Item 17.4

MODEL CODE OF CONDUCT GUIDANCE

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GUIDANCE ON THE MODEL CODE OF CONDUCT

SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

The Model Code of Conduct (Code) required by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) was most recently reviewed and re-issued in 2021. It sets out the principles and rules governing the conduct of members of devolved public bodies. Your public body's code of conduct is based on this Code. Therefore, all subsequent references to the Code in this Guidance should be understood as references to the Code as adopted by your public body. A copy of the Model Code can be found at: https://www.standardscommissionscotland.org.uk/codes-of-conduct/members-model-code-of-conduct.

This Guidance has been produced by The Standards Commission for Scotland (Standards Commission) and contains case illustrations (some of which are based on cases from Scotland, Northern Ireland and Wales, and some of which are hypothetical) and examples of factors that members of devolved public bodies (members) may wish to consider when applying the requirements of the Code. In cases where a provision of the Code mirrors that contained in the Councillors' Code of Conduct, examples of complaints concerning councillors have been included.

Members should be mindful, when seeking to apply the Code to their own situation or circumstances, that the lists of factors in the Guidance and examples provided are not exhaustive. All members have a personal responsibility to ensure that they comply with the provisions of the Code.

While members should observe any guidance from the Standards Commission, it is not a substitute for the Code. The purpose of the Guidance is to provide supplementary information to aid members in interpreting the Code. **Members are, therefore, obliged to ensure they have read and understood the provisions of the Code itself. Reading the Guidance should, in no way, be considered a substitute for doing so.**

This document is a standalone version of the Guidance, without the Code embedded. It is intended to provide easy access to the Guidance itself.

The Standards Commission will continue to review the Guidance on a regular basis to ensure it is relevant and fit for purpose. As such, any feedback, comments, suggestions for improvements and further hypothetical cases are welcome.

Guidance

1 The Code, on which your public body's code is based, was approved by the Scottish Parliament and issued on 7 December 2021.

2 This Guidance is effective from 28 March 2024 and replaces all previous versions.

3 This Guidance is for members of devolved public bodies, and is also directed at advisory and co-opted members who sit on, or attend, any meetings (including committee meetings) of the public body. However, it should be noted that the Standards Commission has no legal powers to enforce the provisions of the Code against anyone other than those appointed or elected to be members of the devolved public bodies listed in Schedule 3 of the 2000 Act.

4 Public body boards comprise of individuals who are appointed, elected or nominated to the board

in question in different ways, including individuals who are appointed, elected or nominated by virtue of being:

- a councillor (such as an elected member nominated or appointed by the council as a member of a regional transport partnership);
- a member of another public body (such as a health board member nominated or appointed by the health board as a member of a health and social care integration joint board)
- a student or member of a trade union (of a college sector board);
- a chair of an assigned college (of a college regional strategic body);
- a service user, stakeholder or voluntary sector member (of a health and social care integration joint board);
- a member of staff; and
- an *ex officio* member (being someone who is a member by virtue of holding another post (such as an individual who is a member of a health and social care integration joint board by virtue of a post they hold within the NHS).

5 By accepting your appointment as a board member, you have accepted that you are obliged to comply with the Code. The aim of this Guidance is to provide supplementary information to help you do so. It should be noted that all members of the board are required to comply with the Code, regardless of how they have become a member (i.e. by election, appointment or nomination).

6 The Code is not designed to restrict you; its purpose is to help you meet the required standards of conduct.

7 Public bodies should make arrangements to deliver training and induction sessions on the ethical standards framework and should encourage all their members and senior employees to attend, and, where possible, keep a record of attendance. Subject to resource limitations, the Standards Commission can support any such training and induction programme. Any request for assistance or support should be directed to the Executive Director.

When the Code Applies

8 The Scottish public has an expectation that members of public bodies will conduct themselves in accordance with the Code and the nine key principles of public life, as outlined in Section 2. You must, therefore, comply with the provisions of the Code in all situations and at all times where you are acting as a member, have identified yourself as a member, or could objectively be considered to be acting as a member.

9 The Code does not apply to your private and family life. In determining whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, would reasonably consider that you were acting as a member of your public body at the time of the events in question.

10 It should be noted the Code will apply when you are engaging in online activity, including using social media, if you could reasonably be considered or perceived to be acting as a member of your public body. The Code does not prevent you from expressing views (including making political comment) provided you do so in a way that is compatible with the substantive provisions of the Code, being Sections 3- 6 inclusive. This includes the requirements to behave with courtesy and respect and to maintain confidentiality.

11 It may be helpful, in certain circumstances, to state that you are expressing your own personal view, rather than the view of your public body. You should, however, always be mindful of how you could reasonably be perceived when doing so and whether your comments could objectively

be considered as reflecting the views of your public body, regardless of any statement about it being a personal comment. It can be very difficult to persuade people that you can take a different view, or even have an open mind, in your capacity as a member of a public body from a view you may have expressed in your personal capacity. This is particularly pertinent in respect of using social media, or commenting in the press, where the separation of public and private comments may be unclear to someone reading them, and where information about your membership of the public body may be readily available online or from different sources (including your public body's website).

12 For example, if a college member posted a comment on social media to the effect that the college was underperforming, the staff were useless and the Chief Executive should resign, it is unlikely that the inclusion of words to the effect that it was a "personal comment" would bring the matter outwith the scope of the Code. That is because it would be likely that a member of the public reading the post, with knowledge of the relevant facts (being the individual's status as a member and the subject matter), would understand it to have been made by the individual in that capacity as board member of the college and with the knowledge they had gained as such.

13 Another example could be where a member, who includes being on the board of their public body in their Twitter profile, retweets a post which contains a description of the service provided by their public body as being substandard and unacceptably poor. While the post in question was not written by the member, the fact that they have chosen to retweet in circumstances where they are identifiable as a member, could be seen as being supportive of the criticism in their capacity as such.

Your Responsibilities

14 As a board member, you have a responsibility to ensure the effective governance and financial management of your public body within the context of public service delivery and reform for the benefit of the Scottish public.

15 You should attend any training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code, this Guidance, and any other guidance and advice notes issued by the Standards Commission. You may wish to discuss training and continuous professional development with the Chair of your public body when you are appointed and during any annual performance discussion.

16 It should be noted, in terms of the Standards Commission's Policy on the Application of Sanctions, ignoring advice and / or training opportunities that could have prevented a contravention of the Code may be considered an aggravating factor by the Standards Commission when deciding on the appropriate sanction to be applied, following a breach finding.

17 Although it is ultimately your personal responsibility to comply with the Code, paragraph 1.9 of the Code makes it clear that if you are uncertain about how the Code should be interpreted and applied, you should seek advice. Your public body will have a Standards Officer. This is an employee who is either solely, or jointly, responsible for undertaking various duties and responsibilities related to the ethical standards framework (regardless of whether or not they have the formal title of Standards Officer). The Standards Commission has produced an Advice Note on the Role of a Standards Officer, which can be found at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

18 The Standards Officer and other senior employees may have experience of dealing with queries

relating to the Code and can give you advice. You may also wish to seek advice from the Chair or an experienced colleague. If applicable, you may also wish to refer to the Scottish Government's 'On Board' Guidance, which can be found at: https://www.gov.scot/publications/board-guide-members-statutory-boards/.

19 As it is your personal responsibility to comply with the Code, the fact that you may have sought, and then followed such advice would not be a defence to a breach of the Code; however a discussion with the Standards Officer or Chair may help to clarify your own thinking. If you are found to be in breach of the Code, the fact you sought advice may be taken into account by the Standards Commission as a mitigating factor when deciding on the appropriate sanction to apply following a breach finding. Conversely, a failure to seek and / or follow advice may be considered as an aggravating factor. The Standards Commission's Policy on the Application of Sanctions can be found at: https://www.standardscommissionscotland.org.uk/cases/hearing-rules.

20 You should always try to seek advice at the first opportunity, for example from the Standards Officer. You should be mindful that the person from whom you are seeking advice may not have full knowledge of the matter, or your personal circumstances. On rare occasions, for example when an alleged breach is to be considered by the Standards Commission at a Hearing, you may wish to seek external legal advice. You will be responsible for the cost of any external legal advice you have chosen to obtain, either to assist you with interpreting the Code, or in responding to any complaint about your conduct.

21 You are encouraged to promote and support the Code at all times and to encourage others to follow your example in doing so. Experienced members should consider whether they can act as a mentor to others to help them to understand the Code.

22 As noted above, public body boards can comprise of individuals who are appointed, elected or nominated to the board in different ways. Members should recognise that the reason such bodies are comprised of individuals with different backgrounds, knowledge and experiences is to ensure diversity of thought and to ensure that input from, and the perspectives of, all key stakeholders are considered in any decision-making. Members should ensure, therefore, that they understand, respect and take account of differences in each other's backgrounds, knowledge and experiences, so these do not become a barrier to progress and to the effectiveness of the board itself.

23 Members should be clear, nevertheless, that they are required to act in the best interests of the public body, as opposed to the interests of any individual constituency from which they have been appointed, nominated or elected. Such members need to be aware of their obligations to the board and reconcile these with their obligations to their constituency. While such members can raise matters from the perspective of their constituency, they should not promote the interests of, or lobby on behalf of, the constituency when sitting as a member of the public body.

24 The Code should be read as a whole. It may be necessary to cross-reference different provisions.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

25 The Code is underpinned by the nine key principles of public life in Scotland, namely: Duty, Selflessness, Integrity, Objectivity, Accountability & Stewardship, Openness, Honesty, Leadership and Respect.

26 The key principles are for guidance and you should ensure that you always have regard to, and follow, these principles. You should not persuade others to act in a way that would be contrary to the key principles.

27 A breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code. However, the key principles can be used by both the Ethical Standards Commissioner's office (in its investigatory role) and the Standards Commission (in its adjudicatory role) to assist with interpretation of alleged breaches of the substantive sections of the Code, being Sections 3 to 6 inclusive.

28 It is your personal responsibility to ensure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a member. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly and in accordance with the Code.

SECTION 3: GENERAL CONDUCT

Respect and Courtesy: General

29 You must treat everyone you come into contact with in your role as a member with courtesy and respect, even if you disagree with their views. This can include employees, officials from the sponsor body, members of the public, service users, politicians and fellow members.

30 It should be noted, in the context of paragraph 3.1 of the Code, that meetings can include virtual meetings or other forms of remote working via platforms such as MS Teams, Skype and Zoom.

31 While you are entitled to express your views and to disagree with others, you must do so in a respectful way. Respectfully challenging the thoughts of others, and in turn allowing your own thoughts to be challenged helps promote a culture of diversity of thought. You should focus on the issue itself, rather than making any personal comments about an individual.

32 You should always be mindful about how others could reasonably perceive your conduct, and that even if it is not your intention to be disrespectful or discourteous, your behaviour could be interpreted as such. Any decision made by the Standards Commission as to whether conduct could amount to a breach of the respect, courtesy, bullying or harassment provisions in the Code will involve a full, fair and objective assessment of the conduct in question, the intent, and reasonably foreseeable impact.

33 If you make a comment in the heat of the moment, which you do not mean and then regret, you should consider retracting it and / or apologising. Bear in mind, however, that comments made on social media may have been circulated widely by the time you seek to retract them or apologise.

