

MINUTES

Meeting date: Monday 17 December 2018

IN ATTENDANCE

- Kevin Dunion (Convener)
- Lindsey Gallanders
- Michael McCormick
- Tricia Stewart
- Paul Walker
- Lorna Johnston (Executive Director)
- Elaine McLean (Business Manager)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES There were no apologies.</p> <p>DECLARATIONS OF INTEREST No declarations of interest were made.</p>	
2.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and approved the minutes of the meeting on 5 November 2018.</p>	
3.	<p>MATTERS ARISING Members noted that all matters arising were either complete or were due to be discussed under the main agenda.</p>	
STRATEGIC MATTERS		
4.	<p>OUTREACH AND PROMOTION WORK Members agreed that external support should be sought on a project by project basis to assist the Standards Commission in proactively communicating about any high-profile Hearings; the key messages contained in its 2018/19 Annual Report; and any initiatives it was undertaking to support improvements to the ethical standards framework and the Codes of Conduct. Members agreed that the Executive Director should approach a public relations company and seek assistance with how to disseminate the main points and messages arising from the responses to the Standards Commission's survey of Members of Devolved Public Bodies.</p>	Executive Director
5.	<p>REMIT IN RESPECT OF INQUIRY / RESEARCH WORK Members noted that Section 8 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act) states that the Standards Commission's functions are: (a) those functions given to it by the Act; and (b) any others relating to the conduct of councillors and members of devolved public bodies given to it by order made by Ministers. Section 6 of the Act gives the Standards Commission the power to issue guidance to councils and devolved public bodies and Part 2 of the Act provides that the Standards Commission can adjudicate on alleged breaches of the Codes of Conduct and apply sanctions</p> <p>Members noted that, as such, there appeared to be no provision in the Act to allow the Standards Commission to conduct broader research or inquiries, similar to the work the Committee on Standards in Public Life in England undertook in relation to issues concerning the standards of conduct of all public office holders in England. Members</p>	

