

MINUTES *Meeting date: Monday 27 April 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 noted that they had previously declared an interest in an interim suspension decision linked to the no-breach reports under items 12B. Mr Dunion and Ms Stewart did not declare an interest at this meeting, however, as Members were only noting the contents of the no-breach reports and discussing the ESC's general approach. As such, there was no discussion or decision-making on the specific complaints that were the subject of the reports or any complaints linked to them.</p>	
2.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and, subject to two minor typographical amendments, approved the minutes of the meeting on 30 March 2020.</p>	
3.	<p>MATTERS ARISING Members noted that all other matters arising were either complete or were due to be discussed under the agenda.</p>	
STRATEGIC MATTERS		
4.	<p>IMPACT OF CORONAVIRUS SITUATION Members noted that the Executive Team had undertaken research on potential platforms for holding online Hearings and had scheduled a mock Hearing on 7 May 2020 to test one option. Members noted that it may not be necessary to hold any Hearings online if the current restrictions in place on travel and working arrangements were lifted, but agreed that, given the uncertainty over the timing of this, it would nevertheless be helpful to explore alternative arrangements. In particular, Members agreed that it would be important for the Standards Commission to ensure that any Respondent had adequate technical support to enable them to participate fully in an online Hearing.</p> <p>Members noted that the Executive Director had discussed the forthcoming external audit with Audit Scotland's Senior Audit Manager and had advised that as all records were held online, there was no reason why the Standards Commission could not meet the deadlines outlined in the agreed Audit Plan.</p>	<p>Executive Team</p>
BUSINESS MATTERS		

<p>5.</p>	<p>COMMUNICATIONS:</p> <p>(a) Preparation for Hearings and timing of verbal decisions</p> <p>Further to the annual review of the management of Hearings undertaken at the Standards Commission meeting on 30 March 2020, Members agreed that it would be useful for Panel Members to share any questions and issues they wished to raise, or points they expected to be covered, with each other and the Executive Director before the Hearing, as part of the preparation. Members agreed that this should help ensure that all material considerations were covered, and that any irrelevant evidence or submissions were identified at any early stage of the proceedings. Members noted that Panel Members could also ask the Executive Team to seek any additional productions from the parties that they considered might assist in the decision-making on whether there had been a breach of the Code in question.</p> <p>Members further noted that the Hearing Rules provided that if it was not possible, due to time constraints, to announce a verbal decision at the Hearing, the Panel could simply adjourn and the Executive Director would then provide written notification to the ESC, the Respondent and the Chief Executive of the relevant council or devolved public body of its determination and any sanction imposed within three days.</p> <p>(b) Engagement with the ESC</p> <p>Members noted that the Convener had sent the ESC a letter on 20 April 2020 proposing an online meeting to clear away or progress some of the issues outlined below. Members noted that some of the issues were administrative, being:</p> <ul style="list-style-type: none"> • the draft data sharing agreement, which required to be concluded so that the process was GDPR compliant; • the request for ESC to provide the Standards Commission with non-breach reports when they were issued to Respondents; • confirmation as to whether or not non-breach reports were sent to complainers • work planning information, such as an indication of the likely number of cases to be referred as a potential breach of a Code; • the potential technical arrangements necessary to conduct online Hearings during the Covid-19 crisis (if feasible and appropriate) <p>Members noted that the Convener had further advised that there were also matters for discussion that would normally be raised at scheduled joint meetings of the Standards Commission and ESC or at <i>ad hoc</i> meetings between the ESC or her Director of Investigations and the Standards Commission’s Executive Director. The Convener had advised that these were useful to gain insight as to how the Codes are being interpreted, the guidance and advice we provide, novel issues which have arisen, and views on the effectiveness of the ethical standards framework overall. The Convener had noted that some of the current matters included:</p> <ul style="list-style-type: none"> • the ESC’s strategic plan for 2020/24, and an insight into what she had meant when she stated she intended to consider a return to traditional regulatory practices; • the applicability of the Councillors’ Code of Conduct in certain situations; • whether, or how, a course of conduct could form the basis of a breach of a Code; and • possible changes to the ethical standards framework, such as the disposal of inadvertent and technical breaches. <p>Members noted that, to date, no response had been received. Members noted that the Executive Team would send a reminder if no response was received by 5 May 2020. Members asked the Executive Director to keep them updated on this.</p> <p>(c) Section 16</p> <p>Members noted that legal advice had been sought on Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2010 and, specifically, on whether, having made a decision under it to hold a Hearing, there was any difficulty with the Standards Commission then re-making or reviewing the decision if any new and material</p>	<p>Executive Director</p>
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	information comes to light (such as if it received evidence the Respondent has become incapacitated in the long-term). Members asked the Executive Director to circulate the advice once received.	