34 You should always think ahead. If you have any concerns about a potential problem, speak to your public body's Chair, Standards Officer or Chief Executive so that advice can be sought and / or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and / or a complaint being made about you. The fact that you have sought advice, or indeed failed to seek advice, may be taken into account at a Hearing. Similarly, evidence of an immediate apology or retraction may be a mitigating factor at a Hearing.

35 You should ensure you are familiar with the Equality Act 2010, which provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Equality and Human Rights Commission has produced guidance on the Equality Act, which can be found at: https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance.

Respect and Courtesy: Applicability of the Code

36 It is very important to note that the rules of good conduct set out in Section 3 of the Code must be observed in all situations where you are acting as a member of your public body, which includes when you are representing the public body on official business.

37 As noted in the Introduction Section of the Code, it is applicable in all situations where:

1. you are acting as a member (for example, when attending public body board or committee meetings, engaging with employees or assisting service users);
2. you have identified yourself as a member at the time of the conduct in question (for example, you state you are a member on your social media account); and / or

3 you 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 you have been invited as a member).

38 You should be mindful, therefore, that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. In making an objective determination about whether you were acting as a member of the public body (even if you have not identified yourself as being a member), the Standards Commission 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.

39 Factors the Standards Commission may consider when determining if the Code applies include whether:

- you have been clear about the capacity in which you are acting;
- you have described yourself as a member (for example in a social media account or biography, or in the sign-off to correspondence) or are otherwise readily identifiable as acting as a member in the situation / circumstances;
- you have been accurately and reasonably named as a member or otherwise identified as such (for example, in a speaker biography or a delegate list at an outside event);
- you are on the public body's premises or at one of its events;
- you are using IT equipment and / or an email account supplied by your public body;
- your conduct could reasonably be regarded as bringing your position as a member, or your public body, into disrepute;
- you are commenting on political matters that concern your public body, or matters that fall within the scope of its functions;
- you are invited to attend an event because you are a member; and
- you are representing the public body or speaking on behalf of the public body.

40 Members of some public bodies, especially those elected to the board, those appointed via routes linked to a 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.

41 If you are a member of more than one public body, or are also a councillor, you may be subject to more than one Code of Conduct. In considering and making any decision on whether, and which Code applies, the ESC and Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, could reasonably perceive you as having been acting as a member of the specific public body at the time of the alleged breach of the Code. The fact that complainers or witnesses to any conduct may be aware that you are a member of that public body is not in itself sufficient for the Code to be engaged.

A member shared an article that contained a sectarian comment on their LinkedIn profile. While the LinkedIn profile was a personal one, and did not state explicitly that the individual in question was a member of their public body, the Panel determined that it was apparent from the content of the profile, other posts, and shared items that this was the case. Therefore, the Panel found that it would have been reasonable for an informed member of the public to have perceived that the individual could have been acting in their capacity as a member of the public body. The Panel accepted that the member's position was that they had not read the article in full, and that the member was

absolutely appalled by the remark in question, but nevertheless found that there had been a breach of the Code. The Panel agreed that sharing an article of that nature was likely to bring both the member and their public body into disrepute.

A councillor was convicted of sexual assault in respect of an incident that occurred at a Trades Association event. The Panel was satisfied that it would have been reasonable for an informed member of the public to have perceived that the councillor was acting as a councillor at the event, given both the public nature of it and also because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel concluded that the Code applied.

A member sent and encouraged an employee of his public body with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Panel rejected arguments that the member had been acting in an entirely personal capacity. It found that the member could not completely separate himself from his role as a board member of his public body, and that, when sending or encouraging the employee to send the messages during working hours, he was acting as a board member.

A member met a member of the public at a public body-run event and subsequently entered into a personal relationship. The member was then abusive towards the member of the public on a night out. As the member was not acting in his capacity as a member at the time of the incident, the Code would not apply to his conduct.

A member attended a family wedding and introduced himself as a member. The member then became involved in an altercation with another guest. The press later reported that the member has been charged with disorderly conduct and assault. The Code did not apply because while the member had introduced themselves as a member, it would not be reasonable for members of the public to consider that he was attending the wedding (being a private event) in that capacity. The subsequent identification of the member in the media would not mean the Code was engaged.

Respect and Courtesy: Social Media

42 The rules of good conduct also apply when you are engaging in online activity, including when using social media. Social media is a term used to describe online technologies, platforms, applications and practices that are used to share information, knowledge or opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites.

43 The Standards Commission has produced an Advice Note for Members on the Use of Social Media. This can be found at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

44 The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Before commenting or posting, you should consider very carefully whether:

- you understand the immediate and permanent nature of any comment or post you are about to make, and that you will have no control over the extent to which it is shared, and by whom;
- you would make that comment or post in-person, face to face;
- you have such conviction in what you are about to share that you would be prepared to justify it if challenged at a later date;

- ‘liking’, re-posting and sharing comments or posts, or publishing links to other sites could be reasonably regarded in the circumstances as endorsing the original opinion, comment or information, including information on other sites; and
- you fully understand that even if you delete your post, it may have been captured by way of a screenshot or otherwise retained in some way (including being automatically cached online) and that fully deleting content once it has been shared online is almost impossible to achieve.

45 Other important factors to consider when using social media include whether:

- you are identifiable as a member by directly referring to yourself as such or indirectly by referring to the public body, or the functions of your role as a member, or through any information or images posted;
- the account you are using is ‘private’ and whether you have set your privacy controls accordingly. You should bear in mind that anyone who is able to view your social media content will be able to screenshot and publicly share it, if they choose to do so;
- the number of ‘followers’ you have and whether these individuals are following your account because you are a member of your public body;
- you have complied with any policy your public body has produced on the use of social media;
- information you are posting is confidential and you only have access to it because you are a member of the public body;
- you are demonstrating bias or pre-determination;
- you are using the public body’s equipment and / or your public body’s information technology network or your own; and
- you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions.

A complaint alleged that a member had set up a Facebook account under a false name in order to post derogatory comments about employees of the public body. The owner of the account was identified as the posts contained information about specific employees that could only be known by a member. It was established that by posting the comments, the member in question had been acting in their capacity as a member, regardless of whether or not they had identified themselves as such. It was found that the member had breached the respect provisions of the Code.

Respect and Courtesy: Article 10 ECHR – Your Right to Freedom of Expression

46 You have a right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). You are entitled to express your views and opinions. The Code does not prevent making points or from scrutinising the performance of your public body, provided you do so in a respectful manner that is compatible with the Code.

You should note, however, that the protection Article 10 affords is not absolute and does not extend to, or excuse, hate speech or egregious offensive and abusive personal attacks.

Therefore, you may wish to think about:

- whether your comments are likely to bring your office or the public body itself into disrepute;
- whether you are treating others with courtesy, respect and consideration;
- whether making your point in a respectful and constructive manner may have more of an impact in terms of influencing others;
- the fact that ‘liking’, re-posting and re-tweeting comments or posts, or publishing links to other sites are likely to be perceived as endorsing the original opinion, comment or information, including information on other sites;
- whether to allow disagreement on your social media pages;

- the fact that tone can be harder to convey online so consideration should be given to whether humour, irony and sarcasm will be perceived as such;
- whether you have to respond and / or if it is appropriate or helpful to do so;
- whether anything you post could be considered obscene.

47 The Standards Commission has produced an Advice Note that outlines the approach it will take when issues that concern the application of Article 10 of the ECHR and the right to freedom of expression arise. It also suggests issues members should consider in order to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code. The Advice Note is available on the Standards Commission's website at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

Respect and Courtesy: Equalities

48 You are expected to advance equality of opportunity and to seek to foster good relations between different people. It is unacceptable for a public figure such as a member of a public body to express views that indicate a discriminatory attitude towards people on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity.

A complaint alleged that a member had posted a homophobic comment on the complainer's Facebook page and that he had accessed his account using a mobile phone issued by his public body when doing so. It was found that the comment made by the member had clearly been intended to insult and demean the complainer. The member was found to have breached the Code.

A complaint alleged that a councillor had shared, on Facebook and Twitter, a blog article which was critical of a union member who had organised an equal pay strike in Glasgow. The article contained references to "Mein Kampf" and of Hitler having accused "The Jew" of gradually assuming membership of the trade union movement. It was found that the article promoted negative stereotypes and was antisemitic in nature. The councillor was found to have breached the respect provisions of the Code.

A councillor referred to the complainer as a 'TERF' (Trans Exclusionary Radical Feminist) in a series of tweets and emails. The Panel found that while the term TERF was potentially controversial and could be seen as one of abuse, it could also be used or perceived as simply a descriptor. It was found, however, that it was evident from the Respondent's description, over an extended period of time, of TERFS as being "scum" and "hateful and vile", that the councillor intended it to be one of abuse. It was further found that the councillor had directed the term at the complainer as an individual and that it was about her as a person, rather than simply being a descriptor of her alleged views. As such, it was determined that the reference to the complainer as a TERF, in context, amounted to a personal attack on her and that the councillor had failed to behave in a respectful manner. It was further determined that the councillor had used a highly derogatory profanity about a member of the public in another tweet. It was found that using such a word in a public forum such as a tweet was highly offensive and inappropriate, regardless of whether it had been directed at any individual or identifiable group of individuals. The councillor was found to have breached the Code.

Respect and Courtesy: Bullying & Harassment

49 Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. It usually, but not always, arises as a result of an individual misusing their power.

50 Harassment is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. It can be experienced directly or indirectly (for example, being in the room which unacceptable conduct is being displayed and being affected by it). Harassment is not confined to conduct defined as such under the Equality Act 2010 (i.e. unwanted conduct related to a relevant protected characteristic).

51 It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident.

52 Even if the behaviour in question is unintentional, it can still be classed as bullying and / or harassment. It is the impact of the behaviour, not the intent, that is the key. You should therefore be aware of the impact of your conduct as it may be experienced by others, and remember that what may seem harmless to you can be offensive to someone else. It should be noted, however, that any decision made by the Standards Commission as to whether conduct could amount to a breach of the bullying and harassment provisions in the Code will involve a full, fair and objective assessment of the behaviour, intent and reasonably foreseeable impact. This will include taking account of the perception of the person to whom the behaviour has been directed, and whether it was reasonable for the conduct to have the effect of making that person feel offended, humiliated, intimidated, frightened and / or uncomfortable.

53 Bullying and harassment can occur through all means of conduct and communication – including social media posts, shares and comments. It can also arise through a lack of communication, such as the deliberate exclusion of an individual from a conversation, work or social activity.

54 You are responsible for your own behaviour. You must ensure that you are aware of, and comply with, the provisions concerning bullying and harassment in the Code and also any policy your public body has on ensuring dignity in the workplace.

55 The Standards Commission has produced an Advice Note for Members on Bullying and Harassment. The Advice Note is available on the Standards Commission's website at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

A complaint alleged that a member had behaved in a disrespectful manner towards two female fellow members and employees. It was established that the member had made unwarranted and inappropriate physical contact with the fellow members and employees at an official event and had also made remarks towards the employees which were patronising and demeaning. The member was found to be in breach of the Code.

