

Agenda Item	
Report No	

20 August 2009

**STANDARDS COMMISSION: COUNCILLORS' CODE OF CONDUCT  
INVESTIGATION INTO COMPLAINTS**

**Report by the Assistant Chief Executive**

**Summary**

This report provides information in relation to complaints received by the Standards Commission during the period May 2008 to date in relation to alleged breaches of the Councillors' Code of Conduct by Members of Highland Council and the outcome of the Standards Commission's investigations into these complaints.

**1. Introduction**

- 1.1 The Committee is advised on a regular basis of complaints against Members of the Highland Council alleging breaches of the Councillors' Code of Conduct which have occurred since the inception of the Code in May 2003.
- 1.2 Previous reports have provided information on the outcome of 13 complaints where, in every case, it was noted that the Commission had taken the view that the Members concerned had not contravened the Code of Conduct.
- 1.3 Since that time, a further 5 complaints against Members of the Highland Council have been dealt with by the Standards Commission and the outcome of these is detailed below.

**2. Complaints to the Standards Commission**

- 2.1 In May 2008, the Commission dealt with a complaint against Councillor William Clark and Councillor Edward Hunter. It was found that Councillors Clark and Hunter had not contravened the Code of Conduct and the Note of Decision is attached at **Appendix A**.
- 2.2 In January 2009, the Commission dealt with a complaint against Councillor Alasdair Rhind. It was found that Councillor Rhind had not contravened the Code of Conduct and the Note of Decision is attached at **Appendix B**.
- 2.3 In June 2009, the Commission considered a complaint against Councillor Bren Gormley but, having given the whole matter detailed consideration, decided that the matters raised did not amount to a breach of the Code of Conduct and that it would not be in the public interest to investigate the complaint further. A copy of the Investigating Officer's letter is attached at **Appendix C**.
- 2.4 In June 2009, the Commission considered a complaint against Councillor Rod Balfour and Councillor Glynis Sinclair but, having given the whole matter detailed consideration, decided that the matters raised did not amount to a breach of the Code of Conduct and that it would not be in the public interest to investigate the

complaint further. A copy of the Chief Investigating Officer's letter is attached at **Appendix D**.

- 2.5 In June 2009, the Commission considered a complaint against Councillor Katrina McNab but, having given the whole matter detailed consideration, decided that the matters raised did not amount to a breach of the Code of Conduct and that it would not be in the public interest to investigate the complaint further. A copy of the Chief Investigating Officer's letter is attached at **Appendix E**.

### **Recommendation**

The Committee is asked to note that, in respect of the five complaints against Highland Council Members, dealt with over the period since May 2008, the Standards Commission have made no findings of breach of the Code of Conduct.

Signature:

Designation: Assistant Chief Executive

Date 5 August 2009

## ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER  
Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

CONFIDENTIAL

Ms Michelle Morris  
Monitoring Officer  
The Highland Council  
Council Headquarters  
Glenurquhart Road  
Inverness  
IV3 5NX

D Stuart Allan  
Chief Investigating Officer

Direct Dial: 01383 428033  
Direct Fax: 01383 428019

Reference: [REDACTED]

7 May 2008

Dear Ms Morris

**Ethical Standards in Public Life**  
**Councillors' Code of Conduct**

I refer to previous correspondence pertaining to the complaint made by [REDACTED] concerning an alleged contravention of the Councillors' Code of Conduct by Councillors William Clark and Edward Hunter of Highland Council.

I have completed my investigation and decided that – for the reasons given in the attached Note of Decision – the respondents have not contravened the Code in terms of this complaint and I have found accordingly.

In view of this, no further action will be taken on the complaint. I have informed the Standards Commission for Scotland, the complainant and the respondents accordingly.

I am writing in similar terms to the Chief Executive.

Following our decision on this complaint there may be some press coverage and I would be grateful should you forward any copies of such reports to our Investigations Manager.

I should also like to take this opportunity of thanking you for your co-operation during my investigation.

