



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

CODE OF CONDUCT

For Members of the Crofting Commission

VERSION 0.6

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SECTION 1 – INTRODUCTION TO THE CODE OF CONDUCT

- 1.1. The Scottish public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties for the Crofting Commission. You must meet those expectations by ensuring that your conduct is above reproach.
- 1.2. The Ethical Standards in Public Life etc (Scotland) Act 2000 provides for new Codes of Conduct for local authority councillors and members of relevant public bodies; imposes on councils and relevant public bodies a duty to help their members to comply with the relevant code; and establishes a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the codes.
- 1.3. As a member of the Crofting Commission it is your responsibility to make sure that you are familiar with, and that your actions comply with, the provisions of this Code of Conduct.

Guidance on the Code of Conduct

- 1.4. You must observe the rules of conduct contained in this Code. It is your personal responsibility to comply with these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. The responsibility for compliance with the Code and for registration and declaration lies not as a corporate matter with the parent body, but with the individual Commissioner. The objective test puts the onus squarely on the individual to exercise his or her judgement. You must not at any time advocate or encourage any action contrary to the Code of Conduct.
- 1.5. The Code has been developed in line with the key principles listed in Section 2 and provides additional information on how the principles should be interpreted and applied in practice. The Standards Commission may also issue guidance. No Code can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice from the Crofting Commission Standards Officer. You may also choose to consult your own legal advisers and, on detailed financial and commercial matters, seek advice from other relevant professionals.

Enforcement

- 1.6. Part 2 of the Ethical Standards in Public Life etc (Scotland) Act 2000 sets out the provisions for dealing with alleged breaches of this Code of Conduct and the sanctions that shall be applied if the Standards Commission finds that there has been a breach of the Code. Those sanctions are outlined in **Annex A**. Special provisions apply to Crown appointments, employees and ex officio members of devolved public bodies.

SECTION 2 – KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The general principles upon which this Code of Conduct are based are:

- **Public Service**

You have a duty to act in the interests of the Crofting Commission and in accordance with the core tasks of that body.

- **Selflessness**

You have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

- **Integrity**

You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

- **Objectivity**

You must make decisions solely on merit when carrying out public business.

- **Accountability and Stewardship**

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the Crofting Commission uses its resources prudently and in accordance with the law.

- **Openness**

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

- **Honesty**

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

- **Leadership**

You have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the Crofting Commission and its members in conducting public business.

- **Respect**

You must respect fellow Commissioners and its officials and the role they play, treating them with courtesy at all times.

- 2.2 You should apply the principles of this Code to your dealings with fellow Commissioners, its officials and all with whom you engage as a member of the Crofting Commission.
- 2.3 The principles of good leadership and respect should be extended to apply when engaging on behalf of the Commission with partner agencies, crofting stakeholders and members of the public, whether in individual or group meetings, treating all involved with respect and courtesy, thereby strengthening public confidence in the Crofting Commission.

SECTION 3 – GENERAL CONDUCT

Conduct at Meetings

- 2.1 You must respect the chair, your colleagues, Commission employees and any members of the public present during meetings of the Crofting Commission, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Crofting Commission. You must comply with rulings from the chair in the conduct of the business of these meetings.

Relationship with Commission Employees (including those employed by contractors providing services to the Commission)

- 2.2 You must respect all Commission employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.
- 2.3 You must follow the Protocol for Relations between Commissioners and Employees attached at **Annex C**. A breach of the Protocol will be considered as a breach of this Code. Employees also have access to the Scottish Government Whistleblowing policy and Commissioners have their own policy, which can be invoked if necessary if there is concern over behaviours. Inappropriate behaviour, which may constitute bullying or harassment, can also be reported to the Commissioner for Ethical Standards in Public Life.

Allowances

- 2.4 You must comply with any rules of the Crofting Commission regarding remuneration, allowances and expenses.

Gifts and Hospitality

- 2.5 You must never canvass or seek gifts or hospitality.

- 2.6 You are responsible for your decisions connected with the offer or acceptance of gifts or hospitality and for avoiding the risk of damage to public confidence in the Crofting Commission. As a general guide, it is usually appropriate to refuse offers except:
- a) isolated gifts of a trivial character or inexpensive seasonal gifts such as a calendar or diary, or other simple items of office equipment, up to the value of £50;
 - b) normal hospitality associated with your duties and which would reasonably be regarded as inappropriate to refuse, up to the value of £50; or
 - c) gifts received on behalf of the Crofting Commission, up to the value of £50.
- 2.7 You must not accept any offer by way of gift or hospitality which could give rise to a reasonable suspicion of influence on your part to show favour, or disadvantage, to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public. You must not accept repeated hospitality from the same source.
- 2.8 You must record details of any gifts and hospitality received and the record must be made available for public inspection.
- 2.9 You must not accept any offer of a gift or hospitality from any individual or organisation which stands to gain or benefit from a decision the Crofting Commission may be involved in determining, or who is seeking to do business with the Crofting Commission, and which a person might reasonably consider could have a bearing on your judgement. If you are making a visit to inspect equipment, vehicles, land or property, then as a general rule you should ensure that the Crofting Commission pays for the costs of these visits.

Confidentiality Requirements

- 2.10 There may be times when you will be required to treat discussions, documents or other information relating to the work of the Crofting Commission in a confidential manner. You will often receive information of a private nature which is not yet public, or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private.
- 2.11 It is unacceptable to disclose any information to which you have privileged access, for example derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for the purpose of personal or financial gain, or used in such a way as to bring the Crofting Commission into disrepute.

Use of Public Body Facilities

- 2.12 Commissioners must not misuse facilities, equipment, stationery, telephony and services, or use them for party political or campaigning activities. Use of such equipment and services, etc must be in accordance with the Crofting Commission's policy and rules on their usage. Care must be exercised, when using social media networks, not to compromise your position as a Commissioner.
- 2.13 Social Media continues to evolve and it is important to note that the rules of good conduct set out in this section of the Code apply to all situations when you are acting as a Commissioner or represent the Commission. Your perception of when you are acting privately may differ from that of a member of the public.
- 2.14 For more detailed guidance, please see **Annex D**, Standards Commission for Scotland Advice Note on the use of social media.

Appointment to Partner Organisations

- 2.15 You may be appointed, or nominated by the Crofting Commission as a member of another body or organisation. If so, you are bound by the rules of conduct of these organisations and should observe the rules of this Code in carrying out the duties of that body.
- 2.16 Members who become directors of companies as nominees of the Crofting Commission will assume personal responsibilities under the Companies Acts. It is possible that conflicts of interest can arise for such members between the company and the public body. It is your responsibility to take advice on your responsibilities to the public body and to the company. This will include questions of declarations of interest.

