

Agenda Item	14
Report No	AS/16/22

## Highland Council

**Committee:** Audit & Scrutiny Committee

**Date:** 28 September 2022

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

**Report By:** Head of Corporate Governance

### 1. Purpose/Executive Summary

1.1 This Report provides information in relation to complaints dealt with by the Commissioner for Ethical Standards in Public Life (ESC)/Standards Commission during the period 1<sup>st</sup> June 2021 to 31<sup>st</sup> July 2022 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 The Committee is asked to note that, in respect of any complaints against Highland Council Members, concluded during 2021/2022, the ESC/Commission has investigated one complaint and, following investigation, decided to take no further action.

### 3. Implications

3.1 There are no financial, legal, Gaelic, Community (Equality, Poverty and Rural) or Climate Change/Carbon Clever implications or risks arising directly from this report.

### 4. Introduction

4.1 The Committee is advised on a regular basis of investigations into complaints against Members of the Highland Council alleging breaches of the Councillors' Code of Conduct.

4.2 In circumstances where the ESC concludes that there has been a breach of the Code, this is reported to the Standards Commission for Scotland. The Standards Commission normally hold a public hearing to decide the matter and then publish their decision.

4.3 Previously upon receipt of a complaint of an alleged breach of the Code the ESC undertook an initial consideration and review of the circumstances of the concern. In some instances the ESC decided the complaint would not be accepted and there would be no further investigation. In other instances the ESC accepted the complaint and undertook further enquiry. At this point the complaint was typically brought to the attention of the Member concerned and in Highland Council to the Head of Corporate Governance. Following investigation if the ESC identified there had been a potential breach the matter was reported to the Standards Commission.

4.4 In November 2020 and then in March 2021 the previous practice was amended following the issue of two Directions by the Standards Commission. In November 2020 the Standards Commission's directed the ESC to provide a report to the Standards Commission at the conclusion of every investigation into a complaint about a councillor received on or after 12 November 2020, outlining their findings and conclusions whether or not there had been a contravention of the Code. The Direction had the effect that the Standards Commission would make the final decision, under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. A further Direction issued in March 2021 required the ESC to carry out an investigation into every complaint about a councillor received by the ESC, unless:

- i) the conduct referred to in the complaint would not, even if it could be established to have occurred, constitute a contravention of the Councillor's Code.
- ii) the councillor in respect of whom the complaint has been made has passed away prior to the complaint having been made or is an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000; and/or
- iii) the conduct that has or is alleged to have contravened the Councillors' Code occurred (or in the case of a course of conduct ended) more than one year before the complaint was received.

4.5 The aim of the Directions was to ensure there is clarity and consistency in respect of the criteria the ES uses to assess whether complaints were eligible/admissible for investigation. 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.

4.6 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.

## 5. **Complaints to the Commissioner for Ethical Standards – 2021/22**

5.1 This report deals with the complaints concluded during the period 1<sup>st</sup> June 2021 to 31<sup>st</sup> July 2022.

5.2 During 2021/22, the Commissioner undertook one investigation into a complaint against a Member of the Highland Council. In an initial report the ESC advised that he had two competing accounts of the alleged conduct, with no additional evidence at hand to support either position. As such, he was not able to prefer either account. Having directed the Acting ESC to undertake further investigation into the matter, the Standards Commission noted that the complainer had not provided any other evidence to support their assumption that the Councillor was responsible for the action complained of. In the absence of any other evidence, and given it was very unlikely that further substantive evidence would emerge before or during a Hearing, the Standards Commission determined in the circumstances it was not proportionate to hold a Hearing based on such an assumption and directed that no further action be taken.

Date: 12 September

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