

Agenda Item	8.b
Report No	HC/16/25

THE HIGHLAND COUNCIL

Committee: Highland Council

Date: 15 May 2025

Report Title: Decision of Standards Commission for Scotland – Hearing on 15 April 2025.

Report By: Chief Officer Legal and Corporate Governance / Monitoring Officer

1. Purpose/Executive Summary

- 1.1 The purpose of this report is to fulfil the statutory duty placed on the Council under Section 18 of the Ethical Standards in Public Life etc (Scotland) Act 2000, following a Hearing.

2. Recommendations

- 2.1 Council is asked to consider and **note** the decision of the Standards Commission of Scotland.

3. Implications

- 3.1 There are no Resource, Community (Equality, Poverty, Rural and Island), Climate Change/ Carbon Clever, Risk or Gaelic implications.
- 3.2 There are no immediate legal implications for the Council. Consideration of this report discharges the obligation imposed upon the Council by Section 18 of the Ethical Standards in Public Life etc (Scotland) Act 2000. The Standards Commission has decided Councillor Baird breached the Code of Conduct and has imposed the sanction of a two month suspension. The effect of the suspension is to impose a number of restrictions on Councillor Baird's ability to attend Council meetings and to participate in decision making and scrutiny activities.

4. Impacts

- 4.1 In Highland, all policies, strategies or service changes are subject to an integrated screening for impact for Equalities, Poverty and Human Rights, Children's Rights and Wellbeing, Climate Change, Islands and Mainland Rural Communities, and Data Protection. Where identified as required, a full impact assessment will be undertaken.

- 4.2 Considering impacts is a core part of the decision-making process and needs to inform the decision-making process. When taking any decision, Members must give due regard to the findings of any assessment.
- 4.3 This is an update report which does not impact upon any policy, strategy or service and therefore an impact assessment is not required.

5. Complaint against Councillor Michael Baird

- 5.1 Following an investigation into a complaint received on 7 February 2024 about the conduct of Councillor Baird, the Ethical Standards Commissioner (ESC) referred a report to the Standards Commission on 6 August 2024, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).
- 5.2 The substance of the referral was that Councillor Baird had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 3.1 and 3.3, which were as follows:

Respect and Courtesy

3.1: I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.3: I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.

6. The Complaint

- 6.1 The Complainer was a member of the Culrain and District Hall Committee (the Committee), which was involved in managing and maintaining a village hall. The village hall was a local community asset and, as such, was not owned or managed by the Council.
- 6.2 Forestry and Land Scotland had asked the Committee (as the only established local community group) to obtain the opinions of the local community on a land purchase request from a local constituent.
- 6.3 There were three issues of complaint. The Complainer had submitted his initial complaint, about the first issue, in September 2023. He had then submitted two further complaints, in February and May 2024, concerning issues two and three, respectively.
- 6.4 Issue 1: concerned an email Councillor Baird sent the Chair of the Committee (the Committee Chair) on 22 September 2023 in which he stated that if the Committee did not support a proposal for the constituent to buy public land from Forestry and Land Scotland then he could not “support further money (which [name of constituent] is willing to sponsor also) for further improvements to the Culrain Village Hall.”
- 6.5 Issue 2: concerned Councillor Baird’s conduct in sending the Committee Chair a text message on 7 February 2024, after he had been informed by the ESC’s office that a complaint about the email of 22 September 2023 had been made.

- 6.6 Issue 3: concerned an email Councillor Baird sent the Committee Chair on 29 March 2024.
- 6.7 There was no dispute that Councillor Baird had sent the emails and text in question.
- 6.8 The Standards Commission for Scotland convened a Hearing on Tuesday 15 April 2025.

7. Standards Commission Decision

- 7.1 The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Baird.

2. Councillor Baird had breached paragraph 3.1 of the Code only, in respect of the first issue, and that a restriction on his right to freedom of expression that such a finding would entail could be justified.