SECTION 4 – REGISTER OF INTERESTS

- 4.1 The following paragraphs set out the kinds of interests, financial and otherwise which you have to register. These are called "Registerable Interests" and may be fairly static if your circumstances do not alter. You must, at all times, ensure that these interests are registered, when you are appointed and whenever your circumstances change in such a way as to require change or an addition to your entry in the Crofting Commission's Register. If there are any changes to your registerable interests, these must be reported to the Standards Officer without delay or at the most within four weeks of the change. Failure to notify the change within this timescale is a breach of the Code.
- 4.2 This Code sets out the categories of interests which you must register. **Annex B** contains key definitions to help you decide what is required when registering your interests under any particular category. These categories are listed below with explanatory notes designed to help you decide what is required when registering your interests under any particular category.

4.3 The Register of Interests is a public document, which will be reviewed at least annually. The information it is comprised of may differ from an interest you decide to declare. Please see Section 5 for information on Declaration of Interests.

Category One: Remuneration

- 4.4 You have a Registerable Interest where you receive remuneration by virtue of being:
- employed
 - self-employed
 - the holder of an office
 - a director of an undertaking
 - a partner in a firm; or
 - undertaking a trade, profession or vocation or any other work.
- 4.5 In relation to 4.4 above, the amount of remuneration does not require to be registered and remuneration received as a Commissioner does not have to be registered.
- 4.6 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two, "Related Undertakings".
- 4.7 If you receive any allowances in relation to membership of any organisation, the fact that you receive such an allowance must be registered.
- 4.8 When registering employment, you must give the name of the employer, the nature of its business, and the nature of the post held in the organisation.
- 4.9 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.
- 4.10 Where you undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication, and the frequency of articles for which you are paid.
- 4.11 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and the nature of its business.
- 4.12 Registration of a pension is not required as this falls outside the scope of the category.

Category Two: Related Undertakings

- 4.13 You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.
- 4.14 You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

4.15 The situations to which the above paragraphs apply are as follows:

- you are a director of a board of an undertaking and receive remuneration - declared under category one; and
- you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

4.16 You have a registerable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 5.8 below) have made a contract with the Crofting Commission of which you are a member:

- (i) under which goods or services are to be provided, or works are to be executed; and
- (ii) which has not been fully discharged.

4.17 You must register a description of the contract, including its duration, but excluding the consideration.

Category Four: Election Expenses

4.18 You must register a statement of any assistance towards election expenses received where the value of any single donation exceeds £50.

Category Five: Houses, Land and Buildings

4.19 You have a registerable interest where you own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of the Crofting Commission.

4.20 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in houses, land and buildings could potentially affect your responsibilities to the Crofting Commission and to the public, or could influence your actions, speeches or decision making. If in doubt, you may consult with the Standards Commission.

Category Six: Shares and Securities

4.21 You have a registerable interest where you have an interest in shares which constitute a holding in a company or organisation which may be significant to, of relevance to, or bear upon, the work and operation of the Crofting Commission. You are not required to register the value of such interests.

4.22 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in shares and securities could potentially affect your responsibilities to the Crofting Commission and to the public, or could influence your actions, speeches or decision-making. If in doubt, you may consult with the Standards Commission.

Category Seven: Gifts and Hospitality

4.23 You must register the details of any gifts or hospitality received, however it is not necessary to record any gifts or hospitality as described in paragraph 3.6 (a – c) of this Code. This record will be available for public inspection.

Category Eight: Non-Financial Interests

4.24 You may also have a registerable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of the Crofting Commission. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

4.25 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any non-financial interest could potentially affect your responsibilities to the Crofting Commission and to the public, or could influence your actions, speeches or decision-making. If in doubt, you may consult with the Standards Commission.

4.26 In addition to registering interests in the public domain, you must also consider whether you have interests to declare, especially at meetings and when involved in casework. Please see Section 5.

SECTION 5 – DECLARATION OF INTERESTS

Introduction

5.1 The key principles of the Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of the Crofting Commission. Together with the rules on Registration of Interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

5.2 For a full explanation of how Declarations of Interest are handled within the Commission, please see the Anti-Fraud policy, which includes the policy on Conflicts of Interest ([click here](#)).

5.3 Public bodies inevitably have dealings with a wide variety of organisations and individuals and this Code indicates the circumstances in which a business or personal interest must be declared. Public confidence in the public body and its members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason. It is your responsibility to comply with the provisions set out in this Code and not the responsibility of the corporate body to ensure compliance.

- 5.4 In considering whether to make a declaration in any proceedings, you must consider not only whether you will be influenced but whether anybody else would think that you might be influenced by the interest. You must keep in mind that the test is whether a member of the public, acting reasonably, might think that a particular interest could influence you. This objective test puts the onus on the individual member to exercise judgement.
- 5.5 If you feel that, in the context of the matter being considered, your involvement is neither capable of being viewed as more significant than that of an ordinary member of the public, nor likely to be perceived by the public as wrong, you may continue to attend the meeting and participate in both discussion and voting. The relevant interest must however be declared. It is your responsibility to judge whether an interest is sufficiently relevant to particular proceedings to require a declaration and you are advised to err on the side of caution. You may also seek advice from the Commission's Standards Officer and the Standards Commission.

Interests which Require Declaration

- 5.6 Interests which require to be declared may be financial or non-financial. They may or may not be interests which are registerable under this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration.

Financial Interests

- 5.7 Any financial interest which is registerable must be declared. If, in terms of Section 4 of this Code, you have registered an interest as having knowledge of crofting conditions, representing the interest of landlords of crofts, or as a person who can speak the Gaelic language and you have been appointed to the Commission having regard to that knowledge or ability, you do not, for that reason alone, require to declare that interest.

Shares and Securities

- 5.8 You may have to declare interests in shares and securities, over and above those registerable under category five of Section 4 of this Code. You may, for example, in the course of employment or self-employment, be engaged in providing professional advice to a person whose interests are a component of a matter to be dealt with by a board.
- 5.9 You have a declarable interest where an interest becomes of direct relevance to a matter before the Crofting Commission and you have shares comprised in the share capital of a company or other body and the nominal value of the shares is:
- (i) greater than 1% of the issued share capital of the company or other body; or
 - (ii) greater than £25,000.
- 5.10 You are required to declare the name of the company only, not the size or nature of the holding.

Houses, Land and Buildings

- 5.11 Any interest in houses, land and buildings which is registerable under category four of Section 4 of this Code must be declared, as well as any similar interests which arise as a result of specific discussions or operations of the Crofting Commission.

