

Supplementary Agenda

West Dunbartonshire Health & Social Care Partnership Board

Date: Tuesday, 16 August 2022

Time: 14:00

Format: Hybrid Meeting

Contact: Lynn Straker, Committee Officer
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Dear Member

ITEMS TO FOLLOW

I refer to the agenda for the above meeting which was issued on 5 August and now enclose copies of Items 6, 7, 8 and 12 which were not available for issue at that time.

Yours faithfully

BETH CULSHAW

Chief Officer of the Health &
Social Care Partnership

Note referred to:-

6 2022-2023 FINANCIAL PERFORMANCE UPDATE 85 - 116

Submit report by the Chief Financial Officer providing Members with an update on the financial performance based as at Period 3 to 30 June 2022.

7 RESERVES UPDATE 117 - 130

Submit report by the Chief Financial Officer providing a clear framework for Members to ensure reserves are effectively managed to meet the financial risks and uncertainties faced by the HSCP whilst enabling the Partnership Board to provide the capacity to invest in the delivery of the HSCP Strategic Plan.

8 REQUEST FROM WEST DUNBARTONSHIRE COUNCIL 131 - 139
IN RESPONSE TO URGENT NOTICE OF MOTION

Submit report by the Chief Officer – West Dunbartonshire HSCP Board to allow Members to consider a request from West Dunbartonshire Council (WDC) that it use un-earmarked reserves to mitigate against the costs associated with the Councils ambition to abolish charges for non-residential services.

12 ADOPTION OF MODEL CODE OF CONDUCT 141 - 206

Submit report by the Principal Solicitor informing Members of amendments to the Model Code of Conduct produced by the Scottish Government. The Model Code of Conduct applies to members of devolved public bodies such as the HSCP Board. The Standards Commission has brought out guidance to reflect the changes made to the Model Code.

Distribution:-

Voting Members

Michelle McGinty (Chair)
Rona Sweeney (Vice Chair)
Martin Rooney
Lesley Rousselet
Clare Steel
Michelle Wailes

Non-Voting Members

Barbara Barnes
Beth Culshaw
John Kerr
Helen Little
Diana McCrone
Anne MacDougall
Kim McNab
Peter O'Neill
Saied Pourghazi
Selina Ross
Julie Slavin
Val Tierney

Senior Management Team – Health and Social Care Partnership
Chief Executive – West Dunbartonshire Council

Date of Issue: 12 August 2022

WEST DUNBARTONSHIRE HEALTH AND SOCIAL CARE PARTNERSHIP BOARD

Report by Chief Financial Officer

16 August 2022

Subject: 2022/23 Financial Performance Report

1. Purpose

- 1.1 To provide the Health and Social Care Partnership Board with an update on the financial performance based as at period 3 to 30 June 2022.

2. Recommendations

- 2.1 The HSCP Board is recommended to:

- **Note** the updated position in relation to budget movements on the 2022/23 allocation by West Dunbartonshire Council and NHS Greater Glasgow and Clyde Health Board and the first direction for 2022/23 back to our partners to deliver services to meet the HSCP Board's strategic priorities;
- **Note** the reported revenue position for the period 1 April 2022 to 30 June 2022 is reporting a favourable (underspend) position of £0.136m (0.31%);
- **Note** the projected outturn position of £0.863m underspend (0.5%) for 2022/23, including all planned transfers to earmarked reserves;
- **Note** that the forecast costs for Covid-19 for 2022/23 are currently estimated to be £8.507m (including the costs of the £500 thank-you payments);
- **Note** the update on the monitoring of savings agreed for 2022/23;
- **Note** the bad debt write off for quarter one;
- **Note** the current reserves balances;
- **Note** the update in the capital position and projected completion timelines; and
- **Note** the impact of a number of ongoing and potential burdens on the reported position for 2022/23 and the previously reported budget gaps for 2023/24 and 2024/25.

3. Background

- 3.1 At the meeting of the HSCP Board on 21 March 2022 members agreed the 2022/23 revenue estimates. A total indicative net revenue budget of £185.117m (excluding Set Aside) was approved as the health allocation was subject to NHSGCC Board formal approval.
- 3.2 Since the March HSCP Board report there have been a number of budget adjustments. A total net budget of £184.986m is now being monitored as detailed within Appendix 1.

4. Main Issues

Financial Impacts of the HSCP Response to the Covid-19 Pandemic

- 4.1** Throughout 2021/22 the Local Mobilisation Plan (LMP) Covid-19 financial tracker was submitted quarterly to the Scottish Government, however in 2022/23 this will revert to a monthly submission, to allow close monitoring of the impact of Covid Cost Improvement Programmes.
- 4.2** The first financial tracker for 2022/23 was submitted on 26 July 2022 and Table 1 provides a summarised version of the forecast costs. At this time the costs only extend until the end of the 2022/23 financial year; however it is anticipated that some expenditure commitments will extend into 2022/23.
- 4.3** The opening earmarked Covid-19 reserve was £9.213m and at this time it is forecast that expenditure in 2022/23 will be £8.507m (including £0.077m relating to final social care £500 thankyou payments) leaving a projected balance of £0.783m which may be required to transfer to NHSGGC in line with the Scottish Government's 25 February allocation letter.

Table 1 - Summary of Covid-19 Costs and Funding to 31 March 2022

Covid/Remobilisation Cost Analysis	Actual to Date	Full Year Forecast
	£000's	£000's
Covid-19 Pressures		
Scale up of Public Health Measures	0	40
Flu Vaccination & Covid-19 Vaccination (FVCV)	42	239
Additional Staff Costs (Contracted staff)	210	1,081
Additional Staff Costs (Non-contracted staff)	10	26
Additional PPE	0	3,425
Additional Capacity in Community	40	160
Adult Social Care	61	243
Children and Family Services	198	799
Homelessness and Criminal Justice Services	24	95
Reducing Delayed Discharge	52	206
Covid-19 Financial Support for Adult Social Care	62	1,499
Digital & IT costs	27	177
Loss of Income	73	292
Other	15	206
Staff Wellbeing	0	19
Total Spend	814	8,507
Funding		
Opening Earmarked Reserve for Covid Pressures	(9,213)	(9,213)
Grant Funding for Social Care £500 Thankyou	0	(77)
Total Funding	(9,213)	(9,290)
Closing Earmarked Reserve for Covid Pressures	(8,399)	(783)

- 4.4** The vast majority of the PPE distributed in 2021/22 came from the local PPE Hubs operated by WDC on behalf of the HSCP, with the PPE supplied by National Services Scotland (NSS) free of charge. For 2022/23 it is assumed that these costs will be recharged to the HSCP and they are included within the figures detailed in Table 1 above.

Summary Position

- 4.5** The current year to date position as at 30 June is an underspend of £0.136m. The early projected outturn position, with all identified Covid-19 costs being fully funded from reserves, is a potential underspend of £0.863m. The consolidated position is presented in greater detail within Appendix 3, with the individual Health Care and Social Care reports detailed in Appendix 4.
- 4.6** Members should note that the projected underspend takes into account £13.287m of expenditure to be drawn down from earmarked reserves. Summary detail on the anticipated level of reserves is provided within Appendix 6.
- 4.7** The summary position is reported within Table 2 below which identifies the projected 2022/23 budget under spend of £0.863m (0.5% of the budget). This will be subject to change as the year progresses; and there is further clarity on the impact of WDC budget decisions that are anticipated to impact on HSCP costs, i.e. anticipated review of Children and Families, Residential Placements allocation from 50/50 split to 80/20 split (HSCP/Education).

Table 2 - Summary Financial Information as at 30 June 2022

Summary Financial Information	Annual Budget	Year to Date Budget	Year to Date Actual	Year to Date Variance	Forecast Full Year	Forecast Variance	Reserves Adjustment	Forecast Variance	Variance %
	£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's	
Health Care	107,458	24,476	24,390	86	112,096	(4,638)	(4,976)	338	0.3%
Social Care	110,832	23,729	23,528	201	109,894	938	123	815	0.7%
Covid-19	0	0	77	(77)	8,507	(8,507)	(8,430)	(77)	0.0%
Expenditure	218,290	48,205	47,995	210	230,497	(12,207)	(13,283)	1,076	0.5%
Health Care	(4,167)	(1,286)	(1,286)	0	(4,167)	0	0	0	0.0%
Social Care	(29,137)	(2,457)	(2,383)	(74)	(28,843)	(294)	(4)	(290)	1.0%
Covid-19	0	0	0	0	(77)	77	0	77	0.0%
Income	(33,304)	(3,743)	(3,669)	(74)	(33,087)	(217)	(4)	(213)	0.6%
Health Care	103,291	23,190	23,104	86	107,929	(4,638)	(4,976)	338	0.3%
Social Care	81,695	21,272	21,145	127	81,051	644	119	525	0.6%
Covid-19	0	0	77	(77)	8,430	(8,430)	(8,430)	0	0.0%
Net Expenditure	184,986	44,462	44,326	136	197,410	(12,424)	(13,287)	863	0.5%

- 4.8** Analysis on the projected annual variances in excess of £0.050m is contained within Appendix 4.

Update on Pay Awards

- 4.9** The currently reported annual budget for both Health and Social Care services includes an estimation of the impact of the 2022/23 estimated pay uplift for all HSCP staff. Social Care estimates are based on the 2022/23 Public Sector Pay Policy while Health Care estimates are based on the average pay uplift applied to Health in 2021/22 with the average budgeted rates being circa 2.9% and 2.4% respectively. This will be subject to change as pay negotiations continue to progress.
- 4.10** Local Authority staff have been offered a 2% pay rise with NHS Scotland staff being offered 5%. Union ballots for both Local Authority and NHS Scotland staff opened on 10 June and 11 July and closed on 26 July and 8 August respectively.
- 4.11** At the time of writing Local Authority staff have voted to reject the 2% pay offer with the results of the NHS Scotland ballot due on 12 August. A 5% uplift for both Health and Social Care staff is estimated to cost an additional £1.760m.
- 4.12** While Health Boards have historically received an element of funding towards pay negotiations, when the agreed pay uplift exceeds the annual inflationary uplift (with appropriate share passed over to HSCP's), there has been no indication of any further funding at this time while negotiations are ongoing. However the Scottish Government have committed to a further £140m of funding to Local Authorities to support a revised pay offer to staff. The West Dunbartonshire share of £140m equates to approximately £2.352m, however whether any of this additional funding will flow to the HSCP is still to be determined.

Bad Debt Write Off

- 4.13** As previously advised, while West Dunbartonshire Council retain the legal power to both set and levy charges with the collection of those charges being governed by the Council's Corporate Debt Policy any requests to write off HSCP debt now come to the HSCP Chief Financial Officer and HSCP Board for approval depending on the value of the write off request.
- 4.14** The policy recognises that where a debt is irrecoverable, prompt and regular write off of such debts is appropriate in terms of good accounting practice and while the Council will seek to minimise the cost of write-offs by taking all necessary action to recover what is due, where it has not been possible to collect a debt, authorisation to write these debts off will be requested to:
- the HSCP Chief Financial Officer if the debt is under £5,000; or
 - the HSCP Board if the debt is valued at more than £5,000

- 4.15** Analysis of outstanding debt for the Quarter One (period 1 April to 30 June) has taken place by the Corporate Debt Team and 29 cases of outstanding debt totalling £747.39 have been submitted to the HSCP Chief Financial Officer for write off. The reasons for write off are detailed in Table 3 below.

Table 3 – Debt Write off Summary for April to June 2022

Debt Write Off Summary for April - June 2022	Value of Debt Write Off	Number of Cases
Prescribed under £5k	96.00	4
Uneconomical under £5k	22.89	5
Unreasonable under £5k	0.00	0
Deceased under £5k	628.50	20
Deceased over £5k	0.00	0
Prescribed over £5k	0.00	0
Unreasonable over £5k	0.00	0
Totals	747.39	29

Update on Reserves

- 4.16** Analysis of reserves is detailed in Appendix 6 and identifies that at this time is anticipated that £13.287m will be drawn down from earmarked reserves to fund expenditure in 2022/23. Two further reports on this agenda could also have an impact on the current reported reserves position. One considers a number of new proposals on the allocation of some unearmarked reserves and the other is in response to a WDC motion on tackling the “Cost of Living”.

Housing Aids and Adaptations and Care of Gardens

- 4.17** The Housing Aids and Adaptations and Care of Gardens for delivery of social care services is in scope as part of the minimum level of adult services delegated to the HSCP Board and should be considered as an addition to the HSCP’s 2022/23 budget allocation of £81.695m from the council.
- 4.18** These budgets are managed by the Council’s – Roads and Neighbourhood and Housing and Employability Services on behalf of the HSCP Board.
- 4.19** The summary position for the period to 30 June 2022 is included in the table below and will be reported as part of WDC’s financial update position.

Table 4 - Financial Performance as at 30 June 2022

Budgets Managed on Behalf of WD HSCP by West Dunbartonshire Council	Annual Budget	Year to Date Budget	Year to Date Actual	Year to Date Variance	Forecast Full Year	Forecast Variance	Variance %
	£000's	£000's	£000's	£000's	£000's	£000's	
Care of Gardens	455	114	114	0	455	0	0.0%
Aids & Adaptations	250	63	63	0	250	0	0.0%
Net Expenditure	705	176	176	0	705	0	0.0%

2022/23 Capital Expenditure

4.20 The capital updates for Social Care are contained within Appendix 7 and details the actual and forecast progress on a number of capital projects being:

- Special Needs - Aids & Adaptations for HSCP clients;
- Criminal Justice Adaptations;
- Replace Elderly Care Homes and Day Care Centres;
- Community Alarm upgrade; and
- Replacement of Care First

Budget Gap Analysis

4.21 Officers have undertaken a review of all potential burdens that may impact on the currently reported position for 2022/23 and the previously reported budget gaps for 2023/24 and 2024/25 on a best, likely and worst case scenario.

4.22 Table 5 details the potential financial impact of a number of burdens ranging from pay uplifts (as discussed in section 4.9 to 4.12) and the ongoing review of children and families residential care to complex care packages and commissioning risks.

Table 5 – Financial Impact of Potential HSCP Burdens

Consolidated Budget Gap Analysis	2022/23	2023/24	2023/24	2023/24	2024/25	2024/25	2024/25
	£000's	£000's	£000's	£000's	£000's	£000's	£000's
	Likely	Best	Likely	Worst	Best	Likely	Worst
Budget Gap Reported March 2022	-	833	2,815	8,492	3,562	5,623	11,445
Forecast Surplus @ June 2022	(863)						
Budget Pressures not Reported							
Pay Inflation increased to 5%	1,760	1,848	1,848	1,848	1,940	1,940	1,940
Impact of Posts Funded from Reserves		813	813	813	1,322	1,322	1,322
Children & Families Review	2,091	2,196	2,196	2,196	2,305	2,305	2,305
Complex Care Packages	199	765	784	802	804	842	882
Commissioning Risk	522	1,132	1,313	1,440	1,184	1,392	1,545
Office365		140	140	140	140	140	140
Revised Budget Gap @ June 2022	3,709	7,727	9,908	15,730	11,258	13,566	19,581

- 4.23** Table 5 shows that if all the potential burdens were to be realised in 2022/23 the forecast underspend of £0.863m could change to a forecast overspend of £3.709m which would require a recovery plan to be put in place. Any plan would include utilisation of the general unearmarked reserve balance held in accordance with the HSCP Board's Reserve Policy. In addition the impact on 2023/24 and 2024/25 could range from £6.894m to £8.136m.

5. Options Appraisal

- 5.1** None required

6. People Implications

- 6.1** Other than the position noted above within the explanation of variances there are no other people implications known at this time.

7. Financial and Procurement Implications

- 7.1** Other than the financial position noted above, there are no other financial implications known at this time. The regular financial performance reports to will update on any material changes to current costs and projections.

8. Risk Analysis

- 8.1.1** The main financial risks to the 2022/23 projected outturn position relate to the impact of a number of potential HSCP burdens and anticipated increases in demand for some key services such as mental health and other social care services as the HSCP continues to move through its Covid-19 Recovery and Renewal phases.
- 8.2** The ongoing impact of Britain's exit from the European Union on an already Covid depressed UK Economy may have a detrimental impact on public sector funding, coupled with rising inflation and interest rates.
- 8.3** As previously advised an employer's liability insurance claim was been submitted on behalf of a WDC employee working within the HSCP. The employer's liability policy excess is £0.250m. While the Council anticipate that the HSCP will be responsible for costs up to this amount the Integration Scheme sets out clear responsibilities with regard to Claims Handling, Liability and Indemnity. While no provision was included within the 2021/22 draft unaudited accounts until this claim is fully resolved there remains a risk to the HSCP regarding the cost allocation of any insurance excess.

9. Equalities Impact Assessment (EIA)

- 9.1** None required.

10. Environmental Sustainability

- 10.1** None required.

11. Consultation

- 11.1** This report and the projections and assumptions contained within it has been discussed with both council and health board finance colleagues.

12. Strategic Assessment

- 12.1** Proper budgetary control and sound financial practice are cornerstones of good governance and support the Partnership Board and officers to pursue the priorities of the Strategic Plan.

13. Directions

- 13.1** The recurring and non-recurring budget adjustments up to 30 June 2022 (as detailed within Appendix 1) will require the issuing of a revised direction, see Appendix 8.

Julie Slavin – Chief Financial Officer

Date: 9 August 2022

Person to Contact: Julie Slavin – Chief Financial Officer, Church Street, WDC
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Appendices:

- Appendix 1 – Budget Reconciliation
- Appendix 2 – Monitoring of Savings
- Appendix 3 – Revenue Budgetary Control 2021/22
(Overall Summary)
- Appendix 4 – Revenue Budgetary Control 2021/22
(Health Care and Social Care Summary)
- Appendix 5 – Variance Analysis over £0.050m
- Appendix 6 – Reserves
- Appendix 7 – Social Care Capital Update
- Appendix 8 – Directions

Background Papers: 2022/23 Annual Budget Setting Update – March 2022
HSCP Board

Localities Affected: All

2021/22 Budget Reconciliation	Health Care £000	Social Care £000	Total £000
Budget Approved at Board Meeting on 21 March 2022	102,991	82,126	185,117
Health Rollover Budget Adjustments			
Admin & Mgmt - Recurring additional SG uplift for Band 8&9, Medical & Dental	42		42
Admin & Mgmt - Recurring transfer of funding for Chief Nurse post from EDHSCP	41		41
FHS GMS - Recurring Adjustment to Rollover Budget	(397)		(397)
FHS Other - Recurring Adjustment to Rollover Budget	(104)		(104)
Various - Full year effect impact on Rollover budget re in year transfers	32		32
Period 1 to 3 Adjustments			
Budget Transfer for Action for Children and Blue Triangle to WDC		(82)	(82)
SG Additional funding uplift	3		3
SG Infant Feeding additional funding	44		44
SG District nursing additional funding	50		50
SG CAMHS funding	392		392
Camchp04 Pcip Ppsu Transfer	169		169
Apremilast Cam Acute M01 Feb22	8		8
Apremilast Cam Acute M02 Mar22	13		13
Apremilast Cam Acute M03 Apr22	8		8
Revised Budget 2022/23	103,291	82,044	185,335
Budget Funded from Earmarked Reserves		(349)	(349)
Budget Funded from Partner Organisations	103,291	81,695	184,986

Efficiency Detail	Service Area	Total Savings to be Monitored	Savings Anticipated to be Achieved as Planned	Savings not anticipated to be achieved as planned but funded from Earmarked Reserve	Savings not anticipated to be achieved as planned but to be covered by other HSCP underspends / funding streams
		£000	£000	£000	£000
Social Care					
2018/19 Savings Proposals Revised for Public Consultation and Review					
Housing Support - Spend to Save Project. Move to Core and Cluster Model of Support. Phase 2 - New Build Bungalow	Residential LD	180			180
2019/20 Savings Based on 27 March Council Meeting					
Learning Disability - Out of Authority Repatriation Part Year	Residential LD	35	35		
Physical Disabilities - Charging £10 for Day opportunity	Physical Disability	16			16
2020/21 Baseline Budget Adjustments					
Reduction to taxis for social work clients	Children and Families	20			20
Invoke Ordinary Resident	Residential LD	136			136
Review of Residential Placements reflecting work of Service Improvement Leads	Children and Families	150			150
Part Year Reduction in Care at Home budget reflecting work of Service Improvement Leads	Care at Home	181			181
2020/21 Approved Savings delayed until 2021/22					
Admin Saving	Various	238			238

Efficiency Detail	Service Area	Total Savings to be Monitored	Savings Anticipated to be Achieved as Planned	Savings not anticipated to be achieved as planned but funded from Earmarked Reserve	Savings not anticipated to be achieved as planned but to be covered by other HSCP underspends / funding streams
		£000	£000	£000	£000
2021/22 Recurring Savings					
TRFS Staying Well Group	Mental Health	13	13		
Redetermination Adjustment for Community Placement	Children and Families	68			68
2021/22 Approved Savings					
Review of foster carer strategy	Children and Families	215			215
Reduction in external property leases	Learning Disability and Addictions	30		30	
Care at Home service improvement project	Care at Home	425			425
2022/23 Approved Savings					
Reduction in external care home beds reflecting current level of service	External Care Homes	890	890		
Total Savings to be Monitored		2,597	938	30	1,629

Consolidated Expenditure by Service Area	Adjusted Annual Budget	Year to Date Budget	Year to Date Actual	Year to Date Variance	Forecast Full Year	Forecast Variance	Reserves Adjustment	Forecast Variance	Variance %	RAG Status
	£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's		
Older People Residential, Health and Community Care	32,141	8,371	8,102	269	31,422	719	(359)	1,078	3.4%	↓
Care at Home	14,631	3,679	3,685	(6)	14,651	(20)	0	(20)	-0.1%	→
Physical Disability	2,686	677	656	21	2,602	84	0	84	3.1%	→
Childrens Residential Care and Community Services (incl. Specialist)	26,734	5,831	5,948	(117)	27,704	(970)	(505)	(465)	-1.7%	↓
Strategy, Planning and Health Improvement	1,840	410	364	46	1,657	183	0	183	9.9%	→
Mental Health Services - Adult and Elderly, Community and Inpatients	9,988	2,506	2,458	48	10,602	(614)	(807)	193	1.9%	↓
Addictions	2,723	684	684	0	3,336	(613)	(612)	(1)	0.0%	↓
Learning Disabilities - Residential and Community Services	13,178	4,032	4,141	(109)	13,631	(453)	(15)	(438)	-3.3%	↓
Family Health Services (FHS)	29,137	7,628	7,628	0	29,137	0	0	0	0.0%	→
GP Prescribing	20,174	4,796	4,796	0	20,174	0	0	0	0.0%	→
Hosted Services	7,788	1,814	1,770	44	8,101	(313)	(489)	176	2.3%	↓
Criminal Justice (Including Transitions)	0	146	147	(1)	(19)	19	19	0	0.0%	↑
Resource Transfer	17,096	2,976	2,976	0	17,096	0	0	0	0.0%	→
Covid-19	0	0	77	(77)	8,430	(8,430)	(8,430)	0	0.0%	↓
HSCP Corporate and Other Services	6,870	912	894	18	8,886	(2,016)	(2,089)	73	1.1%	↓
Net Expenditure	184,986	44,462	44,326	136	197,410	(12,424)	(13,287)	863	0.5%	↓

Consolidated Expenditure by Subjective Analysis	Adjusted Annual Budget	Year to Date Budget	Year to Date Actual	Year to Date Variance	Forecast Full Year	Forecast Variance	Reserves Adjustment	Forecast Variance	Variance %	RAG Status
	£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's		
Employee	83,136	18,985	18,786	199	85,829	(2,693)	(3,725)	1,032	1.2%	↓
Property	1,057	111	211	(100)	1,491	(434)	(35)	(399)	-37.7%	↓
Transport and Plant	1,402	92	112	(20)	1,482	(80)	(1)	(79)	-5.6%	↓
Supplies, Services and Admin	4,249	615	498	117	7,477	(3,228)	(3,694)	466	11.0%	↓
Payments to Other Bodies	76,186	15,753	15,881	(128)	78,856	(2,670)	(2,163)	(507)	-0.7%	↓
Family Health Services	29,429	7,796	7,796	0	29,429	0	0	0	0.0%	→
GP Prescribing	20,175	4,796	4,796	0	20,175	0	0	0	0.0%	→
Other	2,656	55	(86)	141	5,756	(3,100)	(3,665)	565	21.3%	↓
Gross Expenditure	218,290	48,203	47,994	209	230,495	(12,205)	(13,283)	1,078	0.5%	↓
Income	(33,304)	(3,741)	(3,668)	(73)	(33,085)	(219)	(4)	(215)	0.6%	↓
Net Expenditure	184,986	44,462	44,326	136	197,410	(12,424)	(13,287)	863	0.5%	↓

