ADVICE ON THE ROLE OF A STANDARDS OFFICER IN RESPECT OF THE ETHICAL STANDARDS FRAMEWORK

1. Introduction

1.1 This Advice Note, issued by the Standards Commission, aims to outline the role and responsibilities of the Standards Officer of a Schedule 3 devolved public body, within the ethical standards framework. Schedule 3 devolved public bodies are those listed at Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).

1.2 While this Advice Note aims to assist members of devolved public bodies, employees and others by providing information about the duties that Standards Officers may be expected to discharge within the ethical standards framework, it is not intended to be prescriptive. The Standards Commission recognises that governance and staffing arrangements are entirely a matter for each devolved public body to determine.

1.3 The Standards Commission further acknowledges that it may be that there is not an individual within a devolved public body who has the specific job title of 'Standards Officer'. This Advice Note is, therefore, aimed at any individual who is either solely, or jointly, responsible for undertaking the duties and responsibilities outlined below, regardless of whether or not they have the formal title of 'Standards Officer'.

2. Background

2.1 The Standards Commission's functions are provided for by the 2000 Act. The 2000 Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with Codes of Conduct, which are approved by the Scottish Ministers.

2.2 The role of the Standards Commission is to:

- encourage high ethical standards in public life. This includes promoting and enforcing the Codes of Conduct and issuing guidance to councils and devolved public bodies; and
- adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.

2.3 Individual Codes of Conduct, which are based on a Model Code of Conduct, have been created and approved for all devolved public bodies described within Schedule 3 of the 2000 Act. Codes of Conduct currently apply to the following categories of public bodies:

- National Bodies (for example, the Scottish Legal Aid Board);

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- Regional Bodies (for example, Highlands and Islands Enterprise);
- National Health Service Boards;
- Health & Social Care Integration Joint Boards;
- Further Education Colleges;
- National Parks; and
- Regional Transport Partnerships.

2.4 Complaints about potential breaches of the Codes of Conduct by councillors and members of devolved public bodies are investigated by the Ethical Standards Commissioner (ESC). Following the completion of an investigation, the ESC will submit a report to the Standards Commission.

2.5 The Standards Commission will review the ESC's report and determine whether to:
- direct the ESC to carry out further investigations;
- hold a Hearing; or
- do neither.

2.6 The Standards Commission holds Hearings to determine whether there has been a breach of their respective Code of Conduct by the councillor or member. If the evidence presented to the Standards Commission's Hearing Panel supports, on the balance of probabilities, that a breach of the Code had occurred the Hearing Panel will then determine the sanction to be applied, in accordance with the 2000 Act.

3. Members of the Devolved Public Body

3.1 The Standards Officer is responsible for ensuring that appropriate training is given to members on the ethical standards framework, the Code of Conduct for their public body's members (the Code), and the guidance issued by the Standards Commission. This includes ensuring training is provided on induction and also on a regular basis thereafter.

3.2 While it is a member's personal responsibility to ensure they comply with the provisions in the Code, Standards Officers are expected to contribute to the promotion and maintenance of high standards of conduct by promoting awareness of the Code. Standards Officers can also provide advice and support to members on the interpretation and application of the Code.

3.3 This means that Standards Officers may, on occasion, intervene and advise a member accordingly if there are concerns that the member may have breached the Code or may be about to do so. Members should try, where possible, to seek any advice or support from the Standards Officer in private and in advance of any relevant board or committee meeting so that the Standards Officer has the opportunity to ask any relevant questions, obtain the necessary information and give the matter proper consideration so that they are in a position to give informed advice. It should be noted that while members may be required by the Code to treat any advice received as being confidential, the Standards Officer has a responsibility to the public body, as a whole and, therefore, may be required to share any information or advice provided with the Chief Executive or other employees.

3.4 The Standards Officer is also responsible for ensuring the body keeps a Members' Register of Interests, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021. The Standards Officer should ensure the Register of Interests is maintained and that a reminder to update entries on the Register of Interests is issued to members at least once a year.

3.5 While it is a member's personal responsibility to ensure that all relevant interests are recorded, the Standards Officer should try to ensure that members are aware of what constitutes a

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registrable interest under the Code and, further, that they are aware that any changes must be recorded within one month. The Standards Officer should also ensure reminders incorporating a note to the effect that the statutory requirement is to update entries on the Register of Interests within one month of any change, are issued to elected members at least once a year.

