



Commissioner for Ethical Standards in Public Life in Scotland

Mr Kevin Stewart MSP
Convener
Local Government and Regeneration Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

22 March 2016

Dear Convener

Local Government and Regeneration Committee meeting on 2 March

In the course of an evidence session before the Committee on 2 March 2016, there was some discussion of whether the Councillors' Code of Conduct was fit for purpose. You requested that I write with a comprehensive list of areas in which there are difficulties.

Given that any review of the Code would be a matter principally for others, including the Scottish Government, the Parliament, and representatives of councils and councillors, I am responding with a short note in relation to three aspects of the Code which I suggest would merit attention if consideration is to be given by a future committee to ways in which the Code might be improved. I would, of course, be happy to participate in any future review of the Code on the basis of my experience of its operation.

Key Principles - section 2 of the Code

These are problematic because their presence, or perhaps their prominence, encourages people who are dissatisfied with the conduct of councillors to make complaints about failure to observe one or more of the key principles. However, it is clear from paragraphs 1.6 and 2.1 of the Code, and from the guidance issued by the Standards Commission, that failure to observe any of the key principles cannot in itself be treated as a breach of the Code. Approximately one fifth of all complaints received by my office allege a breach of the Key Principles. Many of these complaints do not proceed beyond initial investigation, as there is no evidence of any breach of the substantive rules in section 3 – 7 of the Code. This can be a source of dissatisfaction and frustration, as well as involving considerable fruitless effort on the part of the persons complaining and in the administration of the complaints.

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Alternative approaches might involve moving the key principles to an Annex, where they would be less prominent, or simply removing them from the Code. Arguably, the Code should be limited to specific rules which can be breached, as in the rules on Registration and Declaration of Interests which reflect and clarify aspects of the key principles of Integrity, Honesty, and Openness.

Social media and section 3 of the Code

The rules of general conduct set out in section 3 of the Code “must be observed in all situations where you act as a councillor” (paragraph 3.1). The rules which follow include a requirement to respect “the chair, your colleagues, Council employees and any members of the public present” at meetings, and a specific requirement to “respect all Council employees and the role they play, and treat them with courtesy at all times”. Taken together, these paragraphs appear to impose an obligation to treat all persons with respect at all times when acting as a councillor. A question which arises with reasonable frequency is: when do the obligations apply to comments made on social media?

The revised guidance issued recently by the Standards Commission contains helpful references to the factors which councillors should take into account when using social media (paragraph 13). However, there is a case for up-dating the Code to recognise explicitly the circumstances in which it applies to councillors’ comments on social media. This would be helpful to councillors and to those who may be considering making a complaint about such comments.

Declaration of Interests – section 5 of the Code

Section 5 sets out in separate provisions the rules applying to declaration of a councillor’s financial and non-financial interests, and to the declaration of the financial and non-financial interests of other persons. There is a large degree of overlap between the separate provisions but there are also some relatively subtle differences, both of which may give rise to confusion.

Paragraph 5.6, which covers the financial interests of councillors, contains two separate references to the objective test set out in paragraph 5.3. In paragraph 5.7, which deals with councillors’ non-financial interests, there are three such references. One of these differs in its terms from all of the other references to the objective test in paragraphs 5.6 and 5.7. Although doubtless intended to ensure clarity, the repetition of references to the objective test can have the opposite effect, and the differences in wording can be a source of confusion.

The rule on declaration of the financial interests of other persons is set out in paragraph 5.10. It again refers to the objective test in two places, albeit with very slightly different wording on the first occasion from four of the references in paragraphs 5.6 and 5.7. Paragraph 5.12 deals with the obligation to declare the non-financial interests of the same list of “other persons”. In this paragraph, there are no references to the objective test. Instead, the exception to the

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requirement to declare an interest and withdraw from the meeting is expressed in terms of an interest which is not "clear and substantial". This may be similar in effect to the objective test, but it is different in that it is not framed in terms of the reasonable judgement of a properly informed member of the public. This variation, as well as the continuing repetition, can be further sources of confusion. Any simplification would be welcome.

Yours sincerely

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Commissioner

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