Yours sincerely,

D Stuart Allan  
Chief Investigating Officer

Enc Note of Decision

*The Ethical Standards in Public Life etc. (Scotland) Act 2000, Section 9(2), provides the Chief Investigating Officer has the function of investigating and reporting to the Standards Commission for Scotland on cases in which a councillor or member of a devolved public body may have contravened the councillors' or, as the case may be, the members' code of conduct.*

IM4/SD H.2.4/06-03-08

**ETHICAL STANDARDS IN  
PUBLIC LIFE**

**OFFICE OF CHIEF INVESTIGATING OFFICER**  
Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

**NOTE OF DECISION**

**Complaint no. LA/H/818  
concerning an alleged contravention of  
the Councillors' Code of Conduct  
by  
Councillor William Clark and Councillor Edward Hunter  
of  
The Highland Council**

*The Ethical Standards in Public Life etc. (Scotland) Act 2000, Section 9(2), provides the Chief Investigating Officer has the function of investigating and reporting to the Standards Commission for Scotland on cases in which a councillor or member of a devolved public body may have contravened the councillors' or, as the case may be, the members' code of conduct.*

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**Complaint no. LA/H/818 concerning an alleged contravention of the Councillors' Code of Conduct by Councillors William Clark and Edward Hunter of The Highland Council**

1. Complaint number LA/H/818 alleged a contravention of the Councillors' Code of Conduct ("the Code") by Councillors William Clark and Edward Hunter ("the respondent").
2. It was alleged that the respondents had contravened the Councillors' Code of Conduct, and, in particular, the provisions on **Relationship with Council Employees** set out in section 3; and the provisions on **Public Comment** contained in Annex C of the Code.
3. The complainant alleged that the respondents initiated a press report within the Lochaber News in which they publicly criticized his appointment as an employee of the Council, and cast doubt on the integrity of the Council's recruitment process.
4. This complaint arose from the publication of an article in the Lochaber News, a local newspaper circulating in the Fort William and Lochaber area, which questioned the appointment of a former Highland councillor to paid employment with the Council. I was asked to consider firstly, the comments attributed to the respondents, Councillors William Clark and Edward Hunter, and secondly, the actions of the respondents in questioning the appointment with the Council's Chief Executive. A distinction required to be drawn between that part of the article compiled by the press and the quotes attributed to the respondents. I found no evidence to support the contention that the respondents initiated the article.
5. The first aspect of this complaint related to paragraph 3.2 of the Code which requires members to respect all Council employees and the role they play, and treat them with courtesy at all times. The complainant pointed out that while the remarks attributed to the respondents in the newspaper article were primarily directed at his suitability for appointment to a Council post, the implication might also have been drawn that others involved in the recruitment process were being criticized.
6. In considering the impact of the remarks on the complainant himself I did not regard the respondents as being overtly critical. Councillor William Clark simply expressed surprise at the appointment of a former chairman of the Housing Committee, and Councillor Hunter implied that in that role the complainant would have had an advantage over other candidates. I did not think that exception could be taken to these comments. An additional jurisdictional issue arose here in that the complainant was not, at the time the comments were made, a substantive employee of the Council as his contract of employment did not take effect until a subsequent date. Councillor Hunter's additional remark about the complainant's attitude was ill-advised however and potentially unhelpful to a Council appointee whose job, when it commenced, would require close contact with the public. I did not consider however that the comments attributed to either respondent, taken in isolation from the article, were of such a disrespectful or discourteous nature as to breach paragraph 3.2.
7. As a general observation I considered that the terms of the Code as they apply to substantive employees should be taken into account when considering the effect of public comment on any individual in the position of an applicant for employment, or appointee awaiting the commencement of employment, with the Council.
8. The complainant suggested that an implication might have been drawn that the respondents' comments also levelled criticism at those Council employees who participated in his selection and appointment. I did not consider that this could be supported by the evidence as no reference was made to any individual either by name or job title. It might have been argued somewhat tenuously that the respondents were criticizing, or at least questioning, the propriety of appointing any former councillor to paid employment with the Council, or at least to a post related to their previous responsibilities as an elected member. Indeed, this was the justification for the comments which the respondents made at interview, but criticism of Council policy and procedures, albeit raised inappropriately in the press, is not a matter that would conflict with this section of the Code. I also noted that none of the Council employees involved in the recruitment process had interpreted the remarks attributed to the respondents as being critical of their actions. I did not consider that, taken

in isolation from the contents and thrust of an article compiled by a newspaper reporter, the comments attributed to either respondent were of such a disrespectful or discourteous nature as to breach paragraph 3.2, and I found accordingly.

