



INTEGRITY IN PUBLIC LIFE

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## SUMMARY ADVICE NOTE ON THE APPLICATION OF ARTICLE 10 ECHR FOR COUNCILLORS

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### 1. Introduction

- 1.1 This Advice Note aims to provide a short summary of a councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights (Article 10). A more detailed Advice Note for Councillors on the Application of Article 10 can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 1.2 This Advice Note should be read in conjunction with the Councillors' Code of Conduct, which can be found on the Standards Commission's website at:  
<https://www.standardscommissionscotland.org.uk/codes-of-conduct>
- 1.3 The Standards Commission has also produced a general Guidance document on the Code, which can be found on the Standards Commission's website at:  
<https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>

### 2. General Principles

- 2.1 An individual's right to freedom of expression is protected by Article 10. Freedom of expression is a general term covering a person's right to hold opinions, or to receive or share information or ideas.
- 2.2 The right to freedom of expression under by Article 10 is, however, qualified. Article 10(2) notes that public authorities, such as the Standards Commission, may restrict this right if they can show that their action is lawful, necessary and proportionate in certain circumstances. These include:
  - to protect the rights and reputations of other people (it may be necessary, for example, to protect officers from offensive and abusive verbal attacks that prevent them from performing their duties);
  - to prevent the disclosure of confidential information; and
  - if the views expressed encourage racial or religious hatred.
- 2.3 An example of a restriction would be a finding of a breach of the Councillors' Code of Conduct and imposition of a sanction (being a censure, suspension, or disqualification).
- 2.4 Politicians, including councillors, can be entitled to enhanced (higher) protection to their right to freedom of expression when they are commenting on political issues or matters of public interest. The Courts have held that a "degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive" that would not be acceptable outside politics, can be tolerated.

### 3. The Standards Commission's approach

- 3.1 The Standards Commission will consider whether Article 10 when might afford protection when deciding whether it is in the public interest and proportionate to hold a Hearing, in respect of any cases alleging a breach of the respect, courtesy, bullying and harassment or confidentiality provisions in the Code.
- 3.2 In determining at Hearings whether there has been a breach of the Code in such cases, the Standards Commission will take a three-stage approach (as outlined in the diagram below) and consider:
- 1) Whether, on the face of it, the Code has been breached.
  - 2) If so, whether such a finding could be a breach of the Respondent’s right to freedom of expression under Article 10.
  - 3) If so, whether the restriction involved by the finding is justified by Article 10(2). It should be noted that a restriction may still be justified, even if the Respondent enjoys an enhanced right to freedom of expression.
- 3.3 While all councillors enjoy the right to freedom of expression, they are required by the Code to behave with courtesy and respect at all times when they are acting as a councillor or when they could reasonably be regarded as acting as such. Councillors should, therefore, consider both what they are expressing and the way they are expressing it. They should be able to:
- undertake their scrutiny role;
  - represent the public and any constituents; and
  - make political points
- in a respectful, courteous and appropriate manner, without resorting to personal attacks and without being offensive, abusive and / or unduly disruptive.
- 3.4 If a councillor is making a gratuitous personal comment and / or is simply indulging in offensive abuse, it is unlikely they will attract the protection of freedom of expression afforded under Article 10.

**The Standards Commission’s Approach at Hearings**