3. Councillor Baird had not breached the Code in respect of the other two issues of complaint.

8. Reasons for Decision

- 8.1 The Panel noted that Councillor Baird used the sign-off "Cllr Baird" in the emails that were the subject of the issues one and three. The Panel noted the text, which was the subject of issue two was sent from Councillor Baird's council-issued mobile phone and, again, included the sign-off "Cllr Baird". The Panel further noted that both emails and the text concerned matters of local interest. As such, Panel was satisfied that Councillor Baird identified himself as a councillor and could also reasonably be considered to be acting as a councillor at the time of the conduct in question. The Panel determined, therefore, that the Code applied to his conduct.
- 8.2 In relation to issue one, the Panel noted the Committee was approached by Forestry and Land Scotland for its views on a land purchase request received from an individual constituent. The Panel noted it was not in dispute that Councillor Baird sent the Committee Chair an email on 22 September 2023 stating that if the Committee did not support the land purchase request, then he could not support "further money" which the constituent "is willing to sponsor also for further improvements to the Culrain Village Hall". The Panel noted Councillor Baird previously made several telephone calls and visits to the Committee Chair's home during which he raised the matter.
- 8.3 The Panel noted that the Committee was entitled to seek grant funding from the Council. The Panel further noted that as one of the three ward councillors for the area that covered Culrain, Councillor Baird was entitled to advise council officers of his views on how the ward budget should be spend, albeit he was not responsible for determining how any funds are distributed.
- 8.4 The Panel considered it was evident from the reference to the constituent "also" being willing to provide sponsorship that Councillor Baird was referring to any potential sources of funding. The Panel noted that while Councillor Baird would not have had any control over a constituent's expenditure, he enjoyed some degree of influence in terms of how the ward budget should be spent. As such, the Panel was of the view

that even if it had been Councillor Baird's intention to refer only to sponsorship from the constituent or to refer to income from any other source, it would be reasonable for the Committee Chair to understand that he was also referring to any future, potential council funding. This was particularly the case given that the Committee had previously received funding from the council for work carried out on the village hall.

8.5 The Panel noted the Committee Chair had confirmed that, before the email was sent, he had enjoyed a friendship with the Councillor Baird. The Panel noted that Committee Chair had indicated that while Councillor Baird had previously visited him at home, the frequency of such visits had increased after the Committee was asked to gauge the community's views on the proposed land purchase, with Councillor Baird also telephoning him frequently. The Panel accepted the Committee Chair's evidence that Councillor Baird almost always referred to the question of whether the Committee would support the proposal during these visits and telephone calls. The Panel considered it would have been evident from this that Councillor Baird felt very strongly about the Committee's stance towards the proposal.

8.6 The Panel considered, given its findings that:

- the Committee had previously received funding from the council for work to the village hall;
- Councillor Baird enjoyed some degree of influence in terms of how the ward budget should be spent; and
- it would have been evident to the Committee Chair that Councillor Baird felt very strongly about the Committee's stance towards the proposal,
- it would have been reasonable for the Committee Chair to have understood the Councillor Baird's email of 22 September 2023 to constitute a viable threat with regard to the award of potential further council funding.

8.7 The Panel was further of the view that, regardless of intent, Councillor Baird, when acting in the capacity as a ward councillor, declared an intent to do something (either by act or omission) to impact upon potential funding, in retribution, to pressure the Committee Chair and Committee into making a decision on a wholly unrelated matter. As such, the Panel was satisfied that Councillor Baird had, effectively, issued a threat.

8.8 The Panel considered that by threatening to use his position as a councillor with influence over expenditure of council funds to force the Committee Chair and committee into making a decision on an unrelated matter, Councillor Baird was disrespectful towards the Committee Chair and Committee. In reaching this view, the Panel considered the threat would not have been made, had there not been an inherent assumption that the Committee Chair or Committee could be financially motivated when making a decision on an issue of local concern. The Panel therefore concluded that, on the face of it, Councillor Baird had breached paragraph 3.1 of the Code in respect of issue one.

8.9 In relation to issues two and three the Panel concluded that there had been no breach of the Code.

9. Sanction

9.1 The decision of the Hearing Panel was to suspend, for a period of two months with effect from 23 April 2024, Councillor Baird, from all meetings of the council and of any committee or sub-committee thereof and of any other body on which he is a representative or nominee of the council or body.

9.2 This sanction was made under section 19(1)(c) terms of the Ethical Standards in Public Life etc. (Scotland) Act

10 Reasons for Sanction

10.1 In determining the appropriate sanction, the Panel considered:

- firstly, whether the interference (i.e. the proposed sanction) was the minimum necessary, or whether less restrictive means could be employed; and then
- secondly, whether the benefit of that least restrictive measure outweighs its adverse impact on Councillor Baird's right to freedom of expression. For example, whether any benefit in applying a sanction in respect of protecting the rights and reputations of others, and to ensure public confidence in councillors and local authorities is not adversely affected, would outweigh any impact on Councillor Baird.

10.2 The Panel began by assessing the nature and seriousness of the breach of the Code. The Panel agreed that the provision requiring councillors to behave with respect and courtesy is a key requirement of the Code. The Panel considered that a failure to do so can erode public confidence in elected members as individuals and also in the local authorities they represent. It can also have a detrimental impact on the rights and reputation of others.

