

# MINUTES

*Meeting date: Monday 30 September 2019*

## IN ATTENDANCE

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

ITEM	CONTENT	ACTION
<b>STANDING ITEMS</b>		
1.	<p><b>APOLOGIES</b> There were no apologies.</p> <p><b>DECLARATIONS OF INTEREST</b> The Convener declared an interest in item 16c and left the room during the discussion on it.</p>	
2.	<p><b>DRAFT MINUTE OF PREVIOUS MEETING</b> Members reviewed and approved the minutes of the meeting on 29 July 2019.</p>	
3.	<p><b>MATTERS ARISING</b> Members noted that the Standards Commission's legal advisers' Account of Expenses in respect of work on appeal LA/Fi/2050 had been prepared and intimated to the Appellant's solicitors. Members noted that if the Appellant did not agree to pay it, the fees and expenses would be referred to the Auditor of Court for taxation. Members asked the Executive Director to keep them updated on any progress.</p> <p>Members noted that all other matters arising were either complete or were due to be discussed under the main agenda.</p>	<b>Executive Director</b>
<b>STRATEGIC MATTERS</b>		
4.	<p><b>STRATEGIC PLAN 2020/24</b> Members discussed the Standards Commission's vision statement and values, to be included in the draft Strategic Plan for 2020/24. Members agreed that the values of being fair, approachable and proactive reflected the behaviour expected of them and the Standards Commission as an entity. Members asked the Executive Director to draft an explanation of what each of these values meant, in the context of the Standards Commission's remit and decision-making, for further consideration.</p> <p><b>FRAMEWORK DOCUMENTS</b> Members reviewed and approved the following framework documents, which were intended to support the efficient administration of the relationship between the Standards Commission and the Scottish Parliamentary Corporate Body (SPCB):</p> <ul style="list-style-type: none"> <li>• Finance Manual</li> <li>• Contingency Protocol</li> <li>• Budget Process Memorandum of Understanding</li> </ul> <p>Members further reviewed and agreed the Framework Document itself. Members asked the Executive Director to ascertain whether the SPCB would be agreeable to</p>	<b>Executive Director</b>





	<p>devolved public bodies will comply with the Codes and will be held accountable if they fail to do so; and achieving a credible deterrence should a Hearing Panel do so where the conduct that was found to have been a breach was so egregious that a longer suspension would normally or otherwise be imposed.</p>	
<p><b>8.</b></p>	<p><b>HEARING RULES 2019 V1.1</b></p> <p>Members reviewed the Hearing Rules to ensure that they made provision for a situation where a Hearing Panel wished, for reasons of transparency, to advise parties of, and to seek representations on, any preliminary view it has in respect of whether there has been a breach of the relevant Code of Conduct and the reason it was considering reaching such a view, if it considers that it would be fair and appropriate to do so. Members noted the Executive Director’s advice that the current version of the Hearing Rules makes it clear at paragraph 5.1 that the Chair could change the procedure at the Hearing at his or her discretion to ensure that any issues before the Panel are determined in a just and fair manner. Members noted that the Executive Director had recommended, nevertheless, that in order to be as open as possible, the Hearing Rules should make explicit reference to the possibility that a Panel may advise the parties of any initial view it has and provide them with an opportunity to make comments on it (and even to submit an adjournment request) should they wish to do so, before a final decision on breach was made. Members agreed with this recommendation and asked that that a change to the Rules be made accordingly.</p> <p>Members further agreed that an amendment to the Rules be made to outline how the Standards Commission would deal with any relevant information or intelligence that emerged between receipt of the ESC’s report and a Hearing (if such information or intelligence had not previously been referred to in any productions or submissions lodged or made by either party). <b>See item 9 below.</b></p> <p>In addition, Members agreed that a provision should be added to the Rules to state that the Standards Commission could choose to send a full or redacted copy of the ESC’s report to a complainant following receipt of any request to do so, so the complainant could understand the extent of matters to be considered at the Hearing. Members noted that the report may have to be redacted before being sent to ensure any confidential information or personal data is not disclosed.</p> <p>Members agreed that once the amendments had been made, the revised version of the Rules should be circulated and published on the website.</p>	<p><b>Executive Team</b></p>
<p><b>9.</b></p>	<p><b>NEW CASE INFORMATION OR INTELLIGENCE</b></p> <p>Members discussed the options available to a Hearing Panel if any new and relevant information or intelligence came to light before, or at a Hearing, that had not been referred to in the ESC’s report or mentioned by the parties and / or was not covered in any submissions or any other productions that had been made or lodged. Members noted such information / intelligence could come from:</p> <ul style="list-style-type: none"> <li>• Any complainant or other interested party;</li> <li>• Media reports;</li> <li>• Enquiries made by Standards Commission staff or Members on behalf of a Hearing Panel.</li> </ul> <p>Members agreed that the Standards Commission could not prevent information from being sent by complainants or other interested parties, even though it does not ask them to do so. Members further agreed that it would be unreasonable and unrealistic to expect Hearing Panel Members to simply ignore any relevant intelligence that was provided or was already in the public domain (such as information in any media reports).</p> <p>In addition, Members noted that the Standards Commission may also wish to make enquiries, including seeking expert advice, if a Hearing Panel considered it appropriate</p>	

