

The Highland Council

Agenda Item	10
Report No	AS/18/23

Committee: **Audit & Scrutiny Committee**

Date: **28 September 2023**

Report Title: **Commissioner for Ethical Standards in Public Life/Standards Commission: Councillors' Code of Conduct – Investigation into Complaints**

Report By: **Head of Legal and Governance**

1. Purpose/Executive Summary

1.1 This Report provides information in relation to complaints dealt with by the Commissioner for Ethical Standards (ESC)/Standards Commission during the period 1st June 2022 to 31st August 2023 in relation to alleged breaches of the Councillors' Code of Conduct by Members of Highland Council and the outcome of the Commissioner's investigations into these complaints

2. Recommendations

2.1 Members are asked to note:-

- i. The ESC has investigated one complaint and, following investigation, the Standards Commission had decided to take no further action.
- ii. Following investigation by the ESC the Standards Commission had decided to hold a hearing in respect of Councillor Hugh Morrison and on conclusion of the hearing found that he had not been in breach of the Code of Conduct.

3. Implications

3.1 Resource: There are no resource implications arising directly from this report.

3.2 Legal: There are no legal implications arising directly from this report. All members agree to adhere to the Councillors' Code of Conduct.

3.3 Community (Equality, Poverty, Rural and Island): There are no such implications arising directly from this report.

3.4 Climate Change / Carbon Clever: There are no such implications arising directly from this report.

- 3.5 Risk: There are no risk implications arising directly from this report.
- 3.6 Health and Safety (risks arising from changes to plant, equipment, process, or people): There are no such implications arising directly from this report.
- 3.7 Gaelic: There are no Gaelic implications arising directly from this report

4. Introduction

- 4.1 The Standards Commission are a statutory body established under The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act). The 2000 Act established a framework whereby Councillors are required to comply with Codes of Conduct and also Guidance which is issued by us. Complaints about alleged breaches of these Codes are investigated by the Ethical Standards Commissioner (ESC) and thereafter adjudicated upon by the Standards Commission. The Standards Commission are also responsible for considering dispensations in relation to financial and non-financial interests.
- 4.2 On election all Councillors in Scotland agree to adhere to the terms of the Code of Councillors' Code of Conduct. The Code was revised and reissued in December 2021 and is supported by a number of Guidance documents and Advice Notes issued by the Standards Commission.
- 4.3 The ESC is required to provide a report to the Standards Commission at the conclusion of every investigation into a complaint about a councillor outlining his findings and conclusions whether or not there has been a contravention of the Code. On receipt of a report from the ESC, the Standards Commission has three options available (a) to direct the ESC to carry out further investigations; (b) to hold a hearing; or (c) to do neither.
- 4.4 In terms of the number of Councillors the Highland Council is one of the largest local authorities in Scotland. Historically the volume of complaints against Members of Highland Council has been low.
- 4.5 Training on the Code of Conduct was offered to all members as part of the Members' Induction Programme 2022. It is intended that further training opportunities be included in the revised training programme which will be coming to Council for approval in October. Members receive the Quarterly Updates from the Standards Commission and are reminded of the need to ensure that their respective Registers remain up to date.

5. Complaints to the Commissioner for Ethical Standards – 2022/23

- 5.1 This report deals with the complaints concluded during the period 1st June 2022 to 31st August 2023.
- 5.2 During the period in question Commissioner completed one investigation into a complaint against a Member of the Highland Council - LA/H/3778.
- 5.3 The complaint was received on 12 July 2022 concerning an alleged contravention of the Councillors' Code of Conduct. Following investigation the Ethical Standards Commissioner referred a report to the Standards Commission on 23 March 2023. The complaint concerns allegations that the Councillor had breached the respect, bullying and harassment provisions in the Code by suggesting in two social media posts that

the Complainer was stalking him and suggesting, during a Council meeting, that the Complainer was “not fit for public office”.

- 5.4 The Standards Commission was of the view, having taken into account the context in which they were made, and the apparent colloquial nature of the language used, that the comments were not sufficiently gratuitous or offensive as to be likely to justify a restriction on the Councillor’s enhanced right to freedom of expression. As such, the Standards Commission concluded that it was unlikely that a finding of breach could be made at a Hearing.
- 5.5 The Standards Commission further noted that the ESC had reached the conclusion that the Councillor’s conduct was not sufficiently serious as to amount to bullying and harassment in terms of the Code. Having reviewed the evidence presented in the report, Standards Commission found no reason to depart from that conclusion. Having considered the above factors, and the fact that the Councillor had proffered an apology to the Complainer, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.
- 5.6 The Standards Commission nevertheless emphasised that the requirement for councillors to behave in a respectful and courteous manner towards colleagues is a fundamental requirement of the Code, as it ensures public confidence in the role of an elected member and the council itself is not undermined. The Standards Commission reiterates that councillors should be able to make political points in a respectful, courteous and appropriate manner, without resorting to personal attacks and without being offensive, abusive or unduly disruptive.
- 5.7 The Standards Commission heard one complaint against a Highland Council member, Councillor Hugh Morrison in the period in question.
- 5.8 A complaint was made to the Ethical Standards Commissioner (ESC) alleging that Councillor Morrison had failed to comply with the Code of Conduct, and, in particular, that he had breached paragraphs 5.5, 5.6, 7.1, 7.4 and 7.5. The complaint arose from Councillor Morrison’s attendance and participation in a meeting of North Planning Applications Committee on 26 April 2022. In particular concern was raised about Councillor Morrison’s participation in the consideration and determination of a windfarm application proposal at Sallachy.
- 5.9 Having reviewed the ESC’s report, the Standards Commission directed the ESC on 8 March 2023 to undertake further investigation in respect of whether Councillor Morrison had ensured that he was seen to be acting fairly and that he avoided any suspicion of unfairness or bias in respect of the matter in question. Following the conclusion of the further investigation on 31 March 2023, the ESC advised that they were of the view that Councillor Morrison had not breached the Code. The Standards Commission nevertheless decided, on 6 April 2023, that it was both proportionate and in the public interest to hold a Hearing on the matter. This was because the Standards Commission was not satisfied, based on the contents of the ESC’s initial report and his report on further investigation, that no breach of the Code had occurred. It further considered that the alleged breach was not insignificant or of a technical nature. The Standards Commission decided, therefore, that it wished to hear evidence and submissions at a Hearing in order to determine whether the Code had been contravened. The Standards Commission noted that holding a Hearing (and the associated publicity) could also promote the provisions of the Codes of Conduct and the ethical standards framework.

- 5.10 The Standards Commission for Scotland convened a Hearing on 25 May 2023. The Commission heard submissions from both the ESC and Councillor Morrison.
- 5.11 The Hearing Panel concluded that:
1. The Councillors' Code of Conduct applied to Councillor Morrison.
 2. Councillor Morrison had not breached the Code
- 5.12 Having considered both the evidence received before and the submissions made at the Hearing, the Panel concluded that there was no breach. As the Panel did not find that the Councillor Morrison had failed to ensure he was acting fairly, or that he had failed to avoid any suspicion of pre-judging, bias, or a lack of fairness in relation to the application, there was no requirement for him to have declared an interest and withdraw from the meeting. As such, the Panel concluded that it had not been established that Councillor Morrison had breached the Code.
- 5.13 In accordance with The Ethical Standards in Public Life etc. (Scotland) Act 2000 Act the outcome of the hearing was reported to the meeting of Highland Council of 29 June 2023.

Designation: Head of Legal and Governance

Date: 15 September 2023

Author: Stewart Fraser