Item 16.2 i

NOTES FROM STANDARDS OFFICERS' WORKSHOP

19 MARCH 2024

(Agreed actions are noted in blue)

1. Amended Guidance on the Model Code

The Standards Commission (SCS) noted that it had consulted with Standards Officers and other stakeholders on an updated version of its Guidance on the Model Code of Conduct, issued when the Code was revised in 2021. The majority of the proposed amendments corresponded with similar changes made to the Guidance on the Councillors' Code, following a consultation with the Ethical Standards Commissioner (ESC) and Council Monitoring Officers. Attendees noting that it was not unusual for individuals to be subject to the Councillors' Code as well as a public body Members' Code, so it was important for the Guidance on both to be as consistent as possible.
SCS advising the proposed changes to the Model Code Guidance include:

- More information and examples about when the relevant Code could apply. It applies when an individual: 1) is acting as a member (for example, when attending public body board or committee meetings, engaging with employees or assisting service users); 2) has identified themself as a member at the time of the conduct in question (for example, they state they are a member on a social media account); and / or 3) could objectively be perceived to be acting as a member (for example, when posting about public body-related matters on social media, or when attending an event to which they have been invited as a member.
  More detail about factors the SCS will consider when looking at 3. above. The draft amended Guidance also notes "in making an objective determination about whether you were acting as a member, the SCS will consider whether it would be reasonable for members of the public, with knowledge of the relevant facts, to consider that you were acting as such at the time of the events in question."
  A paragraph has also been added stating: "Members of some public bodies, especially those elected to the board, those appointed via routes linked to local or specific community (including Local Authority appointees), or those who have regular and direct engagement with service users and stakeholders, may have a high profile within that area or community. If this is the case, you may wish to consider whether members of the public might automatically assume you are commenting in your capacity as a member, either in person or in anything you post, publish or share, particularly if you are commenting on matters that relate to the work or remit of the public body."
- The addition of information about how the SCS will make an objective assessment when deciding whether alleged conduct could amount to a breach of the respect, courtesy, bullying or harassment provisions in the Code.
- A note advising that anyone can make a complaint to the ESC about an alleged breach of the Code and that pressurising employees to do so could compromise their position.
- A note advising that ignoring training on the Code could be an aggravating factor in terms of the sanction, should a breach of it then be found.
- More information about what might constitute a registrable Category Five: Houses, Land and Buildings interest (while it would not include testamentary or succession interests, it could include a matrimonial home or other permanent residence, even if the member owned another property, if the objective test is met).

- More information about what might constitute a registrable Category Eight: non-financial interest. The amended draft Guidance notes a non-financial interest could include membership of a private society or private club, which has entry requirements or qualifications for membership. A relevant factor is whether the organisation has entry requirements or qualifications (other than payment of a fee or subscription or agreement to terms and conditions of membership), as opposed to being open to all.
- More information regarding what would not constitute a connection and declarable interest. The amended draft Guidance notes that a subject or category that may apply to a large proportion of the general public (such as being a taxpayer or in receipt of a state pension) would not generally be considered to give rise to a connection for the purposes of the Code.

Attendees suggested the following further amendments:

- Removal of the word 'usually' in the note that states "It is usually better, however, to try and focus on the issue itself, rather than making any personal comments about an individual". **SCS agreed to remove**.
- Where an individual could be subject to more than one Code, inclusion of further information as to how it would be determined which Code applied (i.e., the factors the ESC and Standards Commission might consider). **SCS agreed to include**.
- More Guidance for nominee / representative members of boards on when and how the Code applied. **SCS agreed to include.**

SCS advising it hoped to circulate and publish the amended Guidance by the end of March.

2. Internal Resolution of Complaints and Self-Referrals

Attendees discussed when it might be appropriate to try and resolve a potential breach of a Code internally and when it should be referred to the ESC. SCS noting that it was really a matter for the Chair, Chief Executive and / or Standards Officers to determine, depending on the specific scenario and individual facts and circumstances / personalities involved. SCS noting that there was no requirement for anyone to submit a complaint to the ESC and nothing to prevent the public body from attempting internal or informal resolution if they thought it appropriate and might be successful (particularly if the alleged conduct was a one-off, not particularly serious and an apology might resolve matters).