Health Care Net Expenditure	Adjusted Annual Budget	Year to Date Budget	Year to Date Actual	Year to Date Variance	Forecast Full Year	Forecast Variance	Reserves Adjustment	Forecast Variance	Variance %	RAG Status
	£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's		
Planning & Health Improvements	744	147	132	15	686	58	0	58	7.8%	↑
Childrens Services - Community	3,406	788	808	(20)	3,546	(140)	(59)	(81)	-2.4%	↓
Childrens Services - Specialist	2,109	499	485	14	2,225	(116)	(172)	56	2.7%	↑
Adult Community Services	10,330	2,244	2,244	0	10,570	(240)	(240)	0	0.0%	→
Community Learning Disabilities	652	157	157	0	652	0	0	0	0.0%	→
Addictions	1,845	312	312	0	2,153	(308)	(308)	0	0.0%	→
Mental Health - Adult Community	3,765	937	905	32	4,235	(470)	(594)	124	3.3%	↑
Mental Health - Elderly Inpatients	2,891	625	624	1	3,099	(208)	(213)	5	0.2%	↑
Family Health Services (FHS)	29,137	7,628	7,628	0	29,137	0	0	0	0.0%	→
GP Prescribing	20,174	4,796	4,796	0	20,174	0	0	0	0.0%	→
Other Services	3,354	267	267	0	6,255	(2,901)	(2,901)	0	0.0%	→
Covid-19	0	0	0	0	974	(974)	(974)	0	0.0%	→
Resource Transfer	17,096	2,976	2,976	0	17,096	0	0	0	0.0%	→
Hosted Services	7,788	1,814	1,770	44	8,101	(313)	(489)	176	2.3%	↑
Net Expenditure	103,291	23,190	23,104	86	108,903	(5,612)	(5,950)	338	0.3%	↑

Social Care Net Expenditure	Adjusted Annual Budget	Year to Date Budget	Year to Date Actual	Year to Date Variance	Forecast Full Year	Forecast Variance	Reserves Adjustment	Forecast Variance	Variance %	RAG Status
	£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's		
Strategy Planning and Health Improvement	1,096	263	232	31	972	124	0	124	11.3%	↑
Residential Accommodation for Young People	3,313	632	639	(7)	3,398	(85)	(55)	(30)	-0.9%	↓
Children's Community Placements	5,767	1,451	1,505	(54)	5,982	(215)	0	(215)	-3.7%	↓
Children's Residential Schools	3,793	821	875	(54)	4,009	(216)	0	(216)	-5.7%	↓
Childcare Operations	4,661	973	981	(8)	4,915	(254)	(219)	(35)	-0.8%	↓
Other Services - Young People	3,685	667	653	14	3,629	56	0	56	1.5%	↑
Residential Accommodation for Older People	7,198	1,684	1,587	97	6,808	390	0	390	5.4%	↑
External Residential Accommodation for Elderly	9,006	3,411	3,368	43	8,860	146	(25)	171	1.9%	↑
Sheltered Housing	1,417	417	414	3	1,403	14	0	14	1.0%	↑
Day Centres Older People	1,211	263	178	85	873	338	0	338	27.9%	↑
Meals on Wheels	26	(11)	(10)	(1)	29	(3)	0	(3)	-11.5%	↓
Community Alarms	21	(395)	(398)	3	12	9	0	9	42.9%	↑
Community Health Operations	2,933	758	720	38	2,866	67	(94)	161	5.5%	↑
Residential - Learning Disability	10,342	3,434	3,543	(109)	10,792	(450)	(15)	(435)	-4.2%	↓
Physical Disability	2,401	681	661	20	2,317	84	0	84	3.5%	↑
Day Centres - Learning Disability	2,184	441	442	(1)	2,187	(3)	0	(3)	-0.1%	↓
Criminal Justice (Including Transitions)	0	146	147	(1)	(19)	19	19	0	0.0%	→
Mental Health	3,333	945	929	16	3,268	65	0	65	2.0%	↑
Care at Home	14,631	3,679	3,685	(6)	14,651	(20)	0	(20)	-0.1%	↓
Addictions Services	879	371	371	0	1,183	(304)	(304)	0	0.0%	→
Equipu	285	(4)	(4)	0	285	0	0	0	0.0%	→
Frailty	141	16	11	5	120	21	0	21	14.9%	↑
Carers	1,564	303	303	0	692	872	872	0	0.0%	→
Integrated Change Fund	0	0	0	0	0	0	0	0	0.0%	→
Covid-19	0	0	77	(77)	7,456	(7,456)	(7,456)	0	0.0%	→
HSCP - Corporate	1,808	326	313	13	1,819	(11)	(60)	49	2.7%	↑
Net Expenditure	81,695	21,272	21,222	50	88,507	(6,812)	(7,337)	525	0.6%	↑

West Dunbartonshire Health & Social Care Partnership
Financial Year 2022/23 Period 3 covering 1 April 2022 to 30 June 2022
Analysis for Variances Over £0.050m

Appendix 5

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
Health Care Variances					
Planning & Health Improvements	744	686	58	8%	↑
Service Description	This service covers planning and health improvement workstreams				
Main Issues / Reason for Variance	The forecast underspend is due to staffing vacancies and recruitment delays. No drawdowns are anticipated from earmarked reserves at this time as plans are still to be confirmed.				
Mitigating Action	Service managers will continue to monitor staffing levels				
Anticipated Outcome	An underspend is anticipated at this time				
Childrens Services - Community	3,406	3,487	(81)	-2%	↓
Service Description	This care group provides community services for children				
Main Issues / Reason for Variance	The forecast underspend is due to recruitment delays.				
Mitigating Action	Service managers will continue to monitor staffing levels				
Anticipated Outcome	An underspend is anticipated at this time				
Childrens Services - Specialist	2,109	2,054	55	3%	↑
Service Description	This care group provides specialist services for children				
Main Issues / Reason for Variance	The forecast underspend is mainly due to staffing vacancies within Community CAMHS				
Mitigating Action	Service managers will continue to monitor staffing levels				
Anticipated Outcome	An underspend is anticipated at this time				

West Dunbartonshire Health & Social Care Partnership
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Analysis for Variances Over £0.050m

Appendix 5

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
Mental Health - Adult Community Service Description	3,765	3,641	124	3%	↑
Main Issues / Reason for Variance	This care group provides mental health services for adults The forecast underspend within core services are due to staffing vacancies and recruitment delays.				
Mitigating Action	Service managers will continue to monitor staffing levels				
Anticipated Outcome	An underspend is anticipated at this time				
Hosted Services Service Description	7,788	7,612	176	2%	↑
Main Issues / Reason for Variance	Hosted Services The forecast underspend is mainly due to the staff turnover rate remaining higher than target, however a planned over-recruitment of Band 5's underway to address this which will be funded from earmarked reserves along with purchase of equipment/hardware.				
Mitigating Action	Service managers will continue to monitor staffing levels				
Anticipated Outcome	An underspend is anticipated at this time				

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status

Social Care Variances

Strategy Planning and Health Improvement	1,096	971	124	11%	↑
Service Description	This service covers planning and health improvement workstreams				
Main Issues / Reason for Variance	The forecast underspend is due to a number of vacant posts that remain unfilled at this time. This position is consistent with the recruitment challenges reported for the HSCP as a whole. Persistent vacant posts in this service area likely to have a negative impact on a number of strategic projects such as service reviews and digital transformation.				
Mitigating Action	Service Managers will continue to focus on recruitment.				
Anticipated Outcome	While an underspend is anticipated at this time recruitment remains a key focus.				

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
Children's Community Placements	5,767	5,982	(215)	-4%	↓
Service Description	This service covers fostering, adoption and kinship placements				
Main Issues / Reason for Variance	The unadjusted forecast overspend of £0.291m is related to a number of new placements, and an increase in the cost of external foster placements. At this time it is unlikely that the previously agreed saving of £0.215m for fostering review will not be achieved and while in 2021/22 unachieved savings were an appropriate charge against covid funding this is not permitted in 2022/23. While £0.076m of these increased costs are assessed to be covid related there remains an adjusted forecast overspend of £0.215m at this time being the unachieved savings.				
Mitigating Action	Service Managers will continue to review placements				
Anticipated Outcome	While an overspend is anticipated at this time fostering review remains a key focus.				
Children's Residential Schools	3,793	4,008	(215)	-6%	↓
Service Description	This service area provides residential education for children and includes the costs of				
Main Issues / Reason for Variance	The unadjusted forecast overspend of £0.673m is related to a number of new placements, additional support packages put in place and delays in transitions. While a material element of these increased costs are assessed to be covid related there remains an adjusted forecast overspend of £0.215m at this time.				
Mitigating Action	Service Managers will continue to review placements				
Anticipated Outcome	An overspend is anticipated at this time				

West Dunbartonshire Health & Social Care Partnership
Financial Year 2022/23 Period 3 covering 1 April 2022 to 30 June 2022
Analysis for Variances Over £0.050m

Appendix 5

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
Other Services - Young People	3,685	3,629	56	2%	↑
Service Description	This service area is mainly comprised of staffing costs and includes the cost of social				
Main Issues / Reason for Variance	The favourable variance is mainly due to a vacant post within staffing and an anticipated underspend in throughcare payments offset by clients remaining in foster care until the age of 21.				
Mitigating Action	None required as this time				
Anticipated Outcome	An underspend is anticipated at this time				
Residential Accommodation for Older People	7,197	6,807	390	5%	↑
Service Description	WDC owned residential accommodation for older people				
Main Issues / Reason for Variance	The forecast underspend is due to persistent vacancies and a lack of agency availability within staffings. At present 140 beds are able to be maintained with income being higher than anticipated, however it may be difficult to maintain this number of residents if recruitment issues persist.				
Mitigating Action	Service Managers will continue to review staffing levels and bed availability				
Anticipated Outcome	An underspend is anticipated at this time				

West Dunbartonshire Health & Social Care Partnership
Financial Year 2022/23 Period 3 covering 1 April 2022 to 30 June 2022
Analysis for Variances Over £0.050m

Appendix 5

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
External Residential Accommodation for Elderly Service Description	9,007	8,836	171	2%	↑
Main Issues / Reason for Variance	The forecast underspend is mainly due to less respite beds being used against those budgeted for				
Mitigating Action	Service Managers will continue to review the use of respite beds				
Anticipated Outcome	An underspend is anticipated at this time				
Day Centres Older People Service Description	1,210	873	337	28%	↑
Main Issues / Reason for Variance	The forecast underspend is mainly due to high sickness absence and a hold of recruitment while attendance numbers remain low.				
Mitigating Action	Service Managers will continue to review staffing and attendance levels				
Anticipated Outcome	An underspend is anticipated at this time				
Community Health Operations Service Description	2,933	2,771	162	6%	↑
Main Issues / Reason for Variance	The forecast underspend is due to a number of staff vacancies with a number of vacancies currently out for advert, however there are a number of vacancies that face recruitment challenges.				
Mitigating Action	Service Managers will continue to review staffing and attendance levels				
Anticipated Outcome	An underspend is anticipated at this time				

West Dunbartonshire Health & Social Care Partnership
Financial Year 2022/23 Period 3 covering 1 April 2022 to 30 June 2022
Analysis for Variances Over £0.050m

Appendix 5

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
Residential - Learning Disability Service Description	10,342	10,776	(434)	-4%	↓
Main Issues / Reason for Variance	This service provides residential care for persons with learning disabilities The forecast overspend is due to a number of staffing vacancies that are being covered by agency staff at double the cost at circa £0.200m along with an anticipated overspend in client packages and an underrecovery of income due to non charging of ILF clients.				
Mitigating Action	Service Managers will continue to review staffing and agency levels				
Anticipated Outcome	An overspend is anticipated at this time				
Physical Disability Service Description	2,401	2,316	85	4%	↑
Main Issues / Reason for Variance	This service provides physical disability services The forecast underspend is mainly due to an underspend on non residential support costs. However there are potentially a number of transitions clients due to move over from Children & Families so the forecast underspend may reduce as the year progresses.				
Mitigating Action	Service Managers will continue to monitor non residential support packages and the progress with transitions				
Anticipated Outcome	An underspend is anticipated at this time				

West Dunbartonshire Health & Social Care Partnership
Financial Year 2022/23 Period 3 covering 1 April 2022 to 30 June 2022
Analysis for Variances Over £0.050m

Appendix 5

Budget Details	Variance Analysis				
	Annual Budget £000	Forecast Full Year £000	Forecast Variance £000	% Variance	RAG Status
Mental Health	3,333	3,268	65	2%	↑
Service Description	This service provides mental health services				
Main Issues / Reason for Variance	The forecast underspend is mainly due to a number of vacant posts within the service along with one client currently in hospital offset by a delay in transitions.				
Mitigating Action	Service Managers will continue to monitor vacancies, client support packages and the progress with transitions				
Anticipated Outcome	An underspend is anticipated at this time				
HSCP - Corporate	1,811	1,761	49	3%	↑
Service Description	This budget contains Corporate spend and income pending allocation to services				
Main Issues / Reason for Variance	The forecast underspend is mainly due to the unachievement of the admin saving built into the budget (£0.240m) offset by a number of staffing vacancies.				
Mitigating Action	Progress of the admin review to be discussed and service managers to continue to monitor vacancies				
Anticipated Outcome	An underspend is anticipated at this time				

Analysis of Reserves	Actual Opening Balance as at 1 April 2021	Forecast Movement in Reserves	Forecast Closing Balance as at 31 March 2023
	£000	£000	£000
<u>Unearmarked Reserves</u>			
Unearmarked Reserves	(4,579)	(863)	(5,442)
Total Unearmarked Reserves	(4,579)	(863)	(5,442)
<u>Earmarked Reserves</u>			
Scottish Govt. Policy Initiatives	(9,704)	2,912	(6,791)
Criminal Justice	(228)	(19)	(247)
Carers Funding	(857)	(872)	(1,729)
Social Care Fund - Living Wage/Fair Work Practices	(678)	0	(678)
GIFREC NHS	(57)	0	(57)
TEC (Technology Enabled Care) Project	(55)	0	(55)
Mental Health Action 15	(451)	451	0
Mental Health Strategy (NHSGCC 5 year mental health strategy)	(695)	0	(695)
New Dementia Funding	(63)	63	0
Scottish Government Alcohol and Drug Partnership (including various National Drugs Priorities)	(872)	597	(275)
Primary Care Boardwide MDT	(27)	0	(27)
Child Health Weight (Henry Programme)	(15)	15	0
Infant Feeding PFG Funding	(44)	44	0
Community Living Change Fund	(357)	0	(357)
Childrens Mental Health and Wellbeing (2020/21)	(94)	31	(63)
Childrens Mental Health and Wellbeing (2021/22)	(173)	0	(173)
Whole Family Wellbeing Fund	(72)	0	(72)
PCIF	(2,069)	2,069	0
GP Premises (incl. PCIF)	(244)	0	(244)

Analysis of Reserves	Actual Opening Balance as at 1 April 2021	Forecast Movement in Reserves	Forecast Closing Balance as at 31 March 2023
	£000	£000	£000
Winter Plan for Social Protection - Fundng for Vulnerable Children	(65)	0	(65)
SG District Nursing Funding	(74)	74	0
Analogue to Digital Community Alarms	(30)	0	(30)
PEF Funding – Speech & Language Therapy Projects	(49)	23	(26)
Winter Planning Funding - MDT	(336)	151	(185)
Winter Planning Funding - 1000 Healthcare Workers	(260)	260	0
Winter Planning Funding - PCIF Funding Bid	(52)	0	(52)
Workforce Wellbeing	(72)	0	(72)
Winter Planning Funding - Interim Care	(673)	25	(648)
Winter Planning Funding - Enhance Care at Home	(1,043)	0	(1,043)
HSCP Initiatives	(4,897)	768	(4,129)
Service Redesign and Transformation	(1,583)	477	(1,106)
Fixed term development post to progress work on Older People's Mental Health, Adult Mental Health and Learning Disabilities Strategies.	(176)	0	(176)
Children at risk of harm inspection action	(714)	0	(714)
Fixed term posts with the integrated HSCP Finance team	(137)	48	(89)
Extension of the role of the Service Improvement Leads until 31 March 2023 . Approved by the Board at 25 March 2021 meeting.	(212)	210	(2)
Additional six social workers in children and families on a non recurring basis. Approved by the Board at 25 March 2021 meeting.	(344)	219	(125)
Unscheduled Care Services	(692)	0	(692)

Analysis of Reserves	Actual Opening Balance as at 1 April 2021	Forecast Movement in Reserves	Forecast Closing Balance as at 31 March 2023
	£000	£000	£000
COVID-19 Recovery (HSCP Funded)	(754)	261	(493)
Support to women and children in recovery from Domestic abuse and support redevelopment of the service as a trauma responsive service and Violence against Women coordination to support the development of the Violence against Women Partnership.	(425)	0	(425)
Childrens Mental Health and Wellbeing and recruitment of a fixed term 2 year Clinical psychologist.	(186)	118	(68)
Fixed term Physio, Admin Support and Social Work Assistant to support clinical staff in addressing backlog of care resulting from pandemic restrictions within Mental Health Services.	(143)	143	(0)
Unachievement of Savings	(452)	30	(422)
Recruitment Campaign for Internal Foster Carers	(30)	0	(30)
Champions Board Top Up Funding	(18)	0	(18)
Promise Keeper Fixed Term Recruitment	(71)	0	(71)
Public Protection Officers	(244)	0	(244)
Participatory Budgeting	(300)	0	(300)
Digital Transformation	(282)	0	(282)
Training and Development	(327)	0	(327)
Change and Transformation	(144)	0	(144)
Covid-19- Scottish Government Funded	(9,268)	8,430	(838)
COVID-19 Pressures	(9,213)	8,430	(783)
NHS Board Adult Social Care	(55)	0	(55)

Analysis of Reserves	Actual Opening Balance as at 1 April 2021	Forecast Movement in Reserves	Forecast Closing Balance as at 31 March 2023
	£000	£000	£000
Health Care	(4,661)	1,122	(3,539)
DWP Conditions Management	(159)	5	(154)
Physio Waiting Times Initiative	(1,075)	419	(656)
Retinal Screening Waiting List Grading Initiative	(220)	70	(150)
Prescribing Reserve	(1,563)	0	(1,563)
CAMHS	(61)	0	(61)
Health Centre	(250)	0	(250)
Planning and Health Improvement	(145)	0	(145)
Mental Health Recovery and Renewal Fund	(853)	488	(365)
Office 365	(140)	140	0
Property Strategy	(178)	0	(178)
Workforce Wellbeing	(18)	0	(18)
Social Care	(1,451)	55	(1,396)
Complex Care Packages	(560)	55	(505)
Care Homes	(891)	0	(891)
Total Earmarked Reserves	(29,981)	13,287	(16,694)
Total Reserves	(34,560)	12,424	(22,136)

Month End Date 30 June 2022

Period 3

Budget Details	Project Life Financials					
	Budget	Spend to Date		Forecast Spend	Variance	
	£000	£000	%	£000	£000	%

Special Needs - Aids & Adaptations for HSCP clients

Project Life Financials	1,053	9	1%	1,053	0	0%
Current Year Financials	1,053	9	1%	961	(92)	-9%
Project Description	Reactive budget to provide adaptations and equipment for HSCP clients.					
Project Manager	Julie Slavin					
Chief Officer	Beth Culshaw					
Project Lifecycle	Planned End Date	31-Mar-23	Forecast End Date	31-Mar-23		

Main Issues / Reason for Variance

Reallocation of expenditure currently coded through HSCP Revenue Aids & Adaptations budget. There is likely to be an underspend at this time due to the ongoing impact of Covid-19.

Mitigating Action

Officers will continue to monitor the position

Anticipated Outcome

Provision of adaptations and equipment to HSCP clients as anticipated.

Month End Date 30 June 2022

Period 3

Budget Details	Project Life Financials					
	Budget	Spend to Date		Forecast Spend	Variance	
	£000	£000	%	£000	£000	%

Criminal Justice Adaptations						
Project Life Financials	73	50	68%	73	0	0%
Current Year Financials	73	50	68%	73	0	0%
Project Description	Renovation of Unit 11 Levenside Business Court					
Project Manager	Laura Smith					
Chief Officer	Beth Culshaw					
Project Lifecycle	Planned End Date	31-Mar-23	Forecast End Date	31-Mar-23		
Main Issues / Reason for Variance						
The construction of an office and storage refit with a mezzanine floor within an existing workshop unit which will include associated finishes works and electrical installations. The multi-purpose new office space will accommodate two members of staff with an office base and allow space to set up a training facility indoors. Project expected to be completed by 31 March 2023.						
Mitigating Action						
None Required						
Anticipated Outcome						
Renovation of Unit 11 Levenside Business Court						

Month End Date 30 June 2022

Period 3

Budget Details	Project Life Financials					
	Budget	Spend to Date		Forecast Spend	Variance	
	£000	£000	%	£000	£000	%

Replace Elderly Care Homes and Day Care Centres

Project Life Financials	27,531	27,266	99%	27,531	0	0%
Current Year Financials	42	55	130%	55	13	30%

Project Description Design and construction of replacement elderly care homes and day care centres in Dumbarton and Clydebank areas.

Project Manager Sharon Jump/ Craig Jardine

Chief Officer Beth Culshaw

Project Lifecycle Planned End Date 31-Mar-23 Forecast End Date 31-Mar-23

Main Issues / Reason for Variance

Clydebank Care Home (Queens Quay House) completion was certified 9 November 2020. The Statement of Final Account has been agreed with the Principal Contractor at a figure less than the cost plan and as such officers have adjusted the project outturn to report the project will be delivered on budget. The residents from the two existing Clydebank Care Homes moved into Queens Quay House on 14 and 15 December 2020. Officers in HSCP and Asset Management are progressing the disposal strategy for Mount Pleasant, Frank Downie and Queen Mary Day Centre.

Mitigating Action

The statement of final account has been signed and financial risk exposure should be reduced through efforts to dispose of the existing properties at the earliest opportunity.

Anticipated Outcome

Dumbarton Care Home opened 2017. Clydebank Care Home was certified complete on 9 November 2020 and projected to deliver on budget.

Month End Date 30 June 2022

Period 3

Budget Details	Project Life Financials					
	Budget	Spend to Date		Forecast Spend	Variance	
	£000	£000	%	£000	£000	%

Community Alarm upgrade						
Project Life Financials	924	0	0%	924	0	0%
Current Year Financials	154	0	0%	40	(114)	-74%
Project Description	To upgrade Community Alarm					
Project Manager	Margaret Jane Cardno					
Chief Officer	Beth Culshaw					
Project Lifecycle	Planned End Date	31-Mar-23	Forecast End Date	31-Mar-23		
Main Issues / Reason for Variance						
Work is ongoing with HR colleagues in order to appoint a project manager to this post and it is anticipated that spend will progress in the final half of the financial year.						
Mitigating Action						
None available at this time						
Anticipated Outcome						
Community Alarm Upgrade						

Month End Date 30 June 2022

Period 3

Budget Details	Project Life Financials					
	Budget	Spend to Date		Forecast Spend	Variance	
	£000	£000	%	£000	£000	%

Replacement of Care First						
Project Life Financials	1,400	0	0%	1,400	0	0%
Current Year Financials	280	0	0%	40	(240)	-86%
Project Description	Replacement of Care First					
Project Manager	Margaret Jane Cardno					
Chief Officer	Beth Culshaw					
Project Lifecycle	Planned End Date	31-Mar-23	Forecast End Date	31-Mar-23		
Main Issues / Reason for Variance						
The replacement of CareFirst has been delayed because of challenges in respect of the recruitment of a Digital Business Lead to take forward the project. Work is ongoing with HR colleagues in order to consider how the recruitment challenge may be addressed.						
Mitigating Action						
None available at this time						
Anticipated Outcome						
Replacement of Care First						

Direction from Health and Social Care Partnership Board.**Appendix 8**

The Chief Officer will issue the following direction email directly after Integration Joint Board approval.