Non-Financial Interests

- 5.12 If you have a registered non-financial interest under category six of Section 4 of this Code you have recognised that it is significant. There is therefore a very strong presumption that this interest will be declared where there is any link between a matter which requires your attention as a member of a public body and the registered interest. Non-financial interests include membership or holding office in other public bodies, clubs, societies, trade unions and organisations including voluntary organisations. They become declarable if and when members of the public might reasonably think they could influence your actions, speeches or votes in the decisions of the Crofting Commission.
- 5.13 You may serve on other bodies as a result of express nomination or appointment by the Crofting Commission or otherwise by virtue of being a member of another public body. You must always remember the public interest points towards transparency particularly where there is a possible divergence of interest between different public authorities.
- 5.14 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a member of a public body. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is irrelevant or without significance. In reaching a view you should consider whether the interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a member of the Crofting Commission as opposed to the interest of an ordinary member of the public.

Interests of Other Persons

- 5.15 The Code requires only your interests to be registered. You may, however, have to consider whether you should declare an interest in regard to the financial interests of your spouse or cohabitee which are known to you. You may have to give similar consideration to any known non-financial interest of a spouse or cohabitee. You have to ask yourself whether a member of the public acting reasonably would regard these interests as effectively the same as your interests in the sense of potential effect on your responsibilities as a Commissioner.

- 5.16 The interests known to you, both financial and non-financial, of relatives and close friends may have to be declared. This Code does not attempt the task of defining "relative" or "friend". The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a Commissioner.

Making a Declaration

- 5.17 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should review agendas for meetings in advance and consider whether they raise any issue requiring a declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.
- 5.18 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words "I declare an interest". The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.
- 5.19 The interest, if still relevant, must be declared at the meeting in question, regardless of whether it has previously been declared. If, due to a change of circumstances, the relevance of the interest no longer applies, you must make the Standards Officer aware of the change as soon as possible, so that your recorded interests can be amended.

Effect of Declaration

- 5.20 Declaring a financial interest has the effect of prohibiting any participation in discussion and voting. A declaration of a non-financial interest involves a further exercise of judgement on your part. You must consider the relationship between the interests which have been declared and the particular matter to be considered and relevant individual circumstances surrounding the particular matter.
- 5.21 In the final analysis the conclusive test is whether, in the particular circumstances of the item of business, and knowing all the relevant facts, a member of the public acting reasonably would consider that you might be influenced by the interest in your role as a Commissioner and that it would therefore be wrong to take part in any discussion or decision-making. If you, in conscience, believe that your continued presence would not fall foul of this objective test, then declaring an interest will not preclude your involvement in discussion or voting. If you are not confident about the application of this objective yardstick, you must play no part in discussion and must leave the meeting room until discussion of the particular item is concluded. As part of your oral declaration of this interest, you should state, "As I have declared an interest, I will withdraw from the meeting during any discussion on this item."

Dispensations

- 5.22 In very limited circumstances dispensations can be granted by the Standards Commission in relation to the existence of financial and non-financial interests which would otherwise prohibit you from taking part and voting on matters coming before the Crofting Commission and its committees. Applications for dispensations will be considered by the Standards Commission and should be made as soon as possible in order to allow proper consideration of the application in advance of meetings where dispensation is sought. You should not take part in the consideration of the matter in question until the application has been granted.
- 5.23 If a dispensation has been granted, you must make the Standards Officer aware and you may use the following wording in a relevant meeting:
“I have an interest in item XX by virtue of XX, however, a dispensation has been granted. Therefore, I will remain and participate.”

SECTION 6 – LOBBYING AND ACCESS TO MEMBERS OF PUBLIC BODIES

- 6.1 In order for the Crofting Commission to fulfil its commitment to being open and accessible, it needs to encourage participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Crofting Commission conducts its business.
- 6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual members. The rules in this Code set out how you should conduct yourself in your contacts with those who would seek to influence you. They are designed to encourage proper interaction between members of public bodies, those they represent and interest groups.

Rules and Guidance

- 6.3 You must not, in relation to contact with any person or organisation who lobbies, do anything which contravenes this Code of Conduct or any other relevant rule of the Crofting Commission or any statutory provision.
- 6.4 You must not, in relation to contact with any person or organisation who lobbies, act in any way which could bring discredit upon the Crofting Commission.
- 6.5 The public must be assured that no person or organisation will gain better access to, or treatment by, you as a result of employing a company or individual to lobby on a fee basis on their behalf. You must not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which you accord any other person or organisation who lobbies or approaches you. Nor should those lobbying on a fee basis on behalf of clients be

given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming from another member of the Crofting Commission.

- 6.6 Before taking any action as a result of being lobbied, you should seek to satisfy yourself about the identity of the person or organisation who is lobbying and the motive for lobbying. You may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that you know the basis on which you are being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code.
- 6.7 You should not accept any paid work:
- a) which would involve you lobbying on behalf of any person or organisation or any clients of a person or organisation.
 - b) to provide services as a strategist, adviser or consultant, for example, advising on how to influence the Crofting Commission and its members. This does not prohibit you from being remunerated for activity which may arise because of, or relate to, membership of the Crofting Commission, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.
- 6.8 If you have concerns about the approach or methods used by any person or organisation in their contacts with you, you must seek the guidance of the Crofting Commission.

SANCTIONS AVAILABLE TO THE STANDARDS COMMISSION FOR BREACH OF THE CODE

- a) Censure — the Standards Commission may reprimand the member but otherwise take no action against them
- b) suspension — of the member for a maximum period of one year from attending one or more, but not all, of the following:
 - (i) all meetings of the Crofting Commission
 - (ii) all meetings of one or more committees or sub-committees of the Crofting Commission
 - (iii) all meetings of any other public body on which that member is a representative or nominee of the Crofting Commission of which they are a member
- c) suspension — for a period not exceeding one year, of the member's entitlement to attend all of the meetings referred to in (b) above
- d) disqualification — removing the member from membership of the Crofting Commission for a period of no more than five years.

Where a Commissioner has been suspended, the Standards Commission may direct that any remuneration or allowance received from membership of the Crofting Commission be reduced, or not paid. Where the Standards Commission disqualifies a member of a public body, it may go on to impose the following further sanctions:

- (i) where the Commissioner is also a councillor, the Standards Commission may disqualify that member (for a period of no more than five years) from being nominated for election as, or from being elected, a councillor. Disqualification of a councillor has the effect of disqualifying that member from their public body and terminating membership of the Crofting Commission any committee, sub-committee, joint committee, joint board or any other body on which that member sits as a representative of their local authority.
- (ii) direct that the Commissioner be removed from membership, and disqualified in respect of membership, of any other devolved public body (provided the members' code applicable to that body is then in force) and may disqualify that person from office as the Water Industry Commissioner.

