

MINUTES

Meeting date: Monday 27 February 2017

IN ATTENDANCE

- Kevin Dunion
- Lindsey Gallanders
- Michael McCormick
- Matt Smith
- Julie Ward
- Lorna Johnston (Executive Director)
- Elaine McLean (Business Manager)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES No apologies were received. Members welcomed Mr McCormick to his first meeting of the Standards Commission.</p> <p>CONFLICTS OF INTEREST Mrs Gallanders and Mr Smith both declared an interest in item 15d and left the room when the matter was discussed.</p>	
2.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and approved the minute of the meeting held on 30 January 2017.</p>	
3.	<p>MATTERS ARISING Members noted that all matters arising were either complete or to be discussed under the main agenda.</p>	
BUSINESS MATTERS		
4.	<p>COMMUNICATIONS:</p> <p>a) Clackmannanshire Council Training Workshop Mrs Ward reported on the training she and the Executive Director had provided to Members and officers of Clackmannanshire Council on 14 February 2017.</p>	
	<p>b) Crofting Commission Training Members noted that the Crofting Commission had asked that the training be held in Inverness. Members agreed it would not be an appropriate use of resources for two Members to provide the training and agreed that the Executive Director should attend with Mrs Gallanders. Members asked the Executive Team to liaise with the Crofting Commission with regard to the arrangements.</p>	Executive Team
	<p>c) SOLAR Members noted that the Convener had been invited and had agreed to present on the topic 'Setting Standards - a perspective from the new Convener of the Standards Commission for Scotland' at a plenary session of SOLAR's Annual Conference on 16-17 March 2017.</p>	
5.	<p>Applications for Appointment of Standards Officers for Health & Social Care Integration Joint Boards Members reviewed and approved the following appointments for the role of</p>	

	<p>Standards Officer:</p> <ul style="list-style-type: none"> • Mr David Mitchell, East Ayrshire Health & Social Care Partnership IJB Members agreed the Executive Team should provide confirmation of the appointment to the Chief Officer. • Ms Alison Warrick, Dumfries & Galloway Health & Social Care Partnership IJB Members agreed the Executive Team should provide confirmation of the appointment to the Chief Officer and ensure that the Council would provide appropriate support. 	<p>Executive Team</p> <p>Executive Team</p>
<p>6.</p>	<p>Risk Register 2017 / 2018</p> <p>Members reviewed and, subject to some amendments, agreed the Risk Register for 2017 / 2018.</p> <p>Members agreed to discuss and determine the impact and probability score for each risk along with identifying the Standards Commission's overall tolerance for them at the next meeting so that overall risk scores could be agreed and the risk map populated accordingly.</p> <p>When discussing the risk concerning conducting Hearings in the most transparent and accessible manner, Members agreed it would be useful to produce guidance for unrepresented Respondent's outlining the process to be following at Hearings and demonstrating this by way of a flowchart. Members asked the Executive Team to draft such guidance for review at the meeting on 28 March 2017.</p>	<p>Executive Team</p>
<p>7.</p>	<p>Consultation on Proposed Changes to the Councillors' Code of Conduct</p> <p>Members noted the Executive Team had identified three potential options in terms of the Standards Commission's response to the consultation. Members agreed these options were:</p> <ol style="list-style-type: none"> 1) Granting a specific exclusion in respect of regional transport partnership (RTPs) to apply to all quasi-judicial and regulatory matters but with the same caveats are currently apply to other bodies covered by the specific exclusion at paragraph 5.18(2)(i); 2) Granting a specific exclusion in respect of RTPs to apply to all quasi-judicial and regulatory matters but without the same caveats are currently apply to other bodies covered by the specific exclusion at paragraph 5.18(2)(i); and 3) Granting an exclusion to RTPs that is analogous to the specific exclusion covering Members of the Cairngorms National Park Authority at paragraph 5.18(2)(ii). <p>Members agreed in terms of option 2) that creating a specific exclusion for RTPs which was wider than the existing one at paragraph 5.18(2)(i) (in that it would also apply to regulatory and quasi-judicial matters even when the RTP was making an objection or representation or has a material interest concerning such a licence, consent or approval) would effectively remove the safeguards the Code provides in respect of the conflict between the interests of different organisations. Members agreed this would be contrary to the spirit and intent of the Code, which was designed to prevent councillors from taking decisions when they had a conflict of interest, in order to ensure constituents were confident such decisions were being taken in their interests.</p> <p>Members noted, in terms of option 3), that if an exclusion was created for RTPs that was analogous to the specific exclusion covering Members of the Cairngorms National Park Authority at paragraph 5.18(2)(ii), such a specific exclusion would be narrower as it would only apply where the councillor member of the RTP had not taken part in the decision to make comment, representations and objections at the RTP and did not attend the meeting to decide the comment, representations and objections. Members agreed this option was also problematic in that it could lead to councillor members of RTPs refusing to be on a RTP so that they could still take</p>	

