

Date 6 August 2026
Your Ref
Our Ref 11682

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Dear

FREEDOM OF INFORMATION REVIEW - MODEL CODE OF CONDUCT

I write in response to your request for review of NHS Lothian's response to your Freedom of Information request about the Model Code of Conduct. Having discussed your request and our response of 3 July 2026, I can respond as follows:

Original Request and Response:
Question:

- I would be grateful if you could please provide a copy of the internal policy and or procedure that NHS Lothian use in relation to breaches of the Model Code of Conduct for Devolved Public Bodies by members of NHS Lothian board.

Answer:

I am advised that some information relevant to your request is already publicly available. Under section 25(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), public authorities are not required to provide information which is otherwise reasonably accessible.

All members of the NHS Lothian Board are subject to the Code of Conduct for Members of Lothian NHS Board, which is based on the Model Code of Conduct for Devolved Public Bodies issued by the Standards Commission for Scotland. The Code is available on the NHS Lothian website here: [Code of Conduct for NHS Lothian Board Members](#).

The Code applies only where an individual is acting as a Board Member, presents themselves as such, or could reasonably be regarded as doing so. Annex A of the Code sets out the process for handling complaints about potential breaches. It states (paragraph 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."

As reflected in the Code, the Ethical Standards Commissioner has statutory responsibility for investigating complaints relating to alleged breaches. While informal local resolution may be

considered in some circumstances, it is discretionary and not governed by a formalised or standardised procedure.

Therefore, NHS Lothian does not hold a separate internal policy or formal documented procedure specifically governing the management of complaints about alleged breaches of the Code of Conduct by Board Members beyond the provisions set out in the published Code. Accordingly, in terms of section 17(1) of FOISA, this information is not held.

Review Request:

- Further to your response to your reply I received yesterday I have reviewed the Model Code of Conduct as you have outlined. I would be grateful if you could direct me where in the aforementioned document it states dealing with a complaint at a local level is discretionary. Stating that it is discretionary in formal communication is factually inaccurate. Furthermore, information received from the prescribed person ESC states that public bodies will have an internal policy. I make reference to the wording.

Review Response:

As specifically highlighted in the original response, the relevant wording is contained within Annex A of the Board Member Code of Conduct, which states that complaints do not have to be referred to the Ethical Standards Commissioner and that, ***in some circumstances***, attempts ***may*** be made to resolve matters informally at a local level. This indicates clearly that local resolution is a potential option rather than a mandatory requirement.

The Standards Commission for Scotland's [Advice Note on the Role of a Standards Officer](#) also describes local resolution as a ***potential option*** and notes that bodies ***may*** develop an internal protocol on this if they wish. However, NHS Lothian does not have a separate documented protocol or procedure beyond the published Code of Conduct. As confirmed in our original FOI(S)A response, the information requested is therefore not held (Section 17(1)).

I am further advised that you may be conflating Ethics Standard Commission (ESC) guidance on whistleblowing with code of conduct complaints. I believe the ESC guidance being referred to is [here](#), which clearly relates specifically to ***whistleblowing*** internal policies. NHS Lothian does have a Whistleblowing Policy.

If you are not satisfied with this response you still have the right to make a formal complaint to the Scottish Information Commissioner who you can contact at the address below or using the Scottish Information Commissioner's Office online appeals service at <https://www.foi.scot/appeal>. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
e-mail: enquiries@foi.scot

Yours sincerely

**Freedom of Information Reviewer/
NHS Lothian**
cc: Executive Nurse Director