

# MINUTES *Meeting date: Monday 24 February 2020*

**IN ATTENDANCE**

Members:

- Kevin Dunion (Convener)
- Michael McCormick
- Tricia Stewart
- Paul Walker
- Ashleigh Dunn

Executive Team:

- 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> Mr Dunion and Mrs Stewart declared an interest in the interim suspension decision under item 14C of the agenda. Mr Dunion and Ms Stewart did not leave the room, however, as Members were only being asked to review a non-breach report issued by the Ethical Standards Commissioner (ESC) and to note an update. As such, there was no discussion or decision-making on the matter.</p>	
2.	<p><b>DRAFT MINUTE OF PREVIOUS MEETING</b> Members reviewed and approved the minutes of the meeting on 27 January 2020.</p>	
3.	<p><b>MATTERS ARISING</b> Members noted that all other matters arising were either complete or were due to be discussed under the main agenda.</p>	
<b>STRATEGIC MATTERS</b>		
4.	<p><b>STRATEGIC PLAN 2020/24</b> Members noted that the Scottish Parliamentary Corporate Body (SPCB) had confirmed that it was content with the Standards Commission’s draft Strategic Plan for 2020/24. Members noted that no further feedback had been received since some relatively minor amendments, including the addition of some explanatory sentences, identified at the previous meeting on 27 January 2020, had been added to the plan. Members formally approved the plan and noted that it would be sent to the designer to apply formatting to the additional wording before being laid before the Scottish Parliament (in accordance with Schedule 1 of the Ethical Standards in Public Life (Scotland) Act 2000), and thereafter published.</p>	<b>Executive Team</b>
<b>BUSINESS MATTERS</b>		

5.	<p><b>COMMUNICATIONS:</b> <b>(a) SharePoint</b> Members noted that the Scottish Parliament’s Business and Information Technology Team (BIT) had provided further training to staff on 20 February 2020, and that the migration of</p>	
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the Standards Commission's files to the SharePoint platform had been scheduled to take place in late February / early March 2020. Members agreed that it would be helpful to explore whether it would be easier and potentially safer for them to access documents via SharePoint and agreed that Ms Dunn should be given access and training on the system in the first instance, so that she could report back on any accessibility issues. Members further asked the Business Manager to continue to explore with BIT whether previous issues they had encountered with access to their individual Standards Commission email accounts could be revisited and resolved.

**Business  
Manager**

**(b) Standards Officers' Workshop**

Members noted that the Standards Officers' workshop was due to be held in Edinburgh on 23 March 2020. Members noted that a programme identifying topics to be discussed, including potential changes to the Model Code of Conduct and any current trends and issues (particularly in respect of bullying and harassment, failing to declare interests, breaching confidentiality, and accepting gifts and hospitality), had been circulated to attendees on 3 February 2020.

**(c) Engagement with the Ethical Standards Commissioner**

Members noted that the Convener had sent the Ethical Standards Commissioner (ESC) a letter on 30 January 2020 proposing a meeting to highlight the Standards Commission's concerns about various matters, including the level of engagement between the two organisations, delays at the investigation stage, and how complaints were to be linked or conjoined. Members noted that the Convener wished to discuss the impact these issues could have on the operational efficiency of the Standards Commission and the overall effectiveness of the ethical standards framework, and to establish how such concerns could be addressed, whilst at the same time recognising the changes being made by the ESC in her sphere.

Members noted that, in a response letter of 19 February 2020, the ESC had indicated she was unwilling to attend such a meeting because she was currently focused on delivery of the core statutory function of her office, which was a situation that would continue through to the new financial year, if not beyond. Members expressed deep disappointment with this response.

**(d) Ayr Training Workshop**

The Convener and Mr McCormick provided an update on the training workshop on the Councillors' Code of Conduct they had facilitated in Ayr on 4 February 2020. Members were pleased to note that there had been a good level of attendance and participation. Members noted that queries had been raised in connection with how councillors were to distinguish between strategic and operational matters, and agreed that it would be useful for the Standards Commission to provide handouts of its Assisting Constituents Card at future training events, as this contained information that helped councillors manage their constituents' expectations about what elected members could and could not do for them and further explained that agreeing to take certain actions could lead a councillor to be in breach of the Code of Conduct.

**(e) Development Day on Evaluating Impact**

Members noted that a Development Day for them to discuss how the Standards Commission could evaluate the impact of both its promotional and adjudication work effectively, by determining how outcomes were to be assessed and what qualitative and quantitative data should be collected and measured, had been scheduled to take place on 26 August 2020. Members agreed that the Executive Team should undertake research on the types of data that other analogous organisations collected for discussion at the Development Day.