A complaint alleged that a member had sent an email to a number of employees of their public body and posted a Twitter message, describing an employee as "arrogant, lazy, mentally challenged" and as having been "useless for years". The impact of the emails led the employee to seek medical and other support and resulted in him taking sickness absence due to stress. The Panel found the emails and tweet to be completely unwarranted and would have adversely affected the employee's ability to carry out his role. The Panel found the member's conduct amounted to a breach of the Code.

A complaint alleged that a member made a number of allegations and critical comments on his online blog about the complainer, who was a fellow member, which were of a personal and insulting nature. It was found that the comments had been made without factual basis, were disrespectful and were clearly intended to demean the complainer in a public forum. The member was found to have breached the Code.

A complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to a police officer, and also made a number of unfounded allegations about him during two telephone calls to a Police Station. It was found that the councillor had made the telephone calls in his capacity as a ward councillor and concluded that the provisions of the Code applied to him at the time of the events in question. It was further found that the comments made by the councillor in the telephone conversations amounted to an unacceptable personal attack on the police officer and that he had breached the respect provisions in the Code.

Respect and Courtesy: Public Body Employees

56 It is understood that there may be tensions in an environment where individuals have different backgrounds and experiences. It is nevertheless essential to ensure that the public has confidence in the public body and the role of its members. This can only be achieved if members behave in a respectful way towards each other and towards the public body's employees.

57 The requirement to respect all public body employees includes employees of contractors providing services to the public body; and employees of any other organisations where it might be reasonably perceived that the public body (and by implication the member) has a supervisory influence over those individuals. This might, for example, include cleaners or security guards employed by an agency contracted to provide services to the public body and who work in public body buildings and / or solely and entirely on public body work.

58 It should be noted that anyone can make a complaint to the Ethical Standards Commissioner about an alleged breach of the Code. There is no obligation on anyone, including public body employees, to make a complaint even if appears that the Code may have been breached. It may be the case that the matter can be resolved informally. Asking a public body employee to make a complaint could compromise their position. You should not, therefore, act in a manner that may pressure employees into making a complaint.

A complaint alleged that a councillor had sent a series of emails (and made statements in council meetings) over a period of eleven months, to his fellow councillors and to senior council employees, alleging corruption in the allocation of a council property a family member of another councillor. The councillor in question had provided no proof to back up his claims of corruption. A number of internal council investigations, and finally an independent investigation carried out by Audit Scotland, had all concluded that there was no evidence to suggest any corruption in relation to the housing allocation. The Panel considered that by making such serious and unwarranted public accusations about the conduct of employees, the councillor's conduct was offensive and fell well below the standard to be expected of a councillor, and therefore found that the Code had been breached. It is worth noting that in this case, due to the seriousness of the contravention and two previous breach findings against him, the councillor was disqualified.

Distinguishing between Strategic and Operational Matters

59 The Standards Commission has produced an Advice Note for Members on Distinguishing Between their Strategic Role and any Operational Work, which can be found at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings. In general, if a duty is delegated to an employee, then it is likely to be operational in nature. You may wish to seek information about specific matters, cases or a particular item of work, but you should be aware that employees may feel pressured by a member challenging their actions or appearing critical of some aspect of their work. This is particularly the case with junior employees, who may not be used to dealing directly with members. Any concerns about

performance should be raised in private with the Chair who can then bring them to the attention of the Chief Executive or the employee's line manager, as appropriate.

Respect and Courtesy: Public Comment about Public Body Employees

60 As a member, you are entitled (and indeed required) to scrutinise the effective delivery of services and whether operational targets have been achieved. You should be careful, however, not to make public statements which expressly, or by implication, criticise the actions (or inaction) of an individual employee or identifiable group of employees (where individuals in that group are, or could be, identifiable). You should note that the concept of a public statement is wide and can cover a variety of scenarios such as the published minutes of a board meeting, a comment on social media, or being overheard in a public area, such as a corridor or tearoom. This provision does not prevent you from scrutinising the performance of a team or service. Instead, it precludes you from making any public criticism, which is personalised in nature, about an individual officer or identifiable group of officers. When you need to raise concerns in public about the performance, conduct or capability of the organisation (or parts of it), you must do so objectively and respectfully, focusing on the issues rather than any employees who are or were directly involved.

For example, in a scenario where you are concerned about the quality of a report before you, you should consider how you raise your concerns. Saying *"I note this report does not contain a risk assessment – I would be grateful if a risk assessment could be undertaken"* would be respectful, whereas saying *"as usual, your report is inadequate and poorly prepared as it does not contain a risk assessment"* could be perceived as being personally critical of the report's author.

An example of effective scrutiny could be to say at a public meeting *"I have concerns about this service we are providing in respect of X, as it appears there are undue delays. Could a report therefore be prepared on service delivery for X against key performance indicators over the last six months? Where these are not met, could information be provided as to why not and on what steps are being taken to improve matters".* However, saying that *"the performance of Ms A, as the director, appears to be lacking, as service X is clearly not meeting its key performance indicators*" could be seen as being critical of Ms A as an individual.

61 The requirement to refrain from criticising employees in public also applies to former employees, if the criticism is about them in that capacity (i.e. their performance, conduct or capability when they were employed by your public body).

62 If you have concerns about the performance, conduct or capability of an employee, you must raise them in private with senior management and in accordance with your public body's procedures. You may wish to discuss your concerns with the Chair in the first instance, to see if they are shared by other members. If you are raising concerns about an employee with senior management, you should try to be as objective and specific as possible.

For example, it would be more helpful to say: *"I am concerned about the way X spoke to me at the board meeting on Y date in that I found his remark to the effect that… to be rude and disparaging"*, rather than "*X is rude towards board members".*

Similarly, it would be more constructive to say *"I am concerned about X's performance as the reports she produced for the meetings on Y and Z dates were not of the quality I would expect from someone of her grade in that they lacked any detail about… and did not cover…",* rather than *"X's performance is not up to scratch as her reports are rubbish".*

63 If you have concerns about the performance, conduct or capability of your public body's Chief Executive, you should raise them in private with the Chief Executive. You should discuss your concerns with the Chair before doing so, to see if they are shared by other members and / or are already being addressed. If you are an executive Board member, you should raise any such concerns with an appropriate member of the management team through established local procedures.

A complaint alleged that a member had become inappropriately involved in disciplinary proceedings being brought against an employee of their public body. The member sought to influence the operational decision-making by sending a number of emails to the employee's line manager excusing the employee's alleged misconduct and praising their performance. In trying to interfere with the line manager's performance of their operational duties the member lost sight of their governance role and overall responsibility to their public body. The member was found to have breached the Code.

A complaint alleged that a member engaged in public criticism of the Chief Executive of their public body by posting information and comments on a stakeholder's Facebook page. The member did not give the Chief Executive an opportunity to respond before publishing the comments on the Facebook page. The member was found to have breached the Code.

A public body was in the process of updating its website's design and content. One of its members sent numerous emails, and made multiple telephone calls, to the public body's IT department questioning the proposed layout, the timescale for the roll-out and the design of other websites in the supplier's portfolio. The member also suggested wording and other content to be used on specific pages and questioned the proposed menu headings for the new site. While the Panel accepted that members would have a strategic role in such a project, and would be entitled to scrutinise its implementation and make some suggestions, the member in question was found to have strayed too far into discussions and decision-making at an operational level. Indeed, the Panel found that the member's interference resulted in delays to the project as employees' time was taken up in dealing with the member's enquiries and suggestions. The member was found to have breached the Code.

Respect and Courtesy: Public Body Meetings

64 The word 'Chair' in paragraph 3.10 of the Code, and the word 'Chair' in this Guidance, are not restricted to those specific terms and apply to any individual holding a similar chairing role.

65 The role of the Chair in any public body meeting, including a committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of employees) can be expressed. At the same time, the Chair has a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the public body's Standing Orders and that the questions and discussion remain focused. This includes determining the point at which conclusions should be reached. Chairs are required to adopt a balanced approach to help ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. As such, you should ensure you are familiar with your public body's relevant rules, regulations or Standing Orders. The role of the Chair in reaching judgements about how the meeting is to be conducted should be supported and respected.

A complaint alleged that a member had failed to respect the Chair and other colleagues during a board meeting. Despite the Chair determining that the matter under consideration had been agreed, the member continued to speak over the Chair, requiring her to adjourn the meeting. Upon

reconvening, the member continued to speak over the Chair. A motion was passed in terms of the public body's Standing Orders to suspend the member from the board meeting. Despite this motion, the member initially refused to leave, and it took a further adjournment from the Chair to persuade the member to remove himself. The Panel held that the member had breached the Code.

66 You are accountable for your own conduct at all times in terms of the Code, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. During the course of a meeting, the Chair has the right to rule on and to take appropriate action as necessary on the acceptability of conduct, and any language used and comments made. This can include requiring the withdrawal of a remark, asking for an apology, or any other action necessary to allow the meeting to proceed properly. Factors you should consider include whether:

- your behaviour, including your body language, is courteous and respectful (even when you hold a different view to that of other participants);
- you are treating others with courtesy, respect and consideration;
- your choice of language in meetings is appropriate and meets the high standards expected by the general public;
- it is appropriate to refer to other members by nicknames or to refer to them in the second person, by using terms such as 'you';
- newspapers, mobile phones, laptops and other devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying; and
- your conduct could diminish the public's opinion of, and trust and confidence in, the public body and / or its members.

A complaint alleged that a member had been disrespectful towards a fellow member by making disparaging remarks about their input into a discussion. Their remarks included a personal comment about the other member's intelligence and their suitability to be a board member. It was found that the member's remarks amounted to a personal attack and were egregious and inappropriate. The member was found to have breached the Code.

At a board meeting a member challenged a senior employee's integrity by accusing them of falsifying data in a performance report. The Panel found this behaviour particularly egregious given that the employee in question was not present at the meeting and, therefore, could not address the accusations. In addition, the concerns had not been raised previously with the employee or their line manager in private. The member was found to have breached the Code.

A councillor said "sieg heil" when the Chair of a committee curtailed debate on a motion. It was found that the words "sieg heil" are synonymous with the former fascist Nazi regime in Germany and are directly associated with obedience to an oppressive dictatorship. As such, it was found that the councillor's use of them could only be taken as an unacceptable way of protesting about how the Chair had conducted the meeting in respect of the item under consideration. Although the councillor had retracted the comment when asked to do so, it was found that he had breached the Code by failing to show respect to the Chair.

Collective Responsibility

67 The provision in the Code concerning collective responsibility is not intended to inhibit or reduce private discussion by members in matters of decision-making and corporate responsibility. However, while you should be ready to offer constructive challenge in your capacity as a member, you must share collective responsibility for decisions taken by the board of your public body as a whole once such decisions have been made. The principle of collective responsibility applies at

all times where you are acting as a member of your public body or could reasonably be perceived to be acting as a such. This could include when you are making a press statement or providing a quote to the media.

68 If you fundamentally disagree with the decision taken by your board, then you have the option of recording your concerns in the minutes of the board meeting. If you remain discontented, you may wish to ask the Chair of your board for a meeting to discuss your concerns. Ultimately, though, if your concerns are not resolved to your satisfaction and you cannot accept and support the collective decision of your board, you may wish to consider whether it is appropriate to resign.