Full details of the sanctions are set out in Section 19 of the Act. Special provisions apply to Crown appointments, employees and ex officio members of devolved public bodies.

DEFINITIONS

1. **"Remuneration"** includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.
2. **"Undertaking"** means:
 - 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.
3. **"Related Undertaking"** is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.
4. **"Parent Undertaking"** is an undertaking in relation to another undertaking, a subsidiary undertaking, if:
 - a. it holds a majority of the voting rights in the undertaking;
 - b. it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors;
 - c. it has the right to exercise a dominant influence over the undertaking
 - (i) by virtue of provisions contained in the undertaking's memorandum or articles
 - (ii) by virtue of a control contract;
 - d. it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking.
5. **"Group of companies"** has the same meaning as "group" in section 262(1) of the Companies Act 1985. A "group", within section 262(1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.
6. **"Public body"** means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc (Scotland) Act 2000.
7. **"A person"** means a single individual or legal person and includes a group of companies.
8. **"Any person"** includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.
9. **"Spouse"** does not include a former spouse or a spouse who is living separately and apart from you.
10. **"Cohabitee"** includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.

PROTOCOL FOR RELATIONS BETWEEN COMMISSIONERS AND EMPLOYEES IN THE CROFTING COMMISSION

1. Principles

This protocol sets out the way in which Commissioners and employees of the Crofting Commission should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up. Please also see the Commissioner's Whistleblowing Policy ([click here](#)).

Commissioners and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

2. Scope

The most common contacts are between Commissioners and senior employees at Chief Executive or Head of Service level, and this protocol is largely about those contacts. There are also many contacts between Commissioners and other employees in their daily business, and the principles of this protocol also apply to them. The particular position of employees who provide direct support services for Commissioners is dealt with separately at **item 6**.

3. Members' and Employees' Roles

Within the Commission, Commissioners have a number of different roles, all of which call for separate consideration, some Commissioner's sit on committees for instance.

Legally, employees are employed by the Scottish Government and are accountable to Parliament. Ultimately they serve the Commission as a whole. The Chief Executive has ultimate responsibility to ensure that the Commission's responsibilities are discharged.

It is clearly important that there should be a close professional working relationship between the Commissioner's and senior employees of the Commission. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question employees' ability to deal impartially with other Commissioners, and the ability of Commissioners to deal impartially with other employees.

The Convener and Chair of Committees will be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to Commissioners on their areas of professional competence. While employees will wish to listen to the views of Commissioners, they must retain final responsibility for the content of reports.

Commissioners will have many dealings with employees. Those employees should always seek to assist Commissioners but it must be remembered that they are ultimately responsible to the Chief Executive.

4. Social Relationships

The relationship between Commissioners and employees depends upon trust and this will be enhanced by the development of positive, friendly relationships. Commissioners and employees will sometimes be thrown together in social situations within the Crofting Communities and they have a responsibility to project a positive image of the Commission. Nonetheless, close personal familiarity between individual employees and Commissioners can damage the relationship of mutual respect and the belief that employees give objective and professional advice and commitment to the Commission. Commissioners and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

5. Public Comment

Commissioners should not raise matters relating to the conduct or capability of employees in public. Employees must accord to Commissioners the respect and courtesy due to them in their roles. There are provisions in the Civil Service Code of Conduct for Employees about speaking in public and employees should observe them. Likewise, Commissioners are bound to treat staff in accordance with the principles of this Code and reference can be made to the Commissioner for Ethical Standards in Public Life by members of staff, as well as by the general public, if it is believed that the Code has been breached.

6. Employees Supporting Commissioners

Where the Commission arranges for employees to support Commissioners directly in carrying out their duties, particular considerations apply. Such employees are normally involved in administrative and practical support of Commissioners. While such staff may operate to the requirements of individual Commissioners in their daily business, it must be remembered that the employees are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.

ADVICE ON THE USE OF SOCIAL MEDIA FOR MEMBERS OF DEVOLVED PUBLIC BODIES**1. Introduction**

Section 3 of the Model Code of Conduct for Members of Devolved Public Bodies concerns the general conduct expected in situations where an individual is acting as a member of a public body. Rules of good conduct in this section govern various matters including relationships with other Board Members and employees of the public body, confidentiality requirements and the use of the public body's facilities.

In particular, paragraph 3.13 of the Model Code of Conduct states:

Members of public bodies must not misuse facilities, equipment, stationery, telephony, computer, information technology equipment and services, or use them for party political or campaigning activities. Use of such equipment and services etc must be in accordance with the public body's policy and rules on their usage. Care must also be exercised when using social media networks not to compromise your position as a member of the public body.

This advice is intended to assist members in complying with the provisions of the Model Code of Conduct when using social media.

Social media continues to evolve and, as such, this advice is not an exhaustive or definitive guide. It is intended to be a starting point to understanding issues relating to the use of social media.

2. General Advice

It is very important to note that the rules of good conduct set out in Section 3 must be observed in all situations where you are acting as a member, including representing the body on official business. You should be mindful that your perception of when you are carrying out official business and when you are acting privately may be different to the view of the public. Factors to consider include whether:

- you are representing the body or speaking on behalf of the body; whether you are readily identifiable as a member of your body in the situation/circumstances;
- you are using social media where you are identified as a member;
- your conduct could reasonably be regarded as bringing your position as a member, or your body, into disrepute; and
- you are engaged in activity, or commenting on matters that are within the scope of the body's functions.

You should always try to think ahead. If you have any concerns about a potential problem or conflict of interest, speak to the Standards Officer or Chief Executive so that advice can be sought and/or action can be taken before a situation becomes a serious problem or before a complaint is made about you.

3. Conduct on Social Media

The rules of good conduct may apply when you are engaging in media activity including the use of social media. As you will be aware, social media is a term used to describe on-line technologies, applications and practices that are used to share information, knowledge and opinions. The most well-known platforms include Facebook, Twitter, Instagram, YouTube and LinkedIn. The term social media can include, but is not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites.

The conduct expected of you within a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and written correspondence. Factors to consider when using social media include whether you:

- are identifiable as a member by directly referring to yourself as such or indirectly as such by referring to the body or through information or images posted
- are using the body's equipment or your own when accessing or posting on social media platforms
- have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions
- have complied with any Social Media, General Media, IT or Communications policy your body has produced
- the information you are posting is confidential and you only have access to it because you are a member of the body
- are demonstrating bias or pre-determination – do not express an opinion on an matter your body is yet to determine
- have considered the immediate and permanent nature of the contribution you are about to make. Your comments are immediately available and may become more publicly shared than you intend.