	<p>to do so. Members agreed that it would be appropriate for a Hearing Panel to take any such new information and intelligence into account, provided:</p> <ul style="list-style-type: none"> <li>• it was directly relevant to the question of whether there was a breach of the Code by the Respondent, in the circumstances that were the subject of the referral to the Standards Commission (as outlined in the ESC's report);</li> <li>• the parties were given sufficient notice that the Hearing Panel may do so, and were provided with copies of the new information and intelligence if it is in written form;</li> <li>• the parties were afforded the opportunity to comment on it either before (via any new productions) or at the Hearing before any decision on breach is made; and</li> <li>• the Panel ensures that an appropriate weight is given to it (for example, by taking into account whether there is any dispute about it, whether it has been tested etc.); and</li> <li>• that, where the Panel has in any way relied on the intelligence or information when making a decision on breach, reference is made to it (and the weight given to it) in the written decision.</li> </ul> <p>Members noted that the Standards Commission had the option, under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, on receipt of a report, to ask the ESC to undertake further investigation. Members agreed that the Standards Commission should choose this option at the outset if it considered there were any substantive omissions in respect of the contents of the ESC's report.</p>	
<b>10.</b>	<p><b>BUSINESS PLAN 2019/20 QUARTER TWO REVIEW</b></p> <p>Members undertook a review of progress in the year to date against the activities outlined in the Business Plan. Members were pleased to note there had been no significant slippages and that good progress was being made in respect of the objectives identified in the plan.</p>	<b>Executive Team</b>
<b>11.</b>	<p><b>FRAUD PREVENTION AND WHISTLEBLOWING POLICY REVIEW</b></p> <p>Members undertook their biennial review of the Standards Commission's Fraud Prevention and Whistleblowing Policy, which outlined formal reporting mechanisms if any wrongdoing or malpractice was suspected. Members agreed some minor typographical amendments and asked that, once these had been made, the revised Policy be circulated to all staff and Members, with a copy being provided to the SPCB for their information.</p>	<b>Executive Team</b>
<b>12.</b>	<p><b>DRAFT ADVICE NOTE FOR MEMBERS OF HEALTH AND SOCIAL CARE INTEGRATION JOINT BOARDS</b></p> <p>Members noted that the Executive Director had sent the draft Advice Note to the Chair of the Health and Social Care IJB Chairs and Vice Chairs Group and the Scottish Government. The Chair had advised that he would ask IJB Chairs and Vice Chairs Group to discuss it at their meeting on 13 September 2019 and provide feedback thereafter. Members noted that the Chair had indicated he considered that it would be helpful to include anonymised case examples or illustrations in the Advice Note and that he would ask the Group for suggestions on these. Members further noted that the Scottish Government had advised that it was pleased with the content of the Advice Note, had suggested topics for case examples to be included and had indicated that it was keen for it to be finalised and disseminated as soon as possible.</p> <p>Members agreed that once further suggestions for case examples had been received and included, the draft Advice Note should be finalised and issued.</p>	<b>Executive Director</b>
<b>13.</b>	<p><b>DRAFT PROGRAMME FOR MONITORING OFFICERS' WORKSHOP</b></p> <p>Subject to some amendments around timings, Members agreed the programme for the Monitoring Officers' Workshop on 4 November 2019 and asked that it be issued, along with an invitation to the event, to all Monitoring Officers and Members of the Working Group on the Review of the Codes of Conduct.</p>	<b>Executive Team</b>