From: Chief Office HSCP
To: Chief Executives WDC and NHSGCC
CC: HSCP Chief Finance Officer, HSCP Board Chair and Vice-Chair
Subject: For Action: Directions from HSCP Board 16 August 2022

Attachment: 2021/22 Financial Performance Report

Following the recent Integration Joint Board meeting, the direction below have been issued under S26-28 of the Public Bodies (Joint Working) (Scotland) Act 2014. Attached is a copy of the original HSCP Board report for reference.

DIRECTION FROM WEST DUNBARTONSHIRE HEALTH AND SOCIAL CARE PARTNERSHIP BOARD		
1	Reference number	HSCP B000027JS16082022
2	Date direction issued by Integration Joint Board	16 August 2022
3	Report Author	Julie Slavin, Chief Financial Officer
4	Direction to	West Dunbartonshire Council and NHS Greater Glasgow and Clyde jointly
5	Does this direction supersede, amend or cancel a previous direction – if yes, include the reference number(s)	Yes
		HSCP B000024JS27062022
6	Functions covered by direction	All delegated Health and Care Services as set-out within the Integration Scheme
7	Full text and detail of direction	West Dunbartonshire Council is directed to spend the delegated net budget of £81.695m in line with the Strategic Plan and the budget outlined within this report. NHS Greater Glasgow and Clyde is directed to spend the delegated net budget of £103.291m in line with the Strategic Plan and the budget outlined within this report West Dunbartonshire Council is directed to write off £747.39 of outstanding debt as detailed within this report.
8	Specification of those impacted by the change	2022/23 Revenue Budget for the HSCP Board will deliver on the strategic outcomes for all delegated health and social care services and our citizens.
9	Budget allocated by Integration Joint Board to carry out direction	The total 2022/23 budget aligned to the HSCP Board is £218.606m. Allocated as follows: West Dunbartonshire Council - £81.695m NHS Greater Glasgow and Clyde - £103.291m Set Aside - £33.620m
10	Desired outcomes detail of what the direction is intended to achieve	Delivery of Strategic Priorities
11	Strategic Milestones	Maintaining financial balance in 2022/23
12	Overall Delivery timescales	30 June 2023
13	Performance monitoring arrangements	Each meeting of the HSCP Board will consider a Financial Performance Update Report and the position regarding Debt Write Off's.
14	Date direction will be reviewed	The next scheduled HSCP Board - 20 September 2022

WEST DUNBARTONSHIRE HEALTH & SOCIAL CARE PARTNERSHIP BOARD

Report by Chief Financial Officer

16 August 2022

Subject: Reserves Update**1. Purpose**

- 1.1** To provide a clear framework for the HSCP Board to ensure reserves are effectively managed to meet the financial risks and uncertainties faced by the HSCP whilst enabling the Partnership Board to provide the capacity to invest in the delivery of the HSCP Strategic Plan.

2. Recommendations

- 2.1** The HSCP Board is recommended to:
- a. **note** the current position in relation to reserves;
 - b. **consider** the financial risks both in 2022/23 and in the medium term, in relation to agreeing on an appropriate level of reserve balance that is sufficient to provide financial stability to the HSCP Board;
 - c. **consider for approval** the proposals contained with Appendix 1 to the value of £1.489m; and
 - d. **note** that further reports on the progress, impact, associated outcomes and exit strategies will be presented to the Board as appropriate.

3. Background

- 3.1** The HSCP Board has the statutory right to hold Reserves under the same legal status as a local authority, i.e. "A section 106 body under the Local Government (Scotland) Act 1973 Act, and is classified as a local government body for accounts purposes..., it is able to hold reserves which should be accounted for in the financial accounts and records of the Partnership Board". The Integration Scheme also sets out the arrangements for the transfer of underspends to reserves.
- 3.2** The HSCP Board's Reserves Policy sets out this legislative context as well as the local arrangements based on relevant professional guidance. Reserves are generally held to do three things as shown below as:
- i. create a working balance to help cushion the impact of uneven cash flows and avoid unnecessary temporary borrowing – this forms part of general reserves;
 - ii. create a contingency to cushion the impact of unexpected events or emergencies; and
 - iii. provide a means of building up funds, often referred to as earmarked reserves, to meet known or predicted liabilities.

- 3.3** Reserves are a key component of the HSCP Board's funding strategy. It is essential for the medium to longer term financial stability and sustainability of the board that sufficient useable funds are held for the reasons detailed above and to earmark specific funding to deliver on Scottish Government policies and local priorities.
- 3.4** This report seeks to address the Board's concerns about the scale of reserves and provides details in respect of how specific financial risks are being managed. In addition it supports the building of a common understanding that balances are being used effectively, ensuring we remain financially resilient whilst identifying resources which could be released for investment to support the HSCP's refreshed Strategic Plan 2023 – 2026.

4. Main Issues

- 4.1** The opening reserve balances position for 2022/23, based on last financial year's draft unaudited accounts, and considered at the June meeting of the HSCP Board, are detailed in Table 1 below.

Table 1 – Movement in Reserves during 2021/22

Movement in Reserves During 2021/22	Un-Earmarked Reserves Balance	Earmarked Reserves Balance	Total General Fund Reserves
	£000	£000	£000
Opening Balance as at 31 March 2021	(4,367)	(17,440)	(21,807)
Total Comprehensive Income and Expenditure (Increase) / Decrease 2021/22	(212)	(12,541)	(12,753)
Unaudited Closing Balance as at 31 March 2022	(4,579)	(29,981)	(34,560)

- 4.2** With reference to section 3.2 (iii) above, earmarked reserves mainly consist of funding received from the Scottish Government to support health and social care policy commitments, Covid-19 response, recovery and renewal of services, Winter Planning and statutory duties including; Primary Care Improvement, Mental Health Action 15, Alcohol and Drugs Partnership, Scottish Living Wage, Carers and Free Personal Care (under 65). The flow of funding for some of these policy commitments is linked to quarterly returns detailing the activity and cost of various programme strands.
- 4.3** The movement in earmarked reserves detailed in Table 1 above, is similar in value to the movement reported within the 2020/21 annual accounts. The reasons for the increases are reported within each financial performance report to the HSCP Board as well as the published annual accounts. For this August meeting, this detail is available within agenda Item 6 – “2022/23 Financial Performance Update”.

- 4.4** The increasing level of earmarked reserves held by this HSCP Board is replicated in IJBs and local authorities across the country, mainly due to the level of Scottish Government funding linked to UK consequential received to respond to the Covid-19 pandemic. Table 2 below, as extracted from the 2021/22 unaudited accounts summaries the position.

Table 2 – Extract from 2021/22 - Note 13: Usable Reserve

Source of Earmarked Reserves	£000
Scottish Government Funding (65%)	(19,406)
HSCP Initiatives, Recovery & Renewal (30%)	(9,012)
GP Prescribing (5%)	(1,563)
Early Indicative Earmarked Reserves	(29,981)

- 4.5** With reference to section 3.2 (i) and (ii) above, concerning the creation of a working balance and a contingency to support the financial stability of the HSCP Board, this is covered under Section 5 of the current Reserves Policy:

“5.1 There is no guidance on the minimum level of reserves that should be held. In determining the prudential target, the Chief Finance Officer must take account of the strategic, operational and financial risks facing the Partnership Board over the medium term and the Partnership Board’s approach to risk management.

5.2 In determining the prudential target, the Chief Finance Officer should consider the medium term financial outlook and the overall financial environment.

5.3 In light of the size and scale of the Partnership Board’s responsibilities, over the medium term it is proposed that a prudent level of general reserves will represent approximately 2% of net expenditure.”

- 4.6** In the past two financial years the HSCP Board has considered a number of reports, including the Medium Term Financial Plan, presented by the Chief Financial Officer regarding the adequacy of the 2% target, given the scale of the financial risks associated with one year funding settlements, the response and recovery from the pandemic and the challenging financial positions of our funding partners WDC and NHSGGC.
- 4.7** In June 2021, the Board agreed that given the funding uncertainties facing the public sector and the potential that demand for health and social care services for our local population would increase as the impacts of the pandemic revealed themselves, the target should be increased from 2% to 3% going into 2021/22.
- 4.8** In March 2022 as part of the 2022/23 budget setting report, the Board again considered the adequacy of the level of unearmarked reserves in the context of the revised Medium Term Financial Plan and the WDC budget decision to review the split of residential school placements. It was agreed that a report

was to be presented to a future meeting after the conclusion of the 2021/22 annual accounts.

- 4.9** The WDC review into the most appropriate split of residential school placements has not yet concluded as securing robust, financial information from providers has been challenging. However regardless of this delay, the decision of the Council, is that any change to the allocation should be effective from the 1 April 2022. If the 80/20 (HSCP/WDC) split is deemed more appropriate than the current 50/50 split, this additional cost pressure (circa £2m depending on current and future placements) will have to be borne by the HSCP's current budget. The latest financial performance report, Item 6 on this agenda, explores the potential impact of this decision on the period 3 probable outturn.
- 4.10** Managing an additional cost pressure of circa £2m would require a recovery plan to be drafted and approved by the Board. This recovery plan would likely consider applying an element of the current unearmarked reserve balance. However this would only be a short term measure to a recurring cost pressure as professional guidance cautions against the use of reserves to balance recurring pressure.

Extract from LAAP 99 Bulletin (Local Authority Accounting Panel):

“Balancing the annual budget by drawing on general reserves may be viewed as a legitimate short-term option. However, it is not normally prudent for reserves to be deployed to finance recurrent expenditure.”

- 4.11** This guidance and the potential application of HSCP Board reserves is also the subject of a further report on this agenda, Item 8 - “Request from West Dunbartonshire Council in Response to Urgent Notice of Motion”. An element of the request contained within that motion regarding current earmarked reserves will be covered below, however the request to use unearmarked reserves to abolish non-residential charges is not considered within this report.
- 4.12** The HSCP Board is operating within a complex and evolving Scottish Government policy landscape coupled with a challenging and potentially worsening UK economic outlook. Decisions on an appropriate and prudent level of unearmarked reserve versus the delivery of strategic priorities and supporting our communities out of the pandemic and cost of living crisis is multi-layered, but financial sustainability in the short, medium and longer term must be maintained to allow the HSCP to invest proactively and drive out efficiencies through better ways of integrated working.
- 4.13** If the current 2% target is to be maintained and not increased, for 2022/23 (based on the latest projected outturn position) this equates to an unearmarked reserve of £4.038m. The current opening position shown in Table 1 above is a balance £4.579m, i.e. in excess of the target by £0.541m.

- 4.14** A robust review of all earmarked reserves has also been undertaken by the HSCP Senior Management Team. Given that 65% of earmarked reserves are from the Scottish Government (Table 2 above) and have conditions and outcomes attached there is reduced scope to “free-up” a significant element. Also the Scottish Government have made it a condition of funding that all current earmarked reserves must be exhausted before any 2022/23 funding will be released e.g. Primary Care Improvement, ADP and Mental Health Recovery and Renewal. There is however potential flexibility within some of the newly created reserves for Winter Planning and other HSCP Board approved earmarked reserves. An element of this is set-out in Table 3 below, but further work requires to be undertaken by Heads of Service to determine whether other local HSCP priorities can be delivered in tandem with Scottish Government required outcomes.

Table 3 – HSCP Reserves Analysis and Review

Analysis of Current Reserves	Opening Balance £000	Balance Committed £000	Potential Available £000
Unearmarked Reserve – 2% (based on P3 projection)	(4,579)	4,038	(541)
Earmarked Reserves Approved by HSCP Board June 2021	(2,542)	2,266	(276)
Earmarked Reserves Approved by HSCP Board June 2022	(1,013)	540	(473)
Other Earmarked Reserves including Scottish Government funding	(26,426)	26,215	(211)
Total Reserves	(34,560)	33,059	(1,501)

- 4.15** In line with the process adopted in June 2021, each service was invited to draft proposals that could be supported by non-recurring reserves over a 1 to 3 year period. The proposals must align to the five key strategic priorities within the Strategic Plan: early intervention; access; resilience; assets and inequalities and support future service redesign, service efficiencies and spend to save projects.
- 4.16** In total 35 proposals with a value of £3.452m were considered by the SMT review panel. This incorporated the request at item (a) below, from the Council motion tabled on 22 June - “Cost of Living Crisis” (see section 4.11 above). Items (b) through to (e) are already incorporated within currently earmarked reserve plans and progress will be reported through regular financial performance reports.

*“Emergency Item of Business Councillor McGinty – Cost Of Living Crisis.
Councillor McGinty moved:*

- i. The Governance arrangements mean that a planned HSCP package which includes a range of proposals to be considered by*

the Health and Social Care Partnership are set out below:

- a) 4 x welfare rights staff to support an income maximisation campaign £150,000*
- b) Children's services staff x 4 £120,000*
- c) Participatory budget £300,000*
- d) Kinship carers and Foster carers £120,000*
- e) Carers support £850,000.*

4.17 The review panel challenged officers on both the financial and non-financial content of their service proposals. As well as aligning to the strategic plan priorities they were also considered against the key themes set out within the Medium Term Financial Plan:

- Better ways of working – benefits of digital and other technology to deliver services more efficiently to release financial savings for re-investment;
- Community empowerment – support the vision for resilient communities;
- Prioritisation of Services – Early Intervention and Reablement;
- Equity and Consistency of Approach – Eligibility Criteria; and
- Service redesign and transformation – across all care groups and supported by Service Improvement Leads.

4.18 All submissions were awarded a Red, Amber or Green (RAG) status based on:

- i. Red status where submissions were not considered an appropriate use of reserves;
- ii. Amber status where submissions were deemed to have some merit, however reserves should be maintained at current level pending further information; and
- iii. Green status where submissions were considered an appropriate use of reserves and would be recommended to the Board for approval.

4.19 The outcome of the review process concluded that some of the proposals required further detail on anticipated benefits, also a number of the proposals could be aligned to existing earmarked reserves held for approved Covid related costs, 2021/22 winter planning funding, Unscheduled Care and Mental Health Strategy. These proposals totalled £1.963m and if further review concludes they can be accommodated within existing earmarked reserves balances this will be reflected in future financial performance reports.

4.20 The remainder of the proposals totalling £1.489m are being presented to the Board to consider all or part approval and to be delivered over the next 3 years. A breakdown of these proposals is contained within Appendix 1, including a summary of the bid, the value and the number of fixed term posts that would be created.

4.21 As set out in Table 3 above, the funding of the proposals contained within Appendix 1 would be possible if the HSCP Board are content to hold the level of unearmarked reserves at the 2% level set out within the reserves policy, i.e.

£4.038m. It should also be noted that this current balance does not reflect any potential surplus or deficit that could arise in 2022/23.

- 4.22** The Financial Performance Update Report presented in Item 6 of this agenda is currently projecting a very early probable outturn underspend of £0.863m. However this projection is very heavily caveated by the outstanding WDC budget decision as set out in sections 4.8 to 4.10 above, as well as the uncertainty of the pay award for local authority and health board staff, anticipated additional inflationary pressures and the budget gaps across the medium term as set out in the Medium Term Financial Plan.

Table 4 – Financial Impact of Potential HSCP Burdens

Consolidated Budget Gap Analysis	2022/23	2023/24	2023/24	2023/24	2024/25	2024/25	2024/25
	£000's	£000's	£000's	£000's	£000's	£000's	£000's
	Likely	Best	Likely	Worst	Best	Likely	Worst
Budget Gap Reported March 2022	-	833	2,815	8,492	3,562	5,623	11,445
Forecast Surplus @ June 2022	(863)						
Budget Pressures not Reported							
Pay Inflation increased to 5%	1,760	1,848	1,848	1,848	1,940	1,940	1,940
Impact of Posts Funded from Reserves		813	813	813	1,322	1,322	1,322
Children & Families Review	2,091	2,196	2,196	2,196	2,305	2,305	2,305
Complex Care Packages	199	765	784	802	804	842	882
Commissioning Risk	522	1,132	1,313	1,440	1,184	1,392	1,545
Office365		140	140	140	140	140	140
Revised Budget Gap @ June 2022	3,709	7,727	9,908	15,730	11,258	13,566	19,581

- 4.23** The approved 2022/23 budget assumed pay inflation in line with the parameters set out within the Public Sector Pay Policy, which ranges from approximately 2.4% to 2.9% depending on salary bandings. The Scottish Government has already announced £140m of additional funding for local authority staff and it is expected that it will announce additional funding for health board staff, however it is unknown at this time what level of support may pass through to Integration Authorities.
- 4.24** It should also be highlighted that a significant proportion of both earmarked reserves and unearmarked reserves have arisen due to difficulties in recruiting both qualified and unqualified health and social care staff. This problem is not unique to West Dunbartonshire and is likely to continue this year and into the medium term. Therefore if all of the proposals within Appendix 1 were approved, given recruitment challenges, the actual cost in 2022/23 is likely only to impact from the last quarter of the financial year.

5. Options Appraisal

- 5.1** Each head of service submission was required to link back any proposal to the HSCP Board strategic priorities.

6. People Implications

- 6.1** A number of the proposals relate to creation of fixed term posts and a defined exit strategy will be developed and monitored by the HSCP Head of People and Change.

7. Financial and Procurement Implications

- 7.1** Other than the movement in reserves position noted above, there are no other financial implications known at this time. Further reports to the HSCP Board will provide an update on any variation to the original proposals and any procurement implications.

8. Risk Analysis

- 8.1** The main financial risks related to the application of the reserves are detailed below:
- i. The ability of the HSCP to mobilise quickly given the nature of some of the reserve proposals;
 - ii. The ability to recruit staff into the fixed term posts where required;
 - iii. The 2022/23 outturn position is unknown at this time and therefore the potential impact on future un-earmarked reserves remains unquantified at this time;
 - iv. The ongoing need to ensure the reserves strategy is prudent and serves the needs of the HSCP given the level of anticipated future budget gaps and financial sustainability challenges;
 - v. Impacts on the delivery of targets and outcomes such as delayed discharge and waiting times; and
 - vi. Continued volatility in, and the legacy impact of the Covid-19 pandemic on demand pressures across the range of community services;

9. Equalities Impact Assessment (EIA)

- 9.1** Equality impact assessments will be carried out where appropriate as part of any service redesign and transformation proposals brought to the HSCP Board.

10. Environmental Sustainability

- 10.1** None required.

11. Consultation

- 11.1** This report has been prepared at the request of the HSCP Board and the contents reflect robust engagement and peer review and challenge by the Chief Officer and the Senior Management Team.

12. Strategic Assessment

- 12.1** Proper budgetary control and sound financial practice are cornerstones of good governance and support the Partnership Board and officers to pursue the priorities of the Strategic Plan.

13. Directions

- 13.1** This report outlines a clear list of proposals for the use and creation of earmarked reserves. A detailed set of directions is required to enable the HSCP Board to mobilise quickly (see Appendix 2).

Julie Slavin – Chief Financial Officer

Date: 12 August 2022

Person to Contact:	Julie Slavin – Chief Financial Officer, Church Street, WDC Offices, Dumbarton G82 1QL Telephone: 01389 737311 E-mail: julie.slavin@ggc.scot.nhs.uk
Appendices:	Appendix 1 – Reserves Proposals for Approval Appendix 2 – Directions
Background Papers:	2022/23 Annual Budget Setting Report - March 2022(wdhscp.org.uk) Item 6: 2022/23 Financial Performance Update Report Item 8: Response to WDC Urgent Motion Draft 2021/22 Unaudited Accounts 2021/22 Draft Unaudited Accounts (wdhscp.org.uk) WD HSCP Reserves Policy (wdhscp.org.uk)
Localities Affected:	All

Name of Proposal	Details of Proposal	£000	W.T.E.
Property Officer	This post is required to support the development and implementation of the HSCP property strategy.	128	1.00
Information Officers	The recruitment of Information Officers for a 2 year period. Key duties are: the provision on training and service development in relation to Social Work Systems; Care First Data Cleanse; working with the service to fully understand data and management information requirements so this can be developed to aid service delivery.	150	2.00
Pharmacist in Community Mental Health Team	NHS Mental Health Services in GGC were facing challenges in meeting the clinical demands caused by mental health issues prior to the pandemic. These challenges include increased referrals and medical recruitment issues across adult CMHTs. One potential solution is to develop clinical pharmacy services within adult CMHTs. Services would include: Ad hoc clinical advice: Medication review and formulation of treatment plan: Engagement with MDT reviews to support development of treatment plans: Patient/carer education: Provision of pharmacist led clinics. Pharmacy 1.6 WTE, (2 posts) for our two Adult CMHTS and two Older People CMHTs.	256	1.60
Service Manager Health & Community Care	2 year secondment to recruit a Service Manager within Health and Community Care to work closely with the Head of Service in developing a whole systems approach across the services within this structure. Also to work across the other operational teams within the HSCP in a leadership / quality assurance role. This post is new initiative and as such would be monitored for impact and if evidenced would be considered as a permanent post.	205	1.00
Upgrade to Children's Houses	The Children's' House estate is split across three main buildings, Craigellachie in Clydebank, Blairvardach in Rhu and Burnside in Alexandria. Each of the houses are six bedded and provide support to children who are looked after and accommodated. Each of the houses are regulated by the Care inspectorate and are subject to stringent criteria in respect of the care and support provided. Each of the three buildings require extra resources to upgrade the facilities that will enable us to uphold the expectations on living standards that are key to the inspectorate position. into a chill space for children. The proposal in this plan is to extend the budgets across a two year period to allow each of the buildings to be appropriately upgraded and for the ongoing finance to allow for ongoing repairs to be carried out by a newly recruited Handyperson who will work across the whole estate.	170	1.00

Integrated Children's Services - GIRFEC Co-ordinator	The post holder will support the work of integrated children's services across the children's services partnership with a particular focus of embedding a UNCRC rights based approach and Girfec refresh and review incorporating National Guidance 2022 yet to be published. A request for shared resourcing has been made with education colleagues and it may be that only 50 % of the resource is required going forward but yet to be concluded. The co-ordinator would support the ICSP and the development of subgroup partnership structure underpinned by agreed performance measure to more ably reflect the impact of the services being developed and delivered.	120	1.00
Community Justice	This proposal is to fund a social worker for Justice Services and commissioned a service to provide peer mentors to work alongside Justice Service with our high risk and hard to reach service users. There have been gaps identified by the Care Inspectorate Inspection from 2019 whereby the service is not working to agreed national outcomes in the use of lived experience within its service.	124	1.00
Caledonian Children's Worker	The children worker must be included in the whole systems approach to Domestic Abuse as part of the Caledonian system. The service would not be permitted without the creation of this post. The post holder will provide support to children and their mothers surviving domestic abuse. This is national and local priority with West Dunbartonshire being second highest nationally in prevalence of Domestic Abuse within its communities.	40	1.00
Learning Disability - Service Redesign	The recent Scottish Government paper 'Towards Transformation' 2021 looks at the particular needs of Scotland's autistic community and people with a learning/intellectual disability. A systematic focus on creating the conditions for change, operationally on the frontline, to ensure people can be successfully supported in more appropriate community settings is urgently needed. This will require whole system engagement to develop a more flexible, specialist workforce to support models of care that promote prevention and early intervention to avoid costly crisis responses. These two year fixed term posts will create the conditions for change and gather evidence based examples of what is possible so that staff teams can then be upskilled and provided with training and development opportunities to ensure those adults living with a learning disability are empowered to live their lives the same as everyone else.	146	2.00
Welfare Rights Officers	WDC Cost of Living Crisis Motion. To provide non-recurring funding to WDC's Working 4 U Service to employ 4 fixed term welfare rights workers to support citizens access appropriate benefits and support. Supporting mental and physical wellbeing by addressing and alleviating personal financial stress. This would benefit individuals and families from all demographic groups	150	4.00
TOTAL OF PROPOSALS FOR CONSIDERATION OF HSCP BOARD		1,489	15.60

Appendix 2: Direction from Health and Social Care Partnership Board.

The Chief Officer will issue the following direction email directly after Integration Joint Board approval.

