

MINUTES *Meeting date: Tuesday 26 May 2020*

IN ATTENDANCE ONLINE

Members:

- Kevin Dunion (Convener)
- Michael McCormick
- Tricia Stewart (items 1-10 only)
- Paul Walker
- Ashleigh Dunn (items 1-12 and 14 only)

Executive Team:

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

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES There were no apologies.</p> <p>DECLARATIONS OF INTEREST No declarations of interest were made.</p>	
2.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and, subject to amendments being made regarding the detail to be included in respect of the discussions on items 9, 11 and 12(b), approved the minutes of the meeting on 27 April 2020.</p>	
3.	<p>MATTERS ARISING Members noted that while it had been agreed at the meeting on 27 April 2020 that the Executive Director should write to the Ethical Standards Commissioner (ESC) outlining their observations regarding the non-breach reports produced by the ESC in respect of two Perth & Kinross councillors, a decision had subsequently been taken not to do so.</p> <p>Members further noted that it had been agreed that the ESC should be invited to attend a joint meeting with the Standards Commission on 27 May 2020 (with 29 June 2020 being offered as an alternative date, should she be unable to attend). Members considered, however, that it was not appropriate to issue such an invitation at present.</p> <p>Members noted that all other matters arising were either complete or were due to be discussed under the agenda.</p>	
STRATEGIC MATTERS		
4.	<p>EXTENT OF ADJUDICATORY AND OVERSIGHT ROLE UNDER SECTIONS 10 AND 11 OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000 The Convener had written to the Ethical Standards Commissioner (ESC) regarding the provisions of the Ethical Standards in Public Life etc. (Scotland) Act 2000 which set out the relationship between the two organisations and, in particular, that the following sections provided the Standards Commission with an oversight role:</p> <ul style="list-style-type: none"> • Section 10, which states that the ESC should comply with any directions given by the Standards Commission (except in respect of how the ESC carries out any specific investigation); and • Section 11, which requires the ESC to provide the Standards Commission with such information concerning the discharge of her functions as the Commission requires. 	

