is otherwise in the public interest to take such a measure.

Any decision by the Standards Commission to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a councillor or member of a devolved public body, nor should it be viewed as a disciplinary measure. Information about any decisions, made under Section 21 of the Act and the policy outlining how the Standards Commission makes any decision under section can be found on the Standards Commission website at: <https://www.standardscommissionscotland.org.uk/cases/details-of-alleged-breach>

Any period of interim suspension imposed will automatically end if:

- ▶ the issuing of a finding that there has not been a breach of the Code;
- ▶ the Standards Commission receives an investigation report but decides not to hold a Hearing; or
- ▶ the Standards Commission receives an investigation report and holds a Hearing (and either finds a breach and imposes a sanction or finds no breach has occurred).

A Panel of the Standards Commission can choose to discontinue an interim suspension at any time on receipt of any new and relevant information, if it is no longer satisfied that it is proportionate and in the public interest for it to be in place.

The Standards Commission received no new interim reports from the ESC in 2020/21. The Standards Commission renewed an interim suspension imposed on a councillor in 2019/20, however, while the ESC's investigation remained ongoing. The ESC concluded the investigation and referred the case to the Standards Commission in 2020/21. The interim suspension remained in place until a Hearing was held.

Appeals

Appeals can be made, under Section 21 of the Ethical Standards Act, to the sheriff principal of the sheriffdom in which the relevant council or devolved public body has its principal office against any decision by the Standards Commission to:

- ▶ find a breach of a Code of Conduct;
- ▶ to impose a suspension or disqualification, as a result of the finding of breach; and
- ▶ to impose an interim suspension.

One appeal was made in 2020/21 by a respondent against a decision made by a Panel of the Standards Commission, at a Hearing on 10 September 2020, to find him in breach of the Councillors' Code of Conduct and to disqualify him. At a hearing on 4 February 2021, a Sheriff Principal determined that the Panel should not have proceeded with the Hearing in the absence of the respondent, who was self-isolating (having been in close contact with an individual who had tested positive for Covid-19). The Sheriff Principal did not consider, or make any finding, on the Panel's decisions on breach and sanction, but remitted the matter back to the Standards Commission to consider at a new Hearing. The new Hearing will be held in early 2021/22.

Timescales

The Standards Commission usually aims to hold Hearings no earlier than six weeks and no later than 12 weeks after the date on which the decision to hold a Hearing is made. This timescale allows sufficient notice to be given to the parties (being the ESC and the respondent) and anyone else who wishes to attend or observe the Hearing (including the media and members of the public). It also allows the parties time to prepare, which includes submitting any relevant and material evidence, and asking witnesses to appear.

The Standards Commission has to consider, and balance, a number of factors when scheduling Hearings. These include the availability of its part-time Members (who form the Hearing Panels), the parties and suitable premises (if the Hearing is to be held in person). In addition, as the Standards Commission only employs three members of staff (full-time equivalent 2.8), it has to allow a sufficient gap between Hearings in order for the team to prepare fully for each.

The Rules provide that a Panel may, at its own discretion or on the application of any of the parties, postpone or adjourn a Hearing. Before any postponement or adjournment is granted,

the Panel will consider both the public interest in the expeditious disposal of the case; and any inconvenience or prejudice to the parties and to witnesses. In making such a decision, the Panel will also be mindful of the fact that delays to Hearings can lead to the quality of available evidence being eroded, as memories can fade with time.

Standards Commission's Timescales 2020/21

Information about the timescales involved in the Hearings held to date in 2020/21 is outlined in the table below. It should be noted that the ESC made 14 referrals between 1 April and 30 October 2020 in a seven-month period, with three cases referred in one week (the week commencing 27 April 2020) and five cases referred in one month (June 2020). For the reasons outlined above, the Standards Commission has to schedule gaps between Hearings and, as such, some were held more than 12 weeks after the decision to hold a Hearing was made. In addition, the existence of coronavirus related travel restrictions meant a number of Hearings were deferred or adjourned while alternative arrangements were made.

The number of referrals made, by month, is outlined in the graph below.

**Number of cases referred to Standards Commission by ESC
April 2019 – March 2021**

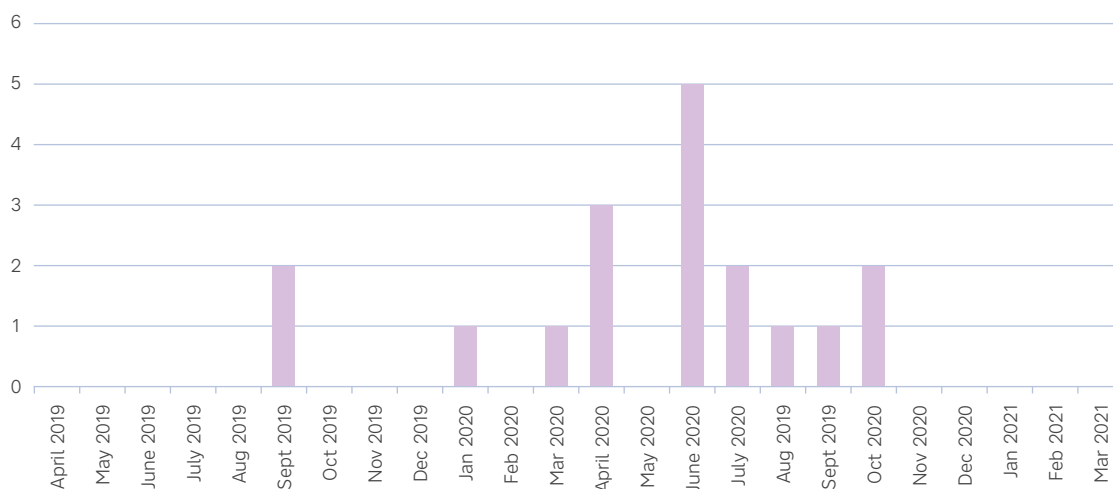


Table 5: Standards Commission's Timescales 2020/21

Report Reference(s)	Date report received	Date of decision to hold a Hearing	Hearing Date		Time between date of decision to hold a Hearing and start of the Hearing (in weeks)
			Date originally identified for Hearing	Actual Hearing Date	
LA/Fi/2268	25/03/20	31/03/20	n/a*	24/08/20	21
LA/R/2257	27/04/20	29/04/20	19/08/20 Adjourned at respondent's request and to conjoin with LA/R/3262 (same respondent)	10/09/20	20
LA/SL/2252	28/04/20	29/04/20	23/07/20	23/07/20	13
LA/H/3003	30/04/20	04/05/20	08/07/20	08/07/20	10
LA/AC/2276	08/06/20	10/06/20	08/09/20 Adjourned at respondent's request	22/10/20	20
LA/WD/3016	10/06/20	15/06/20	14/09/20	14/09/20	14
LA/AC/3199	16/06/20	23/06/20	06/10/20 Adjourned at respondent's request	20/11/20	22
LA/Mo/3132	26/06/20	02/07/20	12/10/20	12/10/20	15
LA/Fi/3125	29/06/20	02/07/20	15/10/20 Adjourned at respondent's request	09/11/20	19
LA/R/3262	16/07/20	17/07/20	19/08/20	10/09/20	8
LA/Fi/3039 & 3075	22/07/20	27/07/20	23/11/20	23/11/20	18
LA/ER/3271	10/08/20	12/08/20	13/11/20	13/11/20	14
LA/Fi/3278	28/09/20	01/10/20	16/12/20	16/12/20	11
LA/SI/3305	08/10/20	12/10/20	17/12/20	17/12/20	10
LA/OI/3265	30/10/20	01/11/20	18/01/21	18/01/21	12

KEY

Report received before 31 March 2020

*No initial date scheduled as Standards Commission waiting to see if Coronavirus restrictions would be lifted to determine whether it could accommodate respondent's preference for a Hearing in person.