From: Chief Office HSCP
To: Chief Executives WDC and NHSGCC
CC: HSCP Chief Finance Officer, HSCP Board Chair and Vice-Chair
Subject: For Action: Directions from HSCP Board 16 August 2022

Attachment: ANALYSIS OF RESERVES

Following the recent Integration Joint Board meeting, the direction below have been issued under S26-28 of the Public Bodies (Joint Working) (Scotland) Act 2014. Attached is a copy of the original HSCP Board report for reference.

DIRECTION FROM WEST DUNBARTONSHIRE HEALTH AND SOCIAL CARE PARTNERSHIP BOARD		
1	Reference number	HSCP B000028JS160822.
2	Date direction issued by Integration Joint Board	16 August 2022
3	Report Author	Julie Slavin, Chief Financial Officer
4	Direction to:	West Dunbartonshire Council and NHS Greater Glasgow and Clyde jointly
5	Does this direction supersede, amend or cancel a previous direction – if yes, include the reference number(s)	Yes HSCP B000008JS24062021
6	Functions covered by direction	All delegated Health and Care Services as set-out within the Integration Scheme
7	Full text and detail of direction	The HSCP Board as section 106 body under the Local Government (Scotland) Act 1973 Act, and is classified as a local government body for accounts purposes..., it is able to hold reserves which should be accounted for in the financial accounts and records of the Partnership Board. The recommendations within this report concern the application of the use of reserves to support the delivery of the HSCP Board's Strategic Plan and Scottish Government policies across all delegated services.
8	Specification of those impacted by the change	The use of reserves across HSCP services will deliver on the strategic outcomes for all delegated health and social care services and our citizens. The reserves will be invested to enhance HSCP staffing levels and support some commissioned services.
9	Budget allocated by Integration Joint Board to carry out direction	See Appendix 1 attached to this report for the detail of £1.489m of reserves. The distribution of the financial resource across WDC and NHSGGC will be linked to

		decisions made on recruitment of fixed term posts (circa 15.60 wte) and commissioning routes. Financial Performance Reports will monitor the detail.	
10	Desired outcomes detail of what the direction is intended to achieve	Delivery of Strategic Priorities, the Recovery and Renewal Plan, Service Delivery Plans and Scottish Government Policy Outcomes.	
11	Strategic Milestones	Maintaining financial balance in 2022/23. This will be monitored in regular financial performance reports to each HSCP Board.	30 June 2023
		Meeting performance targets as defined by both local and national outcomes. This will be monitored in quarterly performance Report to each Audit and Performance Committee	30 June 2023
12	Overall Delivery timescales	30 June 2026	
13	Performance monitoring arrangements	Each meeting of the HSCP Board will consider a Financial Performance Update Report and a Year-End Report in line with Annual Accounts statutory timetable.	
14	Date direction will be reviewed	Future meeting of the HSCP Board in 2022/23	

**WEST DUNBARTONSHIRE HEALTH AND SOCIAL CARE PARTNERSHIP
(HSCP) BOARD**

Report by Chief Officer – West Dunbartonshire HSCP Board

16 August 2022

Subject: Request from West Dunbartonshire Council in Response to Urgent Notice of Motion

1. Purpose

- 1.1** The purpose of this report is for the HSCP Board to consider a request from West Dunbartonshire Council (WDC) that it use un-earmarked reserves to mitigate against the costs associated with the Councils ambition to abolish charges for non-residential services.

2. Recommendations

It is recommended that the HSCP Board agree:

- 2.1** To consider this request in its context, specifically to enable WDC to abolish charges for non-residential care services.
- 2.2** To note that the proposed abolition of charges for non-residential care services may have an in-year unplanned impact for the HSCP in the region of £1.5 million and if requested for future years would have a recurring impact on revenue budgets. It is possible this additional financial pressure will impact on direct service provision, delivery of strategic priorities and the delivery of national outcomes.
- 2.3** To note that the proposed abolition of charges for non-residential care services would likely lead to an increase in demand for such services.

3. Background

- 3.1** On the 22 June 2022 WDC unanimously agreed an emergency notice of motion, raised by Cllr McGinty. This motion, along with the decision of Council, is articulated in the following extract from the draft minute of that meeting:
- i. Emergency Item of Business Cllr McGinty – Cost Of Living Crisis.
Cllr McGinty moved: {extract only}
 - ii. The Governance arrangements mean that a planned HSCP package, which includes a range of proposals to be considered by the Health and Social Care Partnership are set out below:-
 - a) 4 x welfare rights staff to support an income maximisation campaign £150,000

- b) Children's services staff x 4 £120,000
- c) Participatory budget £300,000
- d) Kinship carers and Foster Carers £120,000
- e) Carers support £850,000

- iii. The above have been discussed with the Chief Officer but it is for the Integrated Joint Board to approve these earmarked funds to support the West Dunbartonshire Cost of Living Plan.
- iv. In addition to the above, the Labour Administration plan to abolish the £1.5m of non-residential care charges at the August HSCP. The aim is that the HSCP covers the loss of income from HSCP un-earmarked reserves.
- v. The Council agreed the motion.

3.2 This report pertains to the section 3.1 (iv) of the motion highlighted above.

4. Main Issues

4.1 The main issues arising in respect of the above extract from the motion are outlined in this section of the report.

4.2 The statutory powers that allow local authorities to levy charges for a range of non-residential services are set out in the Social Work (Scotland) Act 1968 Section 87, and must be in compliance with the COSLA (Convention of Scottish Local Authorities) National Strategy and Guidance on Charges Applying to Non-Residential Social Care Services.

4.3 The Public Bodies (Joint Working) (Scotland) Act 2014 which established Integration Joint Boards and the services to be delegated, did not include the power to set and levy charges. Therefore the decision to abolish non-residential care charges is not a matter for the HSCP Board. On the 9 March 2022 WDC approved the "2022/23 Charging Policy for Non-Residential Care Services." Only WDC can make the decision to change this Policy.

4.4 The request in the council motion is not that the HSCP Board agree to abolish non-residential charges, as outlined above this decision is reserved to WDC, but rather, the Council requests that the HSCP Board consider the use of its un-earmarked reserves for this purpose. The options and observations in this report are based on the assumption that this request is intended to be applied in this and future financial years.

Table 1: 2022/23 Non-Residential Charges Budget

Description of Non-Residential Charge	2022/23 Income Budget (£)
Page 132	

Care at Home (Non-personal care)	285,009
Community Alarms	450,868
Building Based Day Care – Older People	207,440
Building Based Day Care – Learning Disability	107,714
Support Charges	411,091
Blue Badges	37,464
Respite	10,003
Total Income Budget	1,509,589

Scheme of Integration

- 4.5** At its inaugural meeting on the 1 July 2015 the HSCP Board noted the approved Scheme of Integration, the completed Scheme having previously been approved by: the NHS Greater Glasgow and Clyde Board at its January 2015 meeting; WDC at its February 2015 meeting and The Scottish Government in May 2015. This integration scheme describes how the 2014 Act is to be implemented for West Dunbartonshire.
- 4.6** Section 11 of the integration scheme covers the “Finance” arrangements including: the appointment of a Chief Financial Officer (CFO); the robustness of budgets and due diligence; the treatment of in-year variances; reserves and the responsibilities of partners.
- 4.7** With regards to any proposed changes to the approved current year budget sub-section 11.8 of the Scheme of Integration states:
- “11.8. Either Party may increase their in-year payment to the Integration Joint Board. Neither Party may reduce the payment in-year to the Integration Joint Board nor hosted services managed on a lead partnership basis to meet exceptional unplanned costs within the Parties without the express consent of the Integration Joint Board and the other Party and where relevant the other Greater Glasgow and Clyde Integration Joint Boards”.
- 4.8** Therefore, should the HSCP Board agree to the Councils request the consent of NHS Greater Glasgow and Clyde Board-would also be required for the request to be acted on.
- 4.9** The approved 2022/23 budget requisition from WDC as at 21 March was £81.777 million. This was the agreed net expenditure contribution, i.e. it was accepted by the HSCP Board, that an element of the gross expenditure cost of delivering social care services would be offset by the income levied in charges.
- 4.10** The WDC 2022/23 budget decision included a request to review the allocation of costs between the HSCP and Education for Looked After & Accommodated Children’s Residential Placement. This may result in the

HSCP becoming liable for approximately £2.090m recurring additional costs which has also been suggested come from HSCP reserves.

- 4.11** The motion proposes that the loss of income could be covered by the HSCP Board's un-earmarked reserves. Integration Joint Boards are considered a local government body as defined by S106 of the Local Government (Scotland) Act 1973 and as such are able to create and use reserves as part of its General Fund. The 1973 Act under S95 also sets out the legislative requirement for local authority bodies to appoint a CFO as being the proper officer with the responsibility for the administration of its financial affairs.
- 4.12** Within the existing statutory and regulatory framework, it is the responsibility of the CFO to maintain a sound financial position, including advising their local authority body on the level of reserves they should hold, taking into account all relevant local circumstances. (Local Authority Accounting Panel (LAAP) 99 Bulletin: Reserves and Balances 2014).
- 4.13** The HSCP Board has recognised the importance of creating and holding sufficient levels of reserves to support strong financial management as set out within its approved Reserves Policy.
- 4.14** This policy is considered each year as part of the annual budget setting exercise and medium term financial planning. Section 3.1 of the HSCP Reserves Policy (extracted from the LAAP bulletin) states:

3.1 Reserves are generally held to do three things:

- a) create a working balance to help cushion the impact of uneven cash flows and avoid unnecessary temporary borrowing – this forms part of general reserves;
- b) create a contingency to cushion the impact of unexpected events or emergencies – this also forms part of general reserves; and
- c) create a means of building up funds, often referred to as earmarked reserves, to meet known or predicted liabilities."

Option One: The HSCP Board Support the Request from WDC

- 4.15** Both the abolition of charges and a change to the allocation of residential placements would have a recurring impact on budgets and the HSCP Board's Medium Term Financial Plan (MTFP) would require to be reviewed. The increase in the budget gaps will impact on the HSCP Board's ability to deliver on its Strategic Plan. The indicative budget gaps from the current MTFP are shown below:

Extract from MTFP 2022/23 to 2026/27 – Table 10

Indicative Budget Gap	2023/24 £000's	2024/25 £000's	2025/26 £000's	2026/27 £000's
Best	(833)	(3,562)	(7,522)	(10,435)
Likely	(2,815)	(5,623)	(9,652)	(12,635)
Worst	(8,492)	(11,445)	(15,602)	(18,725)

- 4.16** There is also a risk that the on-going recurring impact of the removal of charges will be materially greater than £1.5m, as it is likely there would be an increase in demand for non-residential services such as community alarms.
- 4.17** The Feely review on adult social care recommended that non-residential charges should be scrapped. The proposed National Care Service shares this ambition, but at this early stage there is no confirmation when this may take effect from. However there is a working group looking at the impact of this, and based on early projections a 30% increase in demand for services are being modelled. This is 30% on the gross cost of services, not on the income derived which only accounts for a contribution to the actual cost.
- 4.18** The motion does not specify an effective date for the abolition of charges, therefore the in-year impact is unclear. The figures within this report are based on a full year impact. The HSCP Board should note that invoices for the financial year 2022/23 have already been issued.
- 4.19** Sections 4.12 to 4.14 above set out the regulatory context and the purpose of reserves. The HSCP Reserves Policy also considers the adequacy of reserves as extracted below:
- 5.1 There is no guidance on the minimum level of reserves that should be held. In determining the prudential target, the CFO must take account of the strategic, operational and financial risks facing the Partnership Board over the medium term and the Partnership Board's approach to risk management.
- 5.2 In determining the prudential target, the CFO should consider the term financial outlook and the overall financial environment.
- 5.3 In light of the size and scale of the Partnership Board's responsibilities, over the medium term it is proposed that a prudent level of general reserves will represent approximately 2% of net expenditure."
- 4.20** Based on the 2021/22 net expenditure figures reported within the draft unaudited accounts, 2% would equate to an un-earmarked reserve target of £3.956 million. The unaudited closing un-earmarked general fund reserve balance for 2021/22 is £4.579m, which equates to 2.31% of net expenditure or an excess of £0.623m over the target. As stated the HSCP Board are to consider a further paper on the utilisation of reserves at this August meeting in the context of the current and on-going financial risks.

- 4.21** Should the HSCP Board wish to use reserves to meet the immediate need in the financial year 2022/23 the HSCP Board will have to consider how this will be mitigated against in future years as it will constitute a recurring reduction in revenue budgets from 2022/23 onwards. This additional financial pressure may impact on direct service provision, delivery of strategic priorities and the delivery of national outcomes.

Option Two: The HSCP Board do Not Support the Request from WDC

- 4.22** Whilst it is primarily the responsibility of the HSCP Board and its chief financial officer to maintain a sound financial position, external auditors will confirm over the course of their audit whether there are any material uncertainties relating to “going concern” basis of accounting i.e. the financial sustainability of the HSCP Board.
- 4.23** While not prohibited within current guidance, it is not recommended that un-earmarked reserves are used to offset a recurring budget pressure unless there is a clear and deliverable plan in place to replenish the reserves balance as well as address the recurring cost.

Extract from LAAP 99 Bulletin regarding adequacy of reserves:

“The advice should be set in the context of the authority’s risk register and medium term plans and should not focus exclusively on short-term considerations. Balancing the annual budget by drawing on general reserves may be viewed as a legitimate short-term option. However, it is not normally prudent for reserves to be deployed to finance recurrent expenditure. CIPFA has commented that Councils should be particularly wary about using one off reserves to deal with shortfalls in current funding. Where such action is to be taken, this should be made explicit, and an explanation given as to how such expenditure will be funded in the medium to long term. Advice should be given on the adequacy of reserves over the lifetime of the medium term financial plan, and should also take account of the expected need for reserves in the longer term.”

- 4.24** The MTFP “likely” budget gaps set out in section 4.16 above, requires to be reviewed to reflect the cost of a potential 5% pay awards for health staff being in excess of the 2% currently budgeted and the knock-on impact on social care pay settlements. If no additional funding is provided by the Scottish Government in 2022/23 this could result in an additional cost of £2m in employee costs. Rising inflation and further increases in the cost of fuel and energy could also add to costs both in-year and in the medium term. Lastly the outstanding decision on the current split of residential placements (see section 4.15 above) will also have a detrimental impact on the HSCP Board’s financial position.
- 4.25** Considering the current professional and statutory guidance, and the likely financial risks facing the HSCP Board in both the current year and the medium term, it is the recommendation of the CFO that the

application of un-earmarked reserves should not be used to mitigate the cost associated with the proposed abolition of non-residential charges.

- 4.26** If accepted by the HSCP Board, the proposal contained within the motion would be remitted back to WDC for further consideration.

5. Options Appraisal

- 5.1** The two options outlined in section four of this report are presented for the consideration of the HSCP Board.

6. People Implications

- 6.1** The people implications are dependent upon the HSCP Boards agreed option. These are outlined within this section.
- 6.2** Should the HSCP Board not support the Councils request, there are no people implications.
- 6.3** Should the HSCP Board support the Councils request, this may result in significant people implications as staffing costs are the main component within the HSCPs revenue budget. Future decisions in terms of the impact on service delivery would require full and detailed impact assessments.
- 6.4** Should the HSCP Board not reach agreement on this matter, this is purely a technical issue. This would generate additional work streams for Officers which would be absorbed within existing resources.

7. Financial and Procurement Implications

- 7.1** The financial and procurement implications are dependent upon the HSCP Boards agreed option. These are outlined within this section.
- 7.2** Should the HSCP Board not support the Councils request, there are no financial and procurement implications.
- 7.3** Should the HSCP Board support the Councils request this would result in significant financial implications for the HSCP. This additional financial pressure will impact on direct service provision, delivery of strategic priorities and the delivery of national outcomes. Future decisions in terms of the impact on service delivery would require a full and detailed impact assessments.

8. Risk Analysis

- 8.1** The risks are dependent upon the HSCP Boards agreed option and are set out in detail in section 4 above.
- 8.2** Should the HSCP Board not support the Councils request, there are no specific financial risks.

- 8.3** Should the HSCP Board support the Councils request, this exposes the HSCP Board to financial risk as this additional financial burden will impact on direct service provision, delivery of strategic priorities and the delivery of national outcomes. Future discussions in terms of the impact on service delivery would require full and detailed impact assessments.

9. Equalities Impact Assessment (EIA)

- 9.1** The Equalities Impact are dependent upon the HSCP Board's agreed option.

10. Environmental Sustainability

- 10.1** A Strategic Environmental Assessment (SEA) is not required in relation to the recommendations within this report.

11. Consultation

- 11.1** In preparation of this paper Council Legal colleagues have been consulted.

12. Strategic Assessment

- 12.1** The impact on the delivery of the Strategic Plan is dependent upon the HSCP Boards agreed option. These are outlined within this section.
- 12.2** Should the HSCP Board not support the Councils request, there is no impact on the delivery of the HSCP Strategic Plan.
- 12.3** Should the HSCP Board support the Councils request this will have a significant impact on the HSCP Boards ability to deliver the Strategic Plan as this additional financial pressure will impact on direct service provision, delivery of strategic priorities and the delivery of national outcomes.

13. Directions

- 13.1** A Direction is not required in respect of the recommendations within this report.

Beth Culshaw

Chief Officer West Dunbartonshire HSCP
18 July 2022

Person to Contact: Beth Culshaw, Chief Officer – West Dunbartonshire HSCP

Appendices: No Appendices.
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Background Papers:

[West Dunbartonshire Health and Social Care Partnership - Charging Policy for Non-Residential Care Services 2022/2023 \(west-dunbarton.gov.uk\)](#)

[Standing-orders-final-version-080715.pdf \(wdhscp.org.uk\)](#)

[Integration Scheme 2015 \(wdhscp.org.uk\)](#)

[LAAP 99 | CIPFA](#)

[WD HSCP Board Reserves Policy \(wdhscp.org.uk\)](#)

WEST DUNBARTONSHIRE HEALTH & SOCIAL CARE PARTNERSHIP BOARD

Report by Chief Officer – Regulatory and Regeneration

16 August 2022

Subject: Adoption of Proposed Amendments to the Model Code of Conduct

1. Purpose

- 1.1** The purpose of this report is to inform the Health and Social Care Partnership Board of the amendments to the Model Code of Conduct produced by the Scottish Government.
- 1.2** The Model Code of Conduct applies to members of devolved public bodies such as the HSCP Board. The Standards Commission has brought out guidance to reflect the changes made to the Model Code.

2. Recommendations

- 2.1** The HSCP Board is asked to consider and adopt the Model Code and the Guidance (Appendix Links 1 and 2)

3. Background

- 3.1** The HSCP Board currently has a Code of Conduct for Members which was based on a template produced by the Scottish Government. Now that the Model Code of Conduct has been amended, the Scottish Government will expect the HSCP Board to adopt the revised Model Code of Conduct and comply with its amendments.
- 3.2** An induction session for members of the HSCP Board held on 21st June 2022 addressed the code as a whole and identified changes from the previous Code. However, there is one potentially significant change which is specifically drawn to the Board's attention:
- 3.3** The introduction of the principle of collective decision making and corporate responsibility is not a principle which would normally apply to Councillors. Arguably, it is unreasonable to expect politically appointed representatives to sign up to collective responsibility.
- 3.4** Non-voting members also include representatives of staff, third sector bodies, service users and unpaid carers. These members may wish to seek a change to a decision where they believe it will have intolerable negative impacts on those they are appointed to represent.

- 3.5** The HSCP Board responded to the Model Code of Conduct during the Scottish Government's consultation by suggesting that paragraph 3.10 (now 3.11) be deleted. However, paragraph 3.10 has not been amended since the consultation.
- 3.6** Now that the Model Code has been amended, albeit with paragraph 3.10 intact, the Scottish Government will expect the HSCP Board to adopt the revised Model Code and comply with its amendments. The Board must either adopt the Model Code or submit its own Code. The Board's own Code may be refused and substituted and would then presumably have a direct effect on services.
- 4. People Implications**
- 4.1** There are no personnel issues.
- 5. Finance and Procurement Implications**
- 5.1** There are no financial and procurement implications
- 6. Risk Analysis**
- 6.1** A failure to adopt the whole Model Code may lead to action being taken against the HSCP Board.
- 7 Equalities Impact Assessment**
- 7.1** An equalities impact assessment is not required as there is no differential impact on any of the protected categories.
- 8. Consultation**
- 8.1** A response to the consultation was submitted to the Scottish Government and their closing date was met.
- 9. Strategic Assessment**
- 9.1** The recommendations contained in this report are in line with the strategic priority of open, accountable and accessible local government.
- 10. Directions**
- 10.1** As this report concerns governance and not the delivery of services by the Council or the Health Board, no direction is required.

Peter Hessett

Chief Executive / Chief Officer -Regulatory and Regeneration

Date: 11 August 2022

Person to contact: Nigel Ettles, Principal Solicitor – West Dunbartonshire Council
Email: Nigel.Ettles@west-dunbarton.gov.uk

Appendices:

Appendix 1 - [Model Code of Conduct for Members of Devolved Public Bodies](#)

Appendix 2 - [Model Code of Conduct Guidance](#)

Model Code of Conduct for Members of Devolved Public Bodies

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Section 1: Introduction To The Model Code Of Conduct

1.1 This Code has been issued by the Scottish Ministers, with the approval of the Scottish Parliament, as required by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(the “Act”\)](#).

1.2 The purpose of the Code is to set out the conduct expected of those who serve on the boards of public bodies in Scotland.

1.3 The Code has been developed in line with the nine key principles of public life in Scotland. The principles are listed in [Section 2](#) and set out how the provisions of the Code should be interpreted and applied in practice.

My Responsibilities

1.4 I understand that the public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties. I will always seek to meet those expectations by ensuring that I conduct myself in accordance with the Code.

1.5 I will comply with the substantive provisions of this Code, being sections 3 to 6 inclusive, in all situations and at all times where I am acting as a board member of my public body, have referred to myself as a board member or could objectively be considered to be acting as a board member.

1.6 I will comply with the substantive provisions of this Code, being sections 3 to 6 inclusive, in all my dealings with the public, employees and fellow board members, whether formal or informal.

1.7 I understand that it is my personal responsibility to be familiar with the provisions of this Code and that I must also comply with the law and my public body’s rules, standing orders and regulations. I will also ensure that I am familiar with any guidance or advice notes issued by the Standards Commission for Scotland (“Standards Commission”) and my public body, and endeavour to take part in any training offered on the Code.

1.8 I will not, at any time, advocate or encourage any action contrary to this Code.

1.9 I understand that no written information, whether in the Code itself or the associated Guidance or Advice Notes issued by the Standards Commission, can provide for all circumstances. If I am uncertain about how the Code applies, I will seek advice from the Standards Officer of my public body, failing whom the Chair or Chief Executive of my public body. I note that I may also choose to seek external legal advice on how to interpret the provisions of the Code.

Enforcement

1.10 [Part 2 of the Act](#) sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission finds that there has been a breach of the Code. More information on how complaints are dealt with and the sanctions available can be found at [Annex A](#).

Section 2: Key Principles Of The Model Code Of Conduct

2.1 The Code has been based on the following key principles of public life. I will behave in accordance with these principles and understand that they should be used for guidance and interpreting the provisions in the Code.

2.2 I note that a breach of one or more of the key principles does not in itself amount to a breach of the Code. I note that, for a breach of the Code to be found, there must also be a contravention of one or more of the provisions in sections 3 to 6 inclusive of the Code.

The key principles are:

Duty

I have a duty to uphold the law and act in accordance with the law and the public trust placed in me. I have a duty to act in the interests of the public body of which I am a member and in accordance with the core functions and duties of that body.

Selflessness

I have a duty to take decisions solely in terms of public interest. I must not act in order to gain financial or other material benefit for myself, family or friends.

Integrity

I must not place myself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence me in the performance of my duties.

Objectivity

I must make decisions solely on merit and in a way that is consistent with the functions of my public body when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

I am accountable to the public for my decisions and actions. I have a duty to consider issues on their merits, taking account of the views of others and I must ensure that my public body uses its resources prudently and in accordance with the law.

Openness

I have a duty to be as open as possible about my decisions and actions, giving reasons for my decisions and restricting information only when the wider public interest clearly demands.

Honesty

I have a duty to act honestly. I must declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

I have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of my public body and its members in conducting public business.