10.3 The Panel noted that Councillor Baird had agreed, as part of his acceptance of office as a councillor, that he would adhere to the terms of the Code and was disappointed by his failure to do so. The Panel considered that it was wholly inappropriate for Councillor Baird to have effectively threatened to use his position as a councillor with influence over expenditure of council funds to pressure the Committee Chair and Committee into making a decision on an unrelated matter. The Panel considered this conduct to be serious in nature as it was of the view that the public has the right to expect that councillors will make decisions about whether to support funding based on merit (rather than on any unrelated matter, regardless of whether the unrelated matter may be beneficial to the community).

10.4 The Panel considered it was evident that Councillor Baird's conduct had a negative impact on the Committee Chair (being the recipient of the email), who had found it upsetting. The Panel considered it also had a detrimental effect in terms of the Committee's willingness or effectiveness in attempting to facilitate a consultation exercise with the wider local community. As noted above, the Panel was further of the view that it had the potential to reduce public confidence both in councillors and in the broader way funding decisions may be made by local authorities.

10.5 The Panel then considered the aggravating and mitigating factors as set out in the Policy on the Application of Sanctions, beginning with those in mitigation. The Panel noted that mitigating factors are those that may lessen the severity or culpability of the breach.

10.6 The Panel accepted that the conduct it had found to be a breach of the Code concerned only the sending of one email and, as such, was limited in duration. The Panel acknowledged that Councillor Baird did not take any steps to prevent the council from providing further funding. The Panel had no evidence before it to suggest Councillor Baird was seeking a personal advantage or was motivated by anything other than a desire to see the proposal being supported (as he considered it could

result in the creation of local jobs). The Panel also accepted that email was not rude, abusive or aggressive and that the sending of it had not appeared to confer any personal benefit on Councillor Baird.

- 10.7 The Panel noted that Councillor Baird had co-operated with the Hearing process. In addition, the Panel further noted he had apologised for his conduct (albeit he had not done so until two days prior to the Hearing) and had confirmed that while he had not intended to be disrespectful, he accepted the Panel's findings in this regard.
- 10.8 The Panel did not identify any aggravating factors; being ones that may increase the severity or culpability of the breach. However, given its findings in respect of the seriousness of the breach (and, in particular, the adverse impact on the Committee Chair and Committee), and the potential negative impact on public confidence, it was of the view that a censure (being the minimum sanction available), was not appropriate. The Panel agreed that a censure would not achieve the aims, as outlined in the Policy on the Application of Sanctions, of:
- preserving the ethical standards framework;
 - promoting adherence to the Councillors' Code of Conduct;
 - maintaining and improving the public's confidence that councillors will comply with the Code and will be held accountable if they fail to do so; and
 - achieving credible deterrence.
- 10.9 Having considered both the seriousness nature of the breach found, and the mitigating factors identified, the Panel concluded the imposition of a relatively short suspension was the appropriate sanction in the circumstances. The Panel considered this was the minimum necessary sanction to achieve the aims outlined above and, further, to ensure public confidence in the council or democracy itself were not undermined. The Panel was of the view that a suspension was also necessary to discourage other councillors from engaging in similar conduct.
- 10.10 The Panel did not consider a disqualification, or more lengthy suspension, was warranted or justified in the circumstances, given Councillor Baird did not repeat or follow through on his threat. The Panel agreed it may have imposed a longer suspension had he failed to demonstrate any insight or apologised for his conduct. The Panel noted that it may also have imposed a longer suspension had it found the other aspects of the complaint to have met the threshold for amounting to a breach of the Code.
- 10.11 The Panel was also satisfied that the necessary interference (being the short suspension) outweighed the adverse impact on Councillor Baird's right to freedom of expression, particularly because it did not interfere with his ability to support fully his constituents. Having considered carefully the matters outlined above, the Panel concluded, on balance, that the appropriate sanction in the circumstances was to suspend fully Councillor Baird, for a period of two months, with effect from 23 April 2024.
- 10.12 A copy of the full decision can be found at

<https://www.standardscommissionscotland.org.uk/uploads/files/1745309331250422WrittenDecision.pdf>

11. Consideration of the Decision

- 11.1 The Council provides training on both the Code of Conduct as part of its induction for Councillors and refresher training is also provided. The recent Spring Training Event included specific input reminding Members of the requirement within the Code to ensure their Register of Interests was accurate and up to date. Councillors are also kept informed of changes and developments through circulation of the Standards Commission's regular newsletter. Training on the Code of Conduct will continue to be a fundamental part of the Council's ongoing training programme and Members are encouraged to seek advice from officers upon any potential issues arising.

Designation: Chief Officer - Legal and Corporate Governance/Monitoring Officer

Date: 30 April 2025