69 It should be noted that the requirement to respect the principle of collective decision-making and corporate responsibility does not prevent a board from making a subsequent formal decision to alter, delete or rescind a decision (although if the board does so, the principle will apply to the new or altered decision).

During a board meeting of their public body, a member voiced their disagreement with a decision taken by their board. This disagreement was registered in the minutes of the board meeting. However, following the board meeting, the member posted an angry comment on Twitter criticising their board and stating in very strong terms that they did not agree with its decision. The Panel found that while the member was entitled to have their disagreement recorded in the minutes of the board meeting, their conduct in posting the Tweet failed to adhere to the principle of collective responsibility. As such, they were found to have breached the Code.

An NHS Board was seeking to buy land for potential car parking. Having identified a suitable site, the Board decided to make an offer that was slightly above market value, due to concerns about a third-party's interest in the land in question. One board member did not consider that the purchase at the proposed offer price represented best value, and was the only member to vote against the proposal. While the member accepted the majority decision of the Board, she later made adverse comments about the purchase to a local community group. The Panel found that by making such critical comments, the member had breached the Code.

Gifts and Hospitality

70 The Standards Commission has produced a separate Advice Note for members on Gifts and Hospitality which can be found at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

71 In your role as a member, you should never ***ask*** for any gifts or hospitality. However, you will be ***offered*** gifts and hospitality: the Code makes it clear that the default position is you should refuse these, except in the very limited circumstances listed at paragraph 3.15 of the Code – see Notes 68 to 70 below for further information. It should be noted that acceptance can include accepting the *promise* of a gift or hospitality.

72 'Gifts' or 'hospitality' can come in many forms. Beyond the everyday things like bottles of wine or offers of lunch, they can include benefits such as tickets to sporting or other events; provision of services at a price below that generally charged to the public; incurring personal debts or obligations on your behalf, relief from indebtedness, loan concessions, or other financial inducements.

73 **Objective test:** you should always consider whether your acceptance of a gift or hospitality, in the limited circumstances permitted under paragraph 3.15 of the Code, would allow an informed

member of the public to think it might lead to your being influenced in your judgement on matters. You should also always consider whether you would have been given the gift or hospitality if you were not a board member. In doing so, you should think not just of your own perception, but the perception of others.

74 In terms of paragraph 3.16, you should also consider whether there could be a perception that a member of the public, with knowledge of the relevant facts, might reasonably consider that any gift or hospitality received by a person or body connected to you could or would influence your judgement in respect of any matter you are to consider as a member of your public body. If so, you will be required to consider whether you need to declare an interest, in terms of Section 5 of the Code.

75 You should note that it is a criminal offence either to make or receive a bribe. You should note that paragraph 3.21 specifically requires you to familiarise yourself with the terms of the Bribery Act 2010, which outlines in details what a bribe is**.** The Bribery Act 2010 sets out technical definitions for both, however in simple terms a bribe has the following elements:

- to give, promise or offer an advantage (financial or otherwise) to someone, OR
- to request, agree to receive or accept an advantage (financial or otherwise) from someone,

AND, with the intention (by either the giver or receiver) to:

1. Encourage the recipient to improperly perform a function or an activity, OR
2. Reward the recipient who has already improperly performed a function or an activity.

It is also an offence when it is known by the giver or receiver that acceptance of the advantage would itself constitute improper performance of a relevant function or activity. An example of this would be the offer or acceptance of hospitality that goes beyond the limits of what would reasonably be associated with your duties as a board member, under paragraph 3.15 of the Code. If you accept a gift or hospitality that would amount to a breach of the Code, this could be regarded as a bribe and a criminal offence under the Bribery Act. More information on the Bribery Act can be found at: https://www.gov.uk/government/publications/bribery-act-2010-guidance. Your Standards Officer may also be able to assist with further material.

76 An example of bribery might be where a windfarm operator promises to pay community benefit to an organisation in a councillor's ward if that councillor votes in favour of granting planning permission in circumstances where it would not otherwise be granted (i.e. if the proper statutory test of considering the provisions of the development plan and all material planning considerations was not applied or if community benefit was wrongly taken into account in determining a planning application).

77 You should, therefore, be aware that irrespective of any of the provisions in the Code, a gift which induces an individual to improperly undertake a statutory duty, such as a regulatory decision, is still likely to fall foul of the provisions of the Bribery Act 2010. This is regardless of whether the gift is given directly to the individual, or to someone else. Such an action could result in a criminal prosecution.

78 Paragraph 3.18 of the Code makes it clear that where an individual or organisation is awaiting a decision from, or seeking to do business with, the public body, you should not accept any form of gift or hospitality from them, no matter how small in nature or value. This is irrespective of whether you sit on a committee or working group with an influence on the outcome of such matters, as there could still be a perception that you might be in a position to influence colleagues making the decision one way or another. As you have a personal responsibility to comply with the Code, the onus is on you to ascertain whether the individual or organisation offering you gifts and / or hospitality is awaiting a decision from, or seeking to do business with, your public body.

Limited circumstances in which gifts and hospitality may be accepted

79 Provided paragraph 3.18 of the Code does not apply, paragraph 3.15 sets out the very limited circumstances in which you might accept a gift or hospitality from another person in your role as a member. These would be things such as a pen, or a notepad, or hospitality such as tea or coffee at a local event, or a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference. For example, as board member of a National Park Authority, you are asked by the Chair and Chief Executive to attend the opening of a new café within the national park. It would be reasonable for you to attend, and to accept an offer of a light lunch.

80 Similarly, where you are representing the public body in an official role, you will be expected to accept hospitality normally associated with that role, for example, a dinner to commemorate the anniversary of an event. If you are invited to such events, you should always check, in advance, with your public body that you can accept the invitation.

81 Paragraph 3.19 of the Code also recognises that there may be situations where, as a member, you may be expected to accept gifts on the public body's behalf. These could be, for example, from representatives of a similar body from another country. In those circumstances, if it would cause embarrassment or offence to refuse the gift, you can accept it. You should, however, pass the gift to the appropriate employee of your public body at the earliest opportunity. It may be that it will then be registered on any internal register of gifts given to the public body as an entity.

Perception and Influence

82 The provisions in the Code on gifts and hospitality are designed to avoid any perception that members may be using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest (for example, by serious organised crime gangs seeking to obtain contracts and licences to facilitate money laundering).

83 The requirement for members to advise their public body's Standards Officer of any *offers* of any significant gifts or hospitality from the same source on a repeated basis, that you have declined in terms of the Code, is important as it ensures the public body can take action if it appears the same individual or organisation is attempting to influence its board members and decision-making. It is also open to you, in the interests of transparency, to declare any gifts and hospitality you have declined.

A complaint alleged that a member accepted and subsequently failed to declare hospitality received from a law firm that was involved in a tender application to provide legal services to the member's public body. The hospitality involved a trip to watch the Scottish Cup Final at Hampden. It could not be said that the hospitality in question was minor, or that it was associated with the member's duties as a member of their board. In addition, it was found that it should have been evident to the member that there was a possibility that the law firm would submit a tender to provide services to the public body. Although the member was not directly involved in the tender decision, the Panel found that it was likely that a member of the public would reasonably consider that the hospitality could have led the board member to influence others involved in making the decision. By accepting the hospitality, the member was found to have breached the Code.

A complaint alleged that a councillor had failed to declare hospitality received during a site visit from a recipient of planning permission who was to make further applications for the same development. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or further hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, following a Council request. This was not regarded as inappropriate for the purposes of the Code.

Confidentiality

84 You have a statutory right, subject to certain statutory exemptions (including those covered by data protection legislation), to the public body's information under the Freedom of Information (Scotland) Act 2002. You should be aware that information you produce or receive could be subject to disclosure as this legislation provides individuals with the right to request recorded information held by your public body. You also have a right to request information where you can show a need to know that information in order to perform your duties as a member.

85 It is legitimate, however, for your public body to require you to treat certain documents and information, provided to you in your capacity as a member, as confidential. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing, reputation and integrity of a public body, it is essential that you respect the provisions at paragraphs 3.22 to 3.25 of the Code.

86 Information can become confidential in a number of ways, including in terms of the following examples:

- a public body employee, or a member of the public, has asked you to treat it as confidential;
- the public body has resolved to treat it as exempt information in terms of Freedom of Information legislation, or is likely to do so; and
- information which, under the data protection legislation or the General Data Protection Regulation contains personal data, the release of which would lead to a breach under those provisions.

87 Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear, from the nature of the information or from the circumstances in which it was provided to you, that it is confidential. This may include the following types of information.

- commercial information, such as information relating to a contract or a contractor's business;
- personal or sensitive information, such as information relating to an individual's employment or health;
- information which is confidential as a result of a statutory provision;
- information discussed in closed or private sections of meetings;
- legal advice obtained by the public body (either provided by employees or external legal advisers). This will be covered by legal privilege and should not be disclosed without the public body's permission;
- information received as a result of a relationship where there is an expectation of confidence, such as between a member and a service user; and
- information about any ongoing investigation being undertaken by the Ethical Standards Commissioner.

88 The Public Interest Disclosure Act 1998 (PIDA) allows individuals to disclose certain issues to *particular* external parties (known as 'prescribed' individuals or bodies) where there is good reason to believe that internal disclosure will not be taken seriously or will cause the individual

making the disclosure to be penalised in some way. This is known as 'whistleblowing'. You should familiarise yourself with the types of matters which should be reported and the reporting procedure that should be followed where any wrongdoing is suspected, as outlined in the Act. A disclosure of confidential information to an external party, such as a media outlet, which is not included in the list of prescribed individuals or bodies is likely to be a breach of the Code.

89 As a member, you are a data user and must comply with data protection legislation and your public body's data protection policies when handling information. Public body information provided to you must only be used by you for the purpose for which it was provided.

90 You should be aware that a breach of confidentiality could result in criminal proceedings, civil liability for damages and / or a fine being imposed by the Information Commissioner, in addition to any reputational damage being incurred by you and / or the public body.

91 Confidential information must not be disclosed or in any way used for personal advantage or in such a way as to discredit the public body. This applies even in circumstances where you hold the personal view that such information should be publicly available.

92 You must not provide the media with 'off the record' briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the public body and its committees. They can also damage the relationship of trust and respect between members and employees, and between fellow members.

93 Sometimes, confidentiality is a matter of timing, in that information may be released into the public domain at a later stage (either in the short or long term). However, you must respect the requirement for confidentiality even if you do not agree with it or consider that the information should be released at an earlier stage.

94 You should seek advice if you are in any doubt as to whether any documents, information or advice are confidential, particularly if you are intending to disclose these to any outside body or individual.

95 As a member, you are in a position of trust and service users may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish, at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.

96 If you are considering disclosing any information which could reasonably be regarded as being confidential, you should always obtain confirmation (preferably in writing) that you have the authority to do so. However, you must be aware that the person who holds the information may not necessarily have the authority to permit any such disclosure. For example, another member may have passed on information to you. The fact that this information has been passed to you by another member does not mean that the information in question is not confidential, or that the member in question has the authority to permit you to disclose it further.