Even if you are using social media in a private capacity, you should be aware that anything you post or put on your profile is a representation of you. Therefore you should not put anything online that you do not want to represent you. Remember standards of decency and the law apply.

You may also wish to think about:

- whether you are treating others with respect and consideration
- whether 'liking' re-posting and re-tweeting comments or posts, or publishing links to other sites could be reasonably perceived in the circumstances as endorsing the original opinion, comment or information, including information on other sites
- whether to allow disagreement on your social media pages
- the tone can be harder to convey online so consider whether humour, irony and sarcasm be perceived as such
- whether you have to respond. Sometimes people will say nasty things and people in public life can be singled out for abuse. If people criticising you have the wrong information, by all means talk to them. But if they are being sarcastic or downright abusive you should consider whether there is any value in engaging
- whether anything you post could be considered obscene.

It is almost impossible to entirely delete anything that goes online. Even if you decided to delete something you have posted straightaway, there is always the possibility that someone has viewed, and even taken a screenshot of, the post in the meantime. What you post online will stay there and may potentially be shared with lots of other people, for both good and bad reasons.

4. Other Resources

Other guidance that may be of interest or assistance includes:

- The Scottish Government's Policy on social media, which can be accessed at www.gov.scot/About/Information/Social-Media-Policies
- The UK Government's Guidance for civil servants www.gov.uk/government/publications/social-media-guidance-for-civil-servants/social-media-guidance-for-civil-servants
- The Scottish Government's On Board Guidance for Board Members of Public Bodies in Scotland (April 2015) www.gov.scot/Publications/2015/04/9736.

ADVICE NOTE ON THE APPLICATION OF ARTICLE 10 OF THE ECHR AND THE MODEL CODE OF CONDUCT**EXECUTIVE SUMMARY**

1. This Advice Note outlines the approach the Standards Commissions' Hearing Panels will take when issues that concern the application of Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of expression arise. It also suggests issues members of devolved public bodies should consider in order for them to ensure compliance with the provisions in their Codes of Conduct.
2. Article 10 is a qualified right and, as such, the right to freedom of expression may be limited by a restriction such as the imposition of a sanction for a breach of a Code of Conduct. However, any restriction on freedom of expression needs to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued.
3. Enhanced protection of freedom of expression applies to all levels of politics including local. There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
4. Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they are for elected politicians. It may be necessary, for example, to protect officers from offensive and abusive verbal attacks as it is in the public interest that officers are not subjected to unwarranted comments that prevent them from performing their duties.
5. In determining at Hearings whether there has been a contravention of a Code of Conduct, the Standards Commission will take a three stage approach and consider:
 - Whether the facts found lead it to conclude, on the balance of probabilities, that the Respondent has failed to comply with the applicable Code of Conduct.
 - If so, whether such a finding in itself is *prima facie* a breach of the right to freedom of expression under Article 10.
 - If so, whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society.
6. Members of devolved public bodies should consider, therefore, both what they are expressing and the way they are expressing it. They should be able to undertake a scrutiny role, represent the public and any stakeholders, or make a political point in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and/or unduly disruptive.
7. If a member of a devolved public body is making a gratuitous personal comment and/or simply indulging in offensive abuse, it is unlikely they will attract the enhanced protection of freedom of expression afforded under Article 10.

ADVICE NOTE FOR MEMBERS OF DEVOLVED PUBLIC BODIES ON THE APPLICATION OF ARTICLE 10 OF THE ECHR

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission for Scotland (Standards Commission), aims to outline the approach its Hearing Panels will take when issues that concern the application of Article 10 of the European Convention on Human Rights (ECHR) arise.
- 1.2 The Advice Note also suggests issues members of devolved public bodies should consider in order for them to ensure compliance with the provisions concerning courtesy, respect and confidentiality in their Codes of Conduct, which are based on the Model Code of Conduct for Members of Devolved Public Bodies.
- 1.3 Members of devolved public bodies have a personal responsibility to observe the rules in their Codes of Conduct. This advice is intended to assist them in interpreting the provisions in the Codes of Conduct in order to do so. This Advice Note should, therefore, be read in conjunction with the Devolved Public Body's Code of Conduct.

2. Background

- 2.1 The Standards Commission's functions are provided for by the Ethical Standards in Public Life etc (Scotland) Act 2000 (the 2000 Act) as amended by the Scottish Parliamentary Commissions and Commissioners etc Act 2010. The 2000 Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with Codes of Conduct, approved by Scottish Ministers, together with Guidance issued by the Standards Commission.
- 2.2 The role of the Standards Commission is to:
 - Encourage high ethical standards in public life; including the promotion and enforcement of the Codes of Conduct and to issue guidance to councils and devolved public bodies.
 - Adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 Article 10 of the ECHR (as incorporated in the Human Rights Act 1998) concerns freedom of expression. It states:
 - a. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

b. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2.4 Therefore, Article 10 is a qualified right and as such the right to freedom of expression may be limited by imposition of sanctions in respect of provisions prescribed by law, such as ones contained in the Model Code of Conduct, provided the restrictions are necessary and proportionate and are in pursuance of a legitimate aim. The approach the Standards Commission will take in conducting such an analysis is outlined under Section 5 below.

3. Relevant Provisions in the Model Code of Conduct

3.1 The Model Code of Conduct for Members of Devolved Public Bodies contains provisions relating to respect that impact on a members' right to freedom of expression. Specific applicable paragraphs in the Model Code of Conduct include:

Conduct at Meetings

3.2 You must respect the chair, your colleagues and employees of the public body in meetings. You must comply with rulings from the chair in the conduct of the business in these meetings.

Relationship with Board Members and Employees of the Public Body (including those employed by contractors providing services).

3.3 You must treat your fellow Board members and any staff employed by the body with courtesy and respect. It is expected that fellow Board members and employees will show you the same consideration in return. It is good practice for employers to provide examples of what is unacceptable behaviour in their organisation. Public bodies should promote a safe healthy and fair working environment for all. As a Board member you should be familiar with the policies of the public body in relation to bullying and harassment in the workplace and also lead by exemplar behaviour.

4. How Article 10 has been interpreted by the Courts

- 4.1 There have been a number of cases on the application of restrictions under Article 10(2) on freedom of expression. Summaries of some relevant cases are outlined at **Appendix A**.
- 4.2 The points below summarise some of the principles established by the Courts, in the cases outlined in the appendix, in respect of the application of Article 10.