SECTION 5: SUMMARY OF CASES

Hearings

Summaries of all Hearings conducted by the Standards Commission in 2020/21 can be found below. The full written decisions are published online at:

www.standardscommissionscotland.org.uk/cases/case-list

CASE	
LA/H/3003 – Highland Council	
Date of Hearing	8 July 2020 (online)
Complaint	The complaint alleged that the respondent had failed to declare a non-financial interest at a meeting of the Council's Environment, Development and Infrastructure Committee.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that it was not in dispute that the respondent moved, and voted on, a motion to approve additional funds for work relating to Skye Airport/Aerodrome; and for him, as Committee Chair, to write to the Transport Secretary on behalf of the Council and also on behalf of Highlands and Islands Transport Partnership (HITRANS), requesting support. 2. The Panel noted that HITRANS was a member of a working group established for the purpose of developing Skye Aerodrome into an airport and that the respondent had been Chair of HITRANS since June 2017. The Panel noted that the post was unremunerated. 3. The Panel considered that, having applied the objective test under paragraph 5.3, the respondent should have reached the view, in terms of paragraph 5.7, that his interest in HITRANS, as a member of the Working Group, would not be perceived as being so remote and insignificant that it could not influence him. 4. The Panel noted the terms of the specific exclusion under paragraph 5.18 of the Code that allows councillors who were members of regional transport partnerships, such as HITRANS, to take part in the consideration and discussion of, and to vote upon, a matter relating to that regional transport partnership. The Panel noted however, that the specific exclusion only applies if the councillor declares his or her interest at all meetings where such matters are to be discussed. In this case, despite confirming that he was aware of the specific exclusion, the Panel found that the respondent had failed to declare an interest at the Committee meeting before taking part in the discussion and decision-making. 5. The Panel concluded, therefore, that the respondent had breached paragraphs 5.3, 5.7 and 5.18 of the Code.
Sanction	<p>The Panel censured the respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the respondent had co-operated fully with the investigative and Hearing processes and offered an unreserved apology in respect of the failure to declare the interest. 2. Accepted the respondent's submission that the failure to comply with the Code was inadvertent and an oversight. 3. Was of the view that the respondent's conduct did not warrant a more severe sanction as there was no evidence that he had attempted to conceal his interest or that there was any personal gain. The Panel further noted that while it had found that the respondent had not declared the interest as required, had he done so, he would still have been allowed to take part in the discussion and decision-making under the specific exclusion in the Code for members of regional transport partnerships.



CASE	LA/SL/2252 – South Lanarkshire Council
Date of Hearing	23 July 2020 (online)
Complaint	The complaint alleged that the respondent had failed to declare the interest of a close relative in a matter being considered at a special meeting of the Council's Housing and Technical Resources Committee.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that it was not in dispute that a report proposing a budget saving through the redesign of the Council's Housing Repairs Standby (Out of Hours) service was considered at a meeting of the Council's Housing and Technical Resources Committee. 2. The Panel noted that the respondent did not declare an interest and took part in the decision-making on the matter. This was despite being aware that his son participated voluntarily in the Out of Hours service as part of his employment with the Council and was also a local representative of a trade union that had expressed concerns about the budget savings proposal, and its potential impact on service delivery and the employees' earnings. 3. The Panel was of the view that, having erred on the side of caution (as he was advised to do under paragraph 5.2 of the Code), and having applied the objective test under paragraph 5.3, the respondent should have concluded, in terms of paragraphs 5.10 and 5.12, that the financial and non-financial interest of his son (being a close relative) in the matter would not be perceived as being so remote and insignificant, or unclear and unsubstantial, that it could not influence him. 4. The Panel concluded that the respondent's failure to declare an interest at the meeting on question amounted to a contravention of paragraphs 5.2, 5.3, 5.10 and 5.12 of the Code.
Sanction	<p>The Panel censured the respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and Hearing processes. 2. Accepted that the respondent's decision-making and voting had not been influenced, in any way, by his son's interests in the matter. 3. Emphasised that the requirement for councillors to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion, decision-making and voting. 4. Was nevertheless of the view that the respondent's conduct did not warrant a more severe sanction as there was no evidence that there was any personal gain or that the respondent had attempted to conceal his son's employment or connection to the matter.



CASE	LA/Fi/2268 – Fife Council
Date of Hearing	24 August 2020 (online)
Complaint	The complaint alleged that the respondent had failed to declare an interest at a meeting of the Council’s Community and Housing Services Committee.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that it was not in dispute that the respondent attended a meeting of Fife Council’s Community & Housing Services Committee when a report relating to a request by Benarty Community Council to change its boundary was considered. After the Committee agreed to a review, the Council conducted a consultation on a proposed change to the boundary. 2. The Panel noted that, during the consultation period, the respondent sent a private message about the consultation via Facebook Messenger to five recipients, in which she stated that she was contacting them to make sure they “have voted against any change to the Community Council Boundary” and asking them to ensure that members of their families also voted ‘no’ to any change. The Panel further noted that it was accepted that the respondent also sent six emails to members of her family in similar terms. The Panel noted that the messages had entered the public domain. 3. The Panel noted that it was not in dispute that the Committee agreed to confirm a change to the boundary, as detailed in the report that was the subject of the consultation. The Panel further noted that the respondent accepted that she had not declared an interest at the Committee meeting in respect of the matter and had not left the room while it was being considered. 4. The Panel noted that councillors are required to refrain from making public statements about pending quasi-judicial and regulatory matters, in order to avoid any perception that they have pre-judged a decision. In this case, however, the Panel was satisfied that the matter being considered by the Committee was not quasi-judicial or regulatory in nature. 5. The Panel was satisfied that the restriction on pre-judging matters did not apply to other decisions councillors were asked to make. This was because councillors are entitled to have, and publicly express, views and opinions on policy matters and matters of local interest (which are not of a quasi-judicial or regulatory nature). The Panel considered that the requirements of the Code should not limit councillors from discussing or debating matters of policy or strategy. In this case, the Panel was satisfied that the respondent was entitled to contact her friends and family to express an opinion and to encourage them to support her preferred option. 6. The Panel considered that, generally, to constitute an ‘interest’, a councillor’s personal circumstances would have to be capable of being advantaged to a greater extent than other members of the public by the decision to be taken on the matter in question. In this case, the Panel determined that there was no evidence or suggestion of such a benefit or advantage to the respondent or to any person or organisation connected to her. 7. The Panel concluded that the respondent’s failure to declare an interest at the meeting in question did not amount to a contravention of paragraphs 5.3 and 5.7 of the Code.
Sanction	Not applicable.




