



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 5 October 2021

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
7th Meeting 2021, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Meghan Gallacher (Central Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ben Macpherson (Minister for Social Security and Local Government)

Tony Romain (Scottish Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 5 October 2021

[The Convener opened the meeting at 10:00]

“Code of Conduct for Councillors”

The Convener (Ariane Burgess): Good morning and welcome to the Local Government, Housing and Planning Committee’s seventh meeting in 2021. I ask all members and witnesses to ensure that their mobile phones are in silent mode and that all notifications are turned off during the meeting.

Our first agenda item is an evidence-taking session on the “Code of Conduct for Councillors”. I welcome Ben Macpherson, the Minister for Social Security and Local Government. I also welcome Tony Romain and Claire McKenna, who are both senior policy officers in the local government policy and relationships unit at the Scottish Government. They join us virtually.

We will take evidence from the minister before moving to a formal debate on the code of conduct. I ask committee members to declare any interests that they have in the matter.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): I welcome the minister and his team. I declare that, as per my entry in the register of members’ interests, I am a councillor in East Ayrshire Council.

Meghan Gallacher (Central Scotland) (Con): I declare that I am a serving councillor in North Lanarkshire Council.

Paul McLennan (East Lothian) (SNP): I refer to my entry in the register of members’ interests. I am a sitting councillor in East Lothian Council.

The Convener: I invite the minister to make a short opening statement on the code.

The Minister for Social Security and Local Government (Ben Macpherson): Thank you, convener, and good morning, colleagues. The revised “Code of Conduct for Councillors” that the committee is considering is part of a joint exercise to review the code and the “Model Code of Conduct for Members of Devolved Public Bodies”, which was also laid before Parliament on 2 September.

The public expect elected officials, whether they are councillors or members of the Parliament, to

adhere to the highest standards of behaviour. The Parliament demonstrated that commitment by passing the Ethical Standards in Public Life etc (Scotland) Act 2000 as one of its earliest statutes. That act required the Scottish ministers to issue a code of conduct for councillors and a model code of conduct for members of devolved public bodies. It also formed the Commissioner for Ethical Standards in Public Life in Scotland to investigate complaints and the Standards Commission for Scotland to adjudicate on alleged breaches of the codes of conduct and, when a breach is found, to apply a sanction.

The current version of the councillors code was published in 2010 and underwent a minor revision in 2018. During the decade for which it has been in force, it has become increasingly apparent that it is viewed as being cumbersome and outdated. Many stakeholders complained that they no longer understood some of the provisions and found it too confusing to read or no longer relevant. Members of the public were often confused about what would constitute a complaint. My predecessor, Kevin Stewart, therefore initiated a review of the code.

Officials worked together with the Standards Commission, the Commissioner for Ethical Standards in Public Life in Scotland, the Convention of Scottish Local Authorities, the Society of Local Authority Chief Executives and Senior Managers and the Society of Local Authority Lawyers and Administrators in Scotland to develop the new code in partnership. I thank the individuals who were involved for their hard work and the organisations that were involved for their collaboration with the Scottish Government. The work was initially delayed by Covid, but I am pleased that the review is now complete and the revised codes have been laid before Parliament for approval.

I stress that, fundamentally, both codes of conduct remain based on the nine key principles of duty, selflessness, integrity, objectivity, accountability and stewardship, openness, honesty, leadership and respect. Both codes continue to work to promote the public’s trust in the people whom they elect. That has not changed. The key principles underpin the standards of behaviour that are expected under the current code and they continue to underpin the standards of behaviour that will be required under the revised code. The revised code spells out the behaviours more clearly and makes plain the situations and circumstances in which they are expected, including online. The changes have been broadly welcomed by the majority of those who responded to the consultation.

I am happy to answer any questions that the committee has.

The Convener: Thank you, minister. We have a few questions. We will begin with Mark Griffin.

Mark Griffin (Central Scotland) (Lab): My question is about category 5, which covers houses, land and buildings, in section 4, which is called "Registration of Interests". I have always been concerned that councillors seem to be held to a higher standard than MSPs and MPs, in that councillors need to register an interest in their family home, whether that is as owner, part-owner or tenant. Will you say why it was felt important to maintain that requirement?

There have been instances in which overzealous recording of a councillor's property has meant that home addresses have been made available online, which has caused safeguarding issues. We have seen some high-profile safeguarding issues in the national press recently, and other instances of bullying, intimidation and aggression towards councillors. Was consideration given to putting councillors on a par with parliamentarians by taking out the need for them to register an interest in their home?

Ben Macpherson: You raise some important points, Mr Griffin, particularly on security in relation to an individual's residential address. Perhaps Tony Romain can shed some light on that point with regard to discussions with stakeholders during the review.

