

MINUTES *Meeting date: Monday 16 December 2019*

IN ATTENDANCE

Members:

- Michael McCormick
- Tricia Stewart
- Paul Walker
- Ashleigh Dunn

Executive Team:

- Lorna Johnston (Executive Director)
- Elaine McLean (Business Manager)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES Apologies were received from the Convener, Professor Dunion. Mr McCormick chaired the meeting in Professor Dunion's absence.</p> <p>DECLARATIONS OF INTEREST Mrs Stewart declared an interest and took no part in the discussion on the interim suspension decision under item 15C of the agenda.</p>	
2.	<p>DRAFT MINUTE OF PREVIOUS MEETING Subject to one minor typographical amendment being made, Members reviewed and approved the minutes of the meeting on 29 October 2019.</p>	
3.	<p>MATTERS ARISING Members noted that all other matters arising were either complete or were due to be discussed under the main agenda.</p>	
STRATEGIC MATTERS		
4.	<p>STRATEGIC PLAN 2020/24 Members noted that the design of the Strategic Plan for 2020-24 had been finalised and that the draft plan had been published and issued for consultation on 26 November 2019. A copy had also been sent to the Scottish Parliamentary Corporate Body (SPCB) on 28 November 2019 for consideration at its meeting on 30 January 2020. Members asked to be kept updated on any responses to the consultation and noted that, to date, no comments on the draft plan had been received.</p> <p>Members suggested that a paragraph stating that the strategic aims detailed how the Standards Commission would achieve its vision and demonstrate its values be included, to link the sections together. Members agreed a minor change to the wording of the first bullet point under the 'Impact' strategic aim. Members further agreed that an explanation as to why there was a discrepancy between the first two and second two years of the plan, in terms of the percentage of the budget allocation for the different strategic aims, be provided. Members noted that these amendments would be made before the plan was finalised, following the conclusion of the consultation process.</p>	<p>Executive Team</p> <p>Executive Team</p>
BUSINESS MATTERS		
5.	<p>COMMUNICATIONS: (a) SharePoint</p>	

Members noted that the Standards Commission now had access to SharePoint and that staff had received training on it. Members noted that the intention was to streamline all existing shared files before these were thereafter migrated to the SharePoint site. Members asked the Executive Team to arrange for them to receive training on SharePoint and how to access to documents currently sent via email or post. Members agreed that decisions about naming conventions and discipline (in terms of revising documents) could be discussed and agreed at the training event.

Executive Team

(b) Monitoring Officers' Workshop

Members noted that notes taken at the workshop on 4 November 2019, which included suggestions for improving Section 3 and Annex C of the Councillors' Code of Conduct and the investigation and adjudication processes, had been circulated to all attendees, any Monitoring Officers who had been unable to attend, and the Working Group on the Review of the Codes.

(c) Meeting with the Scottish Government's Integration Implementation Team

The Executive Director updated members on a meeting she had attended with the Scottish Government's Health & Social Care Integration Implementation Team on 12 November 2019 at which the Standards Commission's Advice Note for Members of Health & Social Care Integration Joint Boards and the complaints process had been discussed. Members were pleased to note that the Scottish Government had advised that it had received positive feedback on the Advice Note.

(d) Guidance for the public on the Councillors' Code of Conduct

Members agreed that, once the review of the Councillors' Code of Conduct had concluded and any changes made, the Standards Commission should consider preparing an advice note for members of the public on its contents and the extent and remit of the ethical standards framework. Members agreed that such an advice note could be used to help manage the public's expectations about the types of conduct the Code regulated and when it applied. Any advice note could also include information about how they could complain about matters outwith the ethical standards framework, such as ones about a Council service or decision.

(e) Standards Officers' Workshop

Members agreed to hold the Standards Commission's annual workshop for Standards Officers on 23 March 2020 in Edinburgh, from 11:00 – 13:00 (with lunch being provided). Members agreed that the topics for discussion should include:

- suggestions for the review of the Model Code and the Standards Commission's accompanying guidance;
- whether collective responsibility should be included in the Code;
- suggestions for improving the investigation and adjudication processes (including awareness of these); and
- any issues that Standards Officers had dealt with, or been asked about, in terms of their members' compliance with their body's Code.