**Executive  
Team**

**(f) Referrals from the Crown and Procurator Fiscal Service when a councillor is convicted of a criminal offence**

	<p>Members noted that the Crown Office had confirmed that there was no automatic mechanism for the Crown and Procurator Fiscal Service (COPFS) to notify the ESC when it received details of charges against councillors or other elected officials. The Crown Office noted that it was not always clear to COPFS that an accused was a regulated person. The Crown Office had indicated, however, that if a regulatory body requested information from COPFS about cases involving regulated individuals then, subject to the particular circumstances of the case and the request, COPFS may be able to share certain information about the case under the terms of the Data Protection legislation, as Article 6(e) of the General Data Protection Regulation might apply (being the public interest processing basis). Any request would be dealt with its own merits and subject to consideration of any active criminal proceedings. Such requests would usually dealt with through the Data Sharing Team in COPFS Policy Division on a reactive basis.</p>	
6.	<p><b>BUSINESS PLAN 2020/21</b></p> <p>Subject to the inclusion of activities relating to the undertaking of research into different formats for the presentation and publication of Guidance and Advice Notes, and the continuing contribution to the Working Group established to review the Codes of Conduct, Members agreed the contents of the Business Plan for 2020/21. Members noted the Executive Team would add references to the Risk Register before thereafter publishing an external version of the Plan on the website.</p>	Executive Team
7.	<p><b>RISK REGISTER 2020/21</b></p> <p>Subject to the inclusion of more detail in respect of the risks relating to cybersecurity and compliance with GDPR, and the availability of Members, the Risk Register for 2020/21 was agreed. Members also agreed the current and target scores for each risk, both in terms of potential impact and probability.</p> <p>Members noted the Audit &amp; Risk Committee would review the Risk Register and the actions taken to mitigate each risk as its meetings in May and July 2020, and in January 2021. The Audit &amp; Risk Committee would report on these reviews at the subsequent Standards Commission meetings.</p>	Executive Team
8.	<p><b>SUSPENSION GUIDANCE</b></p> <p>Members noted that the Executive Director had updated the Standards Commission's draft guidance on the activities a councillor could undertake while subject to a full suspension imposed by the Standards Commission, to make it clear that it covered the activities of councillors who had been suspended following a Hearing and also ones who were subject to an interim suspension. Members noted that the Executive Director had sent copy of the amended draft guidance to COSLA and was awaiting its comments. Members agreed that given there was an interim suspension in place and the potential for a new one to be issued at any time, the Suspension Guidance should be finalised, issued and disseminated. Members noted that the Guidance could be reviewed and amended (if appropriate) should any feedback be received subsequently from COSLA or any other stakeholder.</p>	Executive Director
9.	<p><b>REVIEW OF CODES OF CONDUCT WORKING GROUP</b></p> <p>Members noted the verbal update provided by the Executive Director on the progress and timescales involved in the Group's work in respect of agreeing potential amendments to the Councillors' and Model Code of Conduct. Members noted that the Group had agreed the wording of a draft revised version of the Councillors' Code. Members further noted that the ESC had declined to take part in the Group and, as such, it had been agreed that the draft revised version would be sent to her so that she could provide written comments by the end of the month. Members noted that the intention was to finalise the draft once any such comments had been received, with a view to issuing it for a 12-week public consultation at the end of March 2020. Members further noted that work was now underway to review the Model Code of Conduct for members of devolved public bodies, so that the provisions within it can be brought into line with the revised Councillors' Code, where possible and appropriate.</p>	