Respect

I must respect all other board members and all employees of my public body and the role they play, treating them with courtesy at all times. Similarly, I must respect members of the public when performing my duties as a board member.

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.

3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.

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.

3.4 I accept that disrespect, bullying and harassment can be:

- a) a one-off incident,
- b) part of a cumulative course of conduct; or
- c) a pattern of behaviour.

3.5 I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.

3.6 I accept that it is my responsibility to understand what constitutes bullying and harassment and I will utilise resources, including the Standards Commission's guidance and advice notes, my public body's policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.

3.7 Except where it is written into my role as Board member, and / or at the invitation of the Chief Executive, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and Executive Team.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.

3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

3.10 I will respect and comply with rulings from the Chair during meetings of:

- a) my public body, its committees; and
- b) any outside organisations that I have been appointed or nominated to by my public body or on which I represent my public body.

3.11 I will respect the principle of collective decision-making and corporate responsibility. This means that once the Board has made a decision, I will support that decision, even if I did not agree with it or vote for it.

Remuneration, Allowances and Expenses

3.12 I will comply with the rules, and the policies of my public body, on the payment of remuneration, allowances and expenses.

Gifts and Hospitality

3.13 I understand that I may be offered gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services ("gift or hospitality") that may be reasonably regarded by a member of the public with knowledge of the relevant facts as placing me under an improper obligation or being capable of influencing my judgement.

3.14 I will never **ask for** or **seek** any gift or hospitality.

3.15 I will refuse any gift or hospitality, unless it is:

- a) a minor item or token of modest intrinsic value offered on an infrequent basis;
- b) a gift being offered to my public body;
- c) hospitality which would reasonably be associated with my duties as a board member; or
- d) hospitality which has been approved in advance by my public body.

3.16 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.

3.17 I will not allow the promise of money or other financial advantage to induce me to act improperly in my role as a board member. I accept that the money or advantage (including any gift or hospitality) does not have to be given to me directly. The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.

3.18 I will never accept any gift or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, my public body.

3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to my public body at the earliest possible opportunity and ask for it to be registered.

3.20 I will promptly advise my public body's Standards Officer if I am offered (but refuse) any gift or hospitality of any significant value and / or if I am offered any gift or hospitality from the same source on a repeated basis, so that my public body can monitor this.

3.21 I will familiarise myself with the terms of the [Bribery Act 2010](#), which provides for offences of bribing another person and offences relating to being bribed.

Confidentiality

3.22 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 should assume it is not given.

3.23 I accept that confidential information can include discussions, documents, and information which is not yet public or never intended to be public, and information deemed confidential by statute.

3.24 I will only use confidential information to undertake my duties as a board member. I will not use it in any way for personal advantage or to discredit my public body (even if my personal view is that the information should be publicly available).

3.25 I note that these confidentiality requirements do not apply to protected whistleblowing disclosures made to the prescribed persons and bodies as identified in statute.

Use of Public Body Resources

3.26 I will only use my public body's resources, including employee assistance, facilities, stationery and IT equipment, for carrying out duties on behalf of the public body, in accordance with its relevant policies.

3.27 I will not use, or in any way enable others to use, my public body's resources:

- a) imprudently (without thinking about the implications or consequences);
- b) unlawfully;
- c) for any political activities or matters relating to these; or
- d) improperly.

Dealing with my Public Body and Preferential Treatment

3.28 I will not use, or attempt to use, my position or influence as a board member to:

- a) improperly confer on or secure for myself, or others, an advantage;
- b) avoid a disadvantage for myself, or create a disadvantage for others or
- c) improperly seek preferential treatment or access for myself or others.

3.29 I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.

3.30 I will advise employees of any connection, as defined at [Section 5](#), I may have to a matter, when seeking information or advice or responding to a request for information or advice from them.

Appointments to Outside Organisations

3.31 If I am appointed, or nominated by my public body, as a member of another body or organisation, I will abide by the rules of conduct and will act in the best interests of that body or organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of that body or organisation.

3.32 I accept that if I am a director or trustee (or equivalent) of a company or a charity, I will be responsible for identifying, and taking advice on, any conflicts of interest that may arise between the company or charity and my public body.

Section 4: Registration Of Interests

4.1 The following paragraphs set out what I have to register when I am appointed and whenever my circumstances change. The register covers my current term of appointment.

4.2 I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a board member must register their registrable interests within one month of becoming a board member, and register any changes to those interests within one month of those changes having occurred.

4.3 The interests which I am required to register are those set out in the following paragraphs. Other than as required by paragraph 4.23, I understand it is not necessary to register the interests of my spouse or cohabitee.

Category One: Remuneration

4.4 I will register any work for which I receive, or expect to receive, payment. I have a registrable interest where I receive remuneration by virtue of being:

- a) employed;
- b) self-employed;
- c) the holder of an office;
- d) a director of an undertaking;
- e) a partner in a firm;
- f) appointed or nominated by my public body to another body; or
- g) engaged in a trade, profession or vocation or any other work.

4.5 I understand that in relation to 4.4 above, the amount of remuneration does not require to be registered. I understand that any remuneration received as a board member of this specific public body does not have to be registered.

4.6 I understand that if a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under Category Two, "Other Roles".

4.7 I must register any allowances I receive in relation to membership of any organisation under Category One.

4.8 When registering employment as an employee, I must give the full name of the employer, the nature of its business, and the nature of the post I hold in the organisation.

4.9 When registering remuneration from the categories listed in paragraph 4.4 (b) to (g) above, I must provide the full name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate. I recognise that some other employments may be incompatible with my role as board member of my public body in terms of paragraph [6.7](#) of this Code.

4.10 Where I otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and how often it is undertaken.

4.11 When registering a directorship, it is necessary to provide the registered name and registered number of the undertaking in which the directorship is held and provide information about the nature of its business.

4.12 I understand that registration of a pension is not required as this falls outside the scope of the category.

Category Two: Other Roles

4.13 I will register any unremunerated directorships where the body in question is a subsidiary or parent company of an undertaking in which I hold a remunerated directorship.

4.14 I will register the registered name and registered number of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which I am a director and from which I receive remuneration.

Category Three: Contracts

4.15 I have a registerable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph 4.19 below) have made a contract with my public body:

- a) under which goods or services are to be provided, or works are to be executed; and
- b) which has not been fully discharged.

4.16 I will register a description of the contract, including its duration, but excluding the value.

Category Four: Election Expenses

4.17 If I have been elected to my public body, then I will register a description of, and statement of, any assistance towards election expenses relating to election to my public body.

Category Five: Houses, Land and Buildings

4.18 I have a registrable interest where I own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of my public body.

4.19 I accept that, when deciding whether or not I need to register any interest I have in houses, land or buildings, the test to be applied is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as being so significant that it could potentially affect my responsibilities to my public body and to the public, or could influence my actions, speeches or decision-making.

Category Six: Interest in Shares and Securities

4.20 I have a registerable interest where:

- a) I own or have an interest in more than 1% of the issued share capital of the company or other body; or
- b) Where, at the relevant date, the market value of any shares and securities (in any one specific company or body) that I own or have an interest in is greater than £25,000.

Category Seven: Gifts and Hospitality

4.21 I understand the requirements of paragraphs [3.13 to 3.21](#) regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

Category Eight: Non-Financial Interests

4.22 I may also have other interests and I understand it is equally important that relevant interests such as membership or holding office in other public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non-financial interests are those which members of the public with knowledge of the relevant facts might reasonably think could influence my actions, speeches, votes or decision-making in my public body (this includes its Committees and memberships of other organisations to which I have been appointed or nominated by my public body).

Category Nine: Close Family Members

4.23 I will register the interests of any close family member who has transactions with my public body or is likely to have transactions or do business with it.

Section 5: Declaration Of Interests

Stage 1: Connection

5.1 For each particular matter I am involved in as a board member, I will first consider whether I have a connection to that matter.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

5.3 A connection includes anything that I have registered as an interest.

5.4 A connection does not include being a member of a body to which I have been appointed or nominated by my public body as a representative of my public body, unless:

- a) The matter being considered by my public body is quasi-judicial or regulatory; or
- b) I have a personal conflict by reason of my actions, my connections or my legal obligations.

Stage 2: Interest

5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

Stage 3: Participation

5.6 I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.

5.7 I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.

5.8 I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the dispensation is sought and that I cannot take part in any discussion or decision-making on the matter in question unless, and until, the application is granted.

5.9 I note that public confidence in a public body is damaged by the perception that decisions taken by that body are substantially influenced by factors other than the public interest. I will not accept a role or appointment if doing so means I will have to declare interests frequently at meetings in respect of my role as a board member. Similarly, if any appointment or nomination to another body would give rise to objective concern because of my existing personal involvement or affiliations, I will not accept the appointment or nomination.

Section 6: Lobbying And Access

6.1 I understand that a wide range of people will seek access to me as a board member and will try to lobby me, including individuals, organisations and companies. I must distinguish between:

- a) any role I have in dealing with enquiries from the public;
- b) any community engagement where I am working with individuals and organisations to encourage their participation and involvement, and;
- c) lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my public body (for example contracts/procurement).

6.2 In deciding whether, and if so how, to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to influence my, or my public body's, decision-making role.

6.3 I will not, in relation to contact with any person or organisation that lobbies, do anything which contravenes this Code or any other relevant rule of my public body or any statutory provision.

6.4 I will not, in relation to contact with any person or organisation that lobbies, act in any way which could bring discredit upon my public body.

6.5 If I have concerns about the approach or methods used by any person or organisation in their contacts with me, I will seek the guidance of the Chair, Chief Executive or Standards Officer of my public body.

6.6 The public must be assured that no person or organisation will gain better access to, or treatment by, me as a result of employing a company or individual to lobby on a fee basis on their behalf. I will not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which I accord any other person or organisation who lobbies or approaches me. I will ensure that those lobbying on a fee basis on behalf of clients are not given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming.

6.7 Before taking any action as a result of being lobbied, I will seek to satisfy myself about the identity of the person or organisation that is lobbying and the motive for lobbying. I understand I may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that I understand the basis on which I am being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code and the [Lobbying \(Scotland\) Act 2016](#).

6.8 I will not accept any paid work:

- a) which would involve me lobbying on behalf of any person or organisation or any clients of a person or organisation.
- b) to provide services as a strategist, adviser or consultant, for example, advising on how to influence my public body and its members. This does not prohibit me from being remunerated for activity which may arise because of, or relate to, membership of my public body, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

Annex A: Breaches Of The Code

Introduction

1. [The Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (“the Act”) provided for a framework to encourage and, where necessary, enforce high ethical standards in public life.
2. The Act provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies, imposing on councils and relevant public bodies a duty to help their members comply with the relevant code.
3. The Act and the subsequent Scottish Parliamentary Commissions and Commissioners etc. Act 2010 established the [Standards Commission for Scotland](#) (“Standards Commission”) and the post of [Commissioner for Ethical Standards in Public Life in Scotland](#) (“ESC”).
4. The Standards Commission and ESC are separate and independent, each with distinct functions. Complaints of breaches of a public body’s Code of Conduct are investigated by the ESC and adjudicated upon by the Standards Commission.
5. The first Model Code of Conduct came into force in 2002. The Code has since been reviewed and re-issued in 2014. The 2021 Code has been issued by the Scottish Ministers following consultation, and with the approval of the Scottish Parliament, as required by the Act.

Investigation of Complaints

6. The ESC is responsible for investigating complaints about members of devolved public bodies. It is not, however, mandatory to report a complaint about a potential breach of the Code to the ESC. It may be more appropriate in some circumstances for attempts to be made to resolve the matter informally at a local level.
7. On conclusion of the investigation, the ESC will send a report to the Standards Commission.

Hearings

8. On receipt of a report from the ESC, the Standards Commission can choose to:
 - Do nothing;
 - Direct the ESC to carry out further investigations; or
 - Hold a Hearing.
9. Hearings are held (usually in public) to determine whether the member concerned has breached their public body’s Code of Conduct. The Hearing Panel comprises of three members of the Standards Commission. The ESC will present evidence and/or make submissions at the Hearing about the investigation and any conclusions as to whether the member has contravened the Code. The member is entitled to attend or be represented at the Hearing and can also present evidence and make

submissions. Both parties can call witnesses. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the member. If the Hearing Panel decides that a member has breached their public body's Code, it is obliged to impose a sanction.

Sanctions

10. The sanctions that can be imposed following a finding of a breach of the Code are as follows:

- **Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the member concerned.
- **Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the member is suspended from attending all meetings of the public body. Partial suspension means that the member is suspended from attending some of the meetings of the public body. The Commission can direct that any remuneration or allowance the member receives as a result of their membership of the public body be reduced or not paid during a period of suspension.
- **Disqualification:** Disqualification means that the member is removed from membership of the body and disqualified (for a period not exceeding five years), from membership of the body. Where a member is also a member of another devolved public body (as defined in the Act), the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in section 19 of the Act.

Interim Suspensions

11. Section 21 of the Act provides the Standards Commission with the power to impose an interim suspension on a member on receipt of an interim report from the ESC about an ongoing investigation. In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the member and will consider whether it is satisfied:

- That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the member may try to interfere with evidence or witnesses); or
- That it is otherwise in the public interest to take such a measure. A policy outlining how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so, should any such a report be received from the ESC can be found [here](#).

12. The decision to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a member of a devolved public body, nor should it be viewed as a disciplinary measure.

Annex B: Definitions

“Bullying” is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted.

"Chair" includes Board Convener or any other individual discharging a similar function to that of a Chair or Convener under alternative decision-making structures.

“Code” is the code of conduct for members of your devolved public body, which is based on the Model Code of Conduct for members of devolved public bodies in Scotland.

"Cohabitee" includes any person who is living with you in a relationship similar to that of a partner, civil partner, or spouse.

“Confidential Information” includes:

- any information passed on to the public body by a Government department (even if it is not clearly marked as confidential) which does not allow the disclosure of that information to the public;
- information of which the law prohibits disclosure (under statute or by the order of a Court);
- any legal advice provided to the public body; or
- any other information which would reasonably be considered a breach of confidence should it be made public.

"Election expenses" means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.

“Employee” includes individuals employed:

- directly by the public body;
- as contractors by the public body, or
- by a contractor to work on the public body’s premises.

“Gifts” a gift can include any item or service received free of charge, or which may be offered or promised at a discounted rate or on terms not available to the general public. Gifts include benefits such as relief from indebtedness, loan concessions, or provision of property, services or facilities at a cost below that generally charged to members of the public. It can also include gifts received directly or gifts received by any company in which the recipient holds a controlling interest in, or by a partnership of which the recipient is a partner.

“Harassment” is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. Harassment can be experienced directly or indirectly and can occur as an isolated incident or as a course of persistent behaviour.

“Hospitality” includes the offer or promise of food, drink, accommodation, entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.

“Relevant Date” Where a board member had an interest in shares at the date on which the member was appointed as a member, the relevant date is – (a) that date; and (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

“Public body” means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

“Remuneration” includes any salary, wage, share of profits, fee, other monetary benefit or benefit in kind.

“Securities” a security is a certificate or other financial instrument that has monetary value and can be traded. Securities includes equity and debt securities, such as stocks bonds and debentures.

“Undertaking” means:

- a) a body corporate or partnership; or
- b) an unincorporated association carrying on a trade or business, with or without a view to a profit.



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GUIDANCE ON THE MODEL CODE OF CONDUCT

SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

The Model Code of Conduct (Code) required by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) was most recently reviewed and re-issued in 2021. It sets out the principles and rules governing the conduct of members of devolved public bodies. Your public body's code of conduct is based on this Code. Therefore, all subsequent references to the Code in this Guidance should be understood as references to the Code as adopted by your public body. A copy of the Model Code can be found at: <https://www.standardscommissionscotland.org.uk/codes-of-conduct/members-model-code-of-conduct>.

This Guidance has been produced by The Standards Commission for Scotland (Standards Commission) and contains case illustrations (some of which are based on cases from Scotland, Northern Ireland and Wales, and some of which are hypothetical) and examples of factors that members of devolved public bodies (members) may wish to consider when applying the requirements of the Code. In cases where a provision of the Code mirrors that contained in the Councillors' Code of Conduct, examples of complaints concerning councillors have been included.

Members should be mindful, when seeking to apply the Code to their own situation or circumstances, that the lists of factors in the Guidance and examples provided are not exhaustive. All members have a personal responsibility to ensure that they comply with the provisions of the Code.

While members should observe any guidance from the Standards Commission, it is not a substitute for the Code. The purpose of the Guidance is to provide supplementary information to aid members in interpreting the Code. **Members are, therefore, obliged to ensure they have read and understood the provisions of the Code itself. Reading the Guidance should, in no way, be considered a substitute for doing so.**

This document is a standalone version of the Guidance, without the Code embedded. It is intended to provide easy access to the Guidance itself.

The Standards Commission will continue to review the Guidance on a regular basis to ensure it is relevant and fit for purpose. As such, any feedback, comments, suggestions for improvements and further hypothetical cases are welcome.

Guidance

- 1 The Code, on which your public body's code is based, was approved by the Scottish Parliament and issued on 7 December 2021.
- 2 This Guidance is effective from 6 May 2022 and replaces all previous versions.
- 3 This Guidance is for members of devolved public bodies, and is also directed at advisory and co-opted members who sit on, or attend, any meetings (including committee meetings) of the public body. However, it should be noted that the Standards Commission has no legal powers to enforce the provisions of the Code against anyone other than those appointed or elected to be members of the devolved public bodies listed in [Schedule 3 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#).

- 4 By accepting your appointment as a board member, you have accepted that you are obliged to comply with the Code. The aim of this Guidance is to provide supplementary information to help you do so.
- 5 The Code is not designed to restrict you; its purpose is to help you meet the required standards of conduct.
- 6 Public bodies should make arrangements to deliver training and induction sessions on the ethical standards framework and should encourage all their members and senior employees to attend. Subject to resource limitations, the Standards Commission can support any such training and induction programme. Any request for assistance or support should be directed to the Executive Director.

When the Code Applies

- 7 The Scottish public has an expectation that members of public bodies will conduct themselves in accordance with the Code and the nine key principles of public life, as outlined in Section 2. You must, therefore, comply with the provisions of the Code in all situations and at all times where you are acting as a member, have identified yourself as a member, or could objectively be considered to be acting as a member.
- 8 The Code does not apply to your private and family life. In determining whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, would reasonably consider that you were acting as a member of your public body at the time of the events in question.
- 9 It should be noted the Code will apply when you are engaging in online activity, including using social media, if you could reasonably be considered or perceived to be acting as a member of your public body. The Code does not prevent you from expressing views (including making political comment) provided you do so in a way that is compatible with the substantive provisions of the Code, being Sections 3- 6 inclusive. This includes the requirements to behave with courtesy and respect and to maintain confidentiality.
- 10 It may be helpful, in certain circumstances, to state that you are expressing your own personal view, rather than the view of your public body. You should, however, always be mindful of how you could reasonably be perceived when doing so and whether your comments could objectively be considered as reflecting the views of your public body, regardless of any statement about it being a personal comment. It can be very difficult to persuade people that you can take a different view, or even have an open mind, in your capacity as a member of a public body from a view you may have expressed in your personal capacity. This is particularly pertinent in respect of using social media, or commenting in the press, where the separation of public and private comments may be unclear to someone reading them, and where information about your membership of the public body may be readily available online or from different sources (including your public body's website).
- 11 For example, if a college member posted a comment on social media to the effect that the college was underperforming, the staff were useless and the Chief Executive should resign, it is unlikely that the inclusion of words to the effect that it was a "personal comment" would bring the matter outwith the scope of the Code. That is because it would be likely that a member of the public reading the post, with knowledge of the relevant facts (being the individual's status as a member and the subject matter), would understand it to have been made by the individual in that capacity

as board member of the college and with the knowledge they had gained as such.

- 12 Another example could be where a member, who includes being on the board of their public body in their Twitter profile, retweets a post which contains a description of the service provided by their public body as being substandard and unacceptably poor. While the post in question was not written by the member, the fact that they have chosen to retweet in circumstances where they are identifiable as a member, could be seen as being supportive of the criticism in their capacity as such.

Your Responsibilities

- 13 As a board member, you have a responsibility to ensure the effective governance and financial management of your public body within the context of public service delivery and reform for the benefit of the Scottish public.
- 14 You should attend any training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code, this Guidance, and any other guidance and advice notes issued by the Standards Commission. You may wish to discuss training and continuous professional development with the Chair of your public body when you are appointed and during any annual performance discussion.
- 15 Although it is ultimately your personal responsibility to comply with the Code, paragraph 1.9 of the Code makes it clear that if you are uncertain about how the Code should be interpreted and applied, you should seek advice. Your public body will have a Standards Officer. This is an employee who is either solely, or jointly, responsible for undertaking various duties and responsibilities related to the ethical standards framework (regardless of whether or not they have the formal title of Standards Officer). The Standards Commission has produced an Advice Note on the Role of a Standards Officer, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 16 The Standards Officer and other senior employees may have experience of dealing with queries relating to the Code and can give you advice. You may also wish to seek advice from the Chair or an experienced colleague. If applicable, you may also wish to refer to the Scottish Government's 'On Board' Guidance, which can be found at: <https://www.gov.scot/publications/board-guide-members-statutory-boards/>.
- 17 As it is your personal responsibility to comply with the Code, the fact that you may have sought, and then followed such advice would not be a defence to a breach of the Code; however a discussion with the Standards Officer or Chair may help to clarify your own thinking. If you are found to be in breach of the Code, the fact you sought advice may be taken into account by the Standards Commission as a mitigating factor when deciding on the appropriate sanction to apply following a breach finding. Conversely, a failure to seek and / or follow advice may be considered as an aggravating factor. The Standards Commission's Policy on the Application of Sanctions can be found at: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>.
- 18 You should always try to seek advice at the first opportunity. You should be mindful that the person from whom you are seeking advice may not have full knowledge of the matter, or your personal circumstances. On rare occasions, for example when an alleged breach is to be considered by the Standards Commission at a Hearing, you may wish to seek external legal advice. You will be responsible for the cost of any external legal advice you have chosen to obtain, either to assist you with interpreting the Code, or in responding to any complaint about your conduct.

- 19** You are encouraged to promote and support the Code at all times and to encourage others to follow your example in doing so. Experienced members should consider whether they can act as a mentor to others to help them to understand the Code.
- 20** The Code should be read as a whole. It may be necessary to cross-reference different provisions.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

- 21** The Code is underpinned by the nine key principles of public life in Scotland, namely: Duty, Selflessness, Integrity, Objectivity, Accountability & Stewardship, Openness, Honesty, Leadership and Respect.
- 22** The key principles are for guidance and you should ensure that you always have regard to, and follow, these principles. You should not persuade others to act in a way that would be contrary to the key principles.
- 23** A breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code. However, the key principles can be used by both the Ethical Standards Commissioner's office (in its investigatory role) and the Standards Commission (in its adjudicatory role) to assist with interpretation of alleged breaches of the substantive sections of the Code, being Sections 3 to 6 inclusive.
- 24** It is your personal responsibility to ensure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a member. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly and in accordance with the Code.

SECTION 3: GENERAL CONDUCT

Respect and Courtesy: General

- 25 You must treat everyone you come into contact with in your role as a member with courtesy and respect, even if you disagree with their views. This can include employees, officials from the sponsor body, members of the public, service users, politicians and fellow members.
- 26 It should be noted, in the context of paragraph 3.1 of the Code, that meetings can include virtual meetings or other forms of remote working via platforms such as MS Teams, Skype and Zoom.
- 27 While you are entitled to express your views and to disagree with others, you must do so in a respectful way. It is usually better to try and focus on the issue itself, rather than making any personal comments about an individual.
- 28 You should always be mindful about how others could reasonably perceive your conduct, and that even if it is not your intention to be disrespectful or discourteous, your behaviour could be interpreted as such.
- 29 If you make a comment in the heat of the moment, which you do not mean and then regret, you should consider retracting it and / or apologising. Bear in mind, however, that comments made on social media may have been circulated widely by the time you seek to retract them or apologise.
- 30 You should always think ahead. If you have any concerns about a potential problem, speak to your public body's Chair, Standards Officer or Chief Executive so that advice can be sought and / or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and / or a complaint being made about you. The fact that you have sought advice, or indeed failed to seek advice, may be taken into account at a Hearing. Similarly, evidence of an immediate apology or retraction may be a mitigating factor at a Hearing.
- 31 You should ensure you are familiar with the [Equality Act 2010](https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance), which provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Equality and Human Rights Commission has produced guidance on the Equality Act, which can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance>.