97 You should be aware of the provisions of data protection legislation. If you hold personal information (such as personal details of a service user or other information such as medical conditions), you may require to be registered as a data controller under data protection legislation. You must abide by the following rules when holding and processing personal data:

- you must only use the information for the purposes for which it was given. In particular, you must not use information you have acquired as a member for political purposes or for personal advantage;

- you must not share such information with anyone without the consent of the person giving the information, or unless required to do so by law. You should note, however, that you do not need a service user's consent to share information with your public body's employees for the purpose of assisting with the resolution of an enquiry or complaint, provided you do not use the constituent's personal data in a way that goes beyond their reasonable expectations in contacting you (unless you are required to do so by law); and
- you should not keep the information any longer than you need to.

A complaint alleged that a member disclosed confidential information relating to the health of a public body employee to a third party. It was found that the member had breached the Code by disclosing to a third-party information about the employee which was private, personal and sensitive and that was, by its very nature, confidential.

A complaint alleged that a member disclosed, in two Facebook posts, sensitive information about his public body's response to the Covid-19 pandemic. The information in question had been provided by employees at private briefings. The Panel, having heard from a number of witnesses, including other members, was satisfied that it was evident the information was intended to remain confidential until the public body had prepared its public communications. This was especially important given the nature of the communications, which could have caused undue fear or alarm. The Panel concluded, therefore, that the member had breached the confidentiality provisions of the Code.

A member disclosed to the press the identity of an employee who had made a claim for constructive dismissal against their public body. The member could only have become aware of the information he disclosed by virtue of being a board member, and would reasonably have been aware that the information was sensitive, confidential and not for public disclosure. The Panel concluded that the member had breached the Code.

A board meeting was convened to agree upon an action plan for the sale of part of a public body's property assets. During that meeting a 'ballpark' figure that the public body might accept for one of its properties was discussed. Subsequent to that board meeting, one of the members present at the board meeting attended a fishing trip organised by a close personal friend who was a property developer. The member disclosed to their friend that their public body was looking to dispose of part of its property assets, and additionally disclosed the 'ballpark' figure that had been discussed during the board meeting. The Panel found that by disclosing this information to their friend, the member had breached the confidentiality requirements of the Code.

A report from a health and social care partnership's Chief Officer, presenting a procurement business case for social care services, was being considered by its board. The report contained information in respect of the tendering exercise and subsequent award of a contract. The information about the award of the contract was disclosed by a board member to a third party after the meeting. In determining whether the member had breached the Code, the Panel noted that while the part of the report containing the information had not been explicitly marked as confidential, it had been discussed in a private part of the meeting. The Panel concluded, as such, that the board member, would have known, or should reasonably have been aware, that the information was confidential and should not have been disclosed. The member, therefore, was found to have breached the Code.

Use of Public Body Resources

98 As a general rule, facilities paid for by the public purse, and provided for use in public body business, should only be used for public body business, unless otherwise expressly permitted by the public body itself. It is recognised, however, that some public bodies may allow members occasional personal use of public body-provided equipment, such as laptops, mobile telephones

and tablets. It is likely that your public body will have policies and protocols on related matters, including the use of IT and other equipment for personal and official purposes. The Code obliges you to adhere to such policies and protocols and, therefore, you should familiarise yourself with their contents.

99 The Code now explicitly forbids the 'imprudent' (i.e. without thinking about the implications or consequences) use of public body facilities. Given the importance of achieving best value, it is important that members are not seen to be using facilities irresponsibly or wastefully. An example of this would be printing documents unnecessarily.

100 Facilities must never be used for political activities.

101 Any expenses claims should be appropriate and necessary to perform your duties as a member of the public body. You should ensure that you are familiar with, and abide by, any policy your public body has in respect of expenses.

102 The provisions at paragraphs 3.26 and 3.27 of the Code apply at all times and not just when you are acting as a member of the public body. Other factors to consider include:

- whether you are either explicitly or impliedly allowing others to use public body facilities improperly;
- how the resource you are using is funded (for example, who pays for any transport or administrative support); and
- whether the resource is being used solely for you to carry out official public body business or for an activity which has expressly been authorised by your public body, or whether you are using it for something else as well.

A complaint alleged that a member used his public body's email account and computer to submit a tender application to another public body on behalf of his private consultancy business. It was found that the member had breached the provisions in the Code prohibiting the improper use of public body facilities.

A complaint alleged that a member asked employees in her public body's print room to print a substantial number of posters and flyers advertising a function being held to raise money for an external charity. While it was noted that the print room employees could have declined the request, the fact that it was made by a board member had made it difficult for them to do so. The Panel accepted that while the member had gained no personal benefit, she had nevertheless breached the Code.

A complaint alleged that a councillor had used Council facilities to send an email in relation to an application for planning permission submitted by his own company. He was found to have breached the provision in the Code concerning the improper use of Council facilities.

Dealing with my Public Body and Preferential Treatment

103 As a member, you must avoid conduct which seeks to further your own personal interests, or the interests of others you are connected to. You must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment is being sought. You should note that *seeking* preferential treatment can be a breach of the Code, regardless of whether any action is taken as a result. Factors to consider include whether you are asking employees to:

- act in a way that suggests you are seeking preferential treatment for yourself or others;
- undertake work or do a task that is outwith their normal duties (unless prior approval has been given by the employee's line manager). As a member, you are in a position of influence and, as such, it may be difficult for an employee to refuse a request, even if they have concerns that it may not be appropriate for them to agree.

104 Paragraphs 3.28 to 3.30 of the Code are designed to ensure there is transparency in your dealings with employees of the public body. There is an onus on you to advise employees of any connection you may have to a matter when seeking advice, assistance or information whether within or outwith a formal meeting of the public body or its committees. This applies equally in circumstances where employees are seeking advice, assistance or information from you.

105 You should not assume that employees will be aware, or will remember, any personal interest you have in a matter, when you are seeking their advice, assistance or information. It is important that you identify any connection as it may be that it is inappropriate for the employee to provide you with advice, assistance or information on the matter, if your connection is one that could amount to declarable interest. For more information on what is meant by 'connection' and a 'declarable interest' in this paragraph, see the further guidance provided under Section 5 (Declaration of Interests).

A complaint alleged that a member of an NHS board sought preferential treatment when contacting employees about a close relative's place on a waiting list for hospital treatment. In contacting the employee, the member had sought information which would not normally be available to members of the public. The member had also sought to exert influence in asking that the relative's treatment be expedited. It was found that the member's actions amounted to attempts to seek preferential treatment in breach of the Code.

A member asked an employee for their login details so they could log into a case management system in order to check the progress of a complaint made by a close friend. The employee in question refused to share the login details. However, the member was found to have breached the preferential treatment provision of the Code by virtue of their actions in seeking to gain entry to a case management system that they would not otherwise be allowed to access. While the member would have been entitled to ask for an update on the status of the complaint, the case management system contained personal data and confidential information to which the member was not entitled.

A firm, in which a councillor was a partner, submitted a planning application for a wind turbine. The Panel heard that the councillor sent two emails from his council email address, signed off by him as a councillor, to members of the planning committee that was due to consider the application. In his emails, the councillor outlined a number of points in favour of the planning application. The Panel determined that members of the public would reasonably conclude that, by sending the emails from his council email address and signing them off as a councillor, he was using his position as a councillor to seek preferential treatment. The councillor was found to have breached the Code.

Appointments to Outside Organisations

106 Public bodies may, on occasion, appoint or nominate their board members to outside bodies. If you are appointed or nominated to an outside body, you are still bound by the Code, but you will also have responsibilities as a member of the outside body. These responsibilities may potentially include personal liabilities and could also give rise to conflicts of interest. Such conflicts may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Public bodies will therefore need to consider this issue carefully

when appointing board members to outside bodies. You need to consider carefully whether you can accept such appointments in each case.

107 You should be aware that you may need to register, in terms of Section 4 of the Code, your membership of another body. That membership could also amount to an interest that would require to be declared in terms of Section 5. More guidance in this regard can be found in the notes below on Sections 4 and 5.

108 If you are appointed or nominated by your public body to an outside body, as a director or a trustee, you will assume legal responsibilities as an individual. These legal responsibilities, as a director of a company, arise by virtue of the Companies Acts, and / or as a charity director or trustee by virtue of the Charities and Trustee Investment (Scotland) Act 2005 (if the outside body is a registered charity). The Office of the Scottish Charity Regulator has up to date guidance on the latter scenario at: https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/. If appointed or nominated to an outside body, you should ensure that you are clear about the role and the responsibilities you will have to it as an individual. You will also have to act in the outside body's best interests and, as a member, will be bound by the provisions in any code of conduct it has adopted, when acting as such.

109 If you have any doubts about your responsibilities or concerns about the impact of an appointment to an outside body on your ability to adhere to your public body's Code, you should seek advice before accepting such an appointment or before any meeting at which appointments are to be made. Advice can be sought from your public body's employees or, if appropriate, from employees of the outside body.

SECTION 4: REGISTRATION OF INTERESTS

110 This section of the Code is intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of you or your family, friends or personal associates.

111 The Register is intended to be a public record of the interests that might, by their nature, be likely to conflict with your role as a member.

112 The fact that you have subsequently declared a registrable interest at a meeting would not necessarily be a defence to a complaint that you breached Section 4 of the Code by failing to register it. Accordingly, you should be as transparent and careful as possible when considering which interests you are required to register.

113 The Register should cover your whole term of office and, if any terms of office are consecutive, then the entire period that you have been a member of the public body. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office. However, you should amend the Register to reflect the change of circumstances, e.g. "*management consultant from xx/xx/2019 until xx/xx/2020*".

114 You should be aware that the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment (No. 2) Regulations 2021 (the 2021 Regulations) state that public body employees must retain the record for a period of five years after the date a member ceases to be in office.

115 You are required by the 2021 Regulations to update your entries in the Register of Interests within one month of your circumstances changing. While your public body may issue a reminder annually or even on a more frequent basis, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or of your circumstances changing. You should also ensure that you review all your entries in the Register at least once a year, even if you think nothing has changed.

116 For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. You should ensure you have provided enough information for a member of the public to be able to understand the nature of the entry in your register without having to undertake any research. A failure to include sufficient information for an entry to be understandable could amount to a breach of the Code. For example, if you are registering employment, you should include the full name of your employer, not just an abbreviation.

Category One: Remuneration

117 Paragraph 4.4 of the Code states that you must register any work for which you receive, or expect to receive, payment or reward. The level of remuneration, or how much you receive, does not matter in terms of whether an entry needs to be made under this category. This means paid work, no matter how casual or trivial in nature, requires to be registered. You are only required to register work for which you have received remuneration or are due to receive payment or reward (if you have undertaken the work and are awaiting payment).

118 You do not need to state the exact job title of any remunerated post you hold as an employee, but you should provide a description that allows a member of the public to understand the type of role. For example, you could state:

"Since 2019, receive an ongoing salary as a part-time customer service agent for X+Y Limited, being an IT consultancy firm"; or "receive hourly rate payment for one day per week self-employed work for GreenFingers, being the trading name of my landscape gardening business which has operated since 2016"; or "received two fixed payments for writing two articles, published in May and September 2021 for Z, a trade magazine".