Enhanced protection of freedom of expression applies to all levels of politics including local.

There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.

Political expression is a broad concept. There is little distinction between political discussion and discussion of matters of public concern.

In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

The right to freedom of expression is not, however, absolute. Restrictions may be imposed to ensure that the conduct of public life at the local government level, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.

It may be necessary, for example, to protect officers from offensive and abusive verbal attacks. It is in the public interest that officers are not subjected to unwarranted comments that prevent them from performing their duties in conditions free from disturbance.

Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they are for elected politicians.

Public interest in particular information can sometimes be as strong as to override even a legally imposed duty of confidence. In determining whether a restriction is legitimate, however, consideration should be given to whether or not there were sufficient other opportunities for the individual imparting the information to achieve his or her objective.

Any restriction on freedom of expression needs, however, to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued (i.e. is there any other way of achieving the restriction's objective).

The less bad or shocking the conduct, the more difficult it is to justify any restriction on freedom of expression.

Communications protected by Article 10 are not limited to speech. They include communications of any kind such as spoken or written words (including social media); pictures, dress, graffiti, acts of protest, even wearing a beard. They include opinion or speculation even if not objectively true. They must, however, be made in a public way.

Hate speech is not protected. This includes any expressions of hatred toward someone on account of that person's colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

5. The Standards Commission's Approach

- 5.1 The Standards Commission recognises that a finding of a contravention of one or more of the provisions in the Code of Conduct, and the subsequent application of a sanction at one of its Hearings, may impact on the member's right to freedom of expression.
- 5.2 In determining at Hearings whether there has been a contravention of the Code of Conduct, the Standards Commission, through its Hearing Panel, will take the following approach. Firstly, it will consider whether the facts found lead it to conclude, on the balance of probabilities, that the Respondent has failed to comply with the Code of Conduct.
- 5.3 Secondly, if so, the Standards Commission will then consider whether such a finding in itself was *prima facie* a breach of the right to freedom of expression under Article 10.
- 5.4 Thirdly, if so, the Standards Commission will proceed to consider whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society.
- 5.5 **Stage 1:** The Hearing Panel will determine whether the facts as established and / or as admitted lead it to conclude, on the balance of probabilities, that there has on the face of it been a contravention of any of the provisions in the Code of Conduct, as alleged. If not, the Hearing Panel will announce its decision and the reasons behind the finding and will proceed to conclude the Hearing on that basis.

If the Hearing Panel concludes, on the balance of probabilities, that there has on the face of it been a contravention of any of the provisions in the Code of Conduct, it will, consider the provisions of Article 10, as set out in Stage 2 and 3 below, before coming to a finding on the matter.

- 5.6 **Stage 2:** If the Hearing Panel has concluded that there has, on the face of it, been a contravention of the Code of Conduct, it will proceed to determine whether such a finding would interfere with the Respondent's right to freedom of expression under Article 10. In doing so, the Hearing Panel will consider whether the comments were made and/or the behaviour took place in a political context or in respect of a debate on questions of public interest, in order to determine whether the enhanced protection applies.

The Standards Commission notes that enhanced protection of freedom of expression applies to all levels of politics including local. Therefore, if the conduct being considered concerns comments and/or behaviour by a member in a political forum or context or in respect of matters of public concern, it is likely that the Hearing Panel will conclude that the enhanced protection applies. However, a Hearing Panel will consider the context on a case by case basis, depending on the specific facts and circumstances of each matter.

5.7 **Stage 3:** The Hearing Panel will then consider whether any interference to freedom of expression it is considering making, in determining a breach of the Code of Conduct has occurred and in applying a sanction, is justified with reference to Article 10(2). The Hearing Panel in making such an evaluative judgement, must consider:

- a. *Is the restriction prescribed by law?* The answer to this will be yes as the Code of Conduct and the Standards Commission's remit to adjudicate on alleged contraventions of them are prescribed by the Ethical Standards in Public Life etc (Scotland) Act 2000 and the Scottish Parliamentary Commissions and Commissioners etc Act 2010.
- b. *Is the restriction necessary in a democratic society?* The Standards Commission considers that one of the objectives of the Model Code and the provisions within it as outlined under Section 3 above, and the imposition of any sanction if a breach is found, is to maintain standards and ensure the conduct of public life, including public debate, does not fall below a minimum level. A further aim is to protect the reputation and rights of others; for example, from offensive, abusive and defamatory remarks. The Standards Commission considers that the intention is also to ensure that officers of devolved public bodies are free from undue disturbance so they can perform their duties, with the aim of protecting the mutual bond of trust and confidence between members and officers, to enable devolved public bodies to function effectively. Other aims are to prevent the disclosure of information received in confidence; to ensure the devolved public body or role of a member is not brought into disrepute; to allow good administration and ensure public confidence in the devolved public body itself is not undermined.

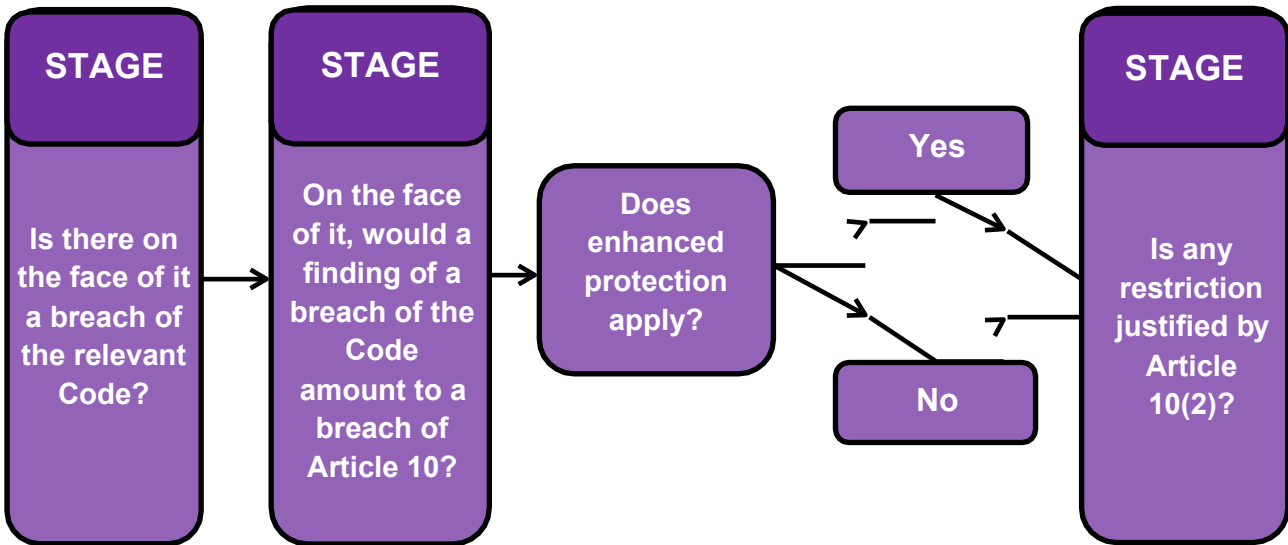
It may be, therefore, that the answer to this question of whether the intended restriction is in pursuance of a legitimate aim will be yes. However, the Standards Commission recognises that Hearing Panels, in determining whether such a restriction is necessary must also consider whether there are relevant and sufficient reasons to justify the interference to the Respondent's right to freedom of expression and whether the restriction is proportionate.

