

MINUTES *Meeting date: Monday 30 March 2020*

IN ATTENDANCE ONLINE

Members:

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

Executive Team:

- Lorna Johnston (Executive Director)
- Elaine McLean (Business Manager)
- Julie Scott (Administrative Assistant – observing only)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES There were no apologies.</p> <p>DECLARATIONS OF INTEREST Mr Dunion and Mrs Stewart declared an interest in the interim suspension decision under item 14B of the agenda. Mr Dunion and Ms Stewart did not leave the meeting, however, as Members were only being asked to note an update. As such, there was no discussion or decision-making on the matter.</p>	
2.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and, subject to a minor typographical amendment, approved the minutes of the meeting on 24 February 2020.</p>	
3.	<p>MATTERS ARISING Members noted that the project to provide all Members and staff with access and training on SharePoint had been put on hold for the time being while staff were working from home as a result of the Coronavirus outbreak and would be progressed when a return to the office was possible.</p> <p>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>IMPACT OF CORONAVIRUS SITUATION Members noted that all staff had been working from home since 18 March 2020, in accordance with the Scottish Parliamentary Corporate Body's direction. Members agreed that any training or promotional events would need to be put on hold until the coronavirus situation improved and the quarantine restrictions that were currently in place were relaxed.</p> <p>Members agreed that, on receipt of any breach referral reports from the Commissioner for Ethical Standards in Public Life (ESC), the Standards Commission would make a decision, as normal, under section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. If the decision was to hold a Hearing, the Standards Commission would review the Government's guidance / any directives in place at the time. Members noted that as the situation was evolving, the Standards Commission would need to make decisions on the scheduling and management of Hearings on a case by case basis, in</p>	

	<p>in respect of potential platforms or procedures that could be used. Members asked the Executive Director to write to the ESC to seek her views and to invite her to an (online) meeting to discuss proposals for dealing with technical and inadvertent breaches of the Codes, including jointly seeking a change to the primary legislation governing the ethical standards framework, if necessary.</p> <p>(b) Standards Officers' Workshop scheduled for 23 March 2020 Members noted that the Standards Officers' workshop scheduled to take place on 23 March 2020 had been postponed due to the Coronavirus outbreak. Members noted that the purpose of the workshop had been to obtain feedback on the draft revised Model Code of Conduct and suggestions for the Standards Commission's associated guidance. Members noted that, in light of the postponement, the Executive Director had agreed with the Scottish Government that the Standards Commission would send a copy of the draft revised Code to all attendees and invite them to submit any comments and suggestions on it. The Standards Commission would then forward any submissions to the Government for its consideration before it launched a formal consultation on the revised draft.</p> <p>(c) Proposed date of Monitoring Officers' Workshop 26 October 2020 Members agreed that the annual Monitoring Officers' workshop should be held in Edinburgh on Monday, 26 October 2020. Members asked the Executive Team to issue a 'save the date' invitation to all Monitoring Officers, the ESC and representatives from Audit Scotland and the Scottish Government.</p> <p>(d) COSLA Convention scheduled for 27 March 2020 Members noted that the Executive Director had been asked to contribute to a workshop on the proposed revised Councillors' Code of Conduct at the COSLA Convention on 27 March 2020. Members noted, however, that the event had also been cancelled due to the Coronavirus outbreak.</p> <p>(e) Development Day Members agreed to proceed with the Development Day, scheduled for 26 August 2020. Members agreed that a decision could be taken nearer the time on whether the event should be postponed or held online if it appeared that the current restrictions on public gatherings would still be in place.</p>	<p>Executive Director</p> <p>Executive Team</p> <p>Executive Team</p>
<p>6.</p>	<p>ANNUAL REPORT 2019/20 - SECTIONS 2 AND 5 Members reviewed and, subject to some minor amendments, approved the proposed contents of Section 2 of the Annual Report for 2019/20, which summarised the Standards Commission's role and remit. Members further agreed the draft contents of Section 5, which summarised the outcome of cases referred to the Standards Commission during the year.</p>	<p>Executive Team</p>
<p>7.</p>	<p>MARCH 2020 STANDARDS UPDATE Members reviewed and approved the proposed Standard Update to be issued and published at the end of March 2020.</p>	<p>Executive Team</p>
<p>8.</p>	<p>ANNUAL REVIEW OF CASES REFERRED UNDER SECTION 16 Members undertook their annual review of all decisions taken (to date) in 2019/2020, under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and, in particular, considered the management of Hearings. Members noted that, in some cases, particularly ones concerning an alleged breach of the respect or bullying and harassment provisions in the Codes of Conduct, it might be helpful for a Hearing Panel to hear from any victim, when considering the appropriate sanction to apply. Members noted that victims of alleged breaches were not always the complainer or called to be witnesses (especially if a breach was admitted) and, as such, a Hearing Panel did not always have the benefit of their perspective. Members asked the Executive Director to prepare a</p>	