	<p>noted that the Standards Commission had no current plans to undertake any such work, but agreed it was useful to know a Ministerial Order could be requested should there be any suggestion that efforts be made to extend the Standards Commission's remit in that regard in the future.</p>	
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BUSINESS MATTERS		
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<p>6.</p>	<p>COMMUNICATIONS:</p> <p>a) Audit Scotland approach in Best Value Reports Members noted that a comment had been made at the Standards Commission's Monitoring Officers' workshop on 5 November 2018 to the effect that Audit Scotland took a stricter approach in its best value reports in respect of when elected members appointed to Arms' Length External Organisations (ALEOs) should declare interests as compared to that taken by the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS) and the Standards Commission. Members noted that the Executive Director had investigated the matter further and considered the suggestion was linked to a statement in Audit Scotland's 'ALEOs: are you getting it right report', that indicated that any councillor who makes funding decisions affecting an ALEO should not be a board member of the ALEO. Members indicated, however, that they shared the same view on this matter as Audit Scotland (as did the CESPLS) and did not, therefore, have concerns that there was any difference in approach between the organisations.</p> <p>b) Perth Training Event Mrs Gallanders and Mr Walker advised that the regional training event on the Councillors' Code of Conduct held in Perth on 14 November 2018 had been well attended, with elected members and officers present. Mrs Gallanders and Mr Walker advised that the illustrations and case examples used in the standard presentation were helpful as they encouraged attendees to participate, but suggested that some of the detail on the application of Article 10 of the European Convention on Human Rights be removed to avoid confusion and replaced with some of the key learning points from the Standards Commission's Advice Note on the subject.</p> <p>c) New Member Recruitment update Members noted that a closing date of 4 December 2018 had been set by the Scottish Parliamentary Corporate Body (SPCB) for applications for in respect of the Standards Commission Member vacancy. Members further noted that the sifting of applications received was due to take place on 18 December 2018, with interviews provisionally scheduled for 21 January 2019.</p> <p>d) Scottish Government's Governance Hub update Mr Walker advised that he had attended a launch event on 20 November 2018 for the Scottish Government's new Governance Hub for members of devolved public bodies. Mr Walker shared the feedback he had provided on the section on the ethical standards framework and advised that the Scottish Government had confirmed they would amend the section accordingly in light of his suggestions.</p> <p>Members asked the Executive Director to keep them updated with the work being undertaken on the Governance Hub and to circulate a link to the section on the ethical standards framework when it was finalised.</p> <p>e) Sanctions Decisions Members agreed that in order to ensure the extent of any the sanction applied at Hearings was as clear as possible, reference should be made in the written determination to the full subsection of Section 19 of the Ethical Standards in Public Life (Scotland) Act 2000 (the Act) under which the decision had been made.</p> <p>Members further noted that Section 19(8) of the Act provided that the Standards Commission should, after consulting such association of local authorities and any such</p>	<p>Executive Team</p>
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	<p>other bodies or persons as it thinks fit, issue guidance to councils on the extent to which a councillor should engage in activities (other than attendance at Council meetings and committee meetings) which are, or may be perceived to be, the activities of a councillor during a period of suspension. Members noted that such activities could involve representing the Council at events. Members agreed that while a period of suspension should not preclude a councillor from holding surgeries with constituents in their ward, it may not be appropriate for them to be able to engage in certain other normal Council related activities. Members agreed that the Executive Director should research what these activities might be so that draft guidance could be produced and issued to COSLA and any other relevant stakeholders for consultation.</p> <p>f) Meeting with Scottish Government on the Codes of Conduct The Executive Director advised that she and the CESPLS had attended a meeting with officers from the Public Bodies Unit and Local Government & Analytical Services Division of the Scottish Government to discuss whether it was appropriate to undertake full reviews of both the Councillors' and Model Codes of Conduct. The Executive Director reported that the Scottish Government were keen to undertake reviews of both Codes and intended to seek Ministerial approval to do so. The Scottish Government had invited both the CESPLS and Standards Commission to be part of a Working Group it was intending to establish to progress any agreed review of the Codes. The intention would be for the Working Group to agree potential changes to the Codes before the Scottish Government then undertook a public consultation on the proposed amendments.</p> <p>Members asked that Executive Director keep them updated on any progress in respect of the potential reviews.</p>	Executive Director
7.	<p>DECEMBER STANDARDS UPDATE Members reviewed and agreed the content of the December 2018 Standards Update (Professional Briefing). Members agreed that the update should be issued and published at the end of the month.</p>	Executive Team
8.	<p>SURVEY OF MEMBERS OF DEVOLVED PUBLIC BODIES Members considered a detailed analysis of the responses to, and potential links between, certain questions posed in the survey issued by the Standards Commission to Members of Devolved Public Bodies in late August 2018, prepared by the Executive Team. Members agreed that the detailed analysis should be published with the key findings added to the existing executive summary and report. Members further agreed that, in order to be as transparent as possible, the tables in the detailed analysis document should be amended before the document was published so that the headings were clear and that the numbers of respondees were included (in addition to the percentage of respondees).</p> <p>Members agreed that the Executive Director should discuss the survey responses and key findings (including the ones concerning the culture within types of Devolved Public Bodies, respondees' experiences of disrespectful behaviour and the links between training and potential compliance and awareness of the Codes), with the public relations company being approached to undertake outreach work. The Executive Director should seek advice and proposals from the public relations company on the best way of disseminating the key messages and findings of the survey to policy-makers and the wider public.</p>	Executive Director
9.	<p>APPEAL ON DECISION LA/Fi/2050 Members noted that the decision on the appeal heard by the Sheriff Principal on 13 August 2018 had still not been issued.</p>	
10.	<p>SUGGESTIONS FROM MONITORING OFFICERS' WORKSHOP Members reviewed a document summarising comments and suggestions made at the workshop the Standards Commission's Monitoring Officers' Workshop on 5 November 2018. Members noted that several suggestions had been made in respect of improving the content of the Councillors' Code of Conduct and the training of elected members on</p>	