Tony Romain (Scottish Government): We recognise that members of the public having councillors' addresses is a danger and that there have been some high-profile incidents of late. Councillors will still need to register that interest because, for example, there might be a planning application in the ward in which they live that they have an interest in. We recognise that we must protect councillors, so the main change in the code is that their addresses will no longer be in the public domain. Only the council will know where a councillor lives. Their address will not be made public so that people cannot go round to the house and threaten them.

Ben Macpherson: I hope that that gives you the reassurance that you are looking for, Mr Griffin.

Mark Griffin: Are you saying that the distinction is purely that councillors deal with planning issues so there needs to be that connection with where they live?

Ben Macpherson: Correct.

Mark Griffin: Okay.

Meghan Gallacher: Declaration of interests has always been a grey area for councillors. The requirement to leave a meeting if you have declared an interest is significantly different from the process that is used by, for example, the

Scottish Parliament. Has further consideration been given to declarations of interests? Should there be more clarity about councillors' participation in meetings when they declare an interest?

Ben Macpherson: What sort of clarity do you mean?

Meghan Gallacher: I will give an example. If I was a councillor sitting in a council meeting and I declared an interest, as I did earlier in this meeting, I would have to leave and not participate in the meeting. Has any work been undertaken to ensure that if, as a generic example, a councillor who has worked for a third-sector organisation was doing a piece of work in a committee in relation to community empowerment, they would not have to leave the meeting, but could participate and provide the knowledge and experience that they have in that work?

Ben Macpherson: I appreciate the nature of the question and the need to ensure that councillors can contribute in a way that helps the wider consideration of matters and uses their experience. However, I am sure that you will appreciate the need to balance that with the consideration of maintaining public trust by ensuring that there is no undue influence.

I will bring in Tony Romain again, because he led the engagement with stakeholders throughout the consultation process, including while my predecessor was in post. The revisions to the code are about ensuring that considerations around declarations of interest are clear not just for councillors, but for members of the public. Tony can give us some insight into the considerations during the process.

Tony Romain: We considered that the previous version of that part of the code was cumbersome and too confusing. We have broken it down into three main parts: connection, interest and participation. Someone who has an interest should declare it, and if it is significant, we would normally expect them to withdraw from the meeting. However, there may be occasions when the councillor's knowledge and experience can help to inform the decision of the rest of the council. There is now provision for a councillor, when they know that an issue is coming up, to apply to the Standards Commission for Scotland for a dispensation to maintain their presence in a meeting. If the Standards Commission agrees, the councillor can stay in the meeting if they need to.

Ben Macpherson: Section 5 is drafted and laid out in such a way that it makes clear the three different aspects that Tony Romain mentioned. I hope that that will be clear for councillors.

Meghan Gallacher: Thank you for that clarity.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): What are your views on what councillors can, cannot and should not do in relation to lobbying in respect of planning applications? The guidance seems to be clear that a councillor must not divulge an opinion in advance, but in my experience as councillor, the advice from senior officials was often not to engage at all with the supporters or opposers of a planning application. I always felt that that restricted a councillor's ability to look at all the information that was available to enable them to make a decision.

Do you have any views on whether that is still a grey area in the code? Are you clear about whether councillors can meet people who are proposing or opposing a planning application? It is still a little unclear to me.

Ben Macpherson: In the redrafted code, section 6 has been shortened to make it easier for users. I appreciate your point that there will often be discussion in the community or public discourse that the councillor will be aware of but they cannot engage directly with stakeholders, whether that is the applicant or, for example, a community campaign that is in opposition. As Mr Coffey will appreciate, planning issues can be sensitive, given the nature of the decision that is being made. It is clear both in the code and in a councillor's engagement with the code that they must be able to make a quasi-judicial decision that has not been influenced.

I think that the drafting is clear. If the committee thinks that it needs further consideration, I can take that point away. However, I encourage the committee to agree to the code as drafted today. Again, Tony Romain might want to add to what I have said, given his engagement throughout the process.

Tony Romain: Fundamentally, we have not changed section 6, but we have made it clearer—at least, I think we have. The main change is that there are now other types of quasi-judicial applications that councils have to undertake besides planning, such as community asset transfer requests. Section 6 was redrafted mainly with that in mind, rather than through a desire to change any rules or regulations around planning applications.

I think that you would agree that it would be unwise to engage with lobbyists, as that would engender mistrust in the public. That does not prevent councils or councillors from asking for or seeking information from people who are making applications, but we would prefer that to be done in a more transparent and open manner instead of behind closed doors, as people fear has happened in the past. I think that the new section 6 makes that much clearer. We are saying that it would be

unwise to engage behind closed doors. I think that you would agree with that.