	Members asked the Executive Director to keep them updated on the Group’s work, including on how it intended to communicate about the changes to the Codes and any changes to the timescales as outlined.	<b>Executive Director</b>
<b>10.</b>	<p><b>PUBLIC SECTOR DIGITAL INCLUSION AND ACCESSIBILITY REGULATIONS</b></p> <p>Members noted that the Standards Commission’s website provider had been instructed to undertake work to ensure the website complied with the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018, and that it had confirmed the work would be completed by 28 February 2020. Members noted that, to ensure full compliance by the deadline of 31 October 2020, the Executive Team would thereafter undertake the following further work:</p> <ul style="list-style-type: none"> <li>• publish an accessibility statement confirming why certain content could not be published in a way that meets the accessibility requirements, such as photos and videos (other than an existing BSL video, which has subtitles);</li> <li>• provide users with details about how they can make a request for information to be provided in a different format, how they can highlight difficulties with accessing information and how they can make suggestions on how the content can be improved; and</li> <li>• insert a link to the Equality and Human Rights Commission, being the organisation to which an appeal about any decision on any accessibility related matter could be made.</li> </ul> <p>Members asked the Executive Team to confirm when all the work was completed so that consideration could then be given to removing the risk of non-compliance with the regulations from the Risk Register.</p>	<b>Executive Team</b>
<b>11.</b>	<p><b>HEARING RULES</b></p> <p>Members noted that advice had been received at a training event on 27 January 2020 to the effect was that it might not be within a Hearing Panel’s discretion to find a breach of a provision that had not been identified previously by the ESC. This was because it was arguable that the Respondent would not have been afforded fair notice of the potential breach. Members agreed, therefore, that a paragraph in the Hearing Rules outlining the process to be followed if a Panel was minded to find a breach of a different provision be amended, to make it clear that it only applied to situations where a Panel found a breach of the same provision in the Code as identified by the ESC, but for different reasons to those outlined in the ESC’s report or by her representative in submissions at the Hearing.</p> <p>Members further agreed (for the reasons outlined under item 14(b) below), that a new provision should be added to the Rules to make it clear that the ESC was required to attend or be represented in person at the Hearing and that it would only be in exceptional circumstances that the appointed Panel would consider a request for the ESC or her representative to be allowed to attend via video conferencing.</p> <p>Members agreed that the Rules should be amended accordingly and thereafter issued to the ESC and published on the Standards Commission’s website.</p>	<b>Executive Director</b>
<b>12.</b>	<p><b>ETHICAL STANDARDS COMMISSIONER’S DRAFT STRATEGIC PLAN 2020/24</b></p> <p>Members expressed disappointment, given the common interest both organisations had in the ethical standards framework, that the ESC had not chosen to formally consult with the Standards Commission on her Strategic Plan for 2020/24 and did not regard the Standards Commission as an “appropriate” stakeholder under section 14(3) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010. Members agreed, nevertheless, that the following feedback and comments on the Strategic Plan should be provided to the ESC:</p> <ul style="list-style-type: none"> <li>• That the Standards Commission welcomed and endorsed her aim of driving quality and innovating to ensure a proportionate approach and to optimise service provision in respect of the complaint handling service. The Standards Commission considered that confidence in the overall ethical standards framework could only be maintained or increased if the public and other stakeholders were assured that any complaints made</li> </ul>	

	<p>would be investigated and adjudicated upon in a fair, efficient and proportionate manner.</p> <ul style="list-style-type: none"> <li>• That while the Standards Commission agreed with the ESC’s plan to build on intelligence to identify trends and future proof the service she provided, it considered that it would be helpful to recognise that such intelligence should also be shared with other stakeholders, including the Standards Commission, to help inform the development of guidance for councillors and members of devolved public bodies and to promote awareness of, and adherence to, the Code of Conduct.</li> <li>• The Standards Commission was concerned that there was a lack of recognition in the Strategic Plan and, specifically in the section outlining how the ESC would contribute to the National Performance Framework, that her activities and remit formed only part of the overall ethical standards framework and that all individuals and organisations involved in it would require to engage with each other to assure ethical excellence in Scotland. A failure to recognise this meant there was somewhat of a disconnect between the Strategic Plan and the Standards Commission’s stated aims (as outlined in its plan) of working, and developing strong relationships, with others to pursue continuous improvement in the ethical standards framework.</li> </ul> <p>Members noted that the ESC had stated that she intended to consider adopting “a traditional regulatory role more fitting to the current environment”. Members were unclear as to what this meant and agreed that ESC should be asked to clarify what she understood such a role to mean.</p>	<b>Executive Director</b>
<b>CASES UPDATE</b>		
<b>13.</b>	<p><b>NO BREACH DECISIONS BY THE ESC &amp; SECTION 14 LETTERS</b></p> <p>Members noted the contents of three non-breach decisions issued by ESC, regarding councillors from Glasgow City, Clackmannanshire and Perth &amp; Kinross.</p>	
<b>14.</b>	<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 the contents of the letter from West Lothian Council, confirming that the Hearing decision issued on 26 November 2019 had been reviewed by the Council at a meeting on 28 January 2020.</p> <p><b>b) LA/CES/2214 -</b> Councillor Roddie Mackay of Comhairle nan Eilean Siar: Members noted that a Hearing had been scheduled for 18 March 2020. Members noted that the Hearing Panel Chair had sent the ESC a letter on 14 February 2020 explaining why her proposal that the Senior Investigating Officer present the case by audio visual means was not a practical option, given that:</p> <ul style="list-style-type: none"> <li>• there would require to be microphones at the tables of the Hearing Panel, the Respondent and the witness stand, with each of these locations having to be in camera shot;</li> <li>• the ESC’s representative would have to be seen, and be heard by, the Panel, Respondent, witnesses and the public (including any press in attendance); and</li> <li>• any inadequacies in the technology or the technical support to make this happen would significantly impact on the efficiency and potentially the fairness of the Hearing. If the connection could not be maintained, the Hearing would have to be abandoned at considerable cost, and delay to the parties.</li> </ul> <p>Members noted that the ESC had replied advising that while she considered the lengthy travel times involved in attending the Hearing would be a “significant diversion of resource”, her Senior Investigating Officer would present the case in person, given that the Respondent’s intention to call two witnesses.</p> <p>Members were of the view that the presentation of cases at Hearings was part of the core business or function of the ESC’s office. Members noted that there had never previously been any suggestion that the ESC would not appear or be represented in</p>	