6.	<p>ANNUAL REPORT 2019/20 - SECTIONS 3 AND 4</p> <p>Subject to some amendments, Members reviewed and agreed the proposed contents of Sections 3 and 4 of the Annual Report for 2019/20; being the Performance Summary and Case Statistics, respectively.</p>	Executive Team
7.	<p>COMMITTEE MEMBERSHIPS</p> <p>Members reviewed the membership of the Standards Commission's Human Resources and Audit and Risk Committees and agreed that their composition should be as following:</p> <p>Human Resources Committee: Mrs Stewart (Chair) and Ms Dunn Audit & Risk Committee: Mr McCormick (Chair) and Mr Walker</p>	Executive Team
8.	<p>HUMAN RESOURCES COMMITTEE 23 APRIL 2020</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 23 April 2020. Members agreed to amend the Human Resources Committee's Terms of Reference in line with its recommendations.</p> <p>Members further noted the Committee's activities during the 2019/20 operational year included:</p> <ul style="list-style-type: none"> • Providing assurance to the Standards Commission that appropriate and adequate arrangements were in place to monitor performance and sickness absence and to encourage development in respect of both Members and staff; • Overseeing staff attendance; • Reviewing and revising all staff job-descriptions and person specifications; • Overseeing the preparation of a key-person dependency risk analysis; • Reviewing the performance management and development requirements of staff; and • Assisting with planning of a Members' Development and Strategic Planning day <p>Members agreed with the Committee's recommendation that the Standards Commission should follow the SPCB's lead and encourage staff to use all leave entitlement during 2020/21. The Committee noted, that the small number of staff and the need to ensure a full service was still provided, meant that annual leave would continue be granted based on business needs, as normal. The Committee noted, however, that staff might be less likely to seek annual leave while the social and travel restrictions as a result of the Covid-19 outbreak remained in place. As such, there was a risk that not all leave could be taken before the end of March 2021 and / or there could be some disruption to service. Members agreed that the disruption to service as a result of a build-up of annual leave be added to the Risk Register for 2020/21.</p> <p>The Convener confirmed that he would schedule annual appraisals for all other Members, to take place in May 2020.</p> <p>Members agreed with the Committee's recommendation that the Executive Director should explore the possibility of inviting an external specialist, such as an academic from a university business school or a statistician, to facilitate the development and strategic planning day scheduled to take place on 26 August 2020, so that Members could be provided with training and advice on the theory behind how returns for investment can be evaluated and on good practice for measuring outcomes. Members agreed that this would hopefully assist them in discussing and agreeing qualitative and quantitative measures for assessing the success of the Standards Commission's educational and promotional work, as outlined in the Strategic Plan for 2020/24.</p>	<p>Executive Team</p> <p>Convener</p> <p>Executive Director</p>

	<p>Members noted that the Executive Director intended to provide Members with training on the revised Codes of Conduct and agreed that this should take place on a separate date to the strategic planning day. Members agreed that a 'health check' on the effectiveness of the team and how Members operated could also be undertaken on the same day as the training. Members noted that the Executive Team would schedule the training day after information on the progress of the consultation was received from the Scottish Government.</p>	<p>Executive Team</p>
<p>9.</p>	<p>EXPENDITURE REPORT 2019/20</p> <p>Members noted that there had been an underspend of approximately £6,500 against the agreed annual budget of £267,000. Members noted that the underspend was largely the result of the Standards Commission having based its budget submission on a projected total of ten Hearings being held in the year. However, the Ethical Standards Commissioner had not referred any cases to the Standards Commission between 26 February 2019 and 3 September 2019. As a result, only seven Hearings had been held in 2019/20, with only three of these concerning reports referred to the Standards Commission after 31 March 2019 (the other Hearings concerned reports that had been referred before 31 March 2019). Members noted that a further Hearing which was due to be held during March 2020 was cancelled due to the impact of the Covid-19 virus outbreak. While some sums spent on travel could not be recovered, other costs associated with it were not incurred as a result of the decision not to proceed with the Hearing.</p>	
