

# MINUTES

*Meeting date: Monday 24 June 2019*

## IN ATTENDANCE

- Kevin Dunion (Convener)
- Ashleigh Dunn
- Michael McCormick
- Tricia Stewart
- Paul Walker
- Lorna Johnston (Executive Director)

ITEM	CONTENT	ACTION
<b>STANDING ITEMS</b>		
1.	<p><b>APOLOGIES</b> Apologies were received from the Business Manager.</p> <p><b>DECLARATIONS OF INTEREST</b> No declarations of interest were made.</p>	
2.	<p><b>DRAFT MINUTE OF PREVIOUS MEETING</b> Members reviewed and, subject to a minor amendment to the wording of item 10, approved the minutes of the meeting on 28 May 2019.</p>	
3.	<p><b>MATTERS ARISING</b> Members noted that all matters arising were either complete or were due to be discussed under the main agenda.</p>	
<b>STRATEGIC MATTERS</b>		
4.	<p><b>OUTREACH AND PROMOTION WORK</b> Mr Dunion advised that he and the Executive Director were due to attend a meeting with the Scottish Government that afternoon to discuss the outcome of the Standards Commission's survey of members of devolved public bodies and, specifically, the culture within Health Boards and Health and Social Care Integration Joint Boards, and between board members, to ensure that any bullying and harassment did not go unchecked or unreported. Mr Dunion noted that he would indicate that the Standards Commission would be willing to have a role in any future training or induction of board members. Mr Dunion confirmed that he would keep Members updated on the discussions and any agreed actions arising from the meeting.</p> <p>Mr Dunion advised that he and the Executive Director would shortly be meeting to discuss preparing a scoping paper for the conference that the Standards Commission intends to hold in respect of ethics and integrity in public life. Members agreed that such a conference would increase awareness of the ethical standards framework and the role and remit of the Standards Commission. Mr Dunion advised that a scoping paper would also be prepared for the programme for the Standards Commission's development and strategic planning day.</p> <p>The Executive Director confirmed that 19 September 2019 had been set aside for the development and strategic planning day. An external facilitator had been contracted to assist with discussions to ensure that Members challenged themselves and took the time to check that they were making effective contributions to the conversation.</p>	<p><b>Mr Dunion</b></p> <p><b>Executive Director</b></p>