CASE	
LA/R/2257 & 3262 – Renfrewshire Council	
Date of Hearing	10 September 2020
Complaint	The complaints alleged that the respondent had bullied, and behaved in a disrespectful manner towards, colleagues and officers.
Preliminary Matters	<p>The Hearing was scheduled for 09:30 on 10 September 2020, having been rescheduled at the respondent's request. Having waited for the respondent who had failed to attend, the Panel started the Hearing at 09:40. The Panel was satisfied it could do so in terms of the Hearing Rules as it had evidence before it that the respondent had been provided with adequate notice of the Hearing. The Panel noted that the respondent had attended an online pre-Hearing meeting.</p> <p>The Panel proceeded to hear submissions from the Ethical Standards Commissioner's representative and evidence from the two complainers, being two other Renfrewshire councillors.</p> <p>It was only after having heard evidence from two witnesses and submissions from the ESC's representative and having retired to deliberate, that the Panel discovered that the respondent had sent the Standards Commission an email late the previous day advising that he had been in contact with someone who had tested positive for Covid-19 and therefore felt he had to self-isolate. The Panel considered whether it should continue with the Hearing in the respondent's absence.</p> <p>The Panel did not consider that the respondent had taken all reasonable steps to advise it that he would not be attending. The Panel noted that, despite being required to do so, the respondent had not submitted a statement of case to the Standards Commission and had not cooperated fully with the ESC's investigation. The Panel noted that he had not disputed that he had sent the emails that were the subject of the complaints or that he disputed the video evidence of the Council meeting, that was also the subject of one of the complaints.</p> <p>Having weighed up a number of options on how best to proceed in the circumstances, the Panel was satisfied that it had sufficient evidence before it to make a decision on breach. The Panel was further satisfied that, given the opportunities previously provided, but not taken, by the respondent to make submissions on the complaint it considered that it was reasonable to proceed to make the decision in his absence.</p> <p>Having made a decision on breach, the Panel adjourned to provide the respondent with an opportunity to submit any comments he wished to make in respect of mitigation before it made a decision on sanction. A decision on sanction was then issued on 28 September 2020.</p>
Decision	<ol style="list-style-type: none"> 1. In respect of the first complaint, the Hearing Panel noted that the respondent was unhappy about the allocation of a council property to the family member of another elected member. The allocation was the subject of a review by the Council's Chief Auditor and then Audit Scotland, who concluded that the Council property was appropriately let and that there was no influence, or opportunity for influence, over the selection process, by any elected member. 2. The Panel accepted that the respondent was entitled to raise concerns about the allocation of council housing, particularly if he was doing so on behalf of a constituent. The Panel noted, however, that it was the manner in which he had pursued the matter, via a number of emails sent to other councillors, senior officers and a journalist over a period of some seven months, and via comments made in public at a Council meeting, that was unacceptable. 3. The Panel found that the respondent had embarked upon a course of conduct in which he accused the complainer of lying, corruption, cronyism and covering up criminal activity. He had further accused senior officers of covering up the housing allocation matter, of bullying and intimidating staff and of engaging in conduct that was bordering on the criminal. 4. The Panel was satisfied that the respondent's accusations, made in his emails, and at the Council meeting, amounted to unjustified personal attacks which were offensive and abusive. 5. Turning to the second complaint, the Panel found that the respondent had breached the Code by making a number of gratuitous personal comments and offensive, demeaning remarks about a fellow councillor in an email sent to the other councillor and circulated to other parties. In addition, the Panel found that the respondent made remarks about someone going round to the other councillor's house and inflicting personal harm on him. The Panel considered that the contents of the email were disrespectful, demeaning and, further, amounted to harassment towards the other councillor. 6. The Panel concluded that the respondent's behaviour amounted to a contravention of paragraphs 3.2, 3.3, 3.5, 3.6, 3.7, and paragraphs 2 and 20 of Annex C of the Code.



<p>Sanction</p>	<p>The Panel disqualified the respondent from being, or being nominated for election as, or from being elected, a councillor for a period of 17 months. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that despite being provided with an opportunity to do so, the respondent declined to offer any submissions in mitigation. 2. Was particularly concerned that the respondent had continued to subject senior officers to repeated and unmerited abuse, despite them having agreed to review the housing allocation matter. The Panel was also concerned about the scale and seriousness of the allegations made, particularly in the context of the respondent having not provided any evidence to support his accusations and the officers having no right of public reply. 3. Noted that the Standards Commission had previously suspended the respondent for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. While the Panel was aware that the previous Hearings had taken place, and the suspensions imposed had expired, before the events in respect of the complaints that were the subject of this Hearing had occurred, it nevertheless considered that it was apparent the respondent had not learnt from the previous suspensions. In particular, there was no evidence that the respondent had made any attempt to moderate his behaviour or consider how it could impact others. 4. Determined that the respondent's behaviour was persistent, deliberate and serious in nature. The Panel considered that the manner in which the respondent had raised his concerns was completely unacceptable and that amounted to personal attacks on officers and fellow councillors. The Panel considered that, as such, it was likely that the respondent's behaviour could seriously undermine public confidence in local government and the role of a councillor and could also have a significantly detrimental impact on working relationships within the Council. 5. Given the repeated breaches of the Code's respect provisions conveyed by email to councillors, council officers and the press, the Panel was of the view that simply suspending the respondent from future Council meetings was insufficient and would not prevent the conduct from recurring. It determined, therefore, that disqualification was necessary and appropriate in the circumstances.
<p>Appeal</p>	<p>The respondent lodged an appeal against both the Panel's decision on breach and sanction. The Sheriff Principal heard the appeal on 4 February 2021. While the Sheriff Principal did not consider the merits of the decision, he found that the Panel had not exercised its discretion reasonably in deciding to proceed in the respondent's absence. As such, the Sheriff Principal quashed the decision and remitted the matter back to the Standards Commission for reconsideration at another Hearing.</p> <p>A new Hearing was scheduled to be held on 7 April 2021.</p>






CASE	
LA/WD/3016 – West Dunbartonshire Council	
Date of Hearing	14 September 2020
Complaint	The complaint alleged that the respondent behaved disrespectfully towards a council officer and had disclosed confidential information at a Special Council Meeting.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel found that the respondent breached the Code when he spoke to a Council employee, in what witnesses described as an aggressive and demeaning manner, prior to a Special Council meeting. 2. The Panel further found that, at the Council meeting that same day, the respondent disclosed confidential information which had been redacted from an Internal Audit report. This referred to the name of an individual, company and contractor who had been awarded Council contracts. 3. The Panel found that while the respondent may have considered it was in the public interest for the information to be disclosed, the fact that the information had been redacted from the report meant that it was apparent the information was confidential and was to be treated as such. 4. The Panel concluded that the respondent's behaviour amounted to a contravention of paragraphs 3.3 and 3.17 of the Code.
Sanction	<p>The Panel suspended the respondent's entitlement to attend the next two ordinary council meetings of the Council. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the respondent had co-operated fully with the investigative and Hearing processes. 2. Noted that the respondent had offered an apology to the Standards Commission in respect of his conduct towards the council officer, after the matter had been referred to it. 3. Considered that the requirement for councillors to behave in a respectful manner towards officers, and to maintain confidentiality, are important parts of the Code, as a failure to do so can undermine the effective running of the Council. The Panel noted that councillors should be able to undertake their scrutiny role in a constructive, respectful, courteous and appropriate manner without resorting to personal attacks or being offensive or demeaning. In this case, the respondent had failed to conduct himself in a courteous and respectful manner. 4. Was of the view that the Code made it clear that confidential information should not be disclosed, even if a councillor held a personal view that it was in the public interest to disclose it. The Panel considered that the disclosure had not been inadvertent. The Panel was of the view that the deliberate nature of the second breach and the fact that there had been two contraventions (albeit in respect of different provisions in the Code), meant that a censure was not appropriate and that a suspension should be imposed. 5. Was nevertheless of the view that the respondent's conduct did not warrant a more severe sanction. This was because there was no personal benefit to the respondent and the events in question had been confined to one day.



