



Commissioner for Ethical Standards in Public Life in Scotland

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Convener
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Dear Convener

CODES OF CONDUCT WHICH APPLY TO COUNCILLORS AND MEMBERS OF PUBLIC BODIES IN RELATION TO THE USE OF SOCIAL MEDIA AND ENGAGING WITH PLANNING APPLICANTS

Thank you for your letter of 22 April.

With regard to the number of complaints we have received alleging a breach of the Code in relation to social media I can provide the following information.

Between 1 April 2014 and 31 March 2015, 20 complaints were received by my office. 16 of those complaints were not pursued, 1 complaint was concluded with a finding of no breach of the Code and 3 complaints were in progress.

We have published 11 of the 17 completed complaints relating to councillors on our website <http://www.publicstandardscommissioner.org.uk/decisions/>. For those who are interested to see the web summaries, it may be helpful to advise that they relate to complaint references LA/AC/1530, LA/ED/1621, LA/ED/1623, LA/G/1635, NB/SHR/1644, LA/SL/1669, LA/H/1673, LA/SL/1679, LA/AC/1695, LA/SB/1703 and LA/Fi/1705). The 6 remaining completed complaints were deemed not of sufficient public interest to merit a web summary.

Most of the complaints involving social media have, at least hitherto, involved comments made by councillors on their private social media accounts. It appears to me that the Code, as it stands, does not apply to comments made by councillors on a private social media account. However, I accept that it might apply in situations where the communication is clearly made by the councillor in the course of their duties as a councillor.

Leaving aside for the moment the question of the possible relevance of Article 10 of the European Convention on Human Rights, to which I made a brief reference in my evidence to the Committee, I think the issue may turn on the interpretation of section 3 of the Councillors' Code. I have been in discussion with the Standards Commission about the need for additional guidance on the application of the Code to a variety of situations which can arise in relation to communications on social media.

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As you will be aware, paragraph 3.2 of the Code is as follows:

"You must respect ... any members of the public present during meetings of the Council, its committees or sub-committees or of any public bodies to which you have been appointed by, and represent the Council."

Although this provision is arguably limited to conduct in formal meetings, paragraph 3.1 provides as follows:

"The rules of good conduct must be observed in all situations where you act as a councillor, including representing the Council on official business".

It is therefore possible to interpret the obligation to respect members of the public as applying more widely than in the formal meetings. This is reinforced by the guidance issued by the Standards Commission which is in these terms:

"7. Paragraph 3.2 provides However, as stated above, paragraph 3.1 provides that the rules of good conduct set out in Section 3 must be observed in all situations where councillors are acting as councillors, including representing the Council in official business and the list of meetings to which this provision applies should be viewed as illustrative, rather than exhaustive. The effect of the provision is that councillors must respect ... any members of the public in all situations where they act as councillors including – but not restricted to – meetings of the Council ... "

Even if any ambiguity is ignored, the fact is that there are many situations in which it is unclear whether a councillor is acting in that capacity or is acting as a private individual. Moreover, as already noted, judgements on respect must be made in the light of the way in which Article 10 of the ELHR has been interpreted by the courts.

You also asked me to comment on the obligations on the councillors engaging with those who are involved in submitting or objecting to planning applications. I accept, as a starting point, that the planning process can be lengthy or complicated, particularly in relation to major developments and developments which are to be undertaken by local authorities. Nevertheless, it does seem to me that section 7 of the Code is clearly and logically set out.

As I am sure you are well aware, the general issues of fairness and impartiality are addressed in paragraphs 7.2 – 7.4 of the Code. The Code then distinguishes between the role of councillors in considering 'Policy and Strategic issues' in paragraphs 7.6 – 7.8 and other decision making roles in relation to applications. Although the planning process itself potentially involves a number of different stages, these are anticipated in the 'General' section in paragraphs 7.9 – 7.12. The provisions on 'Fairness and Impartiality' are given further effect in paragraph 7.11. Councillors who wish to make representations may do so to planning officers, in terms of paragraph 7.14, provided they do not express a 'for' or 'against' view in advance of decision making. Councillors who choose to make representations at a meeting to consider an application must then retire, in terms of paragraph 7.15 (iii).

Special provisions relating to applications requiring full council decisions are also clearly set out, in paragraphs 7.16 – 7.18 and staged decision making is covered by paragraphs 7.19 – 7.21.

A councillor can still be an important conduit for information. They may choose to adopt a representative role and be involved in pre-application discussions in accordance with the Scottish Government Guidance on the Role of Councillors in Pre-Application Procedures <http://www.gov.scot/Topics/Built-Environment/planning/Roles/Planning-Authorities/Documents>.

Guidance on section 7 of the Code is provided by the Standards Commission. Any role it may have in ensuring consistency of interpretation across the country is a matter for them. However, I can advise that the Commission is currently revising its Guidance on the Councillors' Code and, within that process, council officials and I will be consulted.

I am not in a position to comment on the consistency of advice given to councillors by officials in different planning authorities.

Yours sincerely

Bill Thomson
Commissioner