	<p>Members agreed they would use the day to scan the environment in which the Standards Commission operated so that they could then undertake a proper analysis for the likely impact of any work and projects to enable it to identify what the organisation's strategic priorities should be. This would include reviewing how the Standards Commission's aims fit in with the revised National Performance Framework. Members further agreed that the outputs of the day should be that they:</p> <ol style="list-style-type: none"> <li>1. Undertook horizon scanning to identify and articulate any developments that might impact on the Standards Commission's strategic planning;</li> <li>2. Identified all key opportunities and risks and prioritised the strategic aims and work;</li> <li>3. Developed as an effective team;</li> <li>4. Agreed a plan for taking forward the development of the Strategic Plan (including timescales and responsibilities); and</li> <li>5. Took the time to reflect on how they worked together and their individual contributions to the day.</li> </ol> <p>Members noted that Mr Dunion and Mrs Stewart were due to meet the external facilitator on 2 July 2019 to discuss how these outputs could be achieved.</p> <p><b>SECTION 16 OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000</b></p> <p>Members noted that the Executive Director had written to Officeholders' Services of the Parliamentary corporation and the Ethical Standards Commissioner (ESC) seeking their support for the proposal to amend Section 16 of the Ethical Standards in Public Life Etc. (Scotland) Act 2000, to give the Standards Commission a further option on receipt of a report. Members noted that Officeholders' Services had agreed to put the Standards Commission's proposal and a paper outlining the reasoning behind it to the Parliamentary Corporate Body (SPCB) to seek its support. Officeholders' Services had advised that if such support was forthcoming, then the SPCB would contact the Cabinet Secretary for Finance, Economy and Fair Work on both it and the Standards Commission's behalf asking for amendment to be considered. Members asked the Executive Director to keep them updated on any progress in respect of this.</p>	<p><b>Executive Director</b></p>
<p><b>BUSINESS MATTERS</b></p>		
<p><b>5.</b></p>	<p><b>COMMUNICATIONS:</b></p> <p>Members were advised that the Standards Commission was to be given access to the Scottish Parliament's Microsoft SharePoint document management system. Members noted that the system enabled the safe sharing of documents as it removed the need for documents to be sent as attachments to emails, and it further enabled effective version control of documents. Members noted that the Parliament's Business and Information Technology Team had agreed to provide training when the Standards Commission's staff and members were given access to the system and asked that they be kept updated on any progress in respect of this (including about how any password access operated).</p> <p>Members were further advised that a Members' enquiry inbox had been established and that business cards noting this address would be issued shortly.</p>	<p><b>Business Manager</b></p> <p><b>Business Manager</b></p>
<p><b>6.</b></p>	<p><b>APPEAL ON DECISION LA/Fi/2050</b></p> <p>Members noted that the decision on the appeal heard by the Sheriff Principal on 13 August 2018 had still not been issued. Members noted that the Standards Commission's legal advisers had again made enquiries as to when the decision was likely to be finalised, given that they had previously been advised by the Sheriff Principal's Clerk that work was currently being done on the judgment, with a view to it being issued by the middle of May. Members were disappointed to note that the legal advisers had now been told that the decision would not be issued before August 2019 as the Sheriff Principal had been fully committed on other judicial business.</p>	
<p><b>7.</b></p>	<p><b>SECTION 19 SANCTIONS POLICY</b></p> <p>Members undertook a review the Section 19 Sanctions Policy, which outlined the factors the Standards Commission may consider when making a determination at a</p>	

	<p>Hearing on any sanction to be imposed under Section 19 of the Ethical Standards in Public Life Etc. (Scotland) Act 2000. Members agreed the amendments proposed by the Executive Team, which mainly concerned the inclusion of references to the Standards Commission's Interim Suspension Policy and Section 19(6) Policy, both of which were developed after the last review. Members further agreed that, while the Standards Commission was seeking to have amendments made to the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and the Health Boards (Membership and Procedure) (Scotland) Amendment Regulations 2016 (see item 10 below), reference to both should be made in the Policy to them in the interim. Members further agreed that the Policy should be reviewed on an annual basis.</p> <p>Members asked that the amended Section 19 Sanctions Policy be circulated and published on the website.</p>	<b>Executive Team</b>
<b>8.</b>	<p><b>DRAFT SECTIONS 1, 3 AND 6 OF ANNUAL REPORT 2018/19</b></p> <p>Members agreed the proposed contents of Sections 1, 3 and 6 of the Annual Report for 2018/19; being the Executive Report, Performance Summary and Governance &amp; Financial Overview, respectively.</p>	<b>Executive Director</b>
<b>9.</b>	<p><b>PRESS RELEASE TEMPLATE</b></p> <p>Members discussed the format of a template press release to be issued to the media following the conclusion of a Hearing. Members agreed that more work could be done on this to ensure it was in plain English and that it contained, in the first two paragraphs, the outcome of the Hearing and a concise summary of the findings and key matters that had been considered. Members agreed that the third paragraph should be a quote from the Chair covering the key learning point or message that the Panel wished to convey.</p> <p>Members decided that, in order to ensure that a press release could be prepared and issued as quickly as possible following the conclusion of a Hearing, a draft should be prepared and sent to the Chair for approval in advance outlining the key matters to be considered and all potential outcomes. The press release could then be amended to reflect the decisions reached at the Hearing and any key evidence led and submissions made.</p>	<b>Executive Director</b>
<b>10.</b>	<p><b>THE PUBLIC BODIES (JOINT WORKING) (INTEGRATION JOINT BOARDS) (SCOTLAND) ORDER 2014 &amp; THE HEALTH BOARDS (MEMBERSHIP AND PROCEDURE) (SCOTLAND) AMENDMENT REGULATIONS 2016</b></p> <p>Members noted that, following their online discussions, the Convener had sent a letter to the Cabinet Secretary for Health and Sport asking for her support in seeking to have provision 8(e) of the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014 and provision 2(5)(j) of the Health Boards (Membership and Procedure) (Scotland) Amendment Regulations 2016 removed. Members noted this was because the provisions stated that an individual would be disqualified from being a member of a health and social care integration joint board (IJB) or a health board if they had been subject to a sanction under section 19(1)(b) to (e) of the Ethical Standards in Public Life etc. (Scotland) Act 2000. This meant that if the Standards Commission, at a Hearing, imposed any sanction, other than a censure, under Section 19 of the 2000 Act for a breach of a Code of Conduct, the individual concerned would be disqualified from being a member of any health board or an IJB.</p> <p>Members noted that while they understood the Government wished to ensure that individuals who do not meet certain standards were barred from being members of both types of bodies, nevertheless the provisions were disproportionate and potentially unfair. This was because the disqualification would automatically occur where the Standards Commission had imposed a short suspension on an individual for breaching a Code of Conduct on a matter entirely unrelated to their suitability to be a member of a health board or an IJB. In addition, the provisions in the Order and Regulations could</p>	