CASE	LA/Mo/3132 – Moray Council
Date of Hearing	12 October 2020 (online)
Complaint	The complaint alleged that the respondent had failed to register a remunerated position with the Board of NHS Grampian and failed to declare the interest at a meeting of the Council.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that it was not in dispute that the respondent had failed to include her remunerated position as a member of the board of NHS Grampian on her register of interests. The Panel further noted that the respondent had taken steps immediately to rectify the omission when it was brought to her attention and had apologised for her oversight. 2. The Panel was satisfied that it was the respondent's personal responsibility to ensure the interest had been included timeously in her Register of Interests and that a failure to do so amounted to a breach of the Code. 3. The Panel noted that it was also not in dispute that at a meeting of the Council, the respondent did not declare a formal interest when an item of business on the agenda relating to a formal response from the Council, which was to be sent to the Chief Executive and the Chair of NHS Grampian, regarding a consultation on the future of children's services at a local hospital, was to be discussed. While the respondent stood down as Chair while the item was being discussed, she did not leave the Chamber. 4. The Panel considered that, having erred on the side of caution and having applied the objective test, the respondent should have reached the view that her interest would not be perceived as being so remote and insignificant that it could not influence her potential discussion and decision-making on the matter under consideration. 5. The Panel noted the terms of a specific exclusion under paragraph 5.18 of the Code that allows councillors who are also members or directors of certain other devolved public bodies (including NHS Grampian Board), to take part in the consideration and discussion of, and to vote upon, a matter relating to that body. The Panel noted, however, that the specific exclusion only applies if the councillor has declared his or her interest at the meeting where the matter is to be discussed. The Panel determined that the specific exclusion did not apply, and the respondent should have left the room and made it clear she was not taking part in the discussion and decision-making. 6. The Panel concluded that the respondent's failure to register her interest in NHS Grampian and her failure to declare it at the meeting in question amounted to a contravention of paragraphs 4.1, 4.2, 4.11, 5.2, 5.3, 5.5, 5.6 and 5.13 of the Code.
Sanction	<p>The Panel censured the respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the evidence presented in respect of the respondent's good character and public service. 2. Noted that the respondent had co-operated fully with the investigative and Hearing processes and had offered an unreserved apology in respect of the failure to register and declare the interest. 3. Accepted the respondent's submission that the failure to comply with the Code was inadvertent and an oversight. 4. Emphasised that the requirement for councillors to register and declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making. The Panel noted that, while advice can be sought from officers, it remains a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complies with them. 5. Noted that while it had found that the respondent had not declared the interest as required, had she done so, she would still have been allowed to take part in the discussion and decision-making under the specific exclusion in the Code for councillors who have been approved as a member or director of certain devolved public bodies.




CASE	
LA/AC/2276 – Aberdeen City Council	
Date of Hearing	22 October 2020 (online)
Complaint	The complaint alleged that the respondent disclosed confidential information concerning the Council's budget at a Community Council meeting.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that it was not in dispute that the respondent was sent papers labelled "Aberdeen City Council Preparation of Budget 2019/20 Councillor Pack" ahead of the Council's budget meeting. Each page of the budget pack contained a header, in blue, with the text "CONFIDENTIAL". The Panel noted that the covering sheet contained text, in red, to the effect that the folder contained confidential information that "must not" be disclosed to any third party. 2. The Panel noted that the overview section of the budget pack referred to a budget gap of £45 million, relating to rising costs and falling service income. The Panel noted, however, that the covering sheet to the folder advised councillors that further information continued to be provided and, as such, "uncertainty remains". 3. The Panel further noted that it was also not in dispute that the respondent attended a public meeting of Cults, Bieldside and Milltimber Community Council, in her capacity as an Aberdeen City councillor and that while the respondent did not intend to disclose the figure of £45 million, she had done so under scrutiny from the Community Council members. 4. The Panel accepted the respondent's position that certain matters in the budget pack were already in the public domain. The Panel considered, however, that it was evident that the budget gap of £45 million was an essential element of the matters to be discussed at the forthcoming budget meeting. As such, the Panel was of the view that this sum should be kept confidential. 5. The Panel concluded that the respondent's actions, in disclosing confidential information at the Community Council meeting amounted to a contravention of paragraphs 3.16 and 3.17 of the Code.
Sanction	<p>The Panel censured the respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and Hearing processes. 2. Heard that the respondent had been a councillor for some 13 years, with an unblemished record. The Panel further heard that the respondent took her position as a councillor very seriously and that she worked hard to serve her community. 3. Agreed that it is legitimate and important for officers to be able to consult, in confidence, with elected members in respect of a council's finance and budget, in order to manage internal and external communications, and avoid causing any undue concern or alarm to those potentially affected (staff and service users) before expenditure and any savings options are finalised. The Panel found that the respondent had failed to maintain confidentiality as required by the Code 4. Was nevertheless of the view that the respondent's conduct did not warrant a more severe sanction as the Panel had no reason to doubt the respondent's position that the disclosure was unintentional and that it had not been made for personal or party-political reasons. The Panel further noted that the contravention had been a one-off incident and that the respondent had herself highlighted the circumstances to the Council's co-leaders and Monitoring Officer shortly afterwards.



CASE	LA/Fi/3125 – Fife Council
Date of Hearing	9 November 2020 (online)
Complaint	The complaint alleged that the respondent failed to declare a non-financial interest at a special meeting of the Council’s North East Fife Area Committee.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that it was not in dispute that the respondent had been appointed by the Council as a member of the St Andrews Links Management Committee. The respondent’s membership was recorded, as a non-financial interest, on his Register of Interests. 2. The Panel heard that it was not in dispute that an application by the St Andrews Rail Link Campaign for funding from the Local Community Planning Budget to pay for VAT on a transport feasibility study was being considered at a meeting of the North East Fife Area Committee. The Panel noted that the study would include considering a potential rail link that may require to be routed through the grounds of the hotel linked to one of the golf courses, the golf practice centre and the Links Trust’s building. It also would require the diversion of holes on two golf courses. The Panel heard that the respondent failed to declare an interest and moved a motion to refuse the funding application. 3. The Panel considered that a member of the public, with knowledge of the respondent’s membership of the St Andrews Links Management Committee membership, would reasonably regard it as an interest that was sufficiently significant to be likely to prejudice his discussion and decision-making on an application for funding in respect of a feasibility study that could help facilitate the creation of a rail link, being something that could have a detrimental impact on the golf courses and recreational areas run by the St Andrews Links Trust. 4. The Panel concluded that the respondent’s failure to declare his interest at the meeting in question amounted to a contravention of paragraphs of 5.3, 5.7 and 5.8 of the Code.
Sanction	<p>The Panel censured the respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and Hearing processes and had offered a sincere and unreserved apology in respect of the failure to declare the interest. 2. Further noted the positive character references made and submitted on the respondent’s behalf, confirming that he was a committed, diligent and conscientious local representative, who actively sought to assist the communities he served and who worked hard in their interests. 3. Considered that the respondent should have erred on the side of caution when applying the objective test and should, therefore, have declared an interest in the matter before the Committee and withdrawn from the room while it was being discussed. 4. Was nevertheless of the view that the respondent’s conduct did not warrant a more severe sanction. This was because there was no evidence that the respondent had attempted to conceal his interest or that there was any personal gain. The Panel accepted the respondent’s submission that the failure to comply with the Code was inadvertent and that his decision-making at the committee meeting had been influenced by a number of factors other than his membership of the St Andrews Links Management Committee.