	paper, for consideration at their next meeting, on any potential options for allowing victims to provide impact statements if they wished to do so.	Executive Director
9.	<p>REVIEW OF CODES OF CONDUCT</p> <p>Members noted that the Working Group had agreed a draft revised version of the Councillors' Code of Conduct. A final review of the wording was currently being undertaken by the Scottish Government's Legal Team. Members noted that the Executive Director had assisted the Scottish Government with preparing explanatory notes on the substantive changes and the reasons behind them, for issuing as part of the forthcoming public consultation. Members noted that the Executive Team was also working on producing draft guidance to be issued for consultation by the Standards Commission at the same time as the Government's consultation on the Code. The Executive Team also intended to review and update all the Standards Commission's Advice Notes, training material and standard presentations to ensure they reflected and assisted with the interpretation of the contents of the proposed revised version of the Code and, as such, would be ready to be issued when the revised Code was finally agreed by the Scottish Parliament (following the consultation).</p> <p>Members noted that the Scottish Government had updated the content of the Model Code of Conduct so that, where possible and appropriate, it reflected the Councillors' Code. The Scottish Government had sent the draft revised version to a select working group for comment and, as noted under item 5b above, this had also been sent to the Standards Officers' workshop attendees for comments. Members noted that the Scottish Government intended to undertake a joint review of the draft Model Code again at the end of April 2020, with the Standards Commission's help and in light of any comments received, before thereafter issuing it for formal consultation.</p> <p>Members asked the Executive Director to keep them updated on the progress of the work to revise both Codes.</p>	Executive Director
10.	<p>CONFIRMATION OF ANNUAL BUDGET 2020/21</p> <p>Members noted that the Scottish Parliamentary Corporate Body had approved the Standards Commissions budget request of £283,000 for 2020/21.</p>	
11.	<p>REVIEW OF INTERIM SUSPENSION POLICY</p> <p>Having now made four decisions under it, Members reviewed the Standards Commission's Interim Suspension policy in light of issues that arose and feedback received. Members agreed that:</p> <ul style="list-style-type: none"> • a new paragraph be added providing that the Panel could choose to discontinue an interim suspension at any time, on receipt of any new and relevant information that the Panel considered material, if it was no longer satisfied that it was proportionate and in the public interest for it to be in place. • further information should be included about what the Standards Commission would publish in respect of any interim suspension imposed. • a flowchart outlining the process the Standards Commission would follow, on receipt of an interim report from the ESC, be included at Annex A. <p>Members asked the Executive Director to make the agreed changes, before publishing the amended version.</p>	Executive Director
12.	<p>HEARING RULES AND PROCESS 2020 V1.0</p> <p>In light of the exceptional circumstances that prevented the Hearing on case LA/CES/2214 from proceeding on 18 March 2020 as scheduled, and the subsequent decision to discontinue the Hearing (see item 14a below), Members reviewed the Hearing Rules and agreed that they should be amended to include a provision stating that a Hearing Panel could choose, in exceptional circumstances, to discontinue the Hearing process and refer the matter back to the Standards Commission to reconsider its decision under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p>	

