

ANGUS COUNCIL

22 JUNE 2023

STANDARDS COMMISSION DECISION

REPORT BY JACKIE BUCHANAN, DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

In terms of Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and Rule 10.9 of the Standards Commission Hearing Rules, the Council requires to consider, within three months, the terms of a written decision issued by the Standards Commission for Scotland.

1. RECOMMENDATION

- 1.1 It is recommended that the Council considers the decision of the Standards Commission in relation to complaint reference LA/AN/3690.

2. ALIGNMENT TO THE COUNCIL PLAN

- 2.1 This Report contributes to the achievement of our priority that the council is efficient and effective as detailed in our Council Plan.

3. BACKGROUND

- 3.1 The Standards Commission in Scotland encourages high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and those appointed to the Boards of Devolved Public Bodies.
- 3.2 It is a statutory body established under The Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the Ethical Standards Act"). The Ethical Standards Act created a framework whereby Councillors and Members of Devolved Public Bodies are required to comply with Codes of Conduct and also with Guidance which is issued by the Standards Commission.
- 3.3 Complaints about breaches of these Codes are investigated by the Commissioner for Ethical Standards in Public Life in Scotland ("ESC") and thereafter adjudicated upon by the Standards Commission.
- 3.4 Following an investigation into a complaint received about the conduct of Councillor Beth Whiteside (the "Respondent"), the ESC referred a report to the Standards Commission on 28 February 2023, in accordance with section 14(2) of the Ethical Standards Act.
- 3.5 The substance of the referral was that the Respondent had failed to comply with the provisions of the 2021 version of the Councillors' Code of Conduct ("the Code") and, in particular, that she had contravened paragraphs 3.1, 3.3, 3.21, 3.22 and 3.23 of the Code, which are 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.*

Confidentiality

- 3.21 *I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.*
- 3.22 *I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.*
- 3.23 *I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available).*
- 3.6 An online Hearing of the Standards Commission took place on 1 May 2023, in relation to complaint reference LA/AN/3690, concerning an alleged contravention of the Code by Councillor Beth Whiteside, elected member of Angus Council.
- 3.7 The Hearing Panel considered the submissions made both in writing and orally at the Hearing and concluded that: -
1. Councillor Whiteside had, on the face of it, breached the Code in respect of a post she published on Facebook about another elected member;
 2. However, Cllr Whiteside was entitled to enhanced protection of freedom of expression under Article 10 of the European Convention on Human Rights, as a politician commenting on a matter of public interest.
 3. The Panel found that Cllr Whiteside's post and comments were not sufficiently offensive, personally abusive or gratuitous as to justify the restriction on that enhanced right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail. The Panel was of the view that a restriction on this right could not be justified in the circumstances of the case and, therefore, that a formal finding of breach could not be made. As such, the Panel concluded overall that a breach of the Code could not be found.
 4. The Panel further found that Cllr Whiteside had not disclosed confidential information.
- 3.8 The full written decision from the Standards Commission is attached as Appendix 1 to this report.
- 4. FINANCIAL IMPLICATIONS**
- 4.1 There are no financial implications arising directly from this report.
- 5. EQUALITY IMPACT ASSESSMENT**
- 5.1 An equality impact assessment is not required as this report provides information only for elected members.

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Appendix 1 - Decision of the Hearing Panel of the Standards Commission for Scotland