CASE	LA/ER/3271 – East Renfrewshire Council
Date of Hearing	13 November 2020 (online)
Complaint	The complaint alleged that the respondent failed to conduct himself in an appropriate manner during an exchange with a fellow councillor in Council offices.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that the exchange stemmed from a previous difference of opinion between the two councillors (the respondent and the complainer), relating to the health and social care budget. The Council’s overall budget had been discussed at a full Council meeting held on the previous day. 2. Having viewed footage of the Council meeting, the Panel was satisfied that the complainer had repeated a remark she claimed had been made by another individual, that ‘the word eugenics comes to mind’ in respect of the respondent’s position in relation to a savings proposal. The complainer had also commented that the respondent had a “vested interest” as a drug sales representative. While the Panel noted that the complainer may have believed these remarks to be true, it accepted the respondent’s position that they were not. 3. The Panel found that the respondent had called the councillor a “wee fat ugly liar”, and in doing so, had been discourteous and disrespectful towards her. The Panel further found that the respondent had shouted at the councillor during the exchange and that his demeanour, tone and body language were aggressive and intimidating. 4. The Panel was satisfied that the respondent’s conduct was unwelcome and would have left the councillor feeling humiliated and intimidated and concluded that his behaviour also amounted to harassment. 5. The Panel found the respondent had breached paragraphs 3.2 and 3.6 of the Code.
Sanction	<p>The Panel suspended the respondent from attending full Council meeting for one month. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigatory and adjudicatory processes. 2. Considered that it was understandable that that respondent would have been frustrated and upset about the remarks made by the councillor about him at the public Council meeting the previous day and, in particular, the inference that he was a supporter of eugenics, being an accusation that he strongly denied. The Panel accepted that the exchange was the first time the respondent had seen the complainer since the meeting, and that he had been motivated by a desire to seek an apology and an admission that her remarks had no basis. 3. Was satisfied that the incident was a one-off, was of limited duration and that there was no evidence of any previous transgressions by the respondent. 4. Considered that the requirement for councillors to refrain from conduct that is discourteous, disrespectful and that could amount to harassment, is an important feature of the Code, as a failure to do so can undermine relationships and public confidence in the role of a councillor and the Council itself. 5. Noted that councillors should be able to make points and engage with each other in a constructive, respectful, courteous and appropriate manner, without resorting to personal attacks or being offensive, threatening and demeaning.




CASE	LA/AC/3199 – Aberdeen City Council
Date of Hearing	20 November 2020 (online)
Complaint	The complaint concerned the respondent's conviction for sexual assault.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel was satisfied that the respondent had sexually assaulted an individual at an event being held by the Seven Incorporated Trades Association. 2. The Panel was of the view that it would have been reasonable for an informed member of the public to have perceived that the respondent was acting as a councillor at the event. This was for a variety of reasons, including that <ul style="list-style-type: none"> • the invitations had been sent to group leaders, as elected members in the expectation that councillors would be attending; • there was a long-established relationship between the Seven Incorporated Trades organisation and the Council; and • other attendees at the event would have known the respondent as being a councillor, as well as being the Deputy Provost (at the time). <p>As such, the Panel was satisfied that the Code applied to the respondent at the time of the incident that resulted in the conviction.</p> 3. The Panel was satisfied that, by sexually assaulting an individual at the event, the respondent had failed to treat that individual with courtesy and respect. 4. The Panel noted the offence was committed at the individual's workplace and had no legitimate workplace purpose. The Panel was of the view that it was reasonable to conclude that the fact a complaint had been made to the police meant that the individual had not consented and was likely to have made to feel offended, humiliated and uncomfortable at work. As such, the Panel was satisfied that the respondent had harassed the individual. 5. The Panel concluded that the respondent's conduct amounted to a contravention of paragraphs 3.2 and 3.6 of the Code.
Sanction	<p>The Panel suspended the respondent for a period of 12 months. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated with the investigative and adjudicatory processes, albeit he had not been able to attend the Hearing. 2. Was of the view that, in order to reflect how wholly inappropriate the respondent's behaviour had been, the maximum suspension of one year should be imposed. 3. Was satisfied that the imposition of the maximum suspension would reflect the potential damage the respondent's conduct had inflicted on the public's confidence on the role of a councillor and the reputation of the Council. 4. The Panel considered whether a sanction of disqualification should be imposed. The Panel noted that only a conviction giving rise to a period of custody of three months or more precludes the holding of the office of councillor in terms of Section 31 of the Local Government (Scotland) Act 1973. The Panel noted that the Sentencing Sheriff in the respondent's case, having heard the full account of the circumstances and its impact, had not considered the events in question that led to the conviction necessitated a custodial sentence. The Panel was of the view that, while the respondent's conduct was entirely unacceptable and would have been distressing and disturbing for the victim, there was no evidence before it to show that the respondent's conduct had been repeated or had extended beyond the incident in question. The Panel noted that the respondent had been a councillor since 2007 and that he had not previously been the subject of a referral to the Standards Commission. The Panel accepted that the respondent had already been punished by a criminal Court in respect of the incident that was the subject of the complaint. The Panel noted that the supervision period imposed on the respondent had ended and, further, he was no longer on the Sex Offenders' Register. In the circumstances, the Panel did not consider that disqualification was an appropriate sanction.