9. The second aspect of the complaint centred on the actions of the respondents in raising the complainant's appointment with the Chief Executive. It was not disputed that an approach was made by the respondents to the Chief Executive and it was difficult to place any interpretation on this other than that taken by the complainant. Clearly the respondents had a motive in approaching the Chief Executive and questioning the appointment, whether or not this was directed at former councillors in general or the complainant in particular. Given that both respondents stated at interview that they had asked the Chief Executive if he had provided a reference for the complainant it seemed plain that they were referring to him as an individual. Councillor Hunter said that he was simply being inquisitive; Councillor Clark provided no explanation. Had this indiscreet and unnecessary intervention taken place prior to, or during, the selection and appointment process it might well have constituted an attempt to engage in operational management. In the event the intention of the respondents remained unclear and they had no opportunity to take matters further as the Chief Executive quite properly made it clear that Council policy and procedures had been observed, and the statutory time-bar on the employment of the complainant as a former Councillor had expired. That was the case although it has to be borne in mind that the statutory provisions precluding an elected member from becoming an officer of the same council within 12 months of ceasing to be a member are well-established and are there to ensure there is no impropriety – or perceived impropriety – in relation to the appointment of a former councillor to a post as an officer. I considered that the approach to the Chief Executive was reasonable and could not be interpreted as an attempt to intervene in a process which lay outwith the role of elected members. In the whole circumstances of this case I considered that the conduct of the respondents could not reasonably be taken to amount to a breach of paragraph 3.2 of the Code and I found accordingly.

10. Annex C to the Code of Conduct sets out a protocol for relations between Councillors and Employees. Paragraph 20 constrains elected members from raising matters relating to the conduct or capability of employees in public. The protocol applies only to substantive employees, but again it would appear a matter of common sense that critical public comment should not be made about any applicant for, or appointee to, a Council post who is at the relevant time in what might be described as a neo-employment role. Members should consider very carefully whether any comments are appropriate in such circumstances. The respondents in this case took the view that to have made no comment in response to questions about the appointment of a former councillor to paid employment with the Council could have given a perception of approving this as a general policy. In alluding to the complainant as an individual however they gave a negative impression towards his specific appointment which they need not have expressed. I did not consider however that the specific comments made by either respondent breached paragraph 20 of Annex C and I found accordingly.

11. Having considered the information that arose from my investigation, I concluded that Councillors William Clark and Edward Hunter had not contravened the Councillors' Code of Conduct.

D Stuart Allan  
Chief Investigating Officer

Forsyth House  
Innova Campus  
Rosyth Europarc  
Rosyth  
KY11 2UU

7 May 2009

## ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER  
Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

CONFIDENTIAL

Mr Alistair Dodds  
Chief Executive  
The Highland Council  
Glenurquhart Road  
Inverness  
IV3 5NX

D Stuart Allan  
Chief Investigating Officer

Direct Dial: 01383 428033  
Direct Fax: 01383 428019

Reference: [REDACTED]

26 January 2009

Dear Mr Dodds

Ethical Standards in Public Life  
Councillors' Code of Conduct

I refer to previous correspondence pertaining to the complaint made by [REDACTED] concerning an alleged contravention of the Councillors' Code of Conduct by Councillor Alasdair Rhind of Highland Council.

I have completed my investigation and decided that – for the reasons given in the attached Note of Decision – the respondent has not contravened the Code in terms of this complaint and I have found accordingly.

In view of this, no further action will be taken on the complaint. I have informed the Standards Commission for Scotland, the complainant and the respondent accordingly.

I am writing in similar terms to the Monitoring Officer.

Yours sincerely

D Stuart Allan  
Chief Investigating Officer

Enc Note of Decision

**ETHICAL STANDARDS IN  
PUBLIC LIFE**

**OFFICE OF CHIEF INVESTIGATING OFFICER**

Forsyth House, Innova Campus, Rosyth Europe, Rosyth, KY11 2UU

**NOTE OF DECISION**

**Complaint no. LA/H/638  
concerning an alleged contravention of  
the Councillors' Code of Conduct  
by  
Councillor Alasdair Rhind  
of  
The Highland Council**

*The Ethical Standards in Public Life etc. (Scotland) Act 2000, Section 9(3), provides the Chief Investigating Officer has the function of investigating and reporting to the Standards Commission for Scotland on cases in which a councillor or member of a devolved public body may have contravened the councillors' or, as the case may be, the members' code of conduct.*

**Complaint no. LA/H/638 concerning an alleged contravention of the Councillors' Code of Conduct by Councillor Alasdair Rhind of Highland Council**