	Members agreed that a copy of the amended Rules should be sent to the ESC before being published on the website.	Executive Team
CASES UPDATE		
13.	<p>NO BREACH DECISIONS BY THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/SL/2252 & LA/H/3003: Section 14 Letters. Members noted that the ESC had advised that draft breach reports had been sent to a South Lanarkshire councillor and Highland councillor.</p> <p>(b) No breach decisions: Members noted that the ESC had not responded to repeated requests from the Executive Director for the Standards Commission to be sent copies of any non-breach reports she had issued. Members agreed it was important that they had sight of these, so that the Standards Commission had an awareness of how the ESC was interpreting the provisions of the Code and also so it could see the types of issues that were arising, to help inform its educational and promotional work.</p> <p>Members noted that the Standards Commission could issue the ESC with a direction, under Section 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, requiring copies of non-breach reports to be provided. Members agreed, however, that the Executive Director should send the ESC a letter explaining why the Standards Commission required sight of non-breach reports and asking for her to provide these voluntarily, when issued. Members agreed to consider issuing a direction if the ESC failed to respond or indicated she was unwilling to comply with such a request.</p>	Executive Director
14.	<p>CASES</p> <p>(a) LA/CES/2214: Councillor Roddy Mackay of Comhairle Nan Eilean Siar. Members noted that the Hearing scheduled to take place on 18 March 2020 at the Council Headquarters in Stornoway had been cancelled due to the Coronavirus outbreak.</p> <p>Members noted that the Standards Commission would normally reschedule any Hearing that it had not been able to convene (for example, if a Panel Member or party had been unable to attend due to ill health). Members noted, however, that in this case the Standards Commission had recognised that rescheduling the Hearing in the current circumstances would give rise to issues of fairness and proportionality. This was because it was unlikely that one could be convened before July 2020, at the earliest, due to the current guidance against travel and public gatherings associated with the ongoing Coronavirus epidemic and the requirement for the Standards Commission to give the parties proper and sufficient notice of any Hearing date. Furthermore, the Standards Commission was concerned that the ongoing issues arising from the Coronavirus outbreak could easily result in further delays, particularly given the uncertainty of the situation and the real risk that any convened Hearing may have to be cancelled again. The Standards Commission had noted that the complaint had been made to the ESC in October 2018 and the Respondent had been informed that the investigation had been completed in early Autumn 2019. The Standards Commission noted, however, that the ESC's final report had not been issued and sent to the Standards Commission until 16 January 2020, meaning that the matter had been outstanding against the Respondent for some 17 months. The Standards Commission had noted that the alleged breaches of the Code were of a technical nature and that there had not been any suggestion in the ESC's report that the Respondent had been attempting to conceal the interest nor any suggestion of any adverse consequences as a result. In the circumstances, the Standards Commission had considered that it was no longer fair, proportionate and in the public interest to proceed with a Hearing. The Standards Commission had determined, therefore, to take no further action on the referral and had notified the parties accordingly.</p> <p>(b) Interim Suspension: Councillor from Perth & Kinross Council. Members noted that following receipt of further non-breach reports from the ESC on some of the complaints</p>	

about the councillor in question, the Panel had reviewed the interim suspension in place. The Panel had noted that its decision to impose, and then renew, the interim suspension had been based on its view that there appeared to be a *prima facie* case that there may have been a pattern of bullying and intimidating behaviour by the councillor over a period of months, but it was unclear about whether this remained the case. The Panel had, therefore, sought further information from the ESC, by letter of 25 February 2020, on the outstanding complaints about the councillor Stewart and, specifically, whether she considered that, if established, they could amount to a course of conduct towards a number of individuals over a period of time, or whether they only concerned the councillor's conduct immediately before, during and after a specific meeting.

Having not received a response from the ESC, the Panel had reconsidered the matter on 12 March 2020. The Panel had determined that given that three of the complaints against the councillor had been rejected by the ESC and no confirmation had been received that the outstanding complaints suggested a course of conduct, it could no longer be satisfied that the potential consequences to other individuals and to the organisations in question outweigh the risk of reputational, financial or other damage to the councillor's well-being as a result of the continuation of the interim suspension. The Panel had concluded that it was not satisfied that there were sufficient reasons to keep the interim suspension in place and determined, therefore, that it should be discontinued, with immediate effect.

(c) Interim Suspension: Councillor Alan Donnelly of Aberdeen City Council. Members noted that a Panel of the Standards Commission had considered, on 4 March 2020, an interim report from the ESC received on 25 February 2020 about the conduct of Councillor Donnelly. The ESC had reported that Councillor Donnelly had been convicted of a sexual assault that took place while he was attending an event in his capacity as an elected member. The Panel had considered that public confidence in the ethical standards framework would be adversely affected if Councillor Donnelly was allowed to continue to act while complaints of such a serious nature, involving criminal conduct, were outstanding against him. The Panel had further considered that the Council's reputation could be adversely affected if an interim suspension was not imposed. The Panel had noted that there could also be a risk to others if the conduct that was the subject of the conviction was repeated. The Panel had concluded, therefore, that it was satisfied that it was both proportionate and in public interest for it to impose an interim suspension for three months (with immediate effect), while the ESC's investigation was ongoing.