part in discussion and voting on major planning applications before their Council. Another consideration was that if councillor members refrained from attending meetings of the RTPs, only external members of RTPs would remain in the meetings, which could lead to quorum issues. Members considered it was arguable that this would also defeat the statutory purpose of a RTP. It may be that the existing quorum requirements of RTPs would have to be altered if this option was adopted. Members noted that it had been suggested that, as an alternative, the RTP could delegate the making of comments, representations and objections to officers. Members considered, however, that the role of RTP Members could be diminished by such a separation and, in any event, it was arguable such a separation would be artificial (if officers were effectively only voicing what Members had determined) and would not necessarily solve the issue.

Members noted that if option 1) was adopted, it would effectively mean councillor members of RTPs would be in the same position as members of a company established wholly to provide services to the Council (such as a leisure trust ALEO). The councillor member would have to declare his or her interest in the RTP but could still take part in the discussion and decision-making at any meeting where matters relating to the RTP were discussed, provided the RTP was not making any application or objecting / making representations on one. Having declared an interest, they could also take part in the discussion and decision-making on applications where the RTP has an interest, but not one that was considered to be 'material'.

Members noted that the difficulty with this option was that in order to develop transport strategies, RTPs would be likely to comment on the transport implications of any proposed major planning applications in the region they cover, a councillor member of the RTP may find it difficult not to be perceived as pre-judging or demonstrating bias in respect of the application when it is considered by the Council. Members accepted that this would not necessarily be the case in respect of every strategic transport strategy developed, and commented on, by a RTP. However, it seemed likely that most major planning proposals would have significant transport implications and it was arguable, therefore, that any comment from the RTP could be perceived as demonstrating a material interest in or being an objection / representation on an application. If so, councillor members would have to withdraw at a Council meeting and not take part in the Council's consideration of the planning application (although it is noted they could make representations on behalf of the RTP before doing so).

Members decided that the Standards Commission's response to the consultation should be to recommend option 1) but to highlight the difficulties identified, as outlined above. The Standards Commission's response should also provide reasoning as to why it did not recommend options 2) and 3) be adopted.

Members further agreed that the response should indicate that the Standards Commission considered extending the amendment to all other public bodies would dilute the Code and could erode public confidence in the statutory decision-making processes of a Council.

In addition, Members agreed that the Standards Commission should advise the Scottish Government that while it understood there were currently no plans for it to undertake a further review of the Code, the Standards Commission would urge it to do so. The Scottish Government should be provided with the list of issues the Standards Commission had identified, in conjunction with its stakeholders, in respect of the current provisions in the Code and suggestions on the amendments that could be made to resolve these. The Standards Commission should urge the Scottish Government to consider undertaking a further review of the Code in order to resolve the issues identified and should advise the Scottish Government that it