14.	<p><b>RISK REGISTER 2019/20</b></p> <p>Members noted that the ESC had advised that a restructure she was undertaking, along with changes she was making to her office’s policies and procedures, was resulting in delays at the investigation stage. Members noted that the SCS had no control over the time take by the ESC to conduct investigations, given that her office is a separate and distinct organisation. Members considered, nevertheless, that any delays at investigation may have a significant impact on the SCS both in terms of its reputation and its ability to undertake its adjudicatory role. As such, Members agreed that it was appropriate to add a new risk concerning a potential loss of confidence that the Codes of Conduct would be enforced in an efficient manner, due to delays at the investigation stage, to the Standards Commission’s Risk Register.</p> <p>Members agreed that, in order to mitigate the risk, the Executive Director should continue to discuss the progress of investigations and ongoing workloads and targets with the ESC and her Senior Investigating Officer. The Executive Director should also offer to assist with training of any new investigation staff on Hearings and the SCS’s policies, procedures, Advice Notes and Guidance.</p>	Executive Director
<b>CASES UPDATE</b>		
15.	<p><b>NO BREACH DECISIONS BY THE ESC &amp; SECTION 14 LETTERS</b></p> <p>Members noted that, with the exception of the cases referred to under items 16a and 16b below, no Section 14 letters or non-breach reports had been issued by the ESC since the last meeting.</p>	
16.	<p><b>BREACH REPORTS HEARING AND POST HEARING UPDATES</b></p> <p><b>a) LA/WL/2213:</b> Councillor Frank Anderson of West Lothian Council: Members noted that a Hearing was scheduled to take place on 20 November 2019, with a pre-Hearing meeting arranged for 16 October 2019.</p> <p><b>b) LA/SB/2219:</b> Councillor James Fullarton of Scottish Borders Council: Members noted that a Hearing was scheduled to take place on 6 November 2019, with a pre-Hearing meeting arranged for 8 October 2019.</p> <p><b>c) LA/Fi/2176:</b> Councillor Linda Holt of Fife Council: Members noted that the Council had reviewed the Standards Commission’s decision in respect of the Hearing held on 25 June 2019 at its meeting on 26 September 2019.</p> <p><b>d) Interim Reports:</b> Councillor Colin Stewart and Callum Purves of Perth &amp; Kinross Council: Members noted that interim reports in respect of complaints about these councillors had been received from the ESC on 20 September 2019. The reports had been sent to the respective councillors on 23 September 2019 and they had been invited to submit any comments they wished to make, within five days, on the interim report and whether an interim suspension should be imposed. Members agreed to discuss the reports and any submissions received via a conference call on 2 October 2019. Decisions would be issued thereafter and published on the website.</p> <p>Members noted that information to the effect that any decision to impose or not impose an interim suspension should not be seen as a finding on the validity or otherwise of any allegations against the councillor concerned (nor should it be viewed as a disciplinary measure if imposed), should be reiterated in the decisions and on the website.</p>	
17.	<p><b>FEEDBACK AND HEARINGS SURVEY RESPONSES</b></p> <p>Members noted that no feedback or survey responses had been received since the last meeting.</p>	
<b>AOB</b>		

18.	<p><b>AGENDA ITEMS FOR NEXT MEETING</b></p> <p>Members agreed to advise the Executive Director of any matters they wished included in the agenda of the following meeting.</p>	
19.	<p><b>SOLAR CONFERENCE</b></p> <p>Members noted that the Convener was due to speak at the SOLAR Autumn Conference on 28 October 2019. The Convener indicated he intend to speak about current trends and issues regarding behaviours in public life and advised that he would circulate an outline of his presentation to Members beforehand.</p> <p><b>SUGGESTED 2019/2020 DIARY DATES – MEETING SCHEDULE</b></p> <p>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></p> <p>Members noted the planned activities.</p> <p><b>DATE OF NEXT MEETING</b></p> <p>Members noted that the next meeting of the Standards Commission was scheduled to take place on Tuesday, 29 October 2019.</p>	Convener