CASE	LA/Fi/3039 & 3075 – Fife Council
Date of Hearing	23 November 2020 (online)
Complaint	The complaint alleged that the respondent had failed to treat two members of the public with courtesy and respect and had engaged in behaviour towards them that amounted to harassment.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that the matters before it concerned a dispute between a residents' group and the owners of a country house (the complainers), which was used as a wedding venue. 2. The Panel noted the first matter concerned a message the respondent posted on the Residents' Facebook page. The Panel was of the view that it was evident to anyone reading the post, who had knowledge of the Residents' dispute, would have inferred that the respondent was blaming the owners of the country house or their staff of the acts of vandalism he had described. The Panel considered that the accusation was unfounded. The Panel further considered that, in making unfounded and serious allegations about the owners, on a public forum, the respondent had failed to treat them with courtesy and respect and had also engaged in behaviour towards the owners that amounted to harassment. 3. The Panel found that, in the second matter, the respondent had responded to an email from a wedding guest in which he supplied incorrect and unverified information about whether a specific wedding had been held in contravention of an enforcement order. The Panel further found that the email had the potential to damage the complainers' business relationships, and in presenting it as a factual situation, the respondent had again failed to treat them with respect. 4. The Panel found the respondent had breached paragraphs 3.2 and 3.6 of the Code. 5. The Panel noted that the Ethical Standards Commission had referred a third matter, involving an incident where members of the residents' group had blocked the complainers' access to their property, to the Standards Commission as a breach of the Code. Having watched the video footage of the incident carefully, the Panel was satisfied that while the respondent was present, it was clearly evident that he had made some attempts to diffuse the situation and to usher others away from the access road. The Panel was not satisfied, therefore, that the respondent had failed to treat the complainers with courtesy and respect or that he had harassed them in respect of the third incident.
Sanction	<p>The Panel suspended the respondent from attending two full council meetings. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and adjudicatory processes. 2. Noted the respondent's service and contribution to public life. The Panel accepted that the respondent was relatively inexperienced as a councillor at the time and that he now accepted that he may have become too personally vested in the dispute between the complainers and residents' group. 3. Considered that councillors should be able to make points and engage with members of the public in a constructive, respectful, courteous and appropriate manner, without providing misleading information or resorting to personal attacks and being offensive. The panel found that the respondent had failed to conduct himself in a courteous and respectful manner and, instead, had behaved in a manner that amounted to harassment. 4. Was concerned that the respondent had not considered the potential impact of his actions on the complainers and others. 5. Was nevertheless of the view that the respondent's conduct did not warrant a more severe sanction. This was because the contraventions found were restricted to one social media post and an email, and there had been no personal gain.



CASE	LA/Fi/3278 – Fife Council
Date of Hearing	16 December 2020 (online)
Complaint	The complaint alleged that the respondent disclosed confidential information on the re-opening of recycling centres following the first coronavirus lockdown.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that the respondent was appointed as a Director of Sustainability Fife Ltd and by Fife Council to the Board of Fife Resource Solutions (FRS). Both the Council and Sustainability Fife Ltd are members of FRS, being a limited liability partnership and arms-length external organisation established to provide recycling and waste disposal services on behalf of the Council. 2. The Panel found that the respondent disclosed, firstly, in a Fife Conservative press release and later, on Facebook, information that had been discussed in the papers for, and at, a special meeting of the FRS Board. This was despite knowing the information was to remain confidential until such a time as the Council had agreed to the proposals, that full arrangements for their implementation had been put in place, and for communications to be managed accordingly. 3. The Panel heard evidence that it was important for arrangements to be put in place including a booking system for the public so that traffic could be managed safely, staff could be notified of the re-opening of the sites and given appropriate safety training, and decisions could be made and implemented about what items could and could not be disposed of, in conjunction with proposed bulky uplift arrangements. The Panel found that the respondent, in disclosing the information before these arrangements were made, and contrary to the decision made at the meeting, had failed to act in the best interests of FRS, as required by the Councillors’ Code of Conduct. 4. The Panel concluded that the respondent had breached paragraph 3.19 of the Code.
Sanction	<p>The Panel suspended the respondent from attending all meetings of Fife Council, and all meetings of any other body on which he was a representative or nominee of the council, for two months. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and Hearing processes. 2. Reviewed various character references submitted on behalf of the respondent and noted that these indicated he took his position as a councillor very seriously and that he worked hard to assist his constituents and improve communities within his ward. 3. Noted that, as a result of him having disclosed the information, the respondent was no longer a Director of Sustainability Fife Ltd or a member of the Board of FRS. 4. Emphasised that the requirement for councillors to abide by the rules of conduct of any partner organisations they are appointed to is an important requirement of the Code. This includes acting in good faith and refraining from disclosing confidential information. The Panel noted that a failure to do so can damage the reputation and integrity of a Council and, further, can impede discussions and decision-making at meetings of the partner organisation. 5. Was concerned that the respondent did not seem to recognise that divulging confidential information was not in the best interest of FRS and was, therefore, a breach of his duty to act in good faith. Instead, the respondent appeared to have chosen to act in the interests of his party and his role as a constituency representative. 6. Noted that the question of when the information was to be disclosed was simply one of timing and did not, therefore, accept the respondent’s argument that his overriding aim was to be transparent. It nevertheless noted that the contravention had been limited to the one incident.



CASE	LA/SI/3305 – Shetland Islands Council
Date of Hearing	17 December 2020 (online)
Complaint	The complaint alleged that the respondent failed to register properly an interest and shareholding in a company.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that the respondent had registered that he was a director of, and received remuneration from, a company. The Panel noted, however, that when the company changed its registered name, the respondent failed to record this in his Register of Interests, despite continuing to be a director. 2. The Panel further noted that the respondent had failed to register his shareholding in the company. 3. The Panel concluded that the respondent had breached paragraphs 4.1, 4.2, 4.4, 4.11 and 4.21 of the Councillors' Code of Conduct dated July 2018, which concern the registration of certain interests. The failure to register the interests pre-dated the introduction of the current version of the Code. The Panel found, therefore, that the respondent had also breached the corresponding paragraphs in the version of the Code that was in place before July 2018; being paragraphs 4.1, 4.2, 4.3, 4.10 and 4.20.
Sanction	<p>The Panel censured the respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and Hearing processes and had offered an unreserved apology to both the Panel and complainer in respect of the failure to register the interests. 2. Had no reason to doubt the respondent's submission that the failure to comply with the Code was inadvertent and an oversight. 3. Emphasised a failure to ensure a register is kept up to date, as required by the Code, removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether the councillor's interests may or may not influence their discussion and decision-making.