	<p>the ethical standards framework. Members agreed that these should be passed to the Scottish Government when it commenced its forthcoming review of the Code. Members agreed that if any of the suggestions were not taken forward as part of the review, the Standards Commission would consider whether its Guidance on the Code should be amended to include or refer to them.</p> <p>Members noted the suggestion that the points made in the Standards Commission’s Advice Note for Councillors on Distinguishing between Strategic and Operational Matters, about the extent to which elected members can assist constituents, be extrapolated on to cards that elected members could hand out at surgeries to help them manage their constituents’ expectations and raise awareness that agreeing to take certain actions could lead them to be in breach of the Councillors’ Code of Conduct. Subject to some minor changes, Members approved the content of a draft Assisting Constituent’s card prepared by the Executive Team. Members noted that an elected member of South Lanarkshire Council had offered to circulate any draft card produced to his colleagues so that their views on the content and format could be sought. Members agreed that the Executive Team should proceed to take the elected member up on this offer and should also send the draft card to SOLAR representatives so that external views on the content and format were obtained before the card was finalised and disseminated.</p> <p>Members agreed some suggested changes to the Standards Commission’s Guidance on the Councillors’ Code of Conduct; namely to state that repeating or purporting to repeat criticisms of officers publicly, albeit by quoting an external source, could potentially amount to a breach of the Code and to reiterate that bullying and harassment could take the form of either a pattern of behaviour or a one off serious incident. Members also agreed to the addition of further illustrations based on Hearings held to date in 2018/19.</p> <p>Members noted that a suggestion had been made that contact be made with trade unions to ensure they were aware of the existence / extent of the complaints process and that they could, therefore, assist officers in making complaints if need be. Members agreed that the best way to do this would be to suggest to the Scottish Government that a trade union representative be invited to join the working group established to progress any agreed review of the Codes of Conduct.</p> <p>Members noted that other suggestions had been made but agreed that these could or would not be taken forward. Members asked the Executive Team to prepare a paper outlining all the suggestions and explaining the actions taken or reasons as to why certain ones could or would not be progressed, for circulation before the next Monitoring Officers’ Workshop.</p>	<p>Executive Director</p> <p>Executive Team</p> <p>Executive Team</p> <p>Executive Director</p> <p>Executive Team</p>
<p>11.</p>	<p>PROCEDURES IN RESPECT OF REQUESTS FOR HEARINGS TO BE HELD WHOLLY OR PARTLY IN PRIVATE</p> <p>Members agreed the contents of a document outlining the information a Hearing Panel would require, and the types of factors if would consider in order to determine whether or not to accede to a request made under paragraphs 3.22 and 3.23 of the Hearing Rules to hold a Hearing or part of a Hearing in private; and the procedures to be followed after a such a request was granted.</p> <p>Members asked that the document be finalised, published and sent to the CESPLS.</p>	<p>Executive Team</p>
<p>12.</p>	<p>ANNUAL POLICY REVIEWS:</p> <p>a) Risk Management Policy</p> <p>Members undertook their annual review of the Risk Management Policy and approved the minor changes suggested by the Executive Team.</p> <p>b) Records Management Plan</p>	