Respect and Courtesy: Applicability of the Code

- 32 It is very important to note that the rules of good conduct set out in Section 3 of the Code must be observed in all situations where you are acting as a member of your public body, which includes when you are representing the public body on official business.
- 33 As noted in the Introduction Section of the Code, it is also applicable in all situations where you have identified yourself as a member or where you might objectively be perceived to be acting as a member. You should be mindful, therefore, that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. Factors to consider include whether:
 - you are clear about the capacity in which you are acting;
 - you describe yourself as a member or are otherwise readily identifiable as a member in the situation / circumstances;
 - you are on the public body's premises or at one of its events;

- you are using IT equipment and / or an email account supplied by your public body;
- your conduct could reasonably be regarded as bringing your position as a member, or your public body, into disrepute;
- you are engaged in political activity or commenting on political matters or matters of public concerns, and whether these relate to fall to, or fall within, the scope of the public body's functions; and
- you are representing the public body or speaking on behalf of the public body.

- 34** In making any decision on whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, could reasonably perceive you as having been acting as a member at the time of the alleged breach of the Code.

A member shared an article that contained a sectarian comment on their LinkedIn profile. While the LinkedIn profile was a personal one, and did not state explicitly that the individual in question was a member of their public body, the Panel determined that it was apparent from the content of the profile, other posts, and shared items that this was the case. Therefore, the Panel found that it would have been reasonable for an informed member of the public to have perceived that the individual could have been acting in their capacity as a member of the public body. The Panel accepted that the member's position was that they had not read the article in full, and that the member was absolutely appalled by the remark in question, but nevertheless found that there had been a breach of the Code. The Panel agreed that sharing an article of that nature was likely to bring both the member and their public body into disrepute.

A councillor was convicted of sexual assault in respect of an incident that occurred at a Trades Association event. The Panel was satisfied that it would have been reasonable for an informed member of the public to have perceived that the councillor was acting as a councillor at the event, given both the public nature of it and also because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel concluded that the Code applied.

A member sent and encouraged an employee of his public body with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Panel rejected arguments that the member had been acting in an entirely personal capacity. It found that the member could not completely separate himself from his role as a board member of his public body, and that, when sending or encouraging the employee to send the messages during working hours, he was acting as a board member.

Respect and Courtesy: Social Media

- 35** The rules of good conduct also apply when you are engaging in online activity, including when using social media. Social media is a term used to describe online technologies, platforms, applications and practices that are used to share information, knowledge or opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites.
- 36** The Standards Commission has produced an Advice Note for Members on the Use of Social Media. This can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 37** The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Before commenting or posting, you should consider very carefully whether:

- you understand the immediate and permanent nature of any comment or post you are about to make, and that you will have no control over the extent to which it is shared, and by whom;
- you would make that comment or post in-person, face to face;
- you have such conviction in what you are about to share that you would be prepared to justify it if challenged at a later date; and
- you fully understand that even if you delete your post, it may have been captured by way of a screenshot or otherwise retained in some way (including being automatically cached online) and that fully deleting content once it has been shared online is almost impossible to achieve.

38 Other important factors to consider when using social media include whether:

- you are identifiable as a member by directly referring to yourself as such or indirectly by referring to the public body, or the functions of your role as a member, or through any information or images posted;
- the account you are using is 'private' and whether you have set your privacy controls accordingly. You should bear in mind that anyone who is able to view your social media content will be able to screenshot and publicly share it, if they choose to do so;
- the number of 'followers' you have and whether these individuals are following your account because you are a member of your public body;
- you have complied with any policy your public body has produced on the use of social media;
- information you are posting is confidential and you only have access to it because you are a member of the public body;
- you are demonstrating bias or pre-determination;
- you are using the public body's equipment and / or your public body's information technology network or your own; and
- you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions.

A complaint alleged that a member had set up a Facebook account under a false name in order to post derogatory comments about employees of the public body. The owner of the account was identified as the posts contained information about specific employees that could only be known by a member. It was established that by posting the comments, the member in question had been acting in their capacity as a member, regardless of whether or not they had identified themselves as such. It was found that the member had breached the respect provisions of the Code.

Respect and Courtesy: Article 10 ECHR – Your Right to Freedom of Expression

39 You have a right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). You are entitled to express your views and opinions.

You should note, however, that the protection Article 10 affords is not absolute and does not extend to, or excuse, hate speech or egregious offensive and abusive personal attacks.

Therefore, you may wish to think about:

- whether your comments are likely to bring your office or the public body itself into disrepute;
- whether you are treating others with courtesy, respect and consideration;
- whether making your point in a respectful and constructive manner may have more of an impact in terms of influencing others;
- the fact that 'liking', re-posting and re-tweeting comments or posts, or publishing links to other sites are likely to be perceived as endorsing the original opinion, comment or information, including information on other sites;
- whether to allow disagreement on your social media pages;

- the fact that tone can be harder to convey online so consideration should be given to whether humour, irony and sarcasm will be perceived as such;
 - whether you have to respond and / or if it is appropriate or helpful to do so;
 - whether anything you post could be considered obscene.
- 40** The Standards Commission has produced an Advice Note that outlines the approach it will take when issues that concern the application of Article 10 of the ECHR and the right to freedom of expression arise. It also suggests issues members should consider in order to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code. The Advice Note is available on the Standards Commission's website at:
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

Respect and Courtesy: Equalities

- 41** You are expected to advance equality of opportunity and to seek to foster good relations between different people. It is unacceptable for a public figure such as a member of a public body to express views that indicate a discriminatory attitude towards people on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity.

A complaint alleged that a member had posted a homophobic comment on the complainer's Facebook page and that he had accessed his account using a mobile phone issued by his public body when doing so. It was found that the comment made by the member had clearly been intended to insult and demean the complainer. The member was found to have breached the Code.

A complaint alleged that a councillor had shared, on Facebook and Twitter, a blog article which was critical of a union member who had organised an equal pay strike in Glasgow. The article contained references to "Mein Kampf" and of Hitler having accused "The Jew" of gradually assuming membership of the trade union movement. It was found that the article promoted negative stereotypes and was antisemitic in nature. The councillor was found to have breached the respect provisions of the Code.

A councillor referred to the complainer as a 'TERF' (Trans Exclusionary Radical Feminist) in a series of tweets and emails. The Panel found that while the term TERF was potentially controversial and could be seen as one of abuse, it could also be used or perceived as simply a descriptor. It was found, however, that it was evident from the Respondent's description, over an extended period of time, of TERFS as being "scum" and "hateful and vile", that the councillor intended it to be one of abuse. It was further found that the councillor had directed the term at the complainer as an individual and that it was about her as a person, rather than simply being a descriptor of her alleged views. As such, it was determined that the reference to the complainer as a TERF, in context, amounted to a personal attack on her and that the councillor had failed to behave in a respectful manner. It was further determined that the councillor had used a highly derogatory profanity about a member of the public in another tweet. It was found that using such a word in a public forum such as a tweet was highly offensive and inappropriate, regardless of whether it had been directed at any individual or identifiable group of individuals. The councillor was found to have breached the Code.

Respect and Courtesy: Bullying & Harassment

- 42** Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. It usually, but not always, arises as a result of an individual misusing their power.

- 43 Harassment is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. It can be experienced directly or indirectly (for example, being in the room which unacceptable conduct is being displayed and being affected by it).
- 44 It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident.
- 45 Even if the behaviour in question is unintentional, it can still be classed as bullying and / or harassment. It is the impact of the behaviour, not the intent, that is the key. You should therefore at all times be aware of the impact of your conduct on others, and remember that what may seem harmless to you can be offensive to someone else.
- 46 Bullying and harassment can occur through all means of conduct and communication – including social media posts, shares and comments. It can also arise through a lack of communication, such as the deliberate exclusion of an individual from a conversation, work or social activity.
- 47 You are responsible for your own behaviour. You must ensure that you are aware of, and comply with, the provisions concerning bullying and harassment in the Code and also any policy your public body has on ensuring dignity in the workplace.
- 48 The Standards Commission has produced an Advice Note for Members on Bullying and Harassment. The Advice Note is available on the Standards Commission’s website at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

A complaint alleged that a member had behaved in a disrespectful manner towards two female fellow members and employees. It was established that the member had made unwarranted and inappropriate physical contact with the fellow members and employees at an official event and had also made remarks towards the employees which were patronising and demeaning. The member was found to be in breach of the Code.

A complaint alleged that a member had sent an email to a number of employees of their public body and posted a Twitter message, describing an employee as “arrogant, lazy, mentally challenged” and as having been “useless for years”. The impact of the emails led the employee to seek medical and other support and resulted in him taking sickness absence due to stress. The Panel found the emails and tweet to be completely unwarranted and would have adversely affected the employee’s ability to carry out his role. The Panel found the member’s conduct amounted to a breach of the Code.

A complaint alleged that a member made a number of allegations and critical comments on his online blog about the complainer, who was a fellow member, which were of a personal and insulting nature. It was found that the comments had been made without factual basis, were disrespectful and were clearly intended to demean the complainer in a public forum. The member was found to have breached the Code.

A complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to a police officer, and also made a number of unfounded allegations about him during two telephone calls to a Police Station. It was found that the councillor had made the telephone calls in his capacity as a ward councillor and concluded that the provisions of the Code applied to him at the time of the events in question. It was further found that the comments made by the councillor in the telephone conversations amounted to an unacceptable personal attack on the police officer and that he had breached the respect provisions in the Code.

Respect and Courtesy: Public Body Employees

- 49 It is understood that there may be tensions in an environment where individuals have different backgrounds and experiences. It is nevertheless essential to ensure that the public has confidence in the public body and the role of its members. This can only be achieved if members behave in a respectful way towards each other and towards the public body's employees.
- 50 The requirement to respect all public body employees includes employees of contractors providing services to the public body; and employees of any other organisations where it might be reasonably perceived that the public body (and by implication the member) has an influence over that organisation.

A complaint alleged that a councillor had sent a series of emails (and made statements in council meetings) over a period of eleven months, to his fellow councillors and to senior council employees, alleging corruption in the allocation of a council property a family member of another councillor. The councillor in question had provided no proof to back up his claims of corruption. A number of internal council investigations, and finally an independent investigation carried out by Audit Scotland, had all concluded that there was no evidence to suggest any corruption in relation to the housing allocation. The Panel considered that by making such serious and unwarranted public accusations about the conduct of employees, the councillor's conduct was offensive and fell well below the standard to be expected of a councillor, and therefore found that the Code had been breached. It is worth noting that in this case, due to the seriousness of the contravention and two previous breach findings against him, the councillor was disqualified.

Distinguishing between Strategic and Operational Matters

- 51 The Standards Commission has produced an Advice Note for Members on Distinguishing Between their Strategic Role and any Operational Work, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>. In general, if a duty is delegated to an employee, then it is likely to be operational in nature. You may wish to seek information about specific matters, cases or a particular item of work, but you should be aware that employees may feel pressured by a member challenging their actions or appearing critical of some aspect of their work. This is particularly the case with junior employees, who may not be used to dealing directly with members. Any concerns about performance should be raised in private with the Chair who can then bring them to the attention of the Chief Executive or the employee's line manager, as appropriate.

Respect and Courtesy: Public Comment about Public Body Employees

- 52 As a member, you are entitled (and indeed required) to scrutinise the effective delivery of services and whether operational targets have been achieved. You should be careful, however, not to make public statements which expressly, or by implication, criticise the actions (or inaction) of an individual employee or identifiable group of employees (where individuals in that group are, or could be, identifiable). You should note that the concept of a public statement is wide and can cover a variety of scenarios such as the published minutes of a board meeting, a comment on social media, or being overheard in a public area, such as a corridor or tearoom. This provision does not prevent you from scrutinising the performance of a team or service. Instead, it precludes you from making any public criticism, which is personalised in nature, about an individual officer or identifiable group of officers. When you need to raise concerns in public about the performance, conduct or capability of the organisation (or parts of it), you must do so objectively and respectfully, focusing on the issues rather than any employees who are or were directly involved.

For example, in a scenario where you are concerned about the quality of a report before you, you should consider how you raise your concerns. Saying *“I note this report does not contain a risk assessment – I would be grateful if a risk assessment could be undertaken”* would be respectful, whereas saying *“as usual, your report is inadequate and poorly prepared as it does not contain a risk assessment”* could be perceived as being personally critical of the report’s author.

An example of effective scrutiny could be to say at a public meeting *“I have concerns about this service we are providing in respect of X, as it appears there are undue delays. Could a report therefore be prepared on service delivery for X against key performance indicators over the last six months? Where these are not met, could information be provided as to why not and on what steps are being taken to improve matters”*. However, saying that *“the performance of Ms A, as the director, appears to be lacking, as service X is clearly not meeting its key performance indicators”* could be seen as being critical of Ms A as an individual.

- 53** If you have concerns about the performance, conduct or capability of an employee, you must raise them in private with senior management and in accordance with your public body’s procedures. You may wish to discuss your concerns with the Chair in the first instance, to see if they are shared by other members. If you are raising concerns about an employee with senior management, you should try to be as objective and specific as possible.

For example, it would be more helpful to say: *“I am concerned about the way X spoke to me at the board meeting on Y date in that I found his remark to the effect that... to be rude and disparaging”*, rather than *“X is rude towards board members”*.

Similarly, it would be more constructive to say *“I am concerned about X’s performance as the reports she produced for the meetings on Y and Z dates were not of the quality I would expect from someone of her grade in that they lacked any detail about... and did not cover...”*, rather than *“X’s performance is not up to scratch as her reports are rubbish”*.

- 54** If you have concerns about the performance, conduct or capability of your public body’s Chief Executive, you should raise them in private with the Chief Executive. You should discuss your concerns with the Chair before doing so, to see if they are shared by other members and / or are already being addressed. If you are an executive Board member, you should raise any such concerns with an appropriate member of the management team through established local procedures.

A complaint alleged that a member had become inappropriately involved in disciplinary proceedings being brought against an employee of their public body. The member sought to influence the operational decision-making by sending a number of emails to the employee’s line manager excusing the employee’s alleged misconduct and praising their performance. In trying to interfere with the line manager’s performance of their operational duties the member lost sight of their governance role and overall responsibility to their public body. The member was found to have breached the Code.

A complaint alleged that a member engaged in public criticism of the Chief Executive of their public body by posting information and comments on a stakeholder’s Facebook page. The member did not give the Chief Executive an opportunity to respond before publishing the comments on the Facebook page. The member was found to have breached the Code.

A public body was in the process of updating its website’s design and content. One of its members sent numerous emails, and made multiple telephone calls, to the public body’s IT department questioning the proposed layout, the timescale for the roll-out and the design of other websites in the supplier’s

portfolio. The member also suggested wording and other content to be used on specific pages and questioned the proposed menu headings for the new site. While the Panel accepted that members would have a strategic role in such a project, and would be entitled to scrutinise its implementation and make some suggestions, the member in question was found to have strayed too far into discussions and decision-making at an operational level. Indeed, the Panel found that the member's interference resulted in delays to the project as employees' time was taken up in dealing with the member's enquiries and suggestions. The member was found to have breached the Code.

Respect and Courtesy: Public Body Meetings

- 55** The word 'Chair' in paragraph 3.10 of the Code, and the word 'Chair' in this Guidance, are not restricted to those specific terms and apply to any individual holding a similar chairing role.
- 56** The role of the Chair in any public body meeting, including a committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of employees) can be expressed. At the same time, the Chair has a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the public body's Standing Orders. This includes determining the point at which conclusions should be reached. Chairs are required to adopt a balanced approach to help ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. As such, you should ensure you are familiar with your public body's relevant rules, regulations or Standing Orders. The role of the Chair in reaching judgements about how the meeting is to be conducted should be supported and respected.

A complaint alleged that a member had failed to respect the Chair and other colleagues during a board meeting. Despite the Chair determining that the matter under consideration had been agreed, the member continued to speak over the Chair, requiring her to adjourn the meeting. Upon reconvening, the member continued to speak over the Chair. A motion was passed in terms of the public body's Standing Orders to suspend the member from the board meeting. Despite this motion, the member initially refused to leave, and it took a further adjournment from the Chair to persuade the member to remove himself. The Panel held that the member had breached the Code.

- 57** You are accountable for your own conduct at all times in terms of the Code, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. During the course of a meeting, the Chair has the right to rule on and to take appropriate action as necessary on the acceptability of conduct, and any language used and comments made. This can include requiring the withdrawal of a remark, asking for an apology, or any other action necessary to allow the meeting to proceed properly. Factors you should consider include whether:
- your behaviour, including your body language, is courteous and respectful (even when you hold a different view to that of other participants);
 - you are treating others with courtesy, respect and consideration;
 - your choice of language in meetings is appropriate and meets the high standards expected by the general public;
 - it is appropriate to refer to other members by nicknames or to refer to them in the second person, by using terms such as 'you';
 - newspapers, mobile phones, laptops and other devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying; and

- your conduct could diminish the public's opinion of, and trust and confidence in, the public body and / or its members.

A complaint alleged that a member had been disrespectful towards a fellow member by making disparaging remarks about their input into a discussion. Their remarks included a personal comment about the other member's intelligence and their suitability to be a board member. It was found that the member's remarks amounted to a personal attack and were egregious and inappropriate. The member was found to have breached the Code.

At a board meeting a member challenged a senior employee's integrity by accusing them of falsifying data in a performance report. The Panel found this behaviour particularly egregious given that the employee in question was not present at the meeting and, therefore, could not address the accusations. In addition, the concerns had not been raised previously with the employee or their line manager in private. The member was found to have breached the Code.

A councillor said "siege heil" when the Chair of a committee curtailed debate on a motion. It was found that the words "siege heil" are synonymous with the former fascist Nazi regime in Germany and are directly associated with obedience to an oppressive dictatorship. As such, it was found that the councillor's use of them could only be taken as an unacceptable way of protesting about how the Chair had conducted the meeting in respect of the item under consideration. Although the councillor had retracted the comment when asked to do so, it was found that he had breached the Code by failing to show respect to the Chair.

Collective Responsibility

- 58** The provision in the Code concerning collective responsibility is not intended to inhibit or reduce private discussion by members in matters of decision-making and corporate responsibility. However, while you should be ready to offer constructive challenge in your capacity as a member, you must share collective responsibility for decisions taken by the board of your public body as a whole once such decisions have been made. The principle of collective responsibility applies at all times where you are acting as a member of your public body or could reasonably be perceived to be acting as a such. This could include when you are making a press statement or providing a quote to the media.
- 59** If you fundamentally disagree with the decision taken by your board, then you have the option of recording your concerns in the minutes of the board meeting. If you remain discontented, you may wish to ask the Chair of your board for a meeting to discuss your concerns. Ultimately, though, if your concerns are not resolved to your satisfaction and you cannot accept and support the collective decision of your board, you may wish to consider whether it is appropriate to resign.
- 60** It should be noted that the requirement to respect the principle of collective decision-making and corporate responsibility does not prevent a board from making a subsequent formal decision to alter, delete or rescind a decision (although if the board does so, the principle will apply to the new or altered decision).

During a board meeting of their public body, a member voiced their disagreement with a decision taken by their board. This disagreement was registered in the minutes of the board meeting. However, following the board meeting, the member posted an angry comment on Twitter criticising their board and stating in very strong terms that they did not agree with its decision. The Panel found that while the member was entitled to have their disagreement recorded in the minutes of the board meeting, their conduct in posting the Tweet failed to adhere to the principle of collective responsibility. As such, they were found to have breached the Code.

An NHS Board was seeking to buy land for potential car parking. Having identified a suitable site, the Board decided to make an offer that was slightly above market value, due to concerns about a third-party's interest in the land in question. One board member did not consider that the purchase at the proposed offer price represented best value, and was the only member to vote against the proposal. While the member accepted the majority decision of the Board, she later made adverse comments about the purchase to a local community group. The Panel found that by making such critical comments, the member had breached the Code.

Gifts and Hospitality

- 61 The Standards Commission has produced a separate Advice Note for members on Gifts and Hospitality which can be found at:
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 62 In your role as a member, you should never **ask** for any gifts or hospitality. However, you will be **offered** gifts and hospitality: the Code makes it clear that the default position is you should refuse these, except in the very limited circumstances listed at paragraph 3.15 of the Code – see Notes 68 to 70 below for further information. It should be noted that acceptance can include accepting the *promise* of a gift or hospitality.
- 63 ‘Gifts’ or ‘hospitality’ can come in many forms. Beyond the everyday things like bottles of wine or offers of lunch, they can include benefits such as tickets to sporting or other events; provision of services at a price below that generally charged to the public; incurring personal debts or obligations on your behalf, relief from indebtedness, loan concessions, or other financial inducements.
- 64 **Objective test:** you should always consider whether your acceptance of a gift or hospitality, in the limited circumstances permitted under paragraph 3.15 of the Code, would allow an informed member of the public to think it might lead to your being influenced in your judgement on matters. You should also always consider whether you would have been given the gift or hospitality if you were not a board member. In doing so, you should think not just of your own perception, but the perception of others.
- 65 In terms of paragraph 3.16, you should also consider whether there could be a perception that a member of the public, with knowledge of the relevant facts, might reasonably consider that any gift or hospitality received by a person or body connected to you could or would influence your judgement in respect of any matter you are to consider as a member of your public body. If so, you will be required to consider whether you need to declare an interest, in terms of Section 5 of the Code.
- 66 You should note that it is a criminal offence either to make or receive a bribe. You should note that paragraph 3.21 specifically requires you to familiarise yourself with the terms of the [Bribery Act 2010](#), which outlines in details what a bribe is. The Bribery Act 2010 sets out technical definitions for both, however in simple terms a bribe has the following elements:
- to give, promise or offer an advantage (financial or otherwise) to someone, OR
 - to request, agree to receive or accept an advantage (financial or otherwise) from someone,
- AND, with the intention (by either the giver or receiver) to:
1. Encourage the recipient to improperly perform a function or an activity, OR

2. Reward the recipient who has already improperly performed a function or an activity.

It is also an offence when it is known by the giver or receiver that acceptance of the advantage would itself constitute improper performance of a relevant function or activity. An example of this would be the offer or acceptance of hospitality that goes beyond the limits of what would reasonably be associated with your duties as a board member, under paragraph 3.15 of the Code. If you accept a gift or hospitality that would amount to a breach of the Code, this could be regarded as a bribe and a criminal offence under the Bribery Act. More information on the Bribery Act can be found at: <https://www.gov.uk/government/publications/bribery-act-2010-guidance>. Your Standards Officer may also be able to assist with further material.

- 67 An example of bribery might be where a windfarm operator promises to pay community benefit to an organisation in a councillor's ward if that councillor votes in favour of granting planning permission in circumstances where it would not otherwise be granted (i.e. if the proper statutory test of considering the provisions of the development plan and all material planning considerations was not applied or if community benefit was wrongly taken into account in determining a planning application).
- 68 You should, therefore, be aware that irrespective of any of the provisions in the Code, a gift which induces an individual to improperly undertake a statutory duty, such as a regulatory decision, is still likely to fall foul of the provisions of the Bribery Act 2010. This is regardless of whether the gift is given directly to the individual, or to someone else. Such an action could result in a criminal prosecution.
- 69 Paragraph 3.18 of the Code makes it clear that where an individual or organisation is awaiting a decision from, or seeking to do business with, the public body, you should not accept any form of gift or hospitality from them, no matter how small in nature or value. This is irrespective of whether you sit on a committee or working group with an influence on the outcome of such matters, as there could still be a perception that you might be in a position to influence colleagues making the decision one way or another. As you have a personal responsibility to comply with the Code, the onus is on you to ascertain whether the individual or organisation offering you gifts and / or hospitality is awaiting a decision from, or seeking to do business with, your public body.