	<p>The ESC had been informed that it was the Commission’s intention to invoke its statutory authority and issue formal notices and directions when it considered it appropriate to do so. Members agreed that drafts of any Notices should be sent to the ESC so that she had the opportunity to comment on them, before they were finalised and issued.</p> <p>Members were minded, in the first instance, to issue a direction under Section 10 to the effect that if an investigation was likely to exceed three months and at every three month interval thereafter, the ESC must submit to the Standards Commission an interim report as to the progress of the investigation, an explanation as to what requires to be done to complete it and an indication of when it is expected that a final report would be issued</p> <p>Members indicated that they were also minded to direct under Section 10 of the Act that the ESC provide the Standards Commission with a report at the conclusion of all her investigations into complaints about councillors or members of devolved public bodies, indicating whether she concludes there has or has not been a contravention of a Code of Conduct. The Convener and Executive Director would prepare and circulate a paper addressing the implications for our current procedures, including the changes to the Hearing Rules before any consultation on the draft direction occurred (for example, on how a case would be presented if the ESC concluded that no breach of a Code had occurred, but the Standards Commission was minded to hold a Hearing).</p> <p>SECTION 16 OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000</p> <p>Members noted that there was nothing to prevent the Standards Commission from reconsidering a Section 16 decision at any time and also from using the ‘do neither’ option under the section to dispose of certain cases in a more proportionate way. Members noted that they had been reluctant in the past to choose the ‘do neither’ option if there was evidence of a breach of a Code as such a disposal was unlikely to promote compliance, there was nothing to prevent the Standards Commission from issuing advice along with its decision to ‘do neither’. Members noted that the Standards Commission may choose to do so in cases where they were satisfied that the breach was minor, technical and inadvertent in nature (particularly where the Respondent has admitted / accepted it). The Standards Commission might, for example, choose not to hold a Hearing but advise a Respondent to review their register of interests more often if, for example, the breach had concerned a failure to register an interest within one month, as required, but there was evidence that it had been registered not long afterwards. Members agreed the Standards Commission should provide such advice to the Respondent and could also include it in a published decision outlining the reasons why it had determined to ‘do neither’ under Section 16.</p> <p>Members agreed that the Section 16 Policy be updated to reflect that the Standards Commission could choose to remake a Section 16 decision and / or could choose to provide advice to the Respondent even if it chose the ‘do neither option’.</p>	Executive Director
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BUSINESS MATTERS		
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5.	<p>COMMUNICATIONS:</p> <p>(a) Online Hearing arrangements</p> <p>Members noted that the Standards Commission had held a mock Hearing online on 7 May 2020 to test a potential platform. Members noted that the main issues that had been identified were how the public and press could access the Hearing and what could be done to remedy the situation if an attendee was not able to participate fully due to technical difficulties (such as a loss of WiFi). Members noted that the Executive Team was exploring and testing whether an online Hearing could be live-streamed, or a recording of it (to be edited to remove any lengthy periods of inactivity while the Panel was deliberating in private) provided through the Standards Commission’s website. Members agreed that the Respondent and ESC should be invited to online pre-Hearing meetings, which would provide an opportunity to identify and hopefully resolve any technical issues and difficulties. In addition, all attendees should be asked to log in to the online Hearing 30 minutes before it was due to start to check their connectivity and that they could be heard and seen by all. Members agreed that it would be a matter for the Panel Chair to determine, on the day,</p>	
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	<p>whether any online Hearing should be adjourned, if technical issues prevented it from being conducted in a fair and efficient manner.</p> <p>Members noted that the intention was to hold the two Hearings scheduled to take place in July 2020 online (see items 13(b) and 13(c) below). Members noted that the Executive Team would send information sheets outlining how the online Hearings would be conducted to those involved in the two Hearings and would also invite them to attend online pre-Hearing meetings.</p>	<p>Executive Team</p> <p>Executive Team</p>
6.	<p>ANNUAL REPORT 2019/20 – SECTIONS 1 AND 6</p> <p>Subject to some amendments, Members reviewed and agreed the proposed contents of Sections 1 and 6 of the Annual Report for 2019/20; being the Executive Summary and Governance and Financial Overview, respectively.</p>	<p>Executive Team</p>
7.	<p>BUSINESS CONTINUITY PLAN</p> <p>Members undertook their annual review of the Standards Commission’s Business Continuity Plan. Members agreed some minor amendments and asked that, once made, the revised version of the plan be circulated to all staff and Members, the SPCB and the Scottish Public Services Ombudsman.</p>	<p>Executive Team</p>
8.	<p>REVIEW OF CODES OF CONDUCT AND STANDARDS COMMISSION GUIDANCE AND ADVICE NOTES</p> <p>Members noted that while a draft revised version of the Councillors’ Code of Conduct had been agreed by the Working Group, there was still no progress in terms of the consultation on it, due to Scottish Government 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 and any received had been forwarded to the Scottish Government to consider.</p> <p>Members noted that, in the meantime, work had been completed on revising the Standards Commission’s guidance on the Councillors’ Code of Conduct and the associated Advice Notes aimed at elected members so that these could be issued for consultation at the same time as the revised Code. Members noted that the Executive Director intended to undertake similar work on the draft guidance on the Model Code and the associated Advice Notes for Members of Devolved Public Bodies over the next month or so.</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>	
9.	<p>VICTIM IMPACT STATEMENTS</p> <p>Members noted that they had discussed whether 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, at their previous meeting. Members agreed that Mr McCormick should prepare and circulate a paper outlining the possible ways this could be facilitated, before any decision was made.</p>	<p>Mr McCormick</p>
10.	<p>AUDIT AND RISK COMMITTEE 18 MAY 2020</p> <p>Members noted the verbal report provided by Mr McCormick, the Chair of the Audit and Risk Committee, and the draft minutes of the Committee meeting on 18 May 2020. Members agreed to amend the 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"> • Reviewing the Risk Register including the forecast scores and identifying and reviewing actions to be taken to mitigate risks; • Reviewing and recommending to the Standards Commission the external audit plan (including timetable and fees); • Reviewing internal and external audit reports; • Reviewing the management of the Standards Commission’s payroll services contract. <p>Members agreed with the Committee recommendation that some risks relating to:</p> <ul style="list-style-type: none"> • the impact of the Covid-19 outbreak; • any fluctuations in the numbers of cases referred to the Standards Commission; and • any discrepancies between how the Standards Commission and ESC interpreted the provisions in the Codes of Conduct should be added to the Risk Register for 2020/21. 	<p>Executive Team</p>
<p>11.</p>	<p>ADVICE NOTES FOR COUNCILLORS</p> <p>Members agreed amendments to be made to the following three Standards Commission Advice Notes for Councillors on:</p> <ul style="list-style-type: none"> • Distinguishing between Strategic and Operational Matters • The Application of Article 10 of the ECHR • Bullying and Harassment <p>in order to strengthen the guidance they contained with regard to the provisions in the Councillors’ Code on respect, bullying and harassment and how these are interpreted. Members agreed that the amended version of the Advice Notes should be issued and published.</p>	<p>Executive Team</p>
<p>CASES UPDATE</p>		
<p>12.</p>	<p>NO BREACH DECISIONS BY THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/AC/2276: Section 14 Letter. Members noted that the ESC had advised that a draft breach report had been sent to an Aberdeen City councillor.</p> <p>(b) LA/G/2278: Section 14 Letter. Members noted that the ESC had advised that a draft breach report had been sent to a Glasgow councillor.</p> <p>(c) LA/WD/3016: Section 14 Letter. Members noted that the ESC had advised that a draft breach report had been sent to a West Dunbartonshire councillor.</p> <p>(d) LA/Fi/3125: Section 14 Letter. Members noted that the ESC had advised that a draft breach report had been sent to a Fife councillor.</p>	
<p>13.</p>	<p>CASES</p> <p>(a) Interim Suspension: Councillor Alan Donnelly of Aberdeen City Council. Members noted the ESC had advised that her investigation had concluded and a draft breach report had been sent to the Respondent for comment. Members noted that the interim suspension was due to expire on 3 June 2020, so the Panel would be required to make a decision before then on whether or not to it should be renewed, while final report from the ESC was awaited.</p> <p>(b) LA/H/3003: Councillor Alan Henderson of Highland Council. Members noted that an online Hearing was scheduled to take place on 8 July 2020. Members noted the parties would be invited to a pre-Hearing meeting to discuss and hopefully resolve any procedural and technical issues.</p> <p>(c) LA/SL/2252: Councillor Gerry Convery of South Lanarkshire Council. Members noted that an online Hearing was scheduled to take place on 23 July 2020. Members noted the parties</p>	