119 'Undertaking' is defined in Annex B of the Code as (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit. 'Body corporate' includes entities such as companies, limited liability partnerships and, potentially, Scottish Charitable Incorporated Organisations. 'Unincorporated associations' includes clubs, societies, and mutual associations. The key as to whether an interest is registrable under this category is whether you carry out work for the undertaking for which you receive some form of 'remuneration,' i.e. wage, salary, share of profits, fee, expenses or other monetary benefit or benefit in kind.

120 Paragraph 4.5 of the Code confirms you do not have to register any work that you carry out on behalf of the public body in your capacity as member. This includes any additional remuneration you receive to reflect any additional responsibilities you undertake for your public body, such as chairing a committee, or being the lead voting member on a health and social care integration joint board (IJB). However, any remuneration received as an employee of the body would need to be registered.

121 Paragraph 4.10 of the Code indicates that you should register 'any other work' besides a trade, profession or vocation. Such work might include freelance work that you undertake for a particular sector, or a paid consultancy, or educational or training courses you provide in return for payment.

Category Two: Other Roles

122 If you have been appointed as a member of an outside body (including where you have been nominated or appointed by your public body), you should ensure that the membership is registered in your Register of Interests either under Category One: Remuneration (if the position is remunerated) or under Category Eight: Non-Financial Interests (if the position is not remunerated).

123 If you hold an unremunerated directorship in an undertaking, and you are remunerated by a parent or subsidiary of that undertaking, you should register the unremunerated directorship under 'Other Roles.' For the sake of transparency, you should register the name and registration number of both undertakings, and the relationship between the two. Your remuneration in the parent or subsidiary undertaking should also be registered under Category One: Remuneration.

Category Three: Contracts

124 You must register an interest under this category where:

a. you as an individual; or

b. an undertaking that you have a substantial interest in either as a partner, director or shareholder (where the value of shares you hold is as described under Category Four: Shares and Securities)

has an upcoming or ongoing contract with the public body for the supply of goods or services, or for the execution of works. You do not need to state the value of the contract.

This category may overlap with Category One: Remuneration. If so, you should add an entry under both sections, for transparency. An example of the detail required would be as follows: *Director and shareholder of cleaning company which has a contract with MidScotland College to valet the college's vehicle fleet. Contract start date: 1 February 2010.*

Category Four: Election Expenses

125 'Donations' towards election expenses covers all monetary donations, including any received via crowdfunding, if individual contributions (including any from the same source) amount to more than £50.

Category Five: Houses, Land and Buildings

126 You should note that you are only required to register an interest in a house, land or building if the objective test is met. If you are required to register an interest under category five (in terms of paragraph 4.18 of the Code), you will need to provide your public body's Standards Officer with the full address of the house, land or buildings you own or have any other right or interest in. However, there is no requirement for any full address you provide to be disclosed on your public body's website or otherwise made publicly available. This means it is sufficient for the purposes of your publicly available register to simply identify where the property is located. For example, if you were a member of a national park authority, it would be sufficient to state: "*I own a residential property located within X National Park*".

127 Examples of other rights you may have in houses, land and buildings may include a right as a tenant, an agricultural tenant, as a trustee or beneficiary of a trust, or through a liferent. While it would not include testamentary or succession interests, it could include a matrimonial home or other permanent residence (even if you own another property), if the objective test is met.

Category Six: Interest in Shares and Securities

128 'Shares and securities' is intended to cover all types of financial investment models, including stocks, bonds, options, investment trusts, and other forms of part-ownership, including equity and debt ownership.

129 You have a registrable interest, in terms of paragraph 4.20(a) of the Code if, at any time, you own, or have an interest in more than 1% of the issued share capital of a specific company or body, provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body.

130 It should be noted that while the 2021 version of the Code does not contain a qualification stating that you are only required to register any interest in shares and securities under paragraph 4.20 if they are significant to, relevant to or bear upon the work or operation of your public body, the Scottish Government has confirmed that this is the case. A copy of the Scottish Government's letter to Devolved Public Bodies can be found at: https://www.standardscommissionscotland.org.uk/codes-of-conduct/members-model-code-of-conduct

131 You have a registrable interest, in terms of paragraph 4.20(b) of the Code if, at the relevant date, the market value of any shares and securities (in any one specific company or body) you own or

have an interest in is greater than £25,000, provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body. The 'relevant date' is defined in Annex B of the Code as the date you were appointed as a member, and on 5 April each year following your appointment.

132 For example, you are appointed as a board member of MidScotland College on 7 June 2021. For the purposes of paragraph 4.20(b) of the Code, 7 June 2021 is the first 'relevant date' on which you must consider the market value of your shares and securities. If, on 7 June 2021, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000, you must register that shareholding if it is significant to, relevant to or could bear upon the work or operation of the college. Thereafter, the next 'relevant date' on which you must consider the market value of your shares and securities is 5 April 2022, and then 5 April each following year.

133 An interest under shares and securities will also include investments made under self-invested pension plans provided, at the relevant date, they are either more than 1% of the issued share capital of a specific company or body or are greater than £25,000. This is provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body. However, you do not need to declare an interest in your public body's pension fund (if applicable).

134 In relation to paragraph 4.20 of the Code you will have a registrable interest as a trustee, (either as an individual or jointly with other trustees), where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust's value or the value of that benefit is greater than £25,000.

Category Seven: Gifts and Hospitality

135 The default position is you should refuse gifts and hospitality, except in very limited circumstances (see paragraphs 3.13 to 3.21 of the Code). However, if you have accepted and registered gifts and hospitality under the previous versions of the Code, these should remain on your Register of Interests for the term of office.

Category Eight: Non-Financial Interests

136 When considering whether you have a registrable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think could influence your actions, speeches, decision-making or voting in the public body. An example of this might be membership of a society. You should consider whether such membership might lead members of the public to reasonably conclude that it could influence your actions, speeches, decision-making or voting, in terms of paragraph 4.22 of the Code. If so, you should register the interest.

137 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.

138 In order to ensure you are being as transparent as possible, you should consider erring on the side of caution. You are reminded that any non-financial interest registered under Category Eight of the Code, is a connection in terms of Section 5 of the Code. That means you will have to

consider whether it also needs to be declared, if the objective test is met, in terms of paragraph 5.5 of the Code.

139 You should bear in mind that the examples of possible non-financial interests stated in paragraph 4.22 of the Code are illustrative only and, therefore, are not an exhaustive list of potential non-financial interests.

Category Nine: Close Family Members

140 Paragraph 4.23 of the Code is intended to help ensure that your public body complies with accounting standards that require a public body's accounts to disclose the possibility that its financial position may have been affected by any related party transactions. Such transactions include contracts for the supply of goods and services, and the execution of works. While you are also required to declare the financial interests of others under paragraph 5.5 of the Code, if the objective test is met, there is a risk that your public body's finance team may not realise that you have done so when preparing the accounts. You are, therefore, required to register the interest of any close family member who has transactions with your public body or is likely to have transactions or do business with it. This is to ensure there is transparency in respect of any potential influence that anyone close to you, in your capacity as a member of your public body, may have over a transaction your public body has been involved in that, in turn, had an impact on its overall financial position.

141 The Code does not define what is meant by 'close family member' as this will depend on your individual circumstances, but it is likely that a spouse, cohabitee, partner, parent and child would be considered to fall within this category. You do not need to disclose the family member's name or any other personal data in the register; it is sufficient for you to identify the relationship and nature of the transaction. For example, *"my son is a partner in a law firm that has a contract to provide legal services to the health board".*

142 The fact that a close family member may be employed by your public body would not be considered a transaction or business for the purposes of Category Nine. Therefore, while such a connection could amount to a declarable interest under Section 5 of the Code, it would not require to be registered.

A board member of a Regional Transport Partnership (RTP) failed to register his membership of a prominent cycling pressure group. The Panel found that a member of the public with knowledge of the membership of the pressure group might reasonably think that the member's actions and decision-making at the RTP would be influenced by that interest. As such, the Panel determined it was an interest that should have been registered as a non-financial interest under Category Eight.

A member failed to register that they received a one-off payment for writing an article in a trade magazine. The article was published and payment was received after the member's appointment to the board of her public body. The Panel accepted that the failure to register was inadvertent, but nevertheless found that a breach of the Code had occurred.

A member failed to ensure his one-third shareholding in a company was registered correctly and timeously. While the Panel accepted that there was no intention to mislead or deceive, and that neither the member nor the company had gained any benefit from the oversight, he was nevertheless found to have breached the Code.

A complaint alleged that a councillor failed to register a financial interest in respect of her remunerated employment as an office manager with a member of the Scottish Parliament. The Panel noted that the councillor had publicly announced, via a posting on a social media site, that she would be working for the MSP. While it was accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment, the councillor was nevertheless found to have breached the Code.

SECTION 5: DECLARATION OF INTERESTS

143 The requirement for members 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 member's role and denies the public the opportunity to consider whether a member's interests may or may not influence their discussion and decision-making.

144 Should you be in any doubt about the legal implications of your participation in a public body discussion or decision, you should seek advice from your Standards Officer, Chair or Chief Executive before taking part.

Stage 1: Connection

Paragraph 5.1

145 In your work as a member, you will have connections with a great number of people and organisations. In the same way, your financial affairs, employment and property holdings - or those of individuals close to you or bodies you are involved with - will sometimes mean that you have a connection to a matter that your public body is considering, in some way.

146 Such connections will not always amount to an interest that you are required to declare. However, you should always consider whether this is a possibility, in the context of your role as a member and in respect of any specific matter you are being asked to consider. You should always err on the side of caution, and if you are in any doubt you should consult your public body's Standards Officer.

147 It should be noted that a subject that may apply to a large proportion of the general public would not generally be considered to give rise to a connection for the purposes of the Code. For example, being a taxpayer, or being in receipt of a state pension or universal credit.

Paragraph 5.2

148 The Code cannot provide for every type of relationship that could result in a connection, as this will depend on the facts and circumstances; for example, how close you are to the individual in question and how often you see them. It should be noted, however, that certain relationships such as spouse, partner, cohabitee, close friend, parent or child are likely to result in a connection.

149 It is impossible to list every type of connection you could possibly have with a matter involving or to be considered by your public body. However, some common examples would include:

- your public body considering some form of financial assistance or decision that could have a direct effect on an organisation you, your partner, or someone close to you works for;
- your membership of another body or organisation that is seeking to agree a contract with your public body;
- some form of personal connection with a person making an application, or a complaint, to your public body.

150 The Code does not restrict the ability of a public body to benefit from the knowledge and experience of its members. Having knowledge or experience of a matter that is to be considered by your public body is not necessarily a connection. For example, if your public body is considering tenders received for the provision of a new IT system, your knowledge and experience as an IT specialist would not be considered a connection.

151 It is also recognised that some members are appointed to public bodies in a representative capacity. For example, carer or third sector representatives on Health and Social Care Integration Joint Boards, or student representatives on a college board. Being appointed to a board in a representational capacity or for a particular reason is not in itself a connection. For example, being a carer representative on a health and social care integration joint board (IJB) would not be considered a connection in respect of all matters before the IJB that could affect carers. Such a representative may have a connection (that in turn could amount to a declarable interest if the objective test is met), if the specific matter being considered or discussed by the IJB affected them directly and individually.