(d) Interim Suspension: Councillor from Edinburgh City Council. Members noted that a Panel of the Standards Commission had considered an interim report from the ESC received on 26 February 2020 about the conduct of an Edinburgh City councillor. The Panel had determined, on 5 March 2020, that it was not proportionate or in the public interest, to impose an interim suspension. The Panel had noted that while the allegations against Councillor Ritchie had not yet been fully investigated and, as such, were unsubstantiated, there was *prima facie* evidence that some of them were of a serious nature. The Panel had noted, however, that the Councillors' Code only applied to situations where councillors were acting as such or could be perceived as acting as such. The Panel was not satisfied that the ESC had demonstrated that there was *prima facie* evidence of the Code's applicability in respect of the alleged conduct and, in particular, the more serious elements. The Panel had further noted that the conduct that was the subject of the complaint had occurred some two years previously, but that there was no evidence that further complaints about the councillor had been made since then, despite him having continued in his role as an elected member and having attended Council meetings. In addition, the Panel had accepted that an interim suspension could have a detrimental impact on the councillor's health and financial well-being and there was insufficient evidence of a risk of harm to others that could outweigh this. The Panel had determined that, on balance, it was not satisfied that it was necessary for an interim suspension to be imposed while the investigation was ongoing.

	<p>(e) LA/Fi/2268: Councillor Linda Erskine of Fife Council. Members considered a breach report from the ESC, received on 25 March 2020. They considered that it was in the public interest and proportionate for a Hearing to be held so that the Panel could hear and consider submissions on the issue of whether a declaration of interest was required. Members agreed that the parties should be advised that the Standards Commission intended to explore the possibility of holding a Hearing online to determine and should be invited to submit their views on whether this was feasible and practical, before a decision on the date of the Hearing was made.</p>	<p>Executive Team</p>
<p>15.</p>	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>Members noted the feedback received from a member of the public, on 8 March 2020, to the effect that the decision to impose an interim suspension on Councillor Donnelly (see item 14c above) “smacked of political interference”. Members confirmed there had been no political interference in the decision-making and that the decision had been made in accordance with the procedures and timescales outlined in the Standards Commission’s Interim Suspension Pending Completion of Investigation Policy. Members noted that the Executive Director had sent a response to that effect.</p> <p>Members further noted the feedback from the ESC on the interim suspension decisions in respect of Councillor Donnelly and the Edinburgh City councillor. Members noted that the ESC had indicated she did not consider the Standards Commission had given sufficient reasons for its decision about why the Councillors’ Code did or did not apply. Members agreed that they were satisfied that sufficient reasons for the Panel’s decisions, in both cases, had been given. Members noted that while the Standards Commission, as a public body, needed to give adequate reasons, there was no requirement for it to detail all the evidence and arguments referred to it in any of its decisions.</p> <p>Members noted that the Executive Director had written to the ESC to confirm that the Panels had made no determination on the applicability of the Code in either case, as such a question could well be the subject of arguments and submissions at any subsequent Hearing, should the ESC consider, at the conclusion of her investigations, that there had been breaches of the Code. The Executive Director had pointed out that it was evident, from all the Standards Commission’s written decisions, that Hearing Panels always determined whether the Code applied, on a case by case basis, as part of its decision-making on whether there has been a breach by a Respondent.</p> <p>Members noted that the Executive Director had advised the ESC that general issues about the applicability of the Codes and how the provisions within them can or should be interpreted had been discussed in detail at the meetings of the Working Group that was established to review the Codes, and that the Standards Commission had also discussed such issues in the regular meetings it had held with her predecessor. Members noted that the Executive Director had advised the ESC that the Standards Commission remained open and willing to have meetings or telephone conversations with her and her Director of Investigations to discuss these types of matters and, further, that she would be happy to provide feedback on the Group’s discussions, given that the ESC had been unable or unwilling to attend any of the meetings. Members noted that the Executive Director had advised, however, that she did not consider it was appropriate for her to engage in correspondence with the ESC about the applicability of the Code in respect of specific cases, given the need for the Standards Commission to be fair to both parties and to avoid any suspicion it has prejudged a matter before a Hearing.</p>	
<p>AOB</p>		
<p>16.</p>	<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>	

17.	<p>2020 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, 27 April 2020.</p>	
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