SCS and ESC suggesting, however, that it would probably be appropriate for the matter to be referred to the ESC straightaway if the allegation was of a serious nature (note anyone can make a complaint, it doesn't need to be the SO or Chief Executive). ESC noting that if an internal investigation was undertaken and outcome not accepted, the matter may well be referred to him as a formal complaint anyway (and he may not necessarily reach the same conclusion), so consideration should be given to whether it is worthwhile trying internal investigation, particularly if the matter is serious, the dispute is particularly acrimonious etc.

Attendees asking whether something to that effect could be included in the SCS's Guidance. SCS explaining it would be reluctant to include, in the Guidance, circumstances in which it might or might not be appropriate to attempt internal resolution as it would want to avoid being prescriptive and doing so could create further friction as to whether it should have been attempted. In addition, the threshold of what might be deemed serious may vary between public bodies, depending on their nature and the composition of their board.

SCS agreeing, however, it could include some suggestions as to when local resolution might be appropriate (and / or factors to think about when considering this) in the Advice Note on the Role of Standards Officers.

SCS to circulate a draft amended version of the Advice Note on the Role of Standards Officers for consultation.

One attendee advised they had updated their standing orders to reference the Model Code, following internal resolution of a complaint. They also noted that they had included a meeting review on the standard meeting agenda, which allowed the Chair to sum up and challenge any adverse behaviour.

Attendees noting that members were entitled to refer themselves to the ESC. The ESC noting that he occasionally received self-referrals. Members sometimes wanted to refer themselves so that they could be exonerated in respect of a perceived breach of the Code. Attendees noted that self-referring could also be a mitigatory factor, in terms of sanction, should a breach of the Code be found by the SCS.

3. Members' Awareness of, and Compliance with, their Code

Some attendees reported that they had experienced very little in the way of poor behaviour from their members. This could be due to the apolitical nature of their board. It could also be the result of the rigorous nature of the public appointments system and the fit and proper person test, which meant that those appointed should already be well aware of their obligations and been recruited for their values. Attendees noting, however, that this was not necessarily the case with boards that contained elected members, where poor behaviours were often witnessed.

Attendees noting that smaller, one to one or small group training or refresher sessions allowed for a more nuanced discussions on ethics and the Code and facilitated free and frank discussion on topics such as unconscious bias.

Attendees advising that newer members often had greater awareness of the Code and their obligations under it. It was noted that it can sometimes be more difficult to engage more experienced members in discussions about ethics and the Code, including persuading them to attend refresher training.

Attendees agreeing it was helpful to refer to case studies in training as these enabled members to apply the provisions of the Code to situations they may find themselves in and could recognise.

The importance of Standards Officers from different bodies supporting one another was highlighted. It was noted, in particular, that the college development network shared a lot of information in this way. An attendee highlighted the utility of Linkedin as a training and networking resource. **SCS advised it was in the process of developing a Linkedin page for the organisation, which would be shared in an upcoming Standards Update.**

Attendees advising that there could sometimes still be confusion amongst members as to the difference between connection and a declarable interest. Another issue was members forgetting to declare and requiring prompting to do so.

Attendees noting that the number of complaints about disrespectful behaviour appeared to be increasing. It was noted that this could potentially be linked to the budgetary constraints, which often resulted in more contentious debates.

4. Courtesy and Respect

Attendees noting that the upcoming General Election and associated heightened political tensions could have an adverse impact on behaviours (although it was noted that this was more likely to be the case on boards with councillor members, such as health and social care IJBs). Attendees noting there

had been an increase in the number of political statements made, particularly in meetings where budgets were being set and where decisions around the provision of services were being made.

Attendees noted that it was difficult to of strike a balance between a member's right to freedom of expression under Article 10 of the European Convention on Human Rights and the need to protect the rights and reputations of others and ensure the smooth running of the public body.

Attendees noting that having an engaged Chair who is well aware of the requirements of the Code and was prepared to be robust at meetings was important.

Attendees noted that hybrid board or online meetings could be problematic as members tended to display to more micro-aggressions online. Attendees agreeing that behaviours tended to be better at in person meetings.

5. Social Media

Attendees reporting that they were seeing an increase in issues concerning the use of social media, particularly in respect of the principle of collective decision-making and responsibility.