1. Complaint number LA/H/638 alleged a contravention of the Councillors' Code of Conduct ("the Code") by Councillor Alasdair Rhind ("the respondent").
2. It was alleged that the respondent had contravened the Code, in particular, the key principles of **Duty, Integrity, Accountability and Stewardship, and Honesty** set out in section 2.
3. The person complaining ("the complainant") alleged that the respondent submitted a false declaration and inaccurate or incomplete return of expenses incurred by him in relation to the local government election held on 3 May 2007.
4. On 11 April 2007 the respondent declared his candidature for election to the Highland Council in the local government election to be held on 3 May 2007. He was successful in that election and continues to serve as one of the three Councillors who represent the Tain and Easter Ross ward.
5. The provisions of the Representation of the People Act 1983 require an accurate and complete return of all electoral expenses to be submitted with 35 days of the election. Failure to comply with this requirement may constitute a corrupt practice and would thus justify investigation as a criminal matter.
6. The return of expenses submitted by the respondent to the Returning Officer formed the basis of the complainant's allegation under the Code. The first issue was whether the respondent was acting as a councillor (rather than simply a candidate) in submitting his return. For a breach to be established I required to be satisfied that this return of expenses was a) accurate; b) complete; and c) did not conceal an element of third party assistance. In considering this matter I was aware that an investigation had been undertaken by the police and that no criminal proceedings were to be taken by the Procurator Fiscal.
7. The accuracy of the expenses listed on the return were verified by the supporting documentation submitted by the respondent. The complainant did not contend that these were inaccurate, and their cumulative value corresponded with the total amount of election expenses declared by the respondent. The issue in essence was whether they represented the actual costs incurred and whether any element of discount had been applied. In addition there was a question as to the omission of any reference to transport costs, and the absence of hire costs relating to three public meetings.
8. In completing his return of election expenses the respondent was required to comply with the advice given in the notes provided by the Electoral Commission. These are categorised under specified 'purposes' which are detailed in the advisory notes and further reproduced with minor changes) on the return form itself. The judgement as to the purpose under which particular expenditure should be categorised is left to the candidate, it being recognised that some costs may fall into more than one purpose. For ease of reference I scrutinised the respondent's entries under the purposes in which he made his entries.
9. Purpose A: advertising. The respondent entered expenses totalling £885.74 under this heading, with supporting invoices relating to brochure layout and the printing of leaflets, the construction, registration and hosting of an election website, and newspaper announcements of public meetings. The complainant questioned the omission of a specific reference to posters from the printing invoice. This was rebutted by the respondent who stated that the posters were printed by the same supplier who issued a single invoice which he assumed included all his printing requirements. The supplier's recollection supported the respondent and at this juncture, and mindful of the time that had elapsed since the work was undertaken, I did not consider that the accuracy of the invoice could be questioned.
10. In relation to the respondent's election website the complainant speculated that the charge levied by the supplier did not represent the true commercial cost. The supplier did not contend this and explained that he carried out the work at a reduced rate as he considered it to be of community

benefit. The supplier did not know, and I did not think he could reasonably be expected to have known, that the respondent would be required to submit a return of his expenses and that any significant discount would require to be included as notional expenditure. The supplier stated that he did not make the respondent aware that he was providing his services at a reduced rate, and further explained that the work involved was not great as the text and pictorial content was supplied by the respondent. In support of this aspect of his complaint the complainant had obtained quotes from other suppliers which showed a wide range of prices. On the one hand these could be interpreted as showing that the charge invoiced to the respondent was indeed below the commercial rate, but on the other indicated that there was no standard charge which could be applied to website design. The respondent confirmed that he accepted the invoice at face value and I did not therefore consider that his reliance on the invoice could be criticized; nor did I consider that the complainant had provided a robust assessment of the actual commercial cost.

11. Purpose B: unsolicited material to electors. The respondent applied no expenses to this category. It would in my view have been appropriate to have allocated the cost of leaflets to this category but given that the total sum was entered under advertising purpose I did not consider that this was anything other than an error of judgement on the part of the respondent.

12. Purpose C: transport. Again the respondent applied no expense to this purpose. The complainant questioned this by comparison to the return of another candidate. The respondent stated that he met all transport expenses himself, or made use of facilities provided by friends and family who provided their services free of charge. I considered that the respondent was entitled to rely on the guidance note against this purpose on the return form which excludes the use of personal cars where no charge has been made by the owner.

13. Purpose D: public meetings. This aspect of the complaint relied on the omission from the respondent's return to charges for the hire of halls at Fearn, Polnicol and Inver which he utilised for pre-election meetings. This was explained by the statutory exemption applying to the Council halls at Fearn and Polnicol, and the absence of any charge being levied for the community-run hall at Inver.

14. At the end of the day the key issue was whether the respondent was performing official duties as a councillor in submitting his return of election expenses, and, in this connection I found he was acting in his capacity as a candidate (all candidates were under the same legal obligations regarding the returns) and not as a councillor. There are appropriate procedures to challenge the returns of all candidates under the Representation of the People Act, as opposed to the Ethical Standards Act. In any event even if the Code did apply, in all the circumstances of this complaint, having regard to the underlying facts, the speculative nature of the alternative calculations provided by the complainant, the substantial time lapse, and the decision of the Procurator Fiscal on the same issues, I would not have concluded that the respondent had breached the key principles of Duty, Integrity, Accountability and Stewardship, or Honesty. I found accordingly.