Paragraph 5.3

152 Paragraph 5.3 of the Code makes it clear that anything you have registered as an interest in terms of Section 4 of the Code (Registration of Interests) would be considered a connection for the purposes of Section 5.

Paragraph 5.4

153 You should also be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles. Membership of a body you have been appointed or nominated to by the public body, as its representative, would not normally be a connection.

154 However, this does not apply where the matter being considered by your public body is quasi-judicial or regulatory in nature. An example of where you would have a connection as a member of a different body would be where the other body has applied for a licence or consent from your public body, or is an objector to such an application. This is regardless of whether or not you actively participated in the decision by the other body to make the application or objection.

155 In terms of being a member of an outside body, the Code also states you may have a connection where you have a personal conflict, either by reason of:

a. your actions;
b. your connections (other than your membership of the outside body); or
c. your legal obligations.

156 An example of where you may have a personal conflict, and therefore a declarable interest, **by reason of your actions** could be where, just before being appointed to your board, you made critical comments in the press about another organisation's wastefulness in terms of expenditure. If, following your appointment, the other organisation makes a funding application to your public body it is likely that your actions may have resulted in you having a personal conflict.

157 An example of where you may have personal conflict **by way of a connection** (other than solely from your membership of the outside body) would be where your partner works for the outside body, and the body is seeking funding from the public body for its operations that could have an impact on your partner's job.

158 Examples of where you may have a personal conflict **as a result of legal obligations** would include where you are either a director of a company or a charity trustee. Both the Companies Acts and the Charities and Trustee Investment (Scotland) Act 2005 impose obligations on you to act in the best interests of the company or charity, and those obligations may conflict with your role as a member. If you are in doubt as to what your legal obligations are to the outside body, you should seek advice from its legal advisers.

Stage 2: Interest

Paragraph 5.5

159 Having decided that you have a connection to a particular matter, you should apply the objective test to that connection to decide whether it amounts to an interest that requires to be declared.

160 The **objective test** outlined in paragraph 5.5 of the Code assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the connection as so significant that it would be likely to prejudice your discussion or decision-making in your role as a member. If the answer is yes, the connection is an interest which you should declare.

161 At all times when applying the objective test, you should be aware that it is just that – objective. The test is not what you yourself know about your own motivations and whether the connection would unduly influence you: it is what others would reasonably think, if they were in possession of the relevant facts.

162 There may be instances where, having applied the objective test, you consider the connection is so remote and insignificant that you do not think it amounts to an interest. Examples might be where a charity you occasionally donate to is seeking funding from your public body, or when a neighbour you have little social contact with works for a company that has a contract to provide cleaning services for the building where your public body's offices are located.

A complaint alleged that a member of a public body sat on the Appointment Panel for the recruitment of a new Chief Executive, despite being a close friend of one of the candidates. Having reviewed all evidence, including that given by witnesses at the Hearing, the Panel determined that there was no breach of the Code. This was because there was no evidence that the member's association with, or connection to, the candidate in question went beyond a limited professional relationship or that they had engaged in any contact outside a work setting. The Panel concluded that a member of the public, with knowledge of these relevant facts, would not reasonably regard the member's connection as being so significant that it would be considered as being likely to influence their discussion or decision-making. As such, the connection did not amount to an interest that would require to be declared for the purposes of Section 5 of the Code.

A member of a health board took part in a discussion about snagging issues in respect of the construction of a new hospital, despite having previously been engaged in a claim for legal damages against a subsidiary of the construction company, in respect of a private property. Having applied the objective test, the Panel determined that while the member had a connection to the company, this did not amount to a declarable interest. This was because the Panel did not consider that a member of the public, with knowledge of the relevant facts (being the fact that the legal dispute had concluded and was against a subsidiary company), would reasonably regard the member's connection to the matter as being sufficiently significant as to be likely to influence her discussion on the snagging issues in her role as a member.

163 Section 3 of the Code sets out the very limited circumstances in which you would accept gifts and hospitality. As you must apply an objective test when deciding whether or not to accept any gift or hospitality being offered, it would be unusual for such a gift or hospitality to be so significant that it would constitute an interest.

164 When making a declaration of interest you only need provide enough information for those at

the meeting to understand why you are making a declaration. For example, it may be sufficient to say: "*I declare an interest as my partner is a member of the organisation making the application*". You might not necessarily need to provide details about how long your partner has been a member and in what capacity.

165 You must disclose or declare your personal interests both in formal and informal dealings with public body employees and other members, not just in formal board or committee meetings. This is an important consideration, especially when you are seeking advice or assistance from public body employees or other sources. You should not assume that employees and others will know or will remember what your interests are.

166 You should be mindful of the need to protect the confidentiality of another person's business or financial interests when making a declaration of interest. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

A complaint alleged that a member took part in a discussion at a NHS Board meeting on review of child health and medical paediatric inpatient services at a local hospital, where a freedom of information (FoI) request and press coverage were considered. This was despite being aware that an FoI request had been submitted to the Health Board on behalf of his employer, who was a Member of the Scottish Parliament. The employer, who had an interest in retaining certain services under consideration, had previously raised the issue in the Scottish Parliament and had made public statements in the press. The Panel found that the member had failed to apply the objective test as, had he done so, he would have realised that in taking part in the discussion, where issues and concerns that were similar to those raised by his employer could be raised, a member of the public with knowledge of the relevant facts might reasonably conclude that he could be influenced by his employer. The Panel concluded that the nature of an employee / employer relationship could not reasonably been considered to be remote or insignificant. The member was found to have breached the Code.

A complaint alleged that a member had not declared an interest at a board meeting where reports were presented about the public body's contribution towards the funding of certain voluntary organisations, which included her employer. This was despite her employer having been mentioned specifically in reports considered at the meeting in question. It was found that the member should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meeting. She was found to have breached the Code.

A college board was considering a plan for the restructuring of the college's academic faculties. Though the exact details of the restructuring were not yet finalised, it was likely that the plan would result in a number of job losses. A board member, who had a close friend employed as a lecturer in one of the faculties potentially under threat by the restructuring, failed to declare that friendship as an interest. By failing to declare the interest, the Panel found that the member had breached the Code. Although it was not certain that the restructuring would have resulted in the loss of his friend's job, a member of the public, with knowledge of the relevant facts, could reasonably have regarded the member's friendship as being likely to prejudice the discussion and decision-making related to the restructuring.

Stage 3: Participation

Paragraph 5.6

167 If you decide that you should declare an interest, you should do so at the earliest opportunity. If you only realise a declaration is necessary when the discussion in respect of a matter is underway,

you may wish to consider whether you should provide a brief explanation as to why you had not realised you had an interest at the outset of the meeting.

168 Thereafter, when the item is being considered, you should leave the room (unless those still taking part in the consideration of the matter retire to a separate room). It is not sufficient for you to retire to the back of the room or the public gallery. If the meeting is being held online, you should retire to a separate breakout room or leave and re-join after the discussion on the matter has concluded. It is not sufficient for you to turn off your camera and / or microphone for the duration of the matter.

169 You should not give anyone reason to doubt that you are no longer in any position to influence the outcome of deliberations on the relevant item either directly or indirectly. This means that you should refrain from contacting your member colleagues remotely (for example by email or text) while they are considering the item.

A member who was involved in a decision regarding whether to retain paediatric A&E services at a specific hospital, made a declaration of interest stating that their partner was a nurse in the A&E department in question. The member's declaration was noted and they were asked to leave the meeting, which was being held online. However, instead of fully leaving the online meeting, the member simply switched off their camera, meaning that they were still able to see and hear the proceedings. The member then sent WhatsApp messages to their colleagues on the board, outlining further arguments as to why the A&E services should be retained. The Panel found that the member had breached the Code.

Part of the agenda for a public body's board meeting dealt with consideration of a proposed memorandum of understanding between the public body and a university. At the outset of the board meeting, a member, who was also Chancellor of the university in question, declared an interest. When the agenda item arose, the member excused themselves from the board meeting and left the room, returning only when discussion of the memorandum had completed. The member's declaration, together with the fact they had left the meeting, was documented in the board minutes. The member had, therefore, acted in accordance with the Code.

170 Where the only interest is in relation to an item included in an agenda which is before the public body or one of its committees, for noting or formal approval, no declaration is required unless it is then decided that the item needs to be discussed or debated as a substantive issue.

171 You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code. The Standards Commission has produced an Advice Note for Members on How to Declare Interests, which can be found at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

172 You may wish to check that any declaration of interest you have made at a formal meeting is recorded in the minute with the relevant agenda item identified. For example: *"Ms A declared an interest in relation to the funding application at Agenda Item 16 as she is a director of the company making the application. Ms A therefore left the room and took no part in the discussion or decision-making on that item".*

Paragraph 5.7

173 You may wish to think about whether you should indicate why you consider any connection you

have to a matter does not amount to a declarable interest. This is particularly if you know that members of the public are aware of your connection, but where you suspect they may not have knowledge of all the relevant facts.

174 In those circumstances you might want to make a transparency statement. For example, you could state: "*I have a connection to this item by reason of… However, having applied the objective test I do not consider that I have an interest to declare. This is because…".* If you think it would be helpful, you can ask the employees who are clerking the meeting to note your transparency statement in the minutes. Similarly, you may wish, for the sake of transparency, to state that you were offered, but turned down, a gift or hospitality.

175 You should note, however, that transparency statements are not intended to be an alternative to declaring an interest when such a declaration would be required. You must always apply the objective test to any connection and if, having applied the test, you determine that connection amounts to an interest, you must declare that interest and withdraw as explained above.

Paragraph 5.8

176 The Standards Commission can consider requests for dispensations in certain circumstances, either from a member as an individual or to a class or description of members who are affected by a particular category of interest.

177 Any application for a dispensation should be submitted either by email to enquiries@standardscommission.org.uk or by mail to the Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP. Any application should detail all the relevant information, including the reasons why a dispensation is sought. Factors to consider before making the application include whether:

- it would be in accordance with both the spirit and intent of the Code to grant the dispensation; and
- you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

178 In considering any dispensation request, the Standards Commission will consider information provided in respect of the two points above, and also whether any connection outlined would be likely to be sufficiently significant as to amount to a declarable interest when the objective test is applied.

179 It should be remembered that a subject or category that may apply to a large proportion of the general public would not generally be considered to give rise to a connection for the purposes of the Code.

180 The Standards Commission will respond as soon as practicable after receipt of all information, usually within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members work on a part-time basis, so this may not always be possible. As such, all applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.

181 If a dispensation is granted, you should state this at the meeting, and ask for it to be recorded in the minutes.

Paragraph 5.9

182 There is no definition for what may constitute a 'frequent' declaration of interest in terms of paragraph 5.9 of the Code, as this will depend entirely on the specific facts and circumstances of each case and how often the matter in which you have an interest is discussed by the public body. For example, declaring the same interest at four meetings of a public body that only meets on a quarterly basis might be considered 'frequent'. However, this may not necessarily be the case if the public body met twice a month and discussed the same matter in which you have an interest at a few consecutive meetings.

SECTION 6: LOBBYING AND ACCESS TO BOARD MEMBERS

183 As a member, you will be approached by those wishing to make their views known. This is perfectly legitimate and should be encouraged, as it is important that individuals are able to engage with public bodies. Section 6 of the Code outlines what you can and cannot do when you are approached and lobbied by individuals or groups intent on making their views known.