Members asked the Executive Team to make the necessary arrangements and to issue a save the date invitation to all Standards Officers, the ESC and representatives from the Scottish Government and Audit Scotland.

Executive Team

(f) NHS Education for Scotland

Members noted that NHS Education for Scotland (NES) had created a Board Development website and had published the Standards Commission's Advice Note for Members of Health & Social Care Integration Joint Boards (IJBs) on its integration page. NES had asked the Standards Commission to assist it in preparing videos on the ethical standards framework and the key provisions in the Model Code, to be shared on the continuous professional development section of the site (accessible to members of both IJBs and Health Boards). Members noted that the idea would be for the videos to cover case illustrations and practical examples in respect of the types of situations members could experience. Members agreed to participate and asked the Executive Director to

	liaise with NES over the content and potential dates for filming. Members further noted that this work should be included in the Business Plan for 2020/21.	Executive Director
6.	<p>RISK MANAGEMENT POLICY AND RECORDS MANAGEMENT PLAN</p> <p>Having undertaken their annual review of the Risk Management Policy, Members agreed some changes that were intended to strengthen the provisions emphasising that risks could arise from both internal and external circumstances, events and factors; and that appropriate risk management was required to assist the Standards Commission in making informed decisions not only both its work but also about its external engagement. Members asked the Executive Team to make the agreed amendments and to publish the updated policy.</p> <p>Members noted that the Executive Team had completed the annual review of the Standards Commission's Records Management Plan and had notified the Keeper accordingly, via the Progress Update Review procedure.</p>	Executive Team
7.	<p>REVIEW OF CODES OF CONDUCT WORKING GROUP</p> <p>Members noted that the Codes of Conduct Review Working Group had met on 4 November and 5 December 2019. Members noted that the Executive Director had attended the meetings and had been assisting the Scottish Government with the drafting the revised Section 3, Annex A and Annex C of the Councillors' Code, while Monitoring Officers had been working on revisions to Section 5. Members noted that the Working Group was due to meet again in January and that it was hoped that it would be in a position to finalise changes at that stage, so that a final revised version of the Code could be issued for consultation thereafter. Members asked the Executive Director to keep them updated on progress.</p>	Executive Director
8.	<p>SECTION 17(3) OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000 (QUORUM OF HEARING PANELS)</p> <p>Members noted that, at the request of the Standards Commission, Officeholder Services had sought and obtained advice from the Scottish Parliament's solicitors on Section 17(3) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and, in particular, whether it would be possible to co-opt an individual (for example a former member) to be a Standards Commission member on a temporary basis, should the organisation be inquorate and unable to form a Hearing Panel (as a result of more than two members declaring an interest in respect of a specific case). Members noted that the advice was that the legislation was clear that a Hearing could only be conducted with a minimum of three members and that it did not provide for a mechanism to co-opt an individual as a member on a temporary basis. There was no distinction in section 8(3) of the 2000 Act between appointing a new member on a permanent or temporary basis and the appointment of members was reserved to the SPCB (after consultation with stakeholders and with the approval of the Parliament). The Standards Commission had no power to appoint someone to membership and there was no provision for the SPCB to delegate this responsibility. Members noted that the advice was that while the Standards Commission's Hearing Rules provide that a Hearing Panel may dispense with or vary any requirement of the Hearing Rules, these did not allow for changes to the requirements set out in the legislation (such as sections 8(3) and 17(3) of the 2000 Act). In addition, while Schedule 1, paragraph 2B of the 2000 Act provides that the Standards Commission should comply with a direction given by the SPCB for the sharing of staff, premises and other resources, this provision could not be used to resolve any quorum issue.</p> <p>Members agreed that, in light of the advice, there were no further actions the Standards Commission could take to mitigate against the risk that it might find itself in a position where it was inquorate (either due to members being unavailable or being unable to participate due to having a conflict of interest). Members agreed, therefore, that the issue should be retained on the Risk Register, that the situation should be monitored closely and that the SPCB should be advised, as soon as possible if it</p>	