CASE	LA/OI/3265 – Orkney Islands Council
Date of Hearing	18 January 2021 (online)
Complaint	The complaint alleged that the respondent disclosed confidential information and failed to show courtesy or respect towards members of the public.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel found that the respondent, in two Facebook posts published in March 2020, disclosed sensitive information about the Council’s response to the coronavirus pandemic. This was despite the information having been provided by officers to elected members at private briefings. 2. The Panel was satisfied that it was evident to all that information provided at the briefings was to remain confidential until officers had time to prepare its public communications. The Panel noted that sometimes confidentiality and privacy is a matter of timing, in that information may eventually be released into the public domain. In this case, while the Panel noted that the respondent may have been trying to be open and transparent, so that members of the public were informed about decisions that had been and were to be made, it did not consider that he was entitled to disclose the information contained in when he did. 3. The Panel was satisfied, from the witness evidence and submissions made, that it was clear that the briefings were intended to be private and to act as a safe space for elected members to receive information and discuss ideas. The Panel was satisfied that, as such, it should have been evident that discussions and information provided at them was not to be disclosed, even if this had not been explicitly stated at each and every one. 4. The Panel agreed that there were legitimate reasons as to why the Senior Management Team would wish to ensure the information being shared at the briefings was kept confidential at that time, which included that proposals discussed may be adjusted or deferred prior to implementation, and the need to ensure that officers had sufficient time to prepare and manage communications to ensure that the Council’s position and response were represented fully, and that messages were drafted in a way that provided some reassurance and did not cause undue fear or alarm. The Panel noted that there was no evidence or suggestion that the respondent had taken issue with the Council’s proposed approach at any of the briefings or that he had sought advice about whether any information he intended to disclose was confidential. 5. The Panel also found that the respondent disclosed, in another Facebook post in April 2020, that another councillor had passed away, despite having been told that the news was to be kept private until confirmation had been received that all family members had been advised of the news. 6. The Panel found that the respondent had breached the privacy and confidentiality provisions in the Code in respect of all three posts. In addition, the Panel agreed that in sharing the news of the other councillor’s death, the respondent had also failed to demonstrate courtesy and respect towards the councillor’s family as required by the Code. 7. The Panel concluded that the respondent had breached paragraphs 3.1, 3.2, 3.16 and 3.17 of the Code.
Sanction	<p>The Panel suspended the respondent from attending meetings of the full council for three months. In reaching its decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted that the respondent had co-operated fully with the investigative and Hearing processes. 2. Noted that the respondent had served faithfully for some 35 years in public life and, throughout, has been committed to openness and transparency, being two of the key principles of public life. 3. Further noted, from the numerous positive character references submitted on his behalf, that the respondent took his position as a councillor very seriously and worked hard to assist his constituents and improve communities within his ward. 4. Was concerned about the respondent’s failure to understand the need to keep elected members briefings private and to maintain confidentiality, in order for them to be a safe space for discussion and information-sharing. The Panel noted this was despite it being clear, from the witness evidence, that other councillors had clearly understood this. 5. Was further concerned that the respondent had failed to understand the importance of managing communications about sensitive topics and difficult decisions in a controlled and sensitive manner, in order to avoid causing undue alarm or anxiety. The Panel noted that the Code had been breached on more than one occasion and considered that the contraventions would have had a negative impact on officers, fellow councillors, the family of the deceased councillor and potentially the public.

Interim Suspensions

Section 21 of the Ethical Standards Act provides the Standards Commission with the power to impose an interim suspension on a councillor or member of a devolved public body on receipt of an interim report from the ESC about an ongoing investigation. The full written decisions in respect of any interim suspensions in place are published online at: www.standardscommissionscotland.org.uk/cases/details-of-alleged-breach

The decision to impose an interim suspension is not, and should not be seen as, a finding on the

merits of any complaint or the validity of any allegations against a councillor or member of a devolved public body.

Any period of interim suspension imposed will automatically end in any of the following circumstances:

- ▶ if the Standards Commission receives an investigation report but decides not to hold a Hearing; or
- ▶ if the Standards Commission receives an investigation report, holds a Hearing and imposes a sanction.

CASE	
LA/AC/3199 – Aberdeen City Council	
Date	Interim suspension initially imposed on 4 March 2020. Renewed for a further 3 months on 2 June 2020 and renewed on 2 September 2020 until 6 October 2020, being the original date of the Hearing. Following an adjournment, renewed on 2 October 2020 until 20 November 2020, being the date of the rescheduled Hearing (see details of Hearing above).
Background	The ESC sent the Standards Commission an interim report concerning a councillor being convicted for a sexual assault, for it to consider imposing an interim sanction while the investigation was ongoing. The ESC's investigation concluded, and the case was referred to the Standards Commission, on 16 June 2020.
Interim Suspension Decisions	The Panel noted that it appeared that the conduct complained of had taken place while the councillor attended an event in his capacity as a councillor and that it had resulted in him being convicted for a sexual assault and placed on the sex offenders register (being a further ground of complaint). The Panel was satisfied that there was prima facie evidence of a serious contravention of the Councillors' Code, which, if upheld, was likely to attract a more severe sanction than a censure. The Panel considered that public confidence in the ethical standards framework would be adversely affected if the councillor was allowed to continue to act while complaints of such a serious nature, involving criminal conduct, were outstanding against him. The Panel further considered that the Council's reputation could be adversely affected if an interim suspension was not imposed. The Panel noted that there could also be a risk to others if the conduct that was the subject of the conviction was repeated. The Panel concluded, therefore, that it was satisfied that it was both proportionate and in public interest for it to impose an interim suspension until the complaint was considered at a Hearing.

SECTION 6: GOVERNANCE & FINANCIAL OVERVIEW 2020/21

This section provides an overview of the Standards Commission's governance arrangements in 2020/21 and its financial performance.

External Audit

Audit Scotland reported on its review of the Standards Commission's governance arrangements and audit of the Standards Commission's 2020/21 annual report and accounts. Audit Scotland's review identified the three key audit risks, which required specific audit testing. The first was the consideration of the risk of management override of controls in order to change the position disclosed in the financial statements. The second was the risk of fraud over expenditure, which applied to the Standards Commission as the small number of staff employed meant that there was a low degree of segregation of duties. The third was the impact of the retirement of the Business Manager at the end of 2020/21 (the size of the organisation means there is a high reliance on key individuals), particularly in respect of the preparation of the annual report and accounts.

Audit Scotland's main findings were that the Standards Commission had appropriate and proportionate financial planning arrangements in place, which aligned with its strategic plan. It further found that governance arrangements had continued as normal throughout 2020/21 and there were no specific issues arising as a result of Covid-19.

The Audit Report confirmed that the audit procedures did not uncover evidence of management override of controls or of fraud over expenditure and that the draft financial statements and working papers were prepared to a good standard. The Audit Report further confirmed that the financial statements give a true and fair view and were properly prepared in accordance with the financial reporting framework.

The 2020/21 Audit Report will be incorporated in the Standards Commission's audited Annual Accounts, which require to be laid before the Scottish Parliament no later than 31 December 2021.

Internal Audit

The Standards Commission's internal auditor, the SPCB's Head of Internal Audit, reviewed the Standards Commission's response to the Covid-19 pandemic. The overall aim of the review was to provide assurance to the Executive Director (as the Accountable Officer) and the Standards Commission, via its Audit & Risk Committee, that the arrangements and measures to respond to Government Regulations and Guidance are robust and have operated effectively, thereby ensuring risk is maintained at an acceptable level.

The Internal Auditor provided a report to the Standards Commission's Audit & Risk Committee confirming that, based on detailed testing, he was satisfied that a substantial level of assurance could be offered over the governance arrangements, controls and process developed and implemented by the Standards Commission in its responses to the Covid-19 global health emergency. In particular, the Internal Auditor noted that the Standards Commission responded effectively to the Covid-19 global health emergency by the early identification and managed implementation of alternative ways of working and holding Hearings. Key decisions were taken at an appropriate level by the full Standards Commission and were transparently and accurately recorded in publicly available minutes.

Risk Management

The Standards Commission identifies and proactively manages risks that could impact on its ability to meet its strategic and business objectives. The Standards Commission's Risk Management Policy provides details of the organisation's approach to the management of risk and notes that the aim of the risk management framework is to:

- ▶ Provide the Standards Commission and others with assurance that threats are constrained and managed and that opportunities are appropriately exploited to the benefit of the organisation;
- ▶ Give confidence to those who scrutinise the Standards Commission about the robustness of its corporate governance arrangements; and
- ▶ Enable the Standards Commission to make informed decisions across its functions.