Limited circumstances in which gifts and hospitality may be accepted

- 70 Provided paragraph 3.18 of the Code does not apply, paragraph 3.15 sets out the very limited circumstances in which you might accept a gift or hospitality from another person in your role as a member. These would be things such as a pen, or a notepad, or hospitality such as tea or coffee at a local event, or a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference. For example, as board member of a National Park Authority, you are asked by the Chair and Chief Executive to attend the opening of a new café within the national park. It would be reasonable for you to attend, and to accept an offer of a light lunch.
- 71 Similarly, where you are representing the public body in an official role, you will be expected to accept hospitality normally associated with that role, for example, a dinner to commemorate the anniversary of an event. If you are invited to such events, you should always check, in advance, with your public body that you can accept the invitation.
- 72 Paragraph 3.19 of the Code also recognises that there may be situations where, as a member, you may be expected to accept gifts on the public body's behalf. These could be, for example, from representatives of a similar body from another country. In those circumstances, if it would

cause embarrassment or offence to refuse the gift, you can accept it. You should, however, pass the gift to the appropriate employee of your public body at the earliest opportunity. It may be that it will then be registered on any internal register of gifts given to the public body as an entity.

Perception and Influence

- 73** The provisions in the Code on gifts and hospitality are designed to avoid any perception that members may be using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest (for example, by serious organised crime gangs seeking to obtain contracts and licences to facilitate money laundering).
- 74** The requirement for members to advise their public body's Standards Officer of any *offers* of any significant gifts or hospitality from the same source on a repeated basis, that you have declined in terms of the Code, is important as it ensures the public body can take action if it appears the same individual or organisation is attempting to influence its board members and decision-making. It is also open to you, in the interests of transparency, to declare any gifts and hospitality you have declined.

A complaint alleged that a member accepted and subsequently failed to declare hospitality received from a law firm that was involved in a tender application to provide legal services to the member's public body. The hospitality involved a trip to watch the Scottish Cup Final at Hampden. It could not be said that the hospitality in question was minor, or that it was associated with the member's duties as a member of their board. In addition, it was found that it should have been evident to the member that there was a possibility that the law firm would submit a tender to provide services to the public body. Although the member was not directly involved in the tender decision, the Panel found that it was likely that a member of the public would reasonably consider that the hospitality could have led the board member to influence others involved in making the decision. By accepting the hospitality, the member was found to have breached the Code.

A complaint alleged that a councillor had failed to declare hospitality received during a site visit from a recipient of planning permission who was to make further applications for the same development. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or further hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, following a Council request. This was not regarded as inappropriate for the purposes of the Code.

Confidentiality

- 75** You have a statutory right, subject to certain statutory exemptions (including those covered by data protection legislation), to the public body's information under the [Freedom of Information \(Scotland\) Act 2002](#). You also have a right to request information where you can show a need to know that information in order to perform your duties as a member.
- 76** It is legitimate, however, for your public body to require you to treat certain documents and information, provided to you in your capacity as a member, as confidential. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing, reputation and integrity of a public body, it is essential that you respect the provisions at paragraphs 3.22 to 3.25 of the Code.

- 77** Information can become confidential in a number of ways, including in terms of the following examples:
- a public body employee, or a member of the public, has asked you to treat it as confidential;
 - the public body has resolved to treat it as exempt information in terms of Freedom of Information legislation, or is likely to do so; and
 - information which, under the data protection legislation or the General Data Protection Regulation contains personal data, the release of which would lead to a breach under those provisions.
- 78** Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear, from the nature of the information or from the circumstances in which it was provided to you, that it is confidential. This may include the following types of information.
- commercial information, such as information relating to a contract or a contractor's business;
 - personal or sensitive information, such as information relating to an individual's employment or health;
 - information which is confidential as a result of a statutory provision;
 - information discussed in closed or private sections of meetings;
 - legal advice obtained by the public body (either provided by employees or external legal advisers). This will be covered by legal privilege and should not be disclosed without the public body's permission;
 - information received as a result of a relationship where there is an expectation of confidence, such as between a member and a service user; and
 - information about any ongoing investigation being undertaken by the Ethical Standards Commissioner.
- 79** The [Public Interest Disclosure Act 1998](#) (PIDA) allows individuals to disclose certain issues to *particular* external parties (known as 'prescribed' individuals or bodies) where there is good reason to believe that internal disclosure will not be taken seriously or will cause the individual making the disclosure to be penalised in some way. This is known as 'whistleblowing'. You should familiarise yourself with the types of matters which should be reported and the reporting procedure that should be followed where any wrongdoing is suspected, as outlined in the Act. A disclosure of confidential information to an external party, such as a media outlet, which is not included in the list of prescribed individuals or bodies is likely to be a breach of the Code.
- 80** As a member, you are a data user and must comply with data protection legislation and your public body's data protection policies when handling information. Public body information provided to you must only be used by you for the purpose for which it was provided.
- 81** You should be aware that a breach of confidentiality could result in criminal proceedings, civil liability for damages and / or a fine being imposed by the Information Commissioner, in addition to any reputational damage being incurred by you and / or the public body.
- 82** Confidential information must not be disclosed or in any way used for personal advantage or in such a way as to discredit the public body. This applies even in circumstances where you hold the personal view that such information should be publicly available.
- 83** You must not provide the media with 'off the record' briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the public body and its committees.
- 84** Sometimes, confidentiality is a matter of timing, in that information may be released into the

public domain at a later stage (either in the short or long term). However, you must respect the requirement for confidentiality even if you do not agree with it or consider that the information should be released at an earlier stage.

- 85** You should seek advice if you are in any doubt as to whether any documents, information or advice are confidential, particularly if you are intending to disclose these to any outside body or individual.
- 86** As a member, you are in a position of trust and service users may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish, at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.
- 87** If you are considering disclosing any information which could reasonably be regarded as being confidential, you should always obtain confirmation (preferably in writing) that you have the authority to do so. However, you must be aware that the person who holds the information may not necessarily have the authority to permit any such disclosure. For example, another member may have passed on information to you. The fact that this information has been passed to you by another member does not mean that the information in question is not confidential, or that the member in question has the authority to permit you to disclose it further.
- 88** You should be aware of the provisions of data protection legislation. If you hold personal information (such as personal details of a service user or other information such as medical conditions), you may require to be registered as a data controller under data protection legislation. You must abide by the following rules when holding and processing personal data:
- you must only use the information for the purposes for which it was given;
 - you must not share such information with anyone without the consent of the person giving the information, or unless required to do so by law. You should note, however, that you do not need a service user's consent to share information with your public body's employees for the purpose of assisting with the resolution of an enquiry or complaint, provided you do not use the constituent's personal data in a way that goes beyond their reasonable expectations in contacting you (unless you are required to do so by law); and
 - you should not keep the information any longer than you need to.

A complaint alleged that a member disclosed confidential information relating to the health of a public body employee to a third party. It was found that the member had breached the Code by disclosing to a third-party information about the employee which was private, personal and sensitive and that was, by its very nature, confidential.

A complaint alleged that a member disclosed, in two Facebook posts, sensitive information about his public body's response to the Covid-19 pandemic. The information in question had been provided by employees at private briefings. The Panel, having heard from a number of witnesses, including other members, was satisfied that it was evident the information was intended to remain confidential until the public body had prepared its public communications. This was especially important given the nature of the communications, which could have caused undue fear or alarm. The Panel concluded, therefore, that the member had breached the confidentiality provisions of the Code.

A member disclosed to the press the identity of an employee who had made a claim for constructive dismissal against their public body. The member could only have become aware of the information he disclosed by virtue of being a board member, and would reasonably have been aware that the information was sensitive, confidential and not for public disclosure. The Panel concluded that the member had breached the Code.

A board meeting was convened to agree upon an action plan for the sale of part of a public body's property assets. During that meeting a 'ballpark' figure that the public body might accept for one of its properties was discussed. Subsequent to that board meeting, one of the members present at the board meeting attended a fishing trip organised by a close personal friend who was a property developer. The member disclosed to their friend that their public body was looking to dispose of part of its property assets, and additionally disclosed the 'ballpark' figure that had been discussed during the board meeting. The Panel found that by disclosing this information to their friend, the member had breached the confidentiality requirements of the Code.

A report from a health and social care partnership's Chief Officer, presenting a procurement business case for social care services, was being considered by its board. The report contained information in respect of the tendering exercise and subsequent award of a contract. The information about the award of the contract was disclosed by a board member to a third party after the meeting. In determining whether the member had breached the Code, the Panel noted that while the part of the report containing the information had not been explicitly marked as confidential, it had been discussed in a private part of the meeting. The Panel concluded, as such, that the board member, would have known, or should reasonably have been aware, that the information was confidential and should not have been disclosed. The member, therefore, was found to have breached the Code.

Use of Public Body Resources

- 89** As a general rule, facilities paid for by the public purse, and provided for use in public body business, should only be used for public body business, unless otherwise expressly permitted by the public body itself. It is recognised, however, that some public bodies may allow members occasional personal use of public body-provided equipment, such as laptops, mobile telephones and tablets. It is likely that your public body will have policies and protocols on related matters, including the use of IT and other equipment for personal and official purposes. The Code obliges you to adhere to such policies and protocols and, therefore, you should familiarise yourself with their contents.
- 90** The Code now explicitly forbids the 'imprudent' (i.e. without thinking about the implications or consequences) use of public body facilities. Given the importance of achieving [best value](#), it is important that members are not seen to be using facilities irresponsibly or wastefully. An example of this would be printing documents unnecessarily.
- 91** Facilities must never be used for political activities.
- 92** Any expenses claims should be appropriate and necessary to perform your duties as a member of the public body. You should ensure that you are familiar with, and abide by, any policy your public body has in respect of expenses.
- 93** The provisions at paragraphs 3.26 and 3.27 of the Code apply at all times and not just when you are acting as a member of the public body. Other factors to consider include:
- whether you are either explicitly or impliedly allowing others to use public body facilities improperly;
 - how the resource you are using is funded (for example, who pays for any transport or administrative support); and
 - whether the resource is being used solely for you to carry out official public body business or for an activity which has expressly been authorised by your public body, or whether you are using it for something else as well.

A complaint alleged that a member used his public body's email account and computer to submit a tender application to another public body on behalf of his private consultancy business. It was found that the member had breached the provisions in the Code prohibiting the improper use of public body facilities.

A complaint alleged that a member asked employees in her public body's print room to print a substantial number of posters and flyers advertising a function being held to raise money for an external charity. While it was noted that the print room employees could have declined the request, the fact that it was made by a board member had made it difficult for them to do so. The Panel accepted that while the member had gained no personal benefit, she had nevertheless breached the Code.

A complaint alleged that a councillor had used Council facilities to send an email in relation to an application for planning permission submitted by his own company. He was found to have breached the provision in the Code concerning the improper use of Council facilities.

Dealing with my Public Body and Preferential Treatment

- 94** As a member, you must avoid conduct which seeks to further your own personal interests, or the interests of others you are connected to. You must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment is being sought. You should note that *seeking* preferential treatment can be a breach of the Code, regardless of whether any action is taken as a result. Factors to consider include whether you are asking employees to:
- act in a way that suggests you are seeking preferential treatment for yourself or others;
 - undertake work or do a task that is outwith their normal duties (unless prior approval has been given by the employee's line manager). As a member, you are in a position of influence and, as such, it may be difficult for an employee to refuse a request, even if they have concerns that it may not be appropriate for them to agree.
- 95** Paragraphs 3.28 to 3.30 of the Code are designed to ensure there is transparency in your dealings with employees of the public body. There is an onus on you to advise employees of any connection you may have to a matter when seeking advice, assistance or information whether within or outwith a formal meeting of the public body or its committees. This applies equally in circumstances where employees are seeking advice, assistance or information from you.
- 96** You should not assume that employees will be aware, or will remember, any personal interest you have in a matter, when you are seeking their advice, assistance or information. It is important that you identify any connection as it may be that it is inappropriate for the employee to provide you with advice, assistance or information on the matter, if your connection is one that could amount to declarable interest. For more information on what is meant by 'connection' and a 'declarable interest' in this paragraph, see the further guidance provided under Section 5 (Declaration of Interests).

A complaint alleged that a member of an NHS board sought preferential treatment when contacting employees about a close relative's place on a waiting list for hospital treatment. In contacting the employee, the member had sought information which would not normally be available to members of the public. The member had also sought to exert influence in asking that the relative's treatment be expedited. It was found that the member's actions amounted to attempts to seek preferential treatment in breach of the Code.

A member asked an employee for their login details so they could log into a case management system in order to check the progress of a complaint made by a close friend. The employee in question refused to share the login details. However, the member was found to have breached the preferential treatment provision of the Code by virtue of their actions in seeking to gain entry to a case management system that they would not otherwise be allowed to access. While the member would have been entitled to ask for an update on the status of the complaint, the case management system contained personal data and confidential information to which the member was not entitled.

A firm, in which a councillor was a partner, submitted a planning application for a wind turbine. The Panel heard that the councillor sent two emails from his council email address, signed off by him as a councillor, to members of the planning committee that was due to consider the application. In his emails, the councillor outlined a number of points in favour of the planning application. The Panel determined that members of the public would reasonably conclude that, by sending the emails from his council email address and signing them off as a councillor, he was using his position as a councillor to seek preferential treatment. The councillor was found to have breached the Code.

Appointments to Outside Organisations

- 97** Public bodies may, on occasion, appoint or nominate their board members to outside bodies. If you are appointed or nominated to an outside body, you are still bound by the Code, but you will also have responsibilities as a member of the outside body. These responsibilities may potentially include personal liabilities and could also give rise to conflicts of interest. Such conflicts may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Public bodies will therefore need to consider this issue carefully when appointing board members to outside bodies. You need to consider carefully whether you can accept such appointments in each case.
- 98** You should be aware that you may need to register, in terms of Section 4 of the Code, your membership of another body. That membership could also amount to an interest that would require to be declared in terms of Section 5. More guidance in this regard can be found in the notes below on Sections 4 and 5.
- 99** If you are appointed or nominated by your public body to an outside body, as a director or a trustee, you will assume legal responsibilities as an individual. These legal responsibilities, as a director of a company, arise by virtue of the Companies Acts, and / or as a charity director or trustee by virtue of the [Charities and Trustee Investment \(Scotland\) Act 2005](#) (if the outside body is a registered charity). The Office of the Scottish Charity Regulator has up to date guidance on the latter scenario at: <https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/>. If appointed or nominated to an outside body, you should ensure that you are clear about the role and the responsibilities you will have to it as an individual. You will also have to act in the outside body's best interests and, as a member, will be bound by the provisions in any code of conduct it has adopted, when acting as such.
- 100** If you have any doubts about your responsibilities or concerns about the impact of an appointment to an outside body on your ability to adhere to your public body's Code, you should seek advice before accepting such an appointment or before any meeting at which appointments are to be made. Advice can be sought from your public body's employees or, if appropriate, from employees of the outside body.

SECTION 4: REGISTRATION OF INTERESTS

- 101** This section of the Code is intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of you or your family, friends or personal associates.
- 102** The Register is intended to be a public record of the interests that might, by their nature, be likely to conflict with your role as a member.
- 103** The fact that you have subsequently declared a registrable interest at a meeting would not necessarily be a defence to a complaint that you breached Section 4 of the Code by failing to register it. Accordingly, you should be as transparent and careful as possible when considering which interests you are required to register.
- 104** The Register should cover your whole term of office and, if any terms of office are consecutive, then the entire period that you have been a member of the public body. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office. However, you should amend the Register to reflect the change of circumstances, e.g. *“management consultant from xx/xx/2019 until xx/xx/2020”*.
- 105** You should be aware that the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(Register of Interests\) Amendment \(No. 2\) Regulations 2021](#) (the 2021 Regulations) state that public body employees must retain the record for a period of five years after the date a member ceases to be in office.
- 106** You are required by the 2021 Regulations to update your entries in the Register of Interests within one month of your circumstances changing. While your public body may issue a reminder annually or even on a more frequent basis, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or of your circumstances changing. You should also ensure that you review all your entries in the Register at least once a year, even if you think nothing has changed.
- 107** For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. You should ensure you have provided enough information for a member of the public to be able to understand the nature of the entry in your register without having to undertake any research. A failure to include sufficient information for an entry to be understandable could amount to a breach of the Code. For example, if you are registering employment you should include the full name of your employer, not just an abbreviation.

Category One: Remuneration

- 108** The level of remuneration, or how much you receive, does not matter in terms of whether an entry needs to be made under this category. The question is only whether you have received remuneration. This means paid work, no matter how casual or trivial in nature, requires to be registered.
- 109** You do not need to state the exact job title of any remunerated post you hold as an employee, but you should provide a description that allows a member of the public to understand the type of role. For example, you could state:

“Since 2019, receive an ongoing salary as a part-time customer service agent for X+Y Limited, being an IT consultancy firm”; or “receive hourly rate payment for one day per week self-employed work for GreenFingers, being the trading name of my landscape gardening business which has operated since 2016”; or “received two fixed payments for writing two articles, published in May and September 2021 for Z, a trade magazine”.

- 110** ‘Undertaking’ is defined in Annex B of the Code as (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit. ‘Body corporate’ includes entities such as companies, limited liability partnerships and, potentially, Scottish Charitable Incorporated Organisations. ‘Unincorporated associations’ includes clubs, societies, and mutual associations. The key as to whether an interest is registrable under this category is whether you carry out work for the undertaking for which you receive some form of ‘remuneration,’ i.e. wage, salary, share of profits, fee, expenses or other monetary benefit or benefit in kind.
- 111** Paragraph 4.5 of the Code confirms you do not have to register any work that you carry out on behalf of the public body in your capacity as member. This includes any additional remuneration you receive to reflect any additional responsibilities you undertake for your public body, such as chairing a committee, or being the lead voting member on a health and social care integration joint board (IJB). However, any remuneration received as an employee of the body would need to be registered.
- 112** Paragraph 4.10 of the Code indicates that you should register ‘any other work’ besides a trade, profession or vocation. Such work might include freelance work that you undertake for a particular sector, or a paid consultancy, or educational or training courses you provide in return for payment.

Category Two: Other Roles

- 113** If you have been appointed as a member of an outside body (including where you have been nominated or appointed by your public body), you should ensure that the membership is registered in your Register of Interests either under Category One: Remuneration (if the position is remunerated) or under Category Eight: Non-Financial Interests (if the position is not remunerated).
- 114** If you hold an unremunerated directorship in an undertaking, and you are remunerated by a parent or subsidiary of that undertaking, you should register the unremunerated directorship under ‘Other Roles.’ For the sake of transparency, you should register the name and registration number of both undertakings, and the relationship between the two. Your remuneration in the parent or subsidiary undertaking should also be registered under Category One: Remuneration.

Category Three: Contracts

- 115** You must register an interest under this category where:
- a. you as an individual; or
 - b. an undertaking that you have a substantial interest in either as a partner, director or shareholder (where the value of shares you hold is as described under Category Four: Shares and Securities)
- has an upcoming or ongoing contract with the public body for the supply of goods or services, or for the execution of works. You do not need to state the value of the contract.

This category may overlap with Category One: Remuneration. If so, you should add an entry under both sections, for transparency. An example of the detail required would be as follows: *Director and shareholder of cleaning company which has a contract with MidScotland College to valet the college's vehicle fleet. Contract start date: 1 February 2010.*

Category Four: Election Expenses

- 116** 'Donations' towards election expenses would include those received via crowdfunding, if individual contributions (including any from the same source) amount to more than £50.

Category Five: Houses, Land and Buildings

- 117** You should note that you are only required to register an interest in a house, land or building if the objective test is met. If you are required to register an interest under category five (in terms of paragraph 4.18 of the Code), you will need to provide your public body's Standards Officer with the full address of the house, land or buildings you own or have any other right or interest in. However, there is no requirement for any full address you provide to be disclosed on your public body's website or otherwise made publicly available. This means it is sufficient for the purposes of your publicly available register to simply identify where the property is located. For example, if you were a member of a national park authority, it would be sufficient to state: *"I own a residential property located within X National Park"*.
- 118** Examples of other rights you may have in houses, land and buildings may include a right as a tenant, an agricultural tenant, as a trustee or beneficiary of a trust, or through a liferent.

Category Six: Interest in Shares and Securities

- 119** 'Shares and securities' is intended to cover all types of financial investment models, including stocks, bonds, options, investment trusts, and other forms of part-ownership, including equity and debt ownership.
- 120** You have a registrable interest, in terms of paragraph 4.20(a) of the Code if, at any time, you own, or have an interest in more than 1% of the issued share capital of a specific company or body, provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body.
- 121** It should be noted that while the 2021 version of the Code does not contain a qualification stating that you are only required to register any interest in shares and securities under paragraph 4.20 if they are significant to, relevant to or bear upon the work or operation of your public body, the Scottish Government has confirmed that this is the case. A copy of the Scottish Government's letter to Devolved Public Bodies can be found at:
<https://www.standardscommissionscotland.org.uk/codes-of-conduct/members-model-code-of-conduct>
- 122** You have a registrable interest, in terms of paragraph 4.20(b) of the Code if, at the relevant date, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000, provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body. The 'relevant date' is defined in Annex B of the Code as the date you were appointed as a member, and on 5 April each year following your appointment.

123 For example, you are appointed as a board member of MidScotland College on 7 June 2021. For the purposes of paragraph 4.20(b) of the Code, 7 June 2021 is the first ‘relevant date’ on which you must consider the market value of your shares and securities. If, on 7 June 2021, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000, you must register that shareholding if it is significant to, relevant to or could bear upon the work or operation of the college. Thereafter, the next ‘relevant date’ on which you must consider the market value of your shares and securities is 5 April 2022, and then 5 April each following year.

124 An interest under shares and securities will also include investments made under self-invested pension plans provided, at the relevant date, they are either more than 1% of the issued share capital of a specific company or body or are greater than £25,000. This is provided the shares and securities in question are significant to, relevant to or bear upon the work or operation of your public body. However, you do not need to declare an interest in your public body’s pension fund (if applicable).

125 In relation to paragraph 4.20 of the Code you will have a registrable interest as a trustee, (either as an individual or jointly with other trustees), where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust’s value or the value of that benefit is greater than £25,000.

Category Seven: Gifts and Hospitality

126 The default position is you should refuse gifts and hospitality, except in very limited circumstances (see paragraphs 3.13 to 3.21 of the Code). However, if you have accepted and registered gifts and hospitality under the previous versions of the Code, these should remain on your Register of Interests for the term of office.

Category Eight: Non-Financial Interests

127 When considering whether you have a registrable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think could influence your actions, speeches, decision-making or voting in the public body. An example of this might be membership of a society. You should consider whether such membership might lead members of the public to reasonably conclude that it could influence your actions, speeches, decision-making or voting, in terms of paragraph 4.22 of the Code. If so, you should register the interest.

128 In order to ensure you are being as transparent as possible, you should consider erring on the side of caution. You are reminded that any non-financial interest registered under Category Eight of the Code, is a connection in terms of Section 5 of the Code. That means you will have to consider whether it also needs to be declared, if the objective test is met, in terms of paragraph 5.5 of the Code.

129 You should bear in mind that the examples of possible non-financial interests stated in paragraph 4.22 of the Code are illustrative only and, therefore, are not an exhaustive list of potential non-financial interests.

Category Nine: Close Family Members

130 Paragraph 4.23 of the Code is intended to help ensure that your public body complies with accounting standards that require a public body’s accounts to disclose the possibility that its

financial position may have been affected by any related party transactions. Such transactions include contracts for the supply of goods and services, and the execution of works. While you are also required to declare the financial interests of others under paragraph 5.5 of the Code, if the objective test is met, there is a risk that your public body's finance team may not realise that you have done so when preparing the accounts. You are, therefore, required to register the interest of any close family member who has transactions with your public body or is likely to have transactions or do business with it. This is to ensure there is transparency in respect of any potential influence that anyone close to you, in your capacity as a member of your public body, may have over a transaction your public body has been involved in that, in turn, had an impact on its overall financial position.

- 131** The Code does not define what is meant by 'close family member' as this will depend on your individual circumstances, but it is likely that a spouse, cohabitee, partner, parent and child would be considered to fall within this category. You do not need to disclose the family member's name or any other personal data in the register; it is sufficient for you to identify the relationship and nature of the transaction. For example, *"my son is a partner in a law firm that has a contract to provide legal services to the health board"*.
- 132** The fact that a close family member may be employed by your public body would not be considered a transaction or business for the purposes of Category Nine. Therefore, while such a connection could amount to a declarable interest under Section 5 of the Code, it would not require to be registered.