15. Having considered the information that arose from my investigation, I concluded that Councillor Alasdair Rhind had not contravened the Councillors' Code of Conduct.

D Stuart Allan  
Chief Investigating Officer  
Forsyth House  
Innova Campus  
Rosyth Europarc  
Rosyth  
KY11 2UU

26 January 2009

# ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER  
Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

CONFIDENTIAL

Ms Michelle Morris  
Assistant Chief Executive  
Monitoring Officer  
The Highland Council  
Glenurquhart Road  
Inverness  
IV3 5NX

D Stuart Allan  
Chief Investigating Officer

Direct Dial: 01383 428033  
Direct Fax: 01383 428019

Reference: [REDACTED]

09 June 2009

Dear Ms Morris

Ethical Standards in Public Life

I refer to previous correspondence regarding a complaint to me by [REDACTED] alleging that Councillor Bren Gormley had breached the Councillors' Code of Conduct.

Having given this whole matter detailed consideration I considered that, in all the circumstances, the matters raised did not amount to a breach of the Code of Conduct for the reasons set out in my letter of today's date to the complainants [REDACTED]. I, therefore, considered that it would not serve any useful purpose and would not be in the public interest to investigate this complaint further.

In view of this, I shall be taking no further action and I have closed the file on the complaint. I have informed the complainants, the respondent and the Council's Chief Executive.

Following our decision on this complaint there may be some press coverage and I would be grateful should you forward any copies of such reports to the Investigations Manager.

Thank you for all your assistance.

Yours sincerely

*PS* D Stuart Allan  
Chief Investigating Officer

[REDACTED]

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## ETHICAL STANDARDS IN PUBLIC LIFE

### OFFICE OF CHIEF INVESTIGATING OFFICER

Porryth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

CONFIDENTIAL

Ms Michelle Morris  
Assistant Chief Executive  
Highland Council  
Glenurquhart Road  
Inverness  
IV3 5NX

D Stuart Allan  
Chief Investigating Officer

Direct Dial: 01383 428033  
Direct Fax: 01383 428019

Reference: [REDACTED]

9 June 2009

Dear Ms. Morris

#### Ethical Standards in Public Life

I refer to previous correspondence regarding a complaint to me by [REDACTED] ('the complainant') alleging that Councillors Roderick Balfour and Glynis Sinclair ('the respondents') have breached the Councillors' Code of Conduct.

Having given this whole matter detailed consideration I consider that, in all the circumstances, the matters raised did not amount to a breach of the Code of Conduct for the reasons set out in my letter of today's date to the complainant [REDACTED]. I, therefore, considered that it would not serve any useful purpose and would not be in the public interest to investigate this complaint further.

In view of this, I shall be taking no further action and I have closed the file on the complaint. I have informed the complainants, the respondents and the Council's Chief Executive.

Following our decision on this complaint there may be some press coverage and I would be grateful should you forward any copies of such reports to the Investigations Manager.

Thank you for all your assistance.

Yours sincerely

*DS*  
D Stuart Allan  
Chief Investigating Officer  
[REDACTED]

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## ETHICAL STANDARDS IN PUBLIC LIFE

OFFICE OF CHIEF INVESTIGATING OFFICER  
Forsyth House, Innova Campus, Rosyth Europarc, Rosyth, KY11 2UU

**CONFIDENTIAL**

Ms Michelle Morris  
Monitoring Officer  
The Highland Council  
Council Headquarters  
Glenurquhart Road  
Inverness  
IV3 5NX

D Stuart Allan  
Chief Investigating Officer

Direct Dial: 01383 428033  
Direct Fax: 01383 428019

Reference: [REDACTED]

18 June 2009

Dear Ms Morris

**Ethical Standards in Public Life**

I refer to previous correspondence regarding a complaint to me by [REDACTED] alleging that Councillor Katrina MacNab has breached the Councillors' Code of Conduct.

Having given this whole matter detailed consideration I consider that, in all the circumstances, the matters raised did not amount to a breach of the Code of Conduct for the reasons set out in my letter of today's date to the complainant [REDACTED]. I, therefore, considered that it would not serve any useful purpose and would not be in the public interest to investigate this complaint further.

In view of this, I shall be taking no further action and I have closed the file on the complaint. I have informed the complainant, the respondent and the Council's Chief Executive.

Following our decision on this complaint there may be some press coverage and I would be grateful should you forward any copies of such reports to the Investigations Manager.

Thank you for all your assistance.

Yours sincerely

*DS*  
D Stuart Allan  
Chief Investigating Officer