	<p>person at a Hearing, given that Hearings were initiated by receipt of a report from the ESC advising that a breach of a Code may have occurred. Members agreed that it was imperative, therefore, that the ESC or a representative was there to make the case, to call or cross-examine witnesses, to and sum-up, having heard the case for the Respondent. Members agreed that the requirement for the ESC to attend or be represented in person would be included in the Hearing Rules (see item 11 above).</p> <p><b>c) Interim Suspension Decision</b> - Councillor Colin Stewart of Perth &amp; Kinross Council: Members noted the terms of a non-breach report issued by the ESC (see item 13 above). Members further noted that the Panel was due to meet that afternoon to determine whether the interim suspension decision should be reviewed in light of the issuing of a new non-breach report from the ESC on one of the complaints against Councillor Stewart. Members asked the Executive Director to circulate the Panel's decision, once made.</p>	<p><b>Executive Director</b></p> <p><b>Executive Director</b></p>
<b>15.</b>	<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>		
<b>16.</b>	<p><b>INTERIM SUSPENSIONS</b></p> <p>Members noted that the ESC had indicated that it was likely she would submit a new interim suspension report under Section 21 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 within the next week or so. The ESC had, however, raised concerns about the amount of information published by the Standards Commission in respect of the decisions made to date under Section 21. These were that witnesses might refuse to co-operate with an ongoing investigation if they could be identified in the information the Standards Commission put in the public domain and also that the disclosing of such information could impinge on the Respondent's right to privacy. Members noted that, in publishing detailed information about the decisions it had taken under Section 21, the Standards Commission had been trying to be as transparent as possible and had also been attempting to demonstrate that it had fully considered all relevant issues. Members accepted the ESC's concerns, however, and noted that they did not wish to impede any ongoing investigation she was undertaking. As such, Members agreed that the Standards Commission should only publish the following information:</p> <ul style="list-style-type: none"> <li>• the Respondent's name;</li> <li>• the name of Respondent's Council or devolved public body;</li> <li>• the length and extent of the suspension;</li> <li>• a reminder that the allegations against the Respondent had not been investigated and, as such, were unsubstantiated; and</li> <li>• brief reasons as to why Panel was or was not satisfied that it was both proportionate and in public interest for it to impose an interim suspension.</li> </ul> <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> <p><b>NHS EDUCATION FOR SCOTLAND</b></p> <p>Members noted that the Executive Director has sent NHS Education for Scotland (NES) draft content for videos on the ethical standards framework and the key provisions in the Model Code that it wished to publish on the continuous professional development section of its Board Development website. Members noted that NES had suggested the videos be filmed in March 2020, and agreed that the Convener and either Ms Dunn or Mrs Stewart would participate in these. Members asked the Executive Director to advise NES accordingly and make the necessary arrangements.</p>	<p><b>Executive Director</b></p> <p><b>Executive Director</b></p>
<b>17.</b>	<p><b>2020 WORKPLAN</b></p> <p>Members noted the planned activities.</p>	

**APRIL HUMAN RESOURCES COMMITTEE**

Members agreed to change the date of the Human Resources Committee meeting from 27 to 23 April 2020.

**JULY 2020 AUDIT AND RISK COMMITTEE MEETING**

Members noted the Audit & Risk Committee meeting in July had been moved from 20 to 21 July 2020.

**DATE OF NEXT MEETING**

Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 30 March 2020.