The Standards Commission agreed its Risk Register at the start of the operational year to ensure that risks to the implementation of the strategic and operational objectives were identified going forward. The Risk Register contained a score for each risk, which reflected the likelihood of it occurring and the impact should it occur, in light of the controls in place and actions taken.

The Standards Commission's Audit & Risk Committee reviewed the Risk Register, including the rating value for each risk and the risk tolerance level at each of its three meetings in 2020/21. A report of the review was thereafter provided for consideration by Members at the next available meeting of the Standards Commission.

During 2020/21, the Standards Commission identified the principle risks and uncertainties for the organisation as being, firstly, a loss of confidence in the overall ethical standards framework as a result of:

- ▶ The Standards Commission being unable to hold Hearings in a timely, fair and appropriate manner due to restrictions in place as a result of the coronavirus pandemic.
- ▶ Delays at the investigation stage.

- ▶ A lack of engagement between the Standards Commission and the Ethical Standards Commissioner (ESC); and/or a lack of consistency between Standards Commission and ESC in their respective approaches to interpreting the Codes and dealing with complaints.

- ▶ A failure by the Standards Commission to adhere to the timescales outlined in its Service Standards and Hearing Rules.

Work the Standards Commission undertook to mitigate this included developing policies and procedures that enabled it to hold and livestream Hearings online, when travel restrictions relating to the coronavirus pandemic were in place. As a result, the Standards Commission was able to conduct all Hearings in accordance with legislative requirements and its Hearing Rules within an average of 15 weeks from receipt of a report from the ESC. The Standards Commission also mitigated the risk by exercising its oversight role and issuing Directions to the ESC under Sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, ('the Ethical Standards Act'). The Directions required the ESC to:

- ▶ Provide interim reports on investigations into complaints about councillors and members of devolved public bodies where a period of three months had already expired. The purpose of this direction is to provide the Standards Commission with assurance that investigations into such complaints are being progressed without any undue delays and that the parties to any complaint are provided with regular progress updates, in order to ensure confidence in the overall ethical standards framework is maintained.
- ▶ Provide a report to the Standards Commission, at the conclusion of every investigation into a complaint about a councillor or member of a devolved public body received on or after 12 November 2020, outlining the findings and conclusions as to whether or not there has been a contravention of the relevant Code. The Direction means that the Standards Commission will make the final decision, under Section 16 of the Ethical Standards Act, on all complaints that have been investigated.

- Undertake an investigation into every complaint about a councillor and member of a devolved public body received, unless the conduct referred to in the complaint would not, even if it could be established to have occurred, constitute a contravention of the relevant Code of Conduct; the councillor or member has passed away or is an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000; and/or the conduct that has or is alleged to have contravened relevant Code occurred (or in the case of a course of conduct ended) more than one year before the complaint was received. The aim of this Direction was to ensure there was clarity and consistency in respect of the criteria the ESC uses to assess whether complaints are eligible/admissible for investigation.

The Standards Commission further recognised that the size of the organisation meant that there remained an ongoing risk that the organisation would not be able to deliver its business effectively if Members or staff were unavailable for any reason (including as a result of having a conflict of interest), or if there was an influx of cases referred to it at any time and timely Hearing Panels could not be convened due to Members only working for the Standards Commission on a part-time basis. The Standards Commission acknowledged that the size of the organisation meant that there would always be an ongoing risk of disruption to business due to unplanned absences and staff turnover. It further recognised that its own timescales may have to be adjusted if fluctuations in the number of cases being referred to the Standards Commission at any time meant that it was unable to convene Hearing Panels as quickly as normal. Controls in place and specific actions taken in 2020/21 to mitigate these risks included:

- Conducting a full staffing review, with funding sought for a new Caseworker role as a result. Recruitment for the role was undertaken at the end of the year, with the successful candidate due to commence in post at the year-end.

- Monitoring of staffing performance and attendance by the Human Resources Committee to ensure the Standards Commission had sufficient capacity and capability to meet operational requirements. A full review of the policies and procedures in place to support staff during the coronavirus pandemic (including the arrangements for working from home), was also undertaken.
- Seeking and reviewing information about Member and staff availability before any Hearings were scheduled and before the composition of Hearing Panels was agreed.
- Holding Hearings, workshops and training events online while travel restrictions resulting from the coronavirus pandemic were in place.

The number of complaints made and the consequent number of cases referred to the Standards Commission by the ESC is outwith the control of the Standards Commission; however the volume of referrals by the ESC impacts on the resources required to enable the Standards Commission to undertake its statutory functions. While the Standards Commission puts in place controls and identifies actions to mitigate the risks associated with this, it acknowledges that this will always have the potential to impact on its operational effectiveness and its ability to predict the operating budget.

The Audit & Risk Committee was, therefore, able to assure the Standards Commission that all risks had been effectively managed.

Financial Performance

The financial information provided is a summary extracted from the Standards Commission for Scotland's Annual Accounts 2020/21. For further information about the Standards Commission's financial position, a full copy of the Annual Accounts 2020/21 can be found on its website at www.standardscommissionscotland.org.uk/corporate-info/annual-accounts

The Standards Commission's net expenditure on operating activities for the year ending 31 March 2021 amounted to £307,000 (2019/20, £248,000). The expenditure was divided between staff costs of £243,000 (2019/20, £229,000) and other administrative costs of £64,000 (2019/20, £30,000).

Staff costs include all remuneration paid to both staff and Members. Movement up the incremental payscales and the implementation of the SPCB's pay awards meant staff costs increased by £14,000 (compared to 2019/20).

Additional contingency funding of £19,260 was provided by the Scottish Government in respect of legal costs associated with an appeal. Actual expenditure in 2020/21 on the legal costs of the appeal was £14,772.

The overspend of £4,195 against the agreed budget (including contingency funding) of £302,000 largely arose from the costs incurred for legal advice in respect of the extent of the Standards Commission's oversight role and how directions issued to the ESC under Sections 10 and 11 of the Ethical Standards Act could be enforced. In addition, a provision of £5,500 in respect of expenses to be reimbursed to a pursuer following an appeal against a decision made by the Standards Commission in 2020/21 was recognised in the year. The overspend was partly offset by lower than expected Hearing related costs (including Member and staff travel and expenses), as the majority of hearings were held online rather than in person across the country.

In 2019/20, the Standards Commission recovered the sum of £10,871 in respect of expenses from an unsuccessful appeal lodged in 2018 against a decision by one of its Hearing Panels. No similar sums were recovered in 2020/21.

Statement of Comprehensive Net Expenditure

	2020-21	2019-20
	£'000	£'000
Administration costs		
Staff costs	243	229
Other Administration costs	64	30
Gross Administration costs	307	259
Operating Income	-	(11)
Net Operating costs	307	248

All amounts relate to continuing activities. There have been no gains or losses other than those recognised in the Statement of Comprehensive Net Expenditure.

Other Administration Costs

	2020-21	2019-20
	£'000	£'000
Fees for legal advice and representation	42	-
Audit Fee	3	3
Hearing costs accommodation	-	1
Information technology costs	2	2
Printing and promotion costs	10	8
General administration costs	2	4
Recruitment	2	-
Members' travel and expenses	1	6
Staff travel and expenses, and staff and Members' training costs	2	6
	64	30



INTEGRITY IN PUBLIC LIFE

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