
Report on Ethical Standards Framework and Compliance

Report by Monitoring Officer

Standards Committee

22 February 2023

1 PURPOSE AND SUMMARY

- 1.1 This report advises Members of the Ethical Standards Framework and advises on Compliance with that framework in 2021 to 2022. It further considers the role and remit of the Standards Committee of Scottish Borders Council.**
- 1.2 The report provides Members with details of the Ethical Standards Framework and also of Scottish Borders Council's compliance with that Framework for 2021-22. The report further considers the question as to whether Scottish Borders Council should consider any changes to the role and remit of the Standards Committee.

2 RECOMMENDATIONS

- 2.1 **I recommend that the Committee:-**
 - (a) **Considers the contents of the Commissioner for Ethical Standards in Public Life in Scotland's Annual Report 2021 / 22 as highlighted in section 4 and contained in full in the Appendix.**
 - (b) **Notes the details regarding Complaints about SBC Councillors contained in section 5 of this report.**
 - (c) **Recommends to Council that function 3 of its functions detailed in the Scheme of administration is removed.**

3 BACKGROUND

- 3.1 Previous work by the Internal Audit service looking at the operation of the Councillors' Code of Conduct found that the Council had "*sound procedures in place to manage the Code of Conduct, the Council's Complaints Procedure for the Standards Committee*". To ensure that these procedures and standards were maintained it was determined that it would be good practice to report annually on compliance with the Code of Conduct. A subsequent Internal Audit also recommended that it would be appropriate to report on general compliance with the overall Ethical Standards Framework. This report therefore considers Code of Conduct Compliance in the Scottish Borders and nationally.
- 3.2 The Standards Committee last met in December 2021. At that meeting Members discussed the functions of the Committee as detailed in the Scheme of Administration. In particular it had been noted that the Committee currently have the potential to fulfil a disciplinary role in respect of each other. There was a level of discomfort with that position and it had been agreed that the matter would be revisited at a meeting which should have taken place in February 2022. That meeting did not however take place and as a result the matter has not been concluded.

4 NATIONAL STATISTICS

- 4.1 The Commissioner for Ethical Standards in Public Life in Scotland's Annual Report was laid before Parliament on 31 October 2022. That Report is appended to this Report as an Annex. Figure 2 and 3 of the Commissioner's report indicate that, in 2021 to 2022, the Commissioner received 330 new complaints about Councillors and Board Members of Public Bodies. 272 of those were complaints about Councillors. Where the Commissioner receives several complaints about the same or closely related issues, they are investigated as one case. Those 272 complaints were therefore treated as 143 separate cases.
- 4.2 Figure 5 gives a breakdown of who the Complainers to the ESC were and it is notable that members of the public were by far the largest number in that breakdown.

5 SCOTTISH BORDERS STATISTICS

- 5.1 During the financial year 2021 to 2022 the Monitoring Officer received 5 formal complaints made directly to her about Councillor conduct. One complaint was received from an SBC Councillor and the others were made by members of the public. Those complaints all related to allegations of disrespect, four of those relating to alleged failure to engage. One of these complaints was dealt by a mediation process involving the Council Convener. All others were investigated by the Monitoring Officer with no further action taken.
- 5.2 Under current processes the Monitoring Officer is not automatically advised when the Ethical Standards Commissioner receives a complaint about an elected Member. She is advised only when an investigation commences and at this time there are significant delays in those investigations commencing.

- 5.3 In the year financial year 2021 to 2022 the Monitoring Officer did not refer any complaints to the Ethical Standards Commissioner. She was made aware of one complaint made by a member of the public directly to the Commissioner. That complaint was investigated and no breach was found to have occurred.
- 5.4 Any complaints which were received after 1 April 2022 will be reported on next year.

6 The Role of the Standards Committee

- 6.2 The Scheme of Administration notes the following among the functions of the Standards Committee:

“The consideration, investigation and determination of all complaints made concerning the conduct of Councillors”

While a procedure was written and has been adopted for the hearing of complaints by the Standards Committee, this function has only ever been exercised once by the Committee in its history.

- 6.3 In this circumstance this function was discussed by the previous Chair and indeed by the Committee itself in December 2021. There was generally a level of discomfort at the prospect of elected Members standing in judgment of their fellows and mixed views on the role of the Committee at all. On the other hand, some Members certainly felt the committee could have a role to play in some form lessons learned approached.
- 6.4 It had been intended that the Committee would reconvene to discuss in more detail in Feb 2022, however that did not occur.
- 6.5 While any changes to the remit or functions of the Standards Committee would be a decision to be made by Full Council, it is considered that this discussion should be continued and that the Standards Committee should be involved in leading that conversation.
- 6.6 Since the Standards Committee has only once conducted a hearing into alleged misconduct by a Councillor, it is considered that SBC should either remove the function from the Scheme of Administration, or, it should reaffirm that this is a way it would like complaints against Councillors to be handled going forward – though such an approach might have significant impact on resources.
- 6.7 At present, the Monitoring Officer uses a range of tools to assist her in responding to complaints about Councillors Conduct. These include:
- simply speaking to an elected Member to remind them of their responsibilities under the Code of Conduct;
 - involving Political Leaders (such as Group Leaders/the Leader of the Council or the Convener) in a mediated process;
 - on occasion seeking an apology and an undertaking regarding changing behaviours;
 - a formal referral to the Ethical Standards Commissioner.
- These tools have proven to be flexible and largely effective.

- 6.8 It is therefore the recommendation of this report that Standards Committee recommend to Council that function 3 –as noted above – is removed from the its functions.

6 IMPLICATIONS

5.1 Financial

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

5.2 Risk and Mitigations

If the Committee fail to consider the information regarding compliance with the Code of Conduct, there is a risk that an opportunity to learn and develop understanding of the Code will be lost.

There is a further risk in leaving an unused function for the Standards Committee within the Scheme of Administration that the Council is not being fully transparent about its processes.

5.3 Integrated Impact Assessment

An IIA screening has been conducted and the proposal contained in this report has no impact on the Council's Public Sector Equality Duty nor its Fairer Scotland Duty.

5.4 Sustainable Development Goals

The proposal has no impact on Sustainable Development Goals. If there is no impact/difference, then say so, but bear in mind the Goals are wide ranging – complete the checklist!

5.5 Climate Change

The proposal has no impact on Climate Change.

5.6 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no immediate changes required to the Scheme of Administration or Scheme of Delegation as a result of this report. Standards Committee can only make a recommendation to Council. If Council accepts the recommendation there will be a requirement to remove function 3 from the functions of the Standards Committee in the Scheme of Administration. It currently provides:

“The consideration, investigation and determination of all complaints made concerning the conduct of Councillors”

6 CONSULTATION

Insert Committee name – date of meeting

6.1 The Interim Chief Financial Officer, the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications have been consulted and any comments received will be advised at Committee.

Approved by

Name

Nuala McKinlay

Title**Author(s)**

Name	Designation and Contact Number
Nuala McKinlay	Interim Chief Officer Corporate Governance

Background Papers: [insert list of background papers used in compiling report]

Previous Minute Reference: [insert last Minute reference (if any)]

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