SCS advising that it had recently held a joint webinar with the Improvement Service for councillors on best practice and pitfalls when using social media. **SCS advising it would consider the possibility of holding a similar open online event for board members.**

6. Declarations of Interests and Dispensations

Attendee noting a situation where their board might be asked to consult on registration fees. Some of the board members had connections to employers of registrants, employ registrants or are registrants themselves. The board will not be quorate, however, if all those with connections had to declare interests and could not take part. SCS noting that the Code would require anyone who could be impacted financially to declare an interest. SCS suggesting it may be a scenario where it would be appropriate for the public body to seek a dispensation from the SCS to enable the members in question to take part in consideration of the matter. SCS advising attendees of an analogous situation where the SCS had relatively recently awarded a dispensation to members of the two national park authority boards, to allow them to take part in any discussion, decision-making and voting on the Scottish Government's consultation on the future governance of National Parks in Scotland and the future governance arrangements of National Park Authorities. SCS noting it was of the view that it was within the spirit and intent of the Model Code to grant the dispensation as any potential personal benefit to individual Members, or any perception of such, would be outweighed by the clear public interest in the Government being able to benefit from hearing the perspectives and views of the organisations directly affected by the proposals.

7. Distinguishing between Strategic and Operational Matters / Members role in scrutinising performance

SCS asking whether members of boards were becoming inappropriately involved in operational matters. Attendees reporting that they considered the SCS's Guidance and Advice Note on this matter was useful given it was a grey area and it was sometimes not clear where the boundary between

strategic and operational matters lay, particularly if members had an operational remit in terms of, or by virtue of, their appointment or role description. Attendees noted that the Chief Executive had a key role to play in ensuring the board and staff were aware of the line and that they should be proactive about establishing this. Attendees noting that a way of ensuring members focused on providing strategic direction and their scrutiny role was to give them specific roles, such as being the chair of an audit and risk committee or HR committee.

SCS noting it was difficult to provide unequivocal guidance on the topic, as what might be deemed as operational for one public body, might be strategic for another, depending on the relative size of the organisations and the scope of their remit. SCS noting it was important to be aware of the level of detail being provided to members (for example in board papers) as too much could encourage them to become fixated upon, and inappropriately involved in, operational matters and detail. SCS noting that it was happy to add case examples to the Advice Note on distinguishing between Strategic and Operational Matters and that attendees should feel free to email any that could be anonymised and included.

Attendees advising that IJBs members sometimes strayed into operational matters, particularly when budgetary matters were being discussed and members were seeking more options than those being proposed. Attendees reporting that members sometimes had difficulty accepting that their role was to make strategic decisions based on expert advice.

SCS asking whether members ever raised concerns that they felt constricted by the Code in terms of their ability to scrutinise the public body's performance. Attendees noting the Code does not prevent members from using knowledge and experiences and it understands that is why they are elected / appointed and that the public body benefits from this and from their different views and perspectives. It was important for SCS and officers to try to promote the idea that the Code is helpful and protects them from any public perception of misconduct, acting in own interests etc.

8. Potential amendments to the Ethical Standards in Public Life etc. (Scotland) Act 2000

Attendees felt that alternative options for the disposal of cases would be welcomed, in order to ensure there was a more proportionate way to deal with inadvertent or technical breaches of the Code.

Attendees noted that the possibility of a sanction being imposed helped encourage members to be aware of and adhere to the terms of their Codes. It was thought that, if sincere and well-meaning apologies were proffered, then a warning or lesser sanction could be appropriate in some cases.

The potential benefit of an "opt-in" adjudicatory process was noted, under which a Respondent could be notified of a referral and the potential finding and sanction being proposed. The Respondent would then be asked whether they wanted a Hearing, or whether they would be content to accept the finding of breach and proposed sanction.

The SCS advising that it intended to hold a meeting with the ESC in April to discuss potential changes to the Act, with a view to seeing if a joint proposal for changes could be made. SCS advising it would keep attendees updated on this.

9. Support from Standards Commission

Attendees agreeing that the use of the first person in the Model Code was helpful in terms of encouraging compliance. Attendees noting that the SCS could offer support with training and induction on the Model Code.

Attendees welcoming the SCS's quarterly Standards Update. SCS noting that anyone who was not on the mailing this for this could email enquiries@standardscommission.org.uk and ask to be added.