Executive

	would be pleased to assist with any such review and related consultation process.	Team
8.	<p>Review of the Hearing Process Guidance & Rules 2016 version 1.02 Members agreed minor changes to the Rules, which included removing a reference to the CESPLS being allowed to question witnesses or the Respondent at the mitigation stage and also providing clarification that the Standards Commission would not pay for the cost of a party's representative.</p> <p>Members asked the Executive Team to make the agreed amendments and to then publish and circulate the revised version.</p>	Executive Team
9.	<p>Abbreviated Hearing Process Members agreed, with immediate effect, an Abbreviated Hearing Process, which was to be used in circumstances where there was little or no dispute between the parties as to the factual circumstances behind the alleged breach of either the Councillors' or Public Body's Code of Conduct in order to ensure Hearings were conducted in the most efficient manner. Members agreed the Abbreviated Hearing Process should only be used where there was agreement to do so from the Hearing Panel and both parties.</p> <p>Members agreed proposed changes to the Hearing Rules to accommodate and refer to the Abbreviated Hearing Process. The Abbreviated Hearing Process should be finalised and published on the website.</p>	Executive Team
10.	<p>Annual Review of Decisions taken under Section 16 of the 2000 Act Members agreed the annual review of the decisions taken to date in 2016/17 under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 would be undertaken at the next meeting on 28 March 2017.</p>	
11.	<p>Membership of Audit & Risk and Human Resources Committees Following the appointment of Mr Dunion as Convener and the appointments of Mr McCormick and Mrs Stewart, Members agreed to co-opt Mr McCormick as a member for the Human Resources Committee, which was next due to meet on 28 March 2017. Members agreed they would review the composition of the Audit & Risk and Human Resources Committees when Mrs Stewart commenced in post on 1 April 2017.</p>	
12.	<p>Members' Contribution to Key Principles Subject to a few amendments, Members agreed the summary of their contribution to the key principles to be included in the Annual Report for 2016 / 2017.</p>	
13.	<p>Members Performance Review Members agreed that a standard form should be prepared for Members to complete in advance of their individual annual performance reviews. The form should enable self-assessment in terms of what was expected of them in the role and enable them to identify what they considered they had done well and where improvements could be made. It should also facilitate a discussion on what was expected of them going forward, their working relationships with other Members and any areas where they required further development or support. Members noted a similar format had been used in the past and asked that the Executive Team to locate and forward this to the Convener so that it could be adapted as appropriate and circulated.</p>	Executive Team / Convener
CASES UPDATE		
14.	<p>NOTES OF DECISION/CASES NOT PURSUED & SECTION 14 NOTIFICATION LETTERS Members reviewed six cases published by the CESPLS on his website following completion of his investigation.</p>	

<p>15.</p>	<p>BREACH REPORTS AND HEARINGS UPDATE</p> <p>NB/SFRS/1919: Mr Neil Pirie formerly of the Scottish Fire & Rescue Service. Members noted a pre-Hearing meeting had been held on 31 January 2017 and the Hearing was scheduled to take place on 1 March 2017.</p> <p>LA/PK/1948: Councillor Kathleen Howie of Perth & Kinross Council. Members noted the CESPLS had withdrawn his report as he had realised it contained a material error. Members noted that the Standards Commission had decided, in the particular circumstances of the case, not to proceed with the Hearing. A notice to that effect had been put on the website and the parties and local press had been notified.</p> <p>c) LA/NL/1940: Councillor Rosa Zambonini of North Lanarkshire Council. Members noted the Hearing had been scheduled to take place on 6 April 2017. Members noted that the Respondent's representative had submitted a response advising that the Respondent admitted a breach of the Councillors' Code of Conduct and requesting that the Hearing be held in private. The Hearing Panel agreed that given a breach was admitted, there was no need to hold the part of the Hearing relating to that decision in private. However, it agreed that should a breach be determined, the mitigation part of the hearing would be held in private.</p> <p>d) LA/E/1737 & 1751: Councillors Jeremy Balfour and Cameron Rose of Edinburgh City Council. Members reviewed the report from the CESPLS along with the Standards Commission's Section 16 Policy. Members noted that the complaints concerned alleged breaches of provision in the Councillors' Code of Conduct that required councillors to treat officers with respect. Members considered a key aim of the Councillors' Code of Conduct was to ensure there was mutual trust and respect in relationships between councillors and officers to enable councils to function effectively and to help maintain public confidence in local government. Members determined that, in order to ensure provisions of the Code were promoted, it was in the public interest and proportionate to hold a Hearing.</p> <p>e) LA/WL/1824: Councillor Angela Moohan of West Lothian Council. Members reviewed the report from the CESPLS along with the Standards Commission's Section 16 Policy. Members noted that the complaint concerned a failure to comply with the provisions in the Councillors' Code of Conduct in relation to the registration and declaration of interests. Members considered these provisions were a fundamental requirement of the Councillors' Code of Conduct as it ensured transparency in the decision-making process. Members determined that, in order to ensure provisions of the Code were promoted, it was in the public interest and proportionate to hold a Hearing.</p>	
AOB		
<p>16.</p>	<p>2016/17 & 2017/18 DIARY DATES/MEETINGS</p> <p>Members reviewed the schedule and planned activities.</p> <p>DATE OF NEXT MEETING</p> <p>The Standards Commission will next meet on Tuesday, 28 March 2017.</p>	