	<p>potentially have a more significant and disproportionate impact on small local authorities, which have fewer councillors to appoint or nominate for membership or proxy membership of health boards and IJBs.</p> <p>Members were also concerned that the provisions in the Order and Regulations fettered the Standards Commission’s discretion, under Section 19 of the 2000 Act, in respect of any Respondents before it from a health board or IJB as, in essence, it would not be able to suspend them, given that any sanction other than a censure would result in automatic disqualification from the health board or IJB in question. So, whilst a breach such as failing to declare an interest might result in a Councillor or a member of another public authority being suspended for a period of a month or so, a similar outcome would in effect result in disqualification if the case involved a Respondent from a health board or IJB.</p> <p>Members did not consider that it would be fair for a Hearing Panel to take the consequence of the provisions into account when determining any sanction to be applied under Section 19, as doing so could result in a situation where a Respondent who was a member of a health board or an IJB only being censured (to prevent them from being disqualified), whereas a Respondent who was not might receive a suspension.</p> <p>Members further noted that Section 19 of the 2000 Act already gave a Hearing Panel the power to suspend or disqualify a Respondent from another public body (which would include a health board or health and social care integration joint board), if it deemed it appropriate to do so.</p> <p>Members noted that the letter had outlined and reflected their concerns, as discussed. Members asked to be kept updated on any response received or further action taken. Members agreed that, in the meantime, the Executive Director should contact all Monitoring Officers to ensure that they were aware of the provisions and could alert any current elected members who had been, or were, the subject of a suspension that, as a result, they were disqualified from being members of any health board or IJB.</p>	<p><b>Executive Director</b></p>
<p><b>11.</b></p>	<p><b>HUMAN RESOURCES COMMITTEE</b></p> <p>Members noted the verbal report provided by Mrs Stewart, the Chair of the Human Resources Committee, and the draft minutes of the Committee meeting on 10 June 2019. Members agreed to amend the Human Resources Committee’s Terms of Reference in line with its recommendations.</p> <p>Members further noted the contents of key-person dependency risk analysis prepared for, and reviewed by, the Committee at its meeting on 10 June 2019. In addition, Members noted that Committee’s activities during the 2018/19 operational year included:</p> <ul style="list-style-type: none"> <li>• Evaluating the Administrative Assistant role and assisting with the recruitment exercise undertaken.</li> <li>• Reviewing the performance management and development requirements of staff.</li> <li>• Overseeing attendance of staff.</li> <li>• Reviewing staff job descriptions.</li> <li>• Reviewing the key-person dependency risk analysis</li> <li>• Considering and recommending arrangements for the Members’ Development and Strategic Planning day.</li> </ul>	<p><b>Executive Team</b></p>
<p><b>12.</b></p>	<p><b>HEARING RULES &amp; PROCESS 2019 V1.0</b></p> <p>Members reviewed and agreed a suggested amendment to paragraph 3.17 and the addition of new paragraph 3.18, of the Hearing Rules 2019 v1.0, which were intended to make it clear that any productions submitted less than seven days before a Hearing would not necessarily be accepted and included in the bundle for consideration by the</p>	