<p>10.</p>	<p>REVIEW OF CODES OF CONDUCT</p> <p>Members noted that while a draft revised version of the Councillors' Code of Conduct had been agreed by the Working Group, the Scottish Government's consultation on it had been delayed due to staff being redeployed to assist with matters relating to the Covid-19 outbreak.</p> <p>Members noted that the draft revised Model Code of Conduct had been sent by the Scottish Government to a group of selected stakeholders representing various different sectors, such as health boards and colleges. The Standards Commission had also sought comments on the draft revised version from Standards Officers, via the Standards Update issued to them at the end of March 2020. Members noted that the intention was to consider any comments received from the stakeholder group and Standards Officers at the end of April 2020, before revising the draft version in light of these. The amended draft would then be issued for formal consultation.</p> <p>Members noted that, in the interim, the Executive Team was working to revise the Standards Commission's guidance on both Codes so that it could be issued for consultation at the same time as the revised Codes. Members noted that the Executive Director intended to circulate the draft guidance on the Councillors' Code for them to review during the next few weeks.</p> <p>Members asked the Executive Director to keep them updated on the progress of the work to revise both Codes and the Guidance.</p>	<p>Executive Director</p>
<p>11.</p>	<p>VICTIM IMPACT STATEMENTS</p> <p>Members noted that it could sometimes be helpful for a Hearing Panel to hear from any victim if there was one (for example in a bullying or harassment case), when considering the appropriate sanction to apply at a Hearing following a finding of breach. Members noted that the victims of alleged breach may not necessarily be the complainer or called to be witness (especially if the facts of the matter were not in dispute) and, as such, a Hearing Panel might not always benefit from their perspective.</p> <p>Members noted that there were several possible ways in which the Standards Commission could seek to hear from victims. Members agreed, however, that various issues would need to be considered before any decision to adopt such a more formal</p>	

	<p>process for ensuring Panels had access to the victim's perspective could be taken. These issues included how information could be presented to a Panel and how to ensure any irrelevant or prejudicial information was not considered. Members agreed, therefore, to give the issues further thought and to consider the matter again at their next meeting.</p>	Members
CASES UPDATE		
12.	<p>NO BREACH DECISIONS BY THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/R/2257: Section 14 Letter. Members noted that the ESC had advised that a draft breach report had been sent to a Renfrewshire councillor.</p> <p>(b) LA/PK/3052/3053/3066 and LA/PK/2265: Members noted the no-breach reports produced by the ESC in respect of two Perth & Kinross councillors. Members made a number of observations regarding the reasoning and conclusions and directed the Executive Director to write to the ESC about these.</p>	EXECUTIVE DIRECTOR
13.	<p>CASES</p> <p>(a) Interim Suspension: Councillor Alan Donnelly of Aberdeen City Council. Members noted that the ESC's investigation into the complaints about Councillor Donnelly still ongoing. Members noted that the interim suspension was due to expire at the beginning of June 2020 so the Panel would need to make a decision before then on whether or not to renew it, if the ESC's investigation had not concluded.</p> <p>Members noted that the ESC had confirmed in a letter of 24 April 2020 that she was still investigating whether the Councillors' Code of Conduct applied. Members asked the Executive Director to acknowledge the ESC's letter and advise that the Standards Commission looked forward to receiving the report on the outcome of the investigation in due course.</p> <p>(b) LA/Fi/2268: Councillor Linda Erskine of Fife Council. Members noted that a Hearing had been scheduled to take place on 24 August 2020. Members further noted that the parties would be sent invitations to attend an online pre-Hearing meeting in due course.</p>	
14.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>Members noted that no feedback had been received since the last meeting.</p>	
AOB		
15.	<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>	
16.	<p>2020 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 Tuesday, 26 May 2020. Members agreed that the ESC should be invited to attend a joint meeting that day as planned, with 29 June 2020 being offered as an alternative date, should she be unable to attend.</p>	