A board member of a Regional Transport Partnership (RTP) failed to register his membership of a prominent cycling pressure group. The Panel found that a member of the public with knowledge of the membership of the pressure group might reasonably think that the member's actions and decision-making at the RTP would be influenced by that interest. As such, the Panel determined it was an interest that should have been registered as a non-financial interest under Category Eight.

A member failed to register that they received a one-off payment for writing an article in a trade magazine. The article was published and payment was received after the member's appointment to the board of her public body. The Panel accepted that the failure to register was inadvertent, but nevertheless found that a breach of the Code had occurred.

A member failed to ensure his one-third shareholding in a company was registered correctly and timeously. While the Panel accepted that there was no intention to mislead or deceive, and that neither the member nor the company had gained any benefit from the oversight, he was nevertheless found to have breached the Code.

A complaint alleged that a councillor failed to register a financial interest in respect of her remunerated employment as an office manager with a member of the Scottish Parliament. The Panel noted that the councillor had publicly announced, via a posting on a social media site, that she would be working for the MSP. While it was accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment, the councillor was nevertheless found to have breached the Code.

SECTION 5: DECLARATION OF INTERESTS

- 133** The requirement for members to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a member's role and denies the public the opportunity to consider whether a member's interests may or may not influence their discussion and decision-making.
- 134** Should you be in any doubt about the legal implications of your participation in a public body discussion or decision, you should seek advice from your Standards Officer, Chair or Chief Executive before taking part.

Stage 1: Connection

Paragraph 5.1

- 135** In your work as a member, you will have connections with a great number of people and organisations. In the same way, your financial affairs, employment and property holdings - or those of individuals close to you or bodies you are involved with - will sometimes mean that you have a connection to a matter that your public body is considering, in some way.
- 136** Such connections will not always amount to an interest that you are required to declare. However, you should always consider whether this is a possibility, in the context of your role as a member and in respect of any specific matter you are being asked to consider. You should always err on the side of caution, and if you are in any doubt you should consult your public body's Standards Officer.
- 137** It should be noted that a subject that may apply to a large proportion of the general public would not generally be considered to give rise to a connection for the purposes of the Code. For example, being a taxpayer, or being in receipt of a state pension or universal credit.

Paragraph 5.2

- 138** The Code cannot provide for every type of relationship that could result in a connection, as this will depend on the facts and circumstances; for example, how close you are to the individual in question and how often you see them. It should be noted, however, that certain relationships such as spouse, partner, cohabitee, close friend, parent or child are likely to result in a connection.
- 139** It is impossible to list every type of connection you could possibly have with a matter involving or to be considered by your public body. However, some common examples would include:
- your public body considering some form of financial assistance or decision that could have a direct effect on an organisation you, your partner, or someone close to you works for;
 - your membership of another body or organisation that is seeking to agree a contract with your public body;
 - some form of personal connection with a person making an application, or a complaint, to your public body.
- 140** The Code does not restrict the ability of a public body to benefit from the knowledge and experience of its members. Having knowledge or experience of a matter that is to be considered by your public body is not necessarily a connection. For example, if your public body is considering tenders received for the provision of a new IT system, your knowledge and experience as an IT specialist would not be considered a connection.

141 It is also recognised that some members are appointed to public bodies in a representative capacity. For example, carer or third sector representatives on Health and Social Care Integration Joint Boards, or student representatives on a college board. Being appointed to a board in a representational capacity or for a particular reason is not in itself a connection. For example, being a carer representative on a health and social care integration joint board (IJB) would not be considered a connection in respect of all matters before the IJB that could affect carers. Such a representative may have a connection (that in turn could amount to a declarable interest if the objective test is met), if the specific matter being considered or discussed by the IJB affected them directly and individually.

Paragraph 5.3

142 Paragraph 5.3 of the Code makes it clear that anything you have registered as an interest in terms of Section 4 of the Code (Registration of Interests) would be considered a connection for the purposes of Section 5.

Paragraph 5.4

143 You should also be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles. Membership of a body you have been appointed or nominated to by the public body, as its representative, would not normally be a connection.

144 However, this does not apply where the matter being considered by your public body is quasi-judicial or regulatory in nature. An example of where you would have a connection as a member of a different body would be where the other body has applied for a licence or consent from your public body, or is an objector to such an application. This is regardless of whether or not you actively participated in the decision by the other body to make the application or objection.

145 In terms of being a member of an outside body, the Code also states you may have a connection where you have a personal conflict, either by reason of:

- a. your actions;
- b. your connections (other than your membership of the outside body); or
- c. your legal obligations.

146 An example of where you may have a personal conflict, and therefore a declarable interest, **by reason of your actions** could be where, just before being appointed to your board, you made critical comments in the press about another organisation's wastefulness in terms of expenditure. If, following your appointment, the other organisation makes a funding application to your public body it is likely that your actions may have resulted in you having a personal conflict.

147 An example of where you may have personal conflict **by way of a connection** (other than solely from your membership of the outside body) would be where your partner works for the outside body, and the body is seeking funding from the public body for its operations that could have an impact on your partner's job.

148 Examples of where you may have a personal conflict **as a result of legal obligations** would include where you are either a director of a company or a charity trustee. Both the Companies Acts and the Charities and Trustee Investment (Scotland) Act 2005 impose obligations on you to act in the best interests of the company or charity, and those obligations may conflict with your role as a member. If you are in doubt as to what your legal obligations are to the outside body, you should seek advice from its legal advisers.

Stage 2: Interest

Paragraph 5.5

- 149** Having decided that you have a connection to a particular matter, you should apply the objective test to that connection to decide whether it amounts to an interest that requires to be declared.
- 150** The **objective test** outlined in paragraph 5.5 of the Code assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the connection as so significant that it would be likely to prejudice your discussion or decision-making in your role as a member. If the answer is yes, the connection is an interest which you should declare.
- 151** At all times when applying the objective test, you should be aware that it is just that – objective. The test is not what you yourself know about your own motivations and whether the connection would unduly influence you: it is what others would reasonably think, if they were in possession of the relevant facts.
- 152** There may be instances where, having applied the objective test, you consider the connection is so remote and insignificant that you do not think it amounts to an interest. Examples might be where a charity you occasionally donate to is seeking funding from your public body, or when a neighbour you have little social contact with works for a company that has a contract to provide cleaning services for the building where your public body's offices are located.

A complaint alleged that a member of a public body sat on the Appointment Panel for the recruitment of a new Chief Executive, despite being a close friend of one of the candidates. Having reviewed all evidence, including that given by witnesses at the Hearing, the Panel determined that there was no breach of the Code. This was because there was no evidence that the member's association with, or connection to, the candidate in question went beyond a limited professional relationship or that they had engaged in any contact outside a work setting. The Panel concluded that a member of the public, with knowledge of these relevant facts, would not reasonably regard the member's connection as being so significant that it would be considered as being likely to influence their discussion or decision-making. As such, the connection did not amount to an interest that would require to be declared for the purposes of Section 5 of the Code.

A member of a health board took part in a discussion about snagging issues in respect of the construction of a new hospital, despite having previously been engaged in a claim for legal damages against a subsidiary of the construction company, in respect of a private property. Having applied the objective test, the Panel determined that while the member had a connection to the company, this did not amount to a declarable interest. This was because the Panel did not consider that a member of the public, with knowledge of the relevant facts (being the fact that the legal dispute had concluded and was against a subsidiary company), would reasonably regard the member's connection to the matter as being sufficiently significant as to be likely to influence her discussion on the snagging issues in her role as a member.

- 153** Section 3 of the Code sets out the very limited circumstances in which you would accept gifts and hospitality. As you must apply an objective test when deciding whether or not to accept any gift or hospitality being offered, it would be unusual for such a gift or hospitality to be so significant that it would constitute an interest.
- 154** When making a declaration of interest you only need provide enough information for those at

the meeting to understand why you are making a declaration. For example, it may be sufficient to say: “I declare an interest as my partner is a member of the organisation making the application”. You might not necessarily need to provide details about how long your partner has been a member and in what capacity.

- 155** You must disclose or declare your personal interests both in formal and informal dealings with public body employees and other members, not just in formal board or committee meetings. This is an important consideration, especially when you are seeking advice or assistance from public body employees or other sources. You should not assume that employees and others will know or will remember what your interests are.
- 156** You should be mindful of the need to protect the confidentiality of another person’s business or financial interests when making a declaration of interest. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

A complaint alleged that a member took part in a discussion at a NHS Board meeting on review of child health and medical paediatric inpatient services at a local hospital, where a freedom of information (Fol) request and press coverage were considered. This was despite being aware that an Fol request had been submitted to the Health Board on behalf of his employer, who was a Member of the Scottish Parliament. The employer, who had an interest in retaining certain services under consideration, had previously raised the issue in the Scottish Parliament and had made public statements in the press. The Panel found that the member had failed to apply the objective test as, had he done so, he would have realised that in taking part in the discussion, where issues and concerns that were similar to those raised by his employer could be raised, a member of the public with knowledge of the relevant facts might reasonably conclude that he could be influenced by his employer. The Panel concluded that the nature of an employee / employer relationship could not reasonably been considered to be remote or insignificant. The member was found to have breached the Code.

A complaint alleged that a member had not declared an interest at a board meeting where reports were presented about the public body’s contribution towards the funding of certain voluntary organisations, which included her employer. This was despite her employer having been mentioned specifically in reports considered at the meeting in question. It was found that the member should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meeting. She was found to have breached the Code.

A college board was considering a plan for the restructuring of the college’s academic faculties. Though the exact details of the restructuring were not yet finalised, it was likely that the plan would result in a number of job losses. A board member, who had a close friend employed as a lecturer in one of the faculties potentially under threat by the restructuring, failed to declare that friendship as an interest. By failing to declare the interest, the Panel found that the member had breached the Code. Although it was not certain that the restructuring would have resulted in the loss of his friend’s job, a member of the public, with knowledge of the relevant facts, could reasonably have regarded the member’s friendship as being likely to prejudice the discussion and decision-making related to the restructuring.

Stage 3: Participation

Paragraph 5.6

- 157** If you decide that you should declare an interest, you should do so at the earliest opportunity. If you only realise a declaration is necessary when the discussion in respect of a matter is underway,

you may wish to consider whether you should provide a brief explanation as to why you had not realised you had an interest at the outset of the meeting.

- 158** Thereafter, when the item is being considered, you should leave the room. It is not sufficient for you to retire to the back of the room or the public gallery. If the meeting is being held online, you should retire to a separate breakout room or leave and re-join after the discussion on the matter has concluded. It is not sufficient for you to turn off your camera and / or microphone for the duration of the matter.
- 159** You should not give anyone reason to doubt that you are no longer in any position to influence the outcome of deliberations on the relevant item either directly or indirectly. This means that you should refrain from contacting your member colleagues remotely (for example by email or text) while they are considering the item.

A member who was involved in a decision regarding whether to retain paediatric A&E services at a specific hospital, made a declaration of interest stating that their partner was a nurse in the A&E department in question. The member's declaration was noted and they were asked to leave the meeting, which was being held online. However, instead of fully leaving the online meeting, the member simply switched off their camera, meaning that they were still able to see and hear the proceedings. The member then sent WhatsApp messages to their colleagues on the board, outlining further arguments as to why the A&E services should be retained. The Panel found that the member had breached the Code.

Part of the agenda for a public body's board meeting dealt with consideration of a proposed memorandum of understanding between the public body and a university. At the outset of the board meeting, a member, who was also Chancellor of the university in question, declared an interest. When the agenda item arose, the member excused themselves from the board meeting and left the room, returning only when discussion of the memorandum had completed. The member's declaration, together with the fact they had left the meeting, was documented in the board minutes. The member had, therefore, acted in accordance with the Code.

- 160** Where the only interest is in relation to an item included in an agenda which is before the public body or one of its committees, for noting or formal approval, no declaration is required unless it is then decided that the item needs to be discussed or debated as a substantive issue.
- 161** You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code. The Standards Commission has produced an Advice Note for Members on How to Declare Interests, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 162** You may wish to check that any declaration of interest you have made at a formal meeting is recorded in the minute with the relevant agenda item identified. For example: *"Ms A declared an interest in relation to the funding application at Agenda Item 16 as she is a director of the company making the application. Ms A therefore left the room and took no part in the discussion or decision-making on that item"*.

Paragraph 5.7

- 163** You may wish to think about whether you should indicate why you consider any connection you have to a matter does not amount to a declarable interest. This is particularly if you know that

members of the public are aware of your connection, but where you suspect they may not have knowledge of all the relevant facts.

- 164** In those circumstances you might want to make a transparency statement. For example, you could state: *"I have a connection to this item by reason of... However, having applied the objective test I do not consider that I have an interest to declare. This is because..."*. If you think it would be helpful, you can ask the employees who are clerking the meeting to note your transparency statement in the minutes. Similarly, you may wish, for the sake of transparency, to state that you were offered, but turned down, a gift or hospitality.

Paragraph 5.8

- 165** The Standards Commission can consider requests for dispensations in certain circumstances, either from a member as an individual or to a class or description of members who are affected by a particular category of interest.

- 166** Any application for a dispensation should be submitted either by email to enquiries@standardscommission.org.uk or by mail to the Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP. Any application should detail all the relevant information, including the reasons why a dispensation is sought. Factors to consider before making the application include whether:

- it would be in accordance with both the spirit and intent of the Code to grant the dispensation; and
- you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

- 167** The Standards Commission will respond as soon as practicable after receipt of all information, usually within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members work on a part-time basis, so this may not always be possible. As such, all applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.

- 168** If a dispensation is granted, you should consider stating this at the meeting, and asking for this to be recorded in the minutes.

Paragraph 5.9

- 169** There is no definition for what may constitute a 'frequent' declaration of interest in terms of paragraph 5.9 of the Code, as this will depend entirely on the specific facts and circumstances of each case and how often the matter in which you have an interest is discussed by the public body. For example, declaring the same interest at four meetings of a public body that only meets on a quarterly basis might be considered 'frequent'. However, this may not necessarily be the case if the public body met twice a month and discussed the same matter in which you have an interest at a few consecutive meetings.

SECTION 6: LOBBYING AND ACCESS TO BOARD MEMBERS

- 170** As a member, you will be approached by those wishing to make their views known. This is perfectly legitimate and should be encouraged, as it is important that individuals are able to engage with public bodies.
- 171** Paragraph 6.1 of the Code sets out some of the ways in which you, as a member, may be lobbied. For example, you may be lobbied by a service user on a personal issue, such as the service your public body is providing. You may be approached by someone seeking financial or other benefit from the public body, either by way of a contract for goods or services, or some form of licence or consent.
- 172** It is easy for the lines between these different types of approach to become blurred, particularly when you are dealing with casework or regulatory matters, such as planning or licensing. It is important to recognise, however, that the integrity and reputation of the public body's decision-making process depends on openness, transparency and following proper process. There is a risk that private meetings with lobbyists, particularly those that fall outwith the public body's procedures, and where employees are not involved, will undermine or could reasonably be perceived as undermining this.
- 173** Lobbyists can expect to deal with public body employees at certain stages of an application process. If you are seen as facilitating an approach outwith the normal process, there may be a perception that you have allowed the lobbyist special access to the decision-maker and that you are bypassing employees. As such, if you are approached by anyone about a pending decision of any kind, you should advise the employees who are dealing with the matter and give them all relevant information.
- 174** Paragraph 6.5 of the Code notes that if you have concerns about the approach or methods used by any person or organisation in their contacts with you, you can seek the guidance of the Chair, Chief Executive or Standards Officer. You can also seek advice from a colleague or external advice, as you deem appropriate.
- 175** Discussing the information you have received from lobbyists with employees will give you an opportunity to establish if it is something that they were not aware of and / or if it is relevant to any decision you will be making. It may be that lobbyists will present information in a way that is favourable to their case, but which does not give the complete picture. Employees can give you professional advice on what may or may not be a relevant consideration in respect of any decision you will be making.
- 176** Even if you do not make casework or regulatory types of decisions, there are still likely to be issues under the Code that you will need to consider. In particular, it would be a breach of the Code for you to lobby employees who are making decisions on casework or contracts, either on your behalf, or on behalf of others.

Service User Enquiries

- 177** As a member of a public body, you have a representative role and, as such, may be approached by service users. Allowing service users to advise you of their views, including any concerns, helps ensure the public body is perceived as being open, accessible and responsive to the needs of the public. When you respond, you should be mindful of the need to treat everyone with respect, and to otherwise promote the key principles outlined in Section 2 of the Code. In some cases, however, you may feel that there is nothing further to be gained by responding to a service user

and that you are not able to help them further. In those circumstances, you should politely inform the service user that is the case.

- 178** You are entitled to raise a service user's enquiry with the relevant employee, although you should, at all times, follow your public body's policies on the processing of personal data. You can ask questions about how a service has been delivered, and can seek information on progress on behalf of a service user, but you should be careful not to stray into operational management (for more advice on this, please see the Standards Commission's Advice Note for members on distinguishing between their strategic role and any operational work, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>).
- 179** You should be aware of the distinction between a service user's request for service (or for information about a service), and a complaint about a service received. In the latter case, you should recommend that the service user makes use of the public body's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the [Scottish Public Services Ombudsman](#), if necessary and as appropriate.
- 180** Inevitably there will be occasions where the service user looking for your help is also a public body employee. While they are entitled to do so as a private individual in the same way as any other service user, you should decline to get involved in anything which relates to their status as an employee (such as performance or attendance management). You are a member of the organisation that employs them, and employment matters should be handled by their line manager or their union representative, as appropriate.

Lobbying

- 181** Paragraph 6.7 of the Code notes that it is important that you understand the basis on which you are being lobbied in order to ensure that any action taken in connection with a lobbyist complies with the standards set out in the Code and the [Lobbying \(Scotland\) Act 2016](#). This Act aims to increase public transparency about lobbying and defines particular types of communication as 'regulated lobbying'. From 12 March 2018 anyone who engages in regulated lobbying must record details of their activities on a Lobbying Register website. Regulated lobbying only involves lobbying when it takes place face-to-face with:
- Members of the Scottish Parliament;
 - Members of the Scottish Government (including the Scottish Law Officers); and
 - Junior Scottish Ministers; the Permanent Secretary of the Scottish Government; and Scottish Government Special Advisers.
- 182** Private meetings with lobbyists - whether professional lobbyists or members of the public seeking your support - can undermine public trust in decision-making processes. It can also have consequences for the lobbyist. For example, a private meeting could disqualify them from the tender process if they are bidding for a public body contract. Private meetings can also involve offers of hospitality, which could lead to a breach of the gift and hospitality provisions at paragraphs 3.13 to 3.21 of the Code.
- 183** If you are approached by a lobbyist, it is likely that they are seeking your involvement as a lobbyist in turn, whether as a decision-maker or otherwise. It is important to recognise that there is a difference between lobbying on behalf of a commercial or personal interest, and lobbying for a policy change or benefit which affects a group of people, a community, or an organisational

sector. You should always consider what will benefit the public body and its service users as a whole, not just any narrow sectoral interest.

- 184** You must not, in any case, accept any paid work in which you give advice on how to influence your public body. An example of a breach of the Code in this regard could be if a member of the Standards Commission provided paid consultancy services to a political party in respect of how to best respond to complaints and represent its members at Hearings convened to consider potential breaches of Codes.
- 185** In all situations, care is needed. You should be guided by the Code and, in particular, consider:
- could anything you do or say be construed as you having been improperly influenced to take a particular stance on an issue;
 - are you giving, or could you be perceived as giving, preferential access to any one side of an argument;
 - when seeking information on the progress of a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support; and
 - are you reaching your own view on a matter having heard all the relevant arguments and evidence (including the guidance of public body employees), and not simply agreeing or complying with any view expressed by your member colleagues.
- 186** If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions concerning that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard and considered all relevant and material evidence and information. However, you can:
- advise employees of the representations you have received;
 - assist service users in making their views known to the relevant employee;
 - seek factual information about the progress of a case; and / or
 - advise those that are lobbying who they can contact (being the relevant employee).

A board member introduced a change to her public body's funding application policy, which was subsequently approved by the board. Following board approval, a service user sent the member an email complaining about the policy change. The member referred the service user's email to the Chief Executive for an employee response. The service user complained that the member's failure to respond indicated that she did not want to engage with him and had denied him access. The Panel noted, however, there was no specific obligation under the Code for individual members to respond to all who seek to lobby them. The Panel considered that the member had acted appropriately in referring the email to the Chief Executive so that the appropriate employee could respond. As such, it determined that the complaint did not amount to a breach of the Code.

A complaint alleged that a councillor had been involved in a 'secret' meeting with some local residents. The outcome of the meeting resulted in a Traffic Regulation Order (TRO), which ultimately led to the introduction of parking restrictions. The complainer alleged that, by attending the meeting, the councillor had failed to be accessible to the public and had demonstrated bias in favour of some residents. It was established, however, that the councillor had been accompanied at the meeting by an officer from the Council's Roads Services. No evidence was found that the councillor had indicated support for or against the making of the TRO, and as such his conduct did not give rise to a breach of the Code.

A complaint alleged that a Health Board member had held an individual meeting with a supplier of medical equipment, despite knowing that the supplier was involved in an ongoing tender process. The

member met with the supplier alone, without taking an employee of his public body, and without informing his board in advance that he was meeting the supplier. At the next meeting of the board, the tender applications were discussed and the supplier in question was awarded the contract. The Panel found that by meeting with the supplier alone and by subsequently taking part in the discussions and decision-making over the tender, the member had breached the Code. It was likely that a member of the public, with knowledge of the relevant facts, would perceive that the member had offered preferential treatment to the supplier compared to the other suppliers involved in the tender.

A member of a board involved in the provision of grant funding accepted payment from a lobbying organisation. At a subsequent board meeting, convened to discuss and decide upon a round of funding, the member posed a number of critical questions and made derisive comments regarding the majority of the funding applicants. The member did not, however, criticise or comment upon an application for funding by a body that transpired to be a client of the lobbying organisation. The Panel found that by accepting the payment from the lobbying organisation, the member had breached the Code and, further, that it was clear from his actions in the board meeting that, in return for the payment, he was attempting to accord preferential treatment to the lobbying organisation's client.

ANNEX A

BREACHES OF THE CODE

Hearings

187 The Standards Commission, after receiving a report from the Ethical Standards Commissioner, (ESC), can decide to hold a Hearing (usually in public) to determine whether a breach of the Code has occurred and, if so, to determine the appropriate sanction. A policy outlining the factors the Standards Commission will consider when making such a decision on a report referred by the ESC can be found at: <https://www.standardscommissionscotland.org.uk/cases>.

188 Details of the procedures followed at a Standards Commission's Hearing are outlined in its Hearings Process Guide and Rules, which can be found at: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>. In certain circumstances and following the agreement of parties involved in the Hearing, the Standards Commission may use an Abbreviated Hearing Process.

Sanctions

189 [Section 19 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (2000 Act) obliges a Hearing Panel to impose a sanction. This can be either a censure, suspension, or removal from the board and disqualification:

Censure: A censure is a formal record of the Standards Commission's severe and public disapproval of the member.

Suspension: This can be a full or partial suspension (for up to one year). A full suspension means that the member is suspended from attending all meetings of the public body. A partial suspension means that the member is suspended from attending some of the meetings of the public body. In imposing a suspension on a member, the Standards Commission can direct that any remuneration or allowance deriving from membership of the body that would be payable to the member be not paid or be reduced.

Disqualification: Disqualification means that the member is removed from their membership and disqualified from membership of the body for the period determined (which can be up to five years). In circumstances where the member is also a councillor, or a member of another devolved public body, the disqualification may extend to that member's status as a councillor or member of the other devolved public body.

190 The Standards Commission's policy outlining the factors a Hearing Panel will consider when making a decision on the sanction to be imposed can be found at: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>.

Interim Suspensions

191 Section 21 of the 2000 Act gives the Standards Commission power to impose an interim suspension on a member on receipt of an interim report from the ESC about an ongoing investigation. A policy outlining the Standards Commission's approach to interim suspensions can be found at: <https://www.standardscommissionscotland.org.uk/cases/details-of-alleged-breach>.

192 The decision to impose an interim suspension should not be seen as a finding on the merits of a complaint, nor as a disciplinary measure.



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