In considering proportionality, the Hearing Panel will reflect on whether the objective of the finding of a breach and the imposition of a sanction can be achieved by means which are less interfering of the Respondent's rights. The Hearing Panel will also take into account the question of whether any restriction would have a disproportionate effect; for example, on a member's ability to make a political point or to undertake their scrutiny role in an open and transparent manner. In cases of an alleged breach of confidentiality, the Hearing Panel will consider whether or not there were other opportunities for the member imparting the information to have achieved his or her objective.

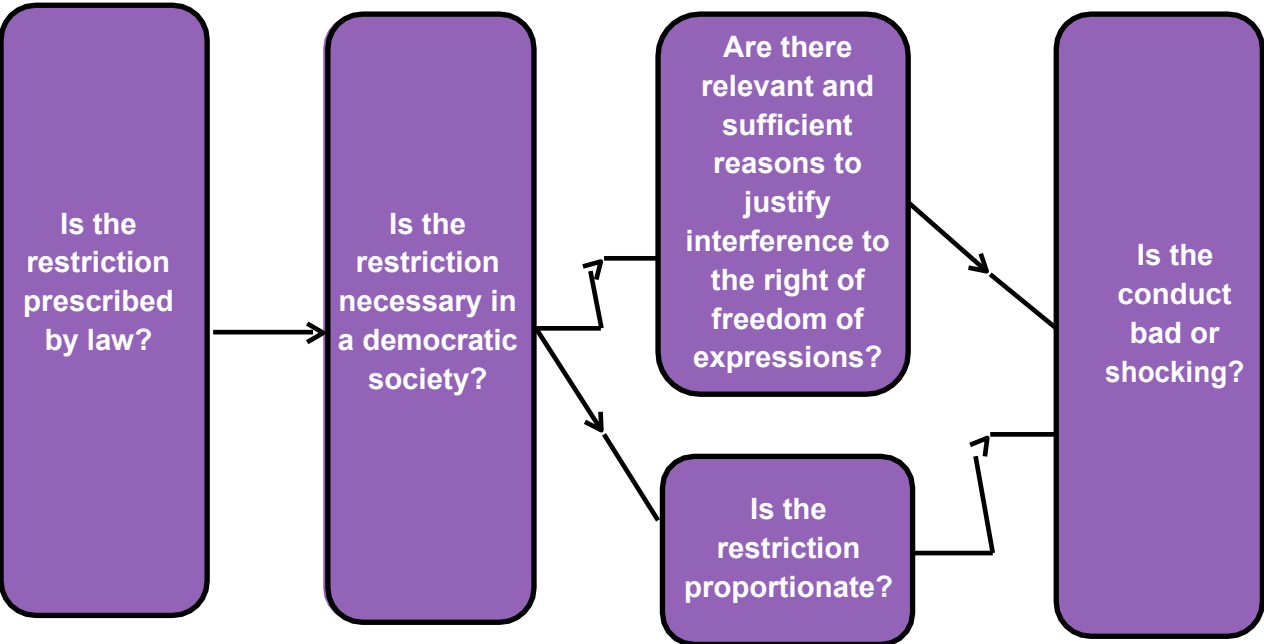
- c. *Is the conduct in question bad or shocking?* If the conduct in question is less bad or shocking, it is more difficult to justify any restriction, particularly if the Respondent enjoys enhanced protection.

- 5.8 The Standards Commission recognises that Hearing Panels will be required to make evaluative judgements and will, therefore, need to weigh all factors outlined above together. In doing so, Hearing Panels will be undertaking a balancing exercise and their decisions at each stage will depend on the facts and circumstances of the particular case under consideration.
- 5.9 The Standards Commission further recognises that undertaking such a balancing exercise will be particularly challenging in some cases. It notes, therefore, that previous Hearing decisions may be useful in terms of outlining the Hearing Panel's approach but should not be relied on as precedent cases in respect of findings of fact.
- 5.10 The Standards Commission will follow the process outlined above in any cases where it appears to the Hearing Panel that Article 10 considerations may apply, regardless of whether the parties to the case make any submissions, refer to case law or lead evidence to that effect.
- 5.11 In its written decisions of Hearings, the Standards Commission will announce the Hearing Panel's findings on each distinct stage.

Standards Commission's Approach



Standards Commission's Approach at Stage 3



6. Advice for Members

- 6.1 The approach outlined above concerns how the Standards Commission will apply Article 10 considerations when adjudicating on complaints referred to it. The Scottish public is entitled to have a high expectation of those in public life and, therefore, members should ensure their conduct is beyond reproach so that complaints do not arise.
- 6.2 Members of devolved public bodies must act in the public interest and have a duty to undertake a scrutiny role to ensure their devolved public body uses its resources properly and in accordance with law. Members may operate in a political environment and must be free to make political points and discuss matters of public concern without undue interference. However, as outlined under Section 4 above, the right to freedom of expression is not absolute. It is important that members understand that restrictions can be imposed to protect the rights and reputations of others and to ensure officers can undertake their tasks without undue disturbance.
- 6.3 Members should consider, therefore, both what they are expressing and the way they are expressing it. They should also consider how their conduct could be perceived. They should be able to undertake a scrutiny role, represent the public and any constituents or stakeholders, or make a political point in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and/or unduly disruptive.
- 6.4 Members may wish to consider:
- Whether they are making a gratuitous¹ personal comment and / or simply indulging in offensive abuse? If so, it is unlikely they will attract the enhanced protection of freedom of expression afforded under Article 10.
 - Are they being dishonest or engaging in misleading conduct towards officers, other members of the devolved public body or members of the public?
 - Is their communication factual, made in good faith and does it have a reasonable basis?
 - Could their behaviour bring the devolved public body or role of a member into disrepute?
 - Could their conduct undermine good administration?
 - Have they taken advice about what they intend to do or say?
 - Have they been warned about similar conduct or behaviour in the past? Should they be heeding such advice and warnings?
 - Is there a way of expressing their point that does not involve disclosing confidential information?