3.6 The Standards Officer should ensure that there are procedures in place to provide for a consistent approach in respect of seeking and recording declarations of interest at the start of all meetings of the body (and any committee or sub-committee thereof). Members should note, however, that it is their personal responsibility to ensure that they declare any interests, as required by Section 5 of the Code. They should not rely on the Standards Officer (or any other employee) to remind them that they may have an interest. This is because employees may not be aware of the extent of the member's connection to or interest in a matter, or may not recall it.

3.7 The Standards Officer might consider it useful to ensure that all relevant employees are aware of, and familiar with, the requirements of the Code.

3.8 The Standards Officer may have an investigatory role if local resolution is attempted in respect of complaints made or concerns raised made about a member's conduct (see Section 7 below).

3.9 The Standards Officer may be required to report to the Board from time to time on matters relating to the Ethical Standards Framework. The Standards Officer may report any concerns about compliance with the Code to the Chief Executive.

3.10 The Standards Officer should provide support to the body's Governance or Standards Committee, if such a committee has been established.

4. The Standards Commission

4.1 The Standards Officer will be the principal liaison between their public body and the Standards Commission, and may assist the Standards Commission whenever necessary in connection with any Hearings concerning a member of the pubic body and in all matters relevant to the ethical standards framework.

4.2 The Standards Officer should try to attend events arranged by the Standards Commission in order to be kept up to date with all relevant developments in respect of the ethical standards framework and to help keep the Standards Commission abreast of any issues or trends that emerge.

4.3 The Standards Officer should familiarise themselves with the content of the Standards Commission's Standards Updates and should ensure these are circulated to members. The Standards Officer should also regularly review the Standards Commission's decisions and advise members of any relevant learning points that have arisen at recent Hearings.

4.4 The Standards Commission expects Standards Officers to assist it in its work to promote the ethical standards framework by engaging in any of its consultations and by circulating and promoting any Guidance and Advice Notes it has produced to members and other employees.

4.5 The Standards Officer may be asked to assist the Standards Commission in making arrangements to run external training events on the Code. The Standards Officer should encourage members to attend any such events.

4.6 The Standards Officer should advise the Standards Commission if they are leaving their post.

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5. The ESC

5.1 The Standards Officer is the principal liaison between their public body and the ESC and should assist the ESC whenever necessary in connection with the investigation of complaints concerning a member of their public body. This includes providing information and evidence within the timescales as requested and making arrangements for interviewing any employees or other members as required. Timely responses to requests from the ESC will assist in keeping to a minimum the time taken to conclude an investigation.

5.2 If local resolution in respect of complaints or concerns made about a member's conduct is deemed inappropriate in the circumstances or is unsuccessful, the Standards Officer may report any alleged breach of the Code to the ESC.

6. Other Standards Officers

6.1 The Standards Officer may wish to try to develop relationships with other Standards Officers to share knowledge, experience and information about best practice and to see whether any joint training sessions for members can be arranged.

7. Local Resolution

7.1 As noted above, the Standards Officer may report an alleged breach of the Code to the ESC. It should be noted, however, that there is no requirement for the Standards Officer (or anyone else) to do so. Any individual can make a complaint to the ESC, regardless of whether or not they have been directly affected by the alleged conduct. It should also be noted that asking a public body employee, including the Chief Executive or Standards Officer, to investigate an alleged breach or to submit a complaint to the ESC, can place them in a difficult position, as employees have a duty to support the public body as a whole.

7.2 There is nothing to prevent the public body from attempting internal or informal resolution, or even undertaking an internal investigation or commissioning an independent one, if it is considered appropriate to do so in the particular circumstances of the case. For example, it may be appropriate to attempt local resolution if:

- the alleged conduct was a one-off incident and not particularly serious in nature;
- the alleged conduct was inadvertent (such as a failure to timeously register an interest in circumstances where it is evident there was no attempt to conceal the interest or hide it for personal gain); or
- it is likely some form of mediation or an apology will resolve matters;

7.3 It may be considered appropriate for the alleged breach of the Code to be referred to the ESC, without any attempt at resolution, if the allegation is of a serious nature or if any investigation required is likely to be lengthy or complex. It should be noted that if an attempt is made to resolve or investigate the matter internally, and the outcome is not accepted by one or more of the parties involved, the matter may well be referred to the ESC as a formal complaint regardless. It is possible that the conclusions reached locally about whether a breach has occurred may be disagreed with by the ESC and/or the Standards Commission. Consideration should be given, therefore, as to whether there is any merit in attempting an internal investigation or resolution process, particularly if the matter is serious in nature, or if it involves a particularly acrimonious dispute between members or between a member and employees.

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