	<p>would be invited to a pre-Hearing meeting to discuss and hopefully resolve any procedural and technical issues.</p> <p>(d) LA/R/2257: Councillor Paul Mack of Renfrewshire Council. Members noted that a Hearing had been scheduled to take place on 19 August 2020.</p> <p>(e) LA/Fi/2268: Councillor Linda Erskine of Fife Council. Members noted that a Hearing had been scheduled to take place on 24 August 2020.</p>	
14.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>Members noted that the ESC had forwarded feedback on an interim suspension decision made by the Standards Commission about an Edinburgh City councillor. Members noted that the feedback was based in part on the misapprehension that the Standards Commission had made a decision on the applicability of the Councillors' Code of Conduct in respect of the complaint, when in fact no such decision had been made, or would be made, until such time as the case had been referred as a potential breach and evidence and submissions had been made at a Hearing.</p> <p>Members noted that the Standards Commission no longer published decisions in cases where it decided not to impose interim suspensions. In this instance a journalist with prior knowledge from an external source that the Standards Commission had made a decision on whether to impose an interim suspension had submitted a request for the decision. Members agreed, therefore, that a protocol would be put in place and the Convener would approve the response to be given to any press enquiries and / or any media releases about interim suspensions or ongoing investigations before it was provided.</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 Monday, 29 June 2020.</p>	