184 Paragraph 6.1 of the Code sets out some of the ways in which you, as a member, may be lobbied. For example, you may be lobbied by a service user on a personal issue, such as the service your public body is providing. You may be approached by someone seeking financial or other benefit from the public body, either by way of a contract for goods or services, or some form of licence or consent.

185 It is easy for the lines between these different types of approach to become blurred, particularly when you are dealing with casework or regulatory matters, such as planning or licensing. It is important to recognise, however, that the integrity and reputation of the public body's decision-making process depends on openness, transparency and following proper process. There is a risk that private meetings with lobbyists, particularly those that fall outwith the public body's procedures, and where employees are not involved, will undermine or could reasonably be perceived as undermining this.

186 Lobbyists can expect to deal with public body employees at certain stages of an application process. If you are seen as facilitating an approach outwith the normal process, there may be a perception that you have allowed the lobbyist special access to the decision-maker and that you are bypassing employees. As such, if you are approached by anyone about a pending decision of any kind, you should advise the employees who are dealing with the matter and give them all relevant information.

187 Paragraph 6.5 of the Code notes that if you have concerns about the approach or methods used by any person or organisation in their contacts with you, you can seek the guidance of the Chair, Chief Executive or Standards Officer. You can also seek advice from a colleague or external advice, as you deem appropriate.

188 Discussing the information you have received from lobbyists with employees will give you an opportunity to establish if it is something that they were not aware of and / or if it is relevant to any decision you will be making. It may be that lobbyists will present information in a way that is favourable to their case, but which does not give the complete picture. Employees can give you professional advice on what may or may not be a relevant consideration in respect of any decision you will be making.

189 Even if you do not make casework or regulatory types of decisions, there are still likely to be issues under the Code that you will need to consider. In particular, it would be a breach of the Code for you to lobby employees who are making decisions on casework or contracts, either on your behalf, or on behalf of others.

Service User Enquiries

190 As a member of a public body, you have a representative role and, as such, may be approached by service users. Allowing service users to advise you of their views, including any concerns, helps ensure the public body is perceived as being open, accessible and responsive to the needs of the public. When you respond, you should be mindful of the need to treat everyone with respect, and to otherwise promote the key principles outlined in Section 2 of the Code. In some cases,

however, you may feel that there is nothing further to be gained by responding to a service user and that you are not able to help them further. In those circumstances, you should politely inform the service user that is the case.

191 You are entitled to raise a service user's enquiry with the relevant employee, although you should, at all times, follow your public body's policies on the processing of personal data. You can ask questions about how a service has been delivered, and can seek information on progress on behalf of a service user, but you should be careful not to stray into operational management (for more advice on this, please see the Standards Commission's Advice Note for members on distinguishing between their strategic role and any operational work, which can be found at: https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

192 You should be aware of the distinction between a service user's request for service (or for information about a service), and a complaint about a service received. In the latter case, you should recommend that the service user makes use of the public body's complaints handling procedure (based on the Scottish Public Services Ombudsman's Model Complaints Handling Procedure, if applicable), as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the Scottish Public Services Ombudsman, if necessary and as appropriate.

193 Inevitably there will be occasions where the service user looking for your help is also a public body employee. While they are entitled to do so as a private individual in the same way as any other service user, you should decline to get involved in anything which relates to their status as an employee (such as performance or attendance management). You are a member of the organisation that employs them, and employment matters should be handled by their line manager or their union representative, as appropriate.

Lobbying

194 Paragraph 6.7 of the Code notes that it is important that you understand the basis on which you are being lobbied in order to ensure that any action taken in connection with a lobbyist complies with the standards set out in the Code and the Lobbying (Scotland) Act 2016. This Act aims to increase public transparency about lobbying and defines particular types of communication as 'regulated lobbying'. From 12 March 2018 anyone who engages in regulated lobbying must record details of their activities on a Lobbying Register website. Regulated lobbying only involves lobbying when it takes place face-to-face with:

- Members of the Scottish Parliament;
- Members of the Scottish Government (including the Scottish Law Officers); and
- Junior Scottish Ministers; the Permanent Secretary of the Scottish Government; and Scottish Government Special Advisers.

195 Private meetings with lobbyists - whether professional lobbyists or members of the public seeking your support - can undermine public trust in decision-making processes. It can also have consequences for the lobbyist. For example, a private meeting could disqualify them from the tender process if they are bidding for a public body contract. Private meetings can also involve offers of hospitality, which could lead to a breach of the gift and hospitality provisions at paragraphs 3.13 to 3.21 of the Code.

196 If you are approached by a lobbyist, it is likely that they are seeking your involvement as a lobbyist in turn, whether as a decision-maker or otherwise. It is important to recognise that there is a difference between lobbying on behalf of a commercial or personal interest, and lobbying for a

policy change or benefit which affects a group of people, a community, or an organisational sector. You should always consider what will benefit the public body and its service users as a whole, not just any narrow sectoral interest.

197 You must not, in any case, accept any paid work in which you give advice on how to influence your public body. An example of a breach of the Code in this regard could be if a member of the Standards Commission provided paid consultancy services to a political party in respect of how to best respond to complaints and represent its members at Hearings convened to consider potential breaches of Codes.

198 In all situations, care is needed. You should be guided by the Code and, in particular, consider:

- could anything you do or say be construed as you having been improperly influenced to take a particular stance on an issue;
- are you giving, or could you be perceived as giving, preferential access to any one side of an argument;
- when seeking information on the progress of a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support; and
- are you reaching your own view on a matter having heard all the relevant arguments and evidence (including the guidance of public body employees), and not simply agreeing or complying with any view expressed by your member colleagues.

199 If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions concerning that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard and considered all relevant and material evidence and information. However, you can:

- advise employees of the representations you have received;
- assist service users in making their views known to the relevant employee;
- seek factual information about the progress of a case; and / or
- advise those that are lobbying who they can contact (being the relevant employee).

A board member introduced a change to her public body's funding application policy, which was subsequently approved by the board. Following board approval, a service user sent the member an email complaining about the policy change. The member referred the service user's email to the Chief Executive for an employee response. The service user complained that the member's failure to respond indicated that she did not want to engage with him and had denied him access. The Panel noted, however, there was no specific obligation under the Code for individual members to respond to all who seek to lobby them. The Panel considered that the member had acted appropriately in referring the email to the Chief Executive so that the appropriate employee could respond. As such, it determined that the complaint did not amount to a breach of the Code.

A complaint alleged that a councillor had been involved in a 'secret' meeting with some local residents. The outcome of the meeting resulted in a Traffic Regulation Order (TRO), which ultimately led to the introduction of parking restrictions. The complainer alleged that, by attending the meeting, the councillor had failed to be accessible to the public and had demonstrated bias in favour of some residents. It was established, however, that the councillor had been accompanied at the meeting by an officer from the Council's Roads Services. No evidence was found that the councillor had indicated support for or against the making of the TRO, and as such his conduct did not give rise to a breach of the Code.

A complaint alleged that a Health Board member had held an individual meeting with a supplier of medical equipment, despite knowing that the supplier was involved in an ongoing tender process. The member met with the supplier alone, without taking an employee of his public body, and without informing his board in advance that he was meeting the supplier. At the next meeting of the board, the tender applications were discussed and the supplier in question was awarded the contract. The Panel found that by meeting with the supplier alone and by subsequently taking part in the discussions and decision-making over the tender, the member had breached the Code. It was likely that a member of the public, with knowledge of the relevant facts, would perceive that the member had offered preferential treatment to the supplier compared to the other suppliers involved in the tender.

A member of a board involved in the provision of grant funding accepted payment from a lobbying organisation. At a subsequent board meeting, convened to discuss and decide upon a round of funding, the member posed a number of critical questions and made derisive comments regarding the majority of the funding applicants. The member did not, however, criticise or comment upon an application for funding by a body that transpired to be a client of the lobbying organisation. The Panel found that by accepting the payment from the lobbying organisation, the member had breached the Code and, further, that it was clear from his actions in the board meeting that, in return for the payment, he was attempting to accord preferential treatment to the lobbying organisation's client.

ANNEX A

BREACHES OF THE CODE

Hearings

200 The Standards Commission, after receiving a report from the Ethical Standards Commissioner, (ESC), can decide to hold a Hearing (usually in public) to determine whether a breach of the Code has occurred and, if so, to determine the appropriate sanction. A policy outlining the factors the Standards Commission will consider when making such a decision on a report referred by the ESC can be found at: https://www.standardscommissionscotland.org.uk/cases.

201 Details of the procedures followed at a Standards Commission's Hearing are outlined in its Hearings Process Guide and Rules, which can be found at: https://www.standardscommissionscotland.org.uk/cases/hearing-rules. In certain circumstances and following the agreement of parties involved in the Hearing, the Standards Commission may use an Abbreviated Hearing Process.

202 Section 24 of the 2000 Act provides for complaints about employee and *ex officio* members of devolved public bodies. The Section provides that on receipt of a report referred by the ESC about a member of a devolved public body (a) who is also an employee; or (b) who is an *ex officio* member of the body, the Standards Commission shall send it to the devolved public body. The Standards Commission will note that while it does not have the power to take any action in respect of the Respondent in those cases, the devolved public body may nevertheless wish to do so. It is noted that this could include:

- consideration of whether initiating disciplinary procedures is appropriate if the Respondent is an employee; and/or
- advising the organisation in which the Respondent holds office, and is a member of the devolved public body by virtue of holding that office, of the ESC's findings.

Sanctions

203 19 of the 2000 Act obliges a Hearing Panel to impose a sanction. This can be either a censure, suspension, or removal from the board and disqualification:

Censure: A censure is a formal record of the Standards Commission's severe and public disapproval of the member.

Suspension: This can be a full or partial suspension (for up to one year). A full suspension means that the member is suspended from attending all meetings of the public body. A partial suspension means that the member is suspended from attending some of the meetings of the public body. In imposing a suspension on a member, the Standards Commission can direct that any remuneration or allowance deriving from membership of the body that would be payable to the member be not paid or be reduced.

Disqualification: Disqualification means that the member is removed from their membership and disqualified from membership of the body for the period determined (which can be up to five years). In circumstances where the member is also a councillor, or a member of another devolved public body, the disqualification may extend to that member's status as a councillor or member of the other devolved public body.

204 The Standards Commission's policy outlining the factors a Hearing Panel will consider when making a decision on the sanction to be imposed can be found at: https://www.standardscommissionscotland.org.uk/cases/hearing-rules.

Interim Suspensions

205 Section 21 of the 2000 Act gives the Standards Commission power to impose an interim suspension on a member on receipt of an interim report from the ESC about an ongoing investigation. A policy outlining the Standards Commission's approach to interim suspensions can be found at: https://www.standardscommissionscotland.org.uk/cases/details-of-alleged-breach.

206 The decision to impose an interim suspension should not be seen as a finding on the merits of a complaint, nor as a disciplinary measure.

Standards Commission for Scotland
Room T2.21, The Scottish Parliament
Edinburgh, EH99 1SP
Tel: 0131 348 6666
Email: enquiries@standardscommission.org.uk
’X’: @StandardsScot