	Panel. Members asked that the Rules be changed accordingly, with the amended version then being sent to the ESC and published on the website.	<b>Executive Team</b>
<b>CASES UPDATE</b>		
<b>13.</b>	<b>NOTES OF DECISION OF NO BREACH &amp; SECTION 14 LETTERS</b> Members noted that no Section 14 letters or non-breach reports had been issued by the ESC since the last meeting.	
<b>14.</b>	<b>BREACH REPORTS HEARING AND POST HEARING UPDATES</b> <b>a) LA/Mi/2166 &amp; 2169:</b> Members noted that the Hearing in respect of Councillor Cassidy was scheduled to take place on 10 July 2019.  <b>b) LA/Fi/2176:</b> Councillor Linda Holt of Fife Council. Members noted that the Hearing was due to take place on 25 June 2019.	
<b>15.</b>	<b>FEEDBACK AND HEARINGS SURVEY RESPONSES</b> Members noted that the current delays in completing investigative work being experienced by the ESC, as a result of her not having a full staff complement, would have a detrimental impact on the overall length of time a complaint was dealt with under the ethical standards framework and that this, in turn, could have an adverse impact on the Standards Commission's reputation. Members were concerned that it could have an impact on the Standards Commission's resources if the Executive Team was receiving queries and complaints about the ESC's work and timescales. Members noted that the matter had been raised with the ESC at the joint meeting earlier that day and asked the Executive Director to kept them apprised of the situation.	<b>Executive Director</b>
<b>AOB</b>		
<b>14.</b>	<b>'ON BOARD' TRAINING</b> Mrs Stewart and Mr Walker provided feedback on the 'On Board' training they had recently attended and advised that it was not clear whether this would have included a mention of the ethical standards framework had they not raised it as a discussion topic. Members asked the Executive Team to contact the organisers to see whether the Standards Commission could provide content for inclusion in future events.  <b>HEARING PANEL TRAINING</b> Members agreed that it would be useful to include, in any refresher training on conducting Hearings, pointers on how to ensure that Hearings remained relatively informal and focused on establishing whether a breach of a Code had occurred. Members were concerned that without proper management there was a risk that they could easily become more like a tribunal or Court if parties and, in particular, any legal representatives, were permitted to continually raise points of law and objections.  <b>AGENDA ITEMS FOR NEXT MEETING</b> Members agreed to advise the Executive Director of any items they wished included in the agenda for discussion at the next meeting.  <b>DRAFT SECTION 19(8) GUIDANCE</b> Members noted that the Executive Team had sent COSLA the draft Section 19(8) Guidance to Councils on the extent to which a councillor should engage in activities which are, or could be perceived to be, the activities of a councillor during a period of suspension for comment. Members noted that COSLA had advised that its Leadership Sounding Board had considered the draft Guidance at a meeting during the week commencing 10 June 2017 and had asked that they be given more time to consider it so that it could be reviewed by them at the same time they reviewed the Councillors' Code of Conduct (during the forthcoming Scottish Government consultation). Members agreed that this seemed a sensible approach and that the Standards Commission should refrain from finalising and publishing the guidance in the meantime.	<b>Executive Team</b>

<b>16.</b>	<p><b>SUGGESTED 2019/2020 DIARY DATES – MEETING SCHEDULE</b> 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><b>2019 WORKPLAN</b> Members noted the planned activities.</p> <p><b>DATE OF NEXT MEETING</b> Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 29 July 2019.</p>	
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