¹ Done without good reason, unjustified.

- Could their conduct be perceived as raising negative issues about performance, conduct or capability of specific and identifiable officers in public? Have they considered what the appropriate channels for raising such concerns are?
- Could there be an impact on the mutual bond of trust between members and officers?

6.5 Members may also wish to consider that demonstrating insight and remorse by issuing a genuine and sincere apology if they realise they have behaved in an offensive way in the heat of a moment. Doing so may well put an end to the matter.

6.6 Members should note that the fact that their conduct may not amount to a breach of the Code of Conduct does not mean there may not be other consequences, for example, they may be the subject of a defamation action.

7. Further Sources of Information

7.1 The Standards Commission has published guidance on how to interpret, and act in accordance with, the provisions in the Model Code of Conduct, including those relating to courtesy and respect. This guidance can be found on the Standards Commission’s website at:

www.standardscommissionscotland.org.uk/guidance/guidance-notes.

7.2 The Standards Commission also publishes written decisions of Hearings held on its website, which can be found at:

www.standardscommissionscotland.org.uk/cases/case-list.

7.3 If members have any queries or concerns about how to interpret or act in accordance with the provisions in their Devolved Public Body’s Code of Conduct, they should seek assistance from their respective Standards Officer. Further information can also be obtained from the Standards Commission using the contact details outlined below.

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Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
5/10/2017	LJ	N/A	V1	Implementation of Policy

APPENDIX A: CASE LAW ON ARTICLE TEN

1. *Heesom -v- Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin): The High Court recognised that politicians have an enhanced protection in respect of political expression, which applies to all levels of politics, including local, and that political expression in itself is a broad concept. The Court further held that public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians. The need to protect officers when imposing a restriction, in terms of Article 10(2), on freedom of expression must be weighed up against a politician's right to enhanced protection. The Court noted that the right to freedom of expression was not absolute but that any restriction was required to respond to a 'pressing social need', to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued. However, that margin must be construed narrowly in this context as there was little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. The Court had further recognised that it was in the public interest that officers were not subjected to unwarranted comments that prevented them from performing their duties in conditions free from perturbation² as this could undermine public confidence in the administration. The Court recognised that local government could not 'sensibly function' without such a mutual bond of trust and confidence.
2. *R (Calver) -v- Adjudication Panel for Wales (2012) EWHC 1172*: This case outlined the order a Tribunal would require to adopt when considering Article 10, which was firstly whether there had been a breach of the Code; secondly, if so, whether the finding of a breach and the imposition of a sanction was a limitation of the right to freedom of expression afforded by Article 10; and thirdly, if so, whether the restriction involved was one that was justified by Article 10(2). The High Court noted that if the conduct in question is less egregious³, it is more difficult to justify any restriction. The Court further noted that 'political expression' had to be interpreted widely and it included open discussion on political issues including public administration and public concern, including comments about the adequacy or inadequacy of the performance of public duties by others. It had been held that there was no distinction between political discussion and discussion of matters of public concern. In making observations about the general purpose of a Code that proscribed conduct, the High Court noted that a Code could seek to maintain standards and to ensure that the conduct of public life at the local government level, including political debate, does not fall below a minimum level so as to maintain public confidence in local democracy.

² Disturbance or upset caused by some event.

³ Extremely bad in a way that it noticeable or shocking.

3. *Guja -v- Moldova (2011) 53 EHRR 16*: The European Court of Human Rights (EHRR) found that the signalling or disclosure of wrongdoing by an officer should be made in the first place to the individual's superior or other competent authority or body and that the question of whether there was any other effective means of remedying the wrongdoing should be considered before information was disclosed in public. The EHRR further found that the public interest in particular information could sometimes be as strong as to override even a legally imposed duty of confidence.
4. *Lombardo -v- Malta (2009) 48 EHRR 23*: The EHRR stated that a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it. The Court noted it did not matter whether the restriction was imposed by civil or criminal proceedings when determining whether interference with the freedom of expression was proportionate to the aim pursued and was necessary in a democratic society.
5. *Mamere -v- France (2009) 49 EHRR 39*: The EHRR noted that individuals taking part in public debates on matters of general concern must not overstep certain limits, particularly with regard to respect of the reputation and rights of others, a degree of exaggeration or even provocation is permitted. The requirement to protect civil servants had to be weighed against the interests of freedom of the press or of open discussion on matters of public concern. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical⁴, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated. The Court noted that Article 10 protects all modes of expression but that the means of disseminating information can be of significance in determining whether measures taken by a competent authority to restrict freedom of expression were proportionate to the legitimate aim being pursued.
6. *Busuioc -v- Moldova (2006) 42 EHRR 14*: Even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.
7. *Livingstone -v- Adjudication Panel for England (2006) EWHC 2533*: The High Court notes that restraints imposed by a code of conduct designed to uphold proper standards in public life are in principle likely to fall within Article 10(2) ECHR but such restraints should not extend beyond what is necessary to maintain those standards. The Court noted that interference with the right of free speech which impedes political debate must be subjected to particularly close scrutiny but that simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection.

⁴ A piece of writing or a speech in which a person strongly attacks or defends a particular opinion, person, idea, or set of beliefs.

8. *Pederson -v- Denmark (2004) 42 EHRR 24*: The EHRR recognised that there can be a conflict between the right to impart information and the protection of the rights and reputation of others. In determining whether a restriction on freedom of expression was legitimate, consideration should be given to whether or not there were sufficient other opportunities for person imparting the information to achieve his or her objective.
9. *Janowski -v- Poland (1999) 29 EHRR 705*: The EHRR considered rights of public servants and their entitlement to protection but noted they are subject to the wider limits of acceptable criticism, meaning such criticism could be harsh or expressed in strong form. Public servants can expect criticism at higher level than the public but not quite the same level as politicians. They did not knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should not, therefore, be treated on an equal footing with the latter when it comes to criticism of their actions. The Court noted that civil servants can expect protection if there is a pressing social need. Any such protection must also be proportionate to the legitimate aim being pursued and be relevant and sufficient. Civil Servants must enjoy public confidence in conditions free from undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks.
10. *Thorgeirson -v- Iceland (1992) 14 EHRR 843*: The EHRR noted that freedom of expression was not just applicable to information and ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those which shock, offend or disturb. The Court observed that there was no distinction between political discussion and discussion on matters of public concern.



INTEGRITY IN PUBLIC LIFE