10. Representative Members

Attendees noting that there could sometimes be difficulties with nominee members on boards (such as trade union, carer, staff and charity representatives) as these individuals did not always accept that they were there to represent the board and act in its best interest. Instead, they often considered that they were there to represent their individual 'constituencies' from which they had been nominated. This was often the case with the boards of IJBs as these included representatives from various groups. Often these representative members were unclear about how and whether the Code applied to them.

SCS noting that it had issued and published an Advice Note for College Sector Board Members, which included information for representative members. **SCS advising it would update its Advice Note for IJB Members to ensure it included similar guidance.**

11. Update from the ESC

The ESC noting that he had recently consulted on a Strategic Plan for 2024-28. He had received a great deal of helpful feedback that he would take on board. He intended to publish a final version of the plan on his website soon.

The ESC advising that he intended to focus, as a priority, on quality assurance moving forward. He had introduced KPIs and benchmarking. The KPIs fell into two broad categories, the first being the time taken to assess and investigate complaints, as he was seeking to reduce this. The KPIs relating to timescales were outlined in the Investigations Manual, a copy of which could be found on his website. The second category related to the extent to which his office is adhering to its own values; inclusive of respect, empathy and kindness. The ESC advised that he was seeking feedback from the parties to complaints on this.

The ESC noting that he was also focusing on:

- Staff development. He had addressed the previous issues with staff turnover, but his team was still relatively new in terms of experience in post.
- Ensuring better, quicker, higher quality and more streamlined complaints handling.
- Having more meaningful and constructive engagement with all stakeholders, including public bodies. The ESC advising that Standards Officers were welcome to get in touch with his office at any time.
- Maintaining and updating procedures to reflect feedback. The ESC noting that the Investigations Manual would be updated on a quarterly basis.

The ESC drawing the attention of attendees to an open letter from the Committee on Standards in Public Life (CSPL) to public sector leaders and to its report on public sector leadership. The ESC urging attendees to ask their boards to consider these. The CSPL had included a checklist with questions for public sector leaders to consider to ensure good conduct and governance. The ESC also urged boards to consider succession planning and, in particular, to consider whether the board also recruited for values.

Standards Commission will circulate links to the CSPL letter, report and checklist with notes from the workshop.

The ESC noting that, as he was responsible for investigating complaints and could not be seen to be pre-judging any matters that could result in a complaint, he was unable to provide advice in respect of whether conduct could amount to a breach of a Code, but that advice could be sought on this from SCS staff (who were not decision-makers on complaints). The ESC advising, however, that he was happy to help with any queries or issues on public appointments and succession planning.

12. Update on SCS Future Plans

SCS noting that Standards Officers could contact the office at any time if they considered there was advice or further guidance or support the SCS could offer to assist them in their role or to assist with training and promoting the Code.
SCS noting its Strategic Plan for 2024/28 and Business Plan for 2024/25 were now on its website. In the forthcoming year, it planned to:

- Have proactive engagement with local and national media, and Parliament, on current issues arising in respect of the ethical standards framework and how provisions in the Code have been interpreted. This could include inviting local media outlets to awareness sessions on the ethical standards framework and role of SCS.
- Reviewing and updating its standard training presentations (and case illustrations) on the 2021 versions of the Codes in light of the revised Guidance and the SCS and ESC's experiences in interpreting their provisions. The updated versions would be published on the website so attendees could download if they wished.
- Write to all political parties represented on Scottish Councils asking for their assistance in promoting awareness of, and compliance with, the Councillors' Code and for them to advise of any issues with provisions.
- Continue to develop, consult on, publish and disseminate new e-Learning material, videos and Advice Notes in light of any emerging trends or feedback.

SCS noting it would aim to make the agreed changes to the Guidance on the Model Code (as noted above) and hoped to be able to issue and publish the revised version by the end of March 2024.

SCS noting that two of its members were due to demit office shortly, so the Scottish Parliamentary Corporate Body were recruiting for two replacements. SCS noting it would publish information on the new appointments on its website and in the next Standards Update, when these had been approved and announced.

Contact Us:

0131 348 6666
enquiries@standardscommission.org.uk
www.standardscommissionscotland.org.uk