10:15

Willie Coffey: How do we ensure that a councillor gets the fullest picture of something? When an application is made, there will be opinions on both sides. For me, the question is whether a councillor should disengage from the process for fear of being lobbied and possibly forming a view as a result, or should embrace the process and declare that they have done so in order to allow the public to see that an objective assessment is still possible.

Ben Macpherson: As Tony Romain set out, the position is that the councillor should not get into a situation where they can be lobbied. However, in a quasi-judicial setting such as a committee session in which papers are considered or presentations are made by both parties, due process must be followed. Of course, the quasi-judicial nature of the process and arrangement lends itself to different perspectives being heard. Do you have anything to add, Tony?

Tony Romain: The Standards Commission will, on the back of the code, provide guidance that will make it clearer how councillors can get information from planning applicants without having to be lobbied. That should make things safer for councillors, who as a result will not be accused of doing anything untoward. The commission has taken that concern on board and it will be included in its guidance.

The Convener: It is great to hear that the Standards Commission will provide guidance, but are there any opportunities to give councillors training in this area? I am hearing from my colleagues about certain grey areas where things are not clear and councillors want to be confident that they are doing the right thing.

Tony Romain: The Standards Commission guidance will be followed up by training material that will be provided to council monitoring officers. How that training will be provided to councillors will be up to individual councils, but the commission will provide the material.

Miles Briggs (Lothian) (Con): I note that, in the section on public comment, point 24 says:

"Councillors and employees both have a responsibility to project a positive image of the Council and should avoid making any public comments that could bring it into disrepute."

Reading that, a new councillor might feel that they should not comment on any concern, even if it is to do with bullying or whatever. Indeed—the minister will be aware of such cases here in the capital—such matters are often taken to the press

before the council can start to look at them. Do you think that that rule is too tight, with regard to councillors being unable to comment publicly on concerns that they have about the running of the council or other issues to do with it?

Ben Macpherson: I am sorry, Mr Briggs, but what do you mean by “point 24”?

Miles Briggs: It is on page 31, in the section entitled “Public comment”. The definition seems to me to be very tight, in that councillors are discouraged from making any public comment that could bring the council “into disrepute”. There is a huge difference between, say, someone in the administration and a councillor in the opposition, who might feel that they have not received a satisfactory resolution from the council’s processes and might make some public comment in the press. I wonder how that paragraph was drawn up.

Ben Macpherson: Thank you for your patience, Mr Briggs. I think that the page numbers in our papers must be different.

I will bring in Tony Romain to talk about the background and engagement with stakeholders, but I think that this is about ensuring appropriate consideration of the institution’s integrity. I take your point, though, about the need for political debate and discussion about performance and everything else. A balance has to be struck here. There will be members of staff working for councillors who are not at an appropriate level for criticism in the public domain, and a lot of this is about taking their wellbeing into consideration.

Tony Romain: The minister has made the point for me. The main concern here is adverse comments about employees. We are not saying that councillors will lose their right to scrutinise the council; indeed, that is part of a councillor’s role. Instead, we are trying to protect employees from being individually picked on by councillors. For example, a councillor could not go around saying, “That Mr Romain isn’t very good at his job”; they would need to take the more formal approach of going to the council and saying, “We’re not doing very well in this particular role.” It is more than anything a matter of how something is said.

Miles Briggs: I take those points on board, and paragraph 25 captures that view. However, paragraph 24 is specifically about bringing the council as an institution “into disrepute”. I am concerned that a new councillor who reads that might feel that, under the code of conduct guidance, they cannot be critical in the press. It says that they have to

“project a positive image of the Council”,

but in some cases they might not feel that they can do that. Perhaps it is just a matter of looking at

the wording to ensure that councillors know that, if they need to, they can make public comment against the organisation, as it were, but not against a particular employee.

Ben Macpherson: I appreciate Mr Briggs’s point. Should the draft document that the Parliament is considering be agreed to, we will look at how that issue can be made clear in the training process. The member has raised a point of perception that is worth considering, and we will take it away and think about how we might liaise with stakeholders and colleagues with regard to training. I hope that that is satisfactory.

Miles Briggs: That is fine.

The Convener: I thank the minister for taking that point on board and Miles Briggs for raising it. I have made a note to keep an eye out for that being made clear in the training.

As there are no further questions, we move to agenda item 2, which is consideration of motion S6M-01124.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Code of Conduct for Councillors be approved.—[*Ben Macpherson*]

Motion agreed to.

The Convener: The committee’s report will confirm the outcome of the debate.

As previously agreed, we will move into private session to consider our work programme.

10:24

Meeting continued in private until 11:43.

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