	appeared the Standards Commission could not undertake its statutory adjudication role as a result of being inquorate.	Executive Team
9.	<p>PROCUREMENT AND FINANCE POLICY AND PROCEDURES</p> <p>Subject to some minor typographical amendments, Members agreed the contents of the Standards Commission's Procurement and Finance Policy and Procedures, as drafted by the Executive Team. Members further agreed a Scheme of Delegation, to be included in an annex to the document, which outlined who had the authority to make decisions in respect of all matters concerning finance, procurement and contract management. Members asked the Executive Team to make the agreed changes and issue the finalised document to all members and staff.</p>	Executive Team
10.	<p>DECEMBER 2019 STANDARDS UPDATE</p> <p>Members reviewed and approved the proposed Standards Update to be issued and published at the end of December 2019.</p>	Executive Team
11.	<p>PUBLIC SECTOR DIGITAL INCLUSION AND ACCESSIBILITY REGULATIONS</p> <p>Members noted the terms of the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 and that the Standards Commission was obliged to ensure its website met the required standards by October 2020. Members noted that the Executive Team were seeking information from both the Standards Commission's website provider and the SPCB's appointed contractor on the potential work and costs involved so that these could be compared. Members asked that an update be provided when this information was available. Members further agreed that the risk that the Standards Commission failed to meet the requirements should be added to the Risk Register for 2020 /2021 when it was prepared, in order to ensure the Audit & Risk Committee formally monitored progress and provided assurances in respect of compliance.</p>	Executive Team
12.	<p>BUDGET AND EXPENDITURE REVIEW</p> <p>Members noted that that the SPCB had agreed that the Standards Commission could offset a shortfall of some £2,500 that had arisen in respect of employer pension contribution liability (which had arisen due to the rate being changed after the budget had been submitted and agreed), against the net £10,871.44 it had received in expenses from the unsuccessful appeal against its decision in respect of case LA/Fi/2050, so that it could stay within its allocated budget without having to seek contingency funding.</p> <p>Members reviewed the expenditure to date and projected expenditure to the year-end against the agreed budget. Members noted that, having taken into account the sum remaining from the recovery of expenses, it appeared there was a possibility that the Standards Commission would have a potential surplus of approximately £8,000. Members noted that the Standards Commission's budget was based on a projection that 10 Hearings would be held during 2019/20. Members noted that, to date, seven Hearings had been held (with one of these being split over two days) and that it was feasible that at least two more could be held (with the related expenses incurred) by the year end, meaning that the estimated amount allocated for Hearings in the agreed budget was likely to prove to be reasonably accurate. Members noted that while travel and expenses costs for the Hearings held to date had been less than anticipated, due to them being held in locations close to where Members and staff are based and being conducted efficiently, the Ethical Standards Commissioner (ESC) had recently advised that she had issued a draft breach report to an elected member of Comhairle nan Eilean Siar (see item 14 below). Members noted that the travel and expense costs in respect of any Hearing held there would be likely to be incurred before the year end and determined, therefore, that it was not appropriate to surrender any funding until the extent of these were known. Members asked the Executive Director to notify the SPCB accordingly and to provide an update on likely expenditure against budget at the next meeting so that they could monitor the situation.</p>	Executive Director