	Members noted the annual review of the Records Management policy had been undertaken and that the Keeper of the Records of Scotland had been notified of amendments made, in line with the Progress Update Review procedure.	
13.	PROGRAMME FOR STANDARDS OFFICERS' WORKSHOP Members approved the content of the draft programme for the Standards Officers' Workshop to be held in Glasgow on 25 March 2019. Members agreed that this should be issued to Standards Officers along with an invitation to attend the event.	Executive Team
14.	ADVICE NOTE ON THE ROLE OF THE MONITORING OFFICER Members noted that a suggestion had been made at the Monitoring Officers' workshop on 5 November 2018 that the Standards Commission produce an Advice Note on the Role of the Monitoring Officer in respect of the Ethical Standards Framework, similar to the one it has produced in respect of Standards Officers of Devolved Public Bodies. Members agreed that such an Advice Note would help Monitoring Officers to understand the role they will be expected to fulfil and the duties they may be asked to undertake. Members agreed the content of a draft Advice Note prepared by the Executive Team and asked that a final version be issued to Monitoring Officers and published on the Standards Commission's website. Members advised, however, that they considered the suggestion had been for the Advice Note to be aimed at elected members to assist them to understand the role of the Monitoring Officer in respect of the Ethical Standards Framework, including the fact that Monitoring Officers were expected to provide them with advice to help them comply with the provisions in the Councillors' Code of Conduct. Members asked, therefore, that an analogous Advice Note also be produced for elected members on the role of a Monitoring Officer. Such an Advice Note should also be published and disseminated.	Executive Team Executive Team
15.	HEARING RULES 2018 Members agreed changes to paragraphs 5.4, 5.6 and 5.10 of the Standards Commission's Hearing Rules 2018 v1.1 that clarified the position in terms of the parties be entitled to choose how they presented their case (in terms of whether they make submissions before or after calling witnesses), and could also decide whether they wish to sum up their case when all evidence has been heard (rather than it being a requirement for them to do so). Members asked the Executive Team to publish the amended Rules.	Executive Team
CASES UPDATE		
16.	NOTES OF DECISION OF NO BREACH & SECTION 14 LETTERS Members noted the terms of a non-breach report issued by the CESPLS about a member of a devolved public body. Members further noted two non-breach reports issued by the CESPLS concerning elected members of North Lanarkshire and Clackmannanshire Councils respectively. Members expressed surprise that the decision in both cases had been that a breach of the Councillors' Code of Conduct had not been established. Members considered the decisions in both were finely balanced and, as such, considered that they should have been referred to the Standards Commission under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act) so that all relevant evidence could be tested, and case law considered, at a Hearing Members noted the letters issued by the CESPLS under Section 14 of the Act advising that he had issued draft breach reports to three Midlothian councillors, one Dundee councillor and one Aberdeenshire councillor.	
17.	BREACH REPORTS HEARING AND POST HEARING UPDATES a) LA/An/2094: Councillor Richard Moore of Angus Council. Members noted that a Hearing had been held on 19 November 2018, at which Councillor Moore was found to have breached the Code and was suspended for three months.	

	<p>b) LA/AB/2125: Councillor Gary Mulvaney of Argyll and Bute Council. Members noted a pre-Hearing meeting had been held on 14 December 2018, with the Hearing scheduled to take place on 18 January 2019.</p> <p>c) LA/AN/2134: Council Brian Boyd of Angus Council. Members noted that they had agreed it was in the public interest and proportionate to hold a Hearing and that one had been scheduled for 20 February 2019.</p>	
AOB		
<p>18.</p>	<p>AGENDA ITEMS FOR NEXT MEETING Members agreed to advise the Executive Director of any items they wished included in the agenda for discuss at the next meeting.</p> <p>SCOTTISH PARLIAMENT’S JOINT WORKING GROUP’S REPORT ON SEXUAL HARASSMENT Members noted that the Parliament’s Joint Working Group on Sexual Harassment and reported to the SPCB on its plans to achieve a culture of respect at Holyrood. Members noted the contents of the tabled report of the Working Group and the recommendations that all complaints about MSPs be investigated by the CESPLS and that the one-year time limit for the submission of any such complaints be removed. Members further noted that the SPCB were consulting on the proposals, with any responses to be submitted by 31 January 2019.</p> <p>Members agreed to read the report in full before holding further discussions about whether the Standards Commission wished to respond to the consultation.</p>	
<p>19.</p>	<p>SUGGESTED 2019 /2020 DIARY DATES – MEETING SCHEDULE Members noted the suggested dates for Standards Commission meetings in 2019/20 and confirmed they would advise the Executive Team if they wished to change any of these.</p>	
<p>20.</p>	<p>FOR INFORMATION 2018 WORKPLAN Members noted the planned activities.</p> <p>DATE OF NEXT MEETING Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 28 January 2019.</p>	