	<p>Members further asked the Executive Director to explore the possibility and costs of obtaining bespoke ‘court craft’ training for Hearing Panel members to help them ensure that Hearings were conducted in the most efficient and fair manner. Members noted that such training could include tips on:</p> <ul style="list-style-type: none"> • good practice in terms of dealing with parties and witnesses in a firm but fair manner to ensure all evidence led and submissions made were relevant and of assistance; • asking questions in the most appropriate way and at the best time; • ensuring that those presenting evidence at a Hearing do not unnecessarily introduce procedures suited for Courts rather than Hearings; and • dealing with anyone who was disruptive. 	<p>Executive Director</p>
<p>13.</p>	<p>SERVICE CHARTER</p> <p>Members considered and agreed changes to the Standards Commission’s Service Charter, as proposed by the Executive Team. Members noted that the proposed amendments included incorporating the agreed values for the organisations, as identified in the Standards Commission’s draft Strategic Plan for 2020-24. Members further agreed changes that were intended to ensure the contents were in plain English, were written in the first person were more positive in tone. Members asked the Executive Team to circulate the amended version to all members and staff and to publish it on the website.</p>	<p>Executive Team</p>
<p>CASES UPDATE</p>		
<p>14.</p>	<p>NO BREACH DECISIONS BY THE ESC & SECTION 14 LETTERS</p> <p>Members noted the contents of three non-breach decisions issued by ESC. Members further noted that a draft report had been issued by the ESC to an elected member of Comhairle nan Eilean Siar.</p> <p>Members noted that one of the non-breach decisions concerned a complaint about the Perth & Kinross councillor who was currently the subject of an interim suspension. Members noted that decision to impose an interim suspension had been based, at least in part, on a review of the Respondent’s alleged course of conduct towards multiple complainers. Members expressed concern, therefore, about the apparent decision by the ESC to consider each complaint separately, particularly when the decision not to refer the particular complaint appeared to be based on the view that there was insufficient evidence to establish it (as opposed to the conduct being complained of not amounting to a breach of the Councillors’ Code). Members noted that this decision could result in the complainer not being called as a witness at any subsequent Standards Commission Hearing, when there was a possibility that her evidence might add to an understanding of credibility regarding other complaints and witnesses.</p> <p>Members also expressed concern, in light of both the Perth & Kinross non-breach decision and one about an elected member of Fife Council, that it appeared the ESC had raised the threshold in terms of the referral of complaints to the Standards.</p> <p>Members directed the Executive Director to arrange a meeting with the ESC to discuss:</p> <ul style="list-style-type: none"> • The threshold for the referral of cases to the Standards Commission; • The Standards Commission’s view that a disaggregated approach should not be taken in respect of complaints concerning similar conduct by a Respondent over a period of time, which taken together could amount to a course of conduct that constituted a breach of either the respect or bullying and harassment provisions in the relevant Code of Conduct. • The fact that delays at the investigation stage having an impact on the quality of witness evidence at any subsequent Hearing, as demonstrated during the recent Hearing in the Scottish Borders (see item 15b below). • The importance of the engagement with the Standards Commission about cases being investigated and potential referrals, to help it plan and manage its budget and 	

	<p>resources, and about issues that arose to help inform its educational and promotional activity.</p> <p>Members asked the Executive Director to report on the outcome of any discussions at the next meeting. Members further asked that the issue of engagement with the ESC be considered by the Audit & Risk Committee at its meeting in January, with a view to adding the matter to the Risk Register if appropriate / necessary.</p>	Executive Director
15.	<p>BREACH REPORTS HEARING AND POST HEARING UPDATES</p> <p>a) LA/WL/2213: Councillor Frank Anderson of West Lothian Council: Members noted that a Hearing had been held on 20 November 2019. Councillor Anderson had been found to have breached the Councillors' Code of Conduct and had been suspended for a period of three months.</p> <p>b) LA/SB/2219: Councillor James Fullarton of Scottish Borders Council: Members noted that a Hearing had been held on 6 November 2019. It was found that Councillor Fullarton had not breached the Councillors' Code of Conduct. Members expressed concerns that delays at the investigation stage had meant that almost all of the witnesses appearing before the Hearing had reported being unable to recollect the alleged events and conduct in question with any clarity.</p> <p>c) Interim Suspension Decision: Councillor Colin Stewart of Perth & Kinross Council: Members noted that the interim suspension was due to expire on 6 January 2020. Members agreed that a report on the progress of the investigation should be sought from the Ethical Standards Commissioner, so that information on the likely date it would conclude could be reviewed and considered, along with any new information, by the Panel on 3 January 2020. The Panel would then determine whether it was necessary and appropriate to renew the interim suspension (in terms of Section 21(10) of the Ethical Standards in Public Life etc. (Scotland) Act 2000) and, if so, for how long.</p>	
16.	<p>FEEDBACK AND HEARINGS SURVEY RESPONSES</p> <p>Members noted that no feedback or survey responses had been received since the last meeting.</p>	
AOB		
17.	<p>AGENDA ITEMS FOR NEXT MEETING</p> <p>Members agreed to advise the Executive Director of any matters they wished included in the agenda of the following meeting.</p>	Executive Director
18.	<p>2019 WORKPLAN</p> <p>Members noted the planned activities.</p> <p>DATE OF NEXT MEETING</p> <p>Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 27 January 2020.</p> <p>CHANGES TO MEETING DATES</p> <p>Members agreed to change their March meeting date from 23 to 30 March 2020. Members further agreed that the Human Resources Committee would meet on 27 April 2020. Members asked the Business Manager to update and thereafter circulate an amended version of the calendar of meetings and events</p>	Business Manager