

MINUTES

Meeting date: Monday 27 July 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)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	APOLOGIES There were no apologies. DECLARATIONS OF INTEREST Mr Walker declared an interest and took no part in the discussion on item 16(j).	
2.	MATTERS ARISING Members noted that all matters arising were either complete or were due to be discussed under the meeting agenda.	
CONSENT ITEMS		
3.	DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and, subject to minor amendments being made, approved the minute of the meeting on 29 June 2020.	
4.	DEVELOPMENT DAY 26 AUGUST 2020 Members noted that, due to Covid-19 related restrictions still being in place, the Standards Commission had been advised that it would be unable to use a meeting room in the Scottish Parliament for the Development Day. As such, an alternative venue had been identified. Members noted that the Executive Team would send them details of the venue and the Covid-19 related guidelines it had adopted.	Executive Team
5.	AUDIT AND RISK COMMITTEE MEETING Members noted the verbal report provided by Mr McCormick, Chair of the Audit & Risk Committee, and the draft minutes of its meeting on 21 July 2020. Members further reviewed the terms of the Annual Audit Report from Audit Scotland and the Annual Assurance Statement from the Internal Auditor, and were pleased to note that strong assurances were offered from both with regard to the Standards Commission's systems of internal control. Members further noted, and advised that they supported, the changes the Committee had made to the Risk Register for 2020/21.	
6.	EXPENDITURE REPORT 2020/2021 QUARTER ONE Members noted the report on expenditure against budget for quarter one of 2020/21.	
STRATEGIC MATTERS		

7.	<p>DIRECTION UNDER SECTION 10 OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000 ON THE OUTCOME OF INVESTIGATIONS</p> <p>Members noted that a draft direction under Section 10 of the Act requiring the Ethical Standards Commissioner (ESC) to:</p> <ul style="list-style-type: none"> 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 concluded there had or had not been a contravention of a Code of Conduct; and notify parties that a report had been issued to the Standards Commission for it to determine what action it wished to take under Section 16 of the Act, <p>had been issued on 21 July 2020. The purpose of the draft direction was to help ensure there was a clearer separation of functions between the two organisations in that the role of the ESC would be investigate complaints, and the Standards Commission would adjudicate on all complaints about councillors and members of public bodies that have been deemed eligible for investigation. The direction would allow the Standards Commission to make the final decision on all such complaints and to decide whether it wished to take no action, hold a Hearing or direct that further investigation be undertaken. Members noted that the Standards Commission might wish to pursue one of the latter two options, when it disagreed with the ESC's conclusions or considered that further relevant and material information would be of value.</p> <p>Members acknowledged that some changes to current arrangements would arise following the implementation of such a direction, particularly in cases where the ESC concluded that no breach has occurred, but where the Standards Commission decided to hold a Hearing. Members noted, therefore, that the ESC had been asked to contact the Standards Commission within seven days to arrange a meeting to discuss, and hopefully resolve, some of these before the Standards Commission proceeded to consult other stakeholders about the draft direction. Members asked the Executive Director to advise them when a response from the ESC was received.</p>	Executive Director
8.	<p>ENGAGEMENT WITH KEY STAKEHOLDERS</p> <p>Members agreed that once a response had been received from the ESC to the letter inviting her to a meeting to discuss the draft direction on the outcome of investigations, it would be helpful thereafter to try to arrange a cycle of meetings between her and the Standards Commission, to discuss issues of concern to both organisations, including the promotion of the ethical standards framework and adherence to the Codes of Conduct.</p> <p>Members noted that work the Standards Commission had been intending to undertake, with a view to facilitating discussions and the sharing of ideas with other public bodies to discuss ways of promoting integrity and improving public perception of the conduct of those in public life, had been put on hold as a result of the Covid-19 pandemic. Members noted that the Convener would circulate a paper identifying potential ways to progress the work, for further discussion.</p>	Convener
BUSINESS MATTERS		
9.	<p>ANNUAL ACCOUNTS</p> <p>Members reviewed the draft Annual Accounts for 2019/20, the contents of the proposed external audit report and the terms of the draft ISA 580 management response letter. Members approved the Annual Accounts and confirmed that the Executive Director was to proceed to sign both the Accounts and ISA 580 letter before submitting them to Audit Scotland for their consideration and final approval.</p>	Executive Director
10.	<p>BUDGET SUBMISSION 2021/2022</p> <p>Members noted that the budget submission for 2021/22 had to be sent to the Scottish Parliamentary Corporate Body (SPCB) before 14 September 2020. Members noted that some 10 Hearings had been held or were scheduled to be held in 2020/21, with at least a further three case referrals expected to be made by the ESC by the end of quarter two. Members agreed, therefore, that it was likely that at least 16 Hearings would be held in the</p>	

	<p>year. Members noted that as the ESC was now required, under a Section 10 direction sent on 1 July 2020, to provide, the Standards Commission with information about the progress of investigations, it should be possible to determine whether the increase in case referrals was the result of the ESC having cleared the backlog caused by the restructuring of her office, or whether it was a trend that was likely to continue into 2021/22. Members noted that if:</p> <ul style="list-style-type: none"> • the increase in case referrals was a trend that was likely to continue; and • the draft direction on the outcome of investigations (see item 7 above) was finalised and issued and the Standards Commission then disagreed with the ESC’s conclusion that there had been no breach of a Code and decided to hold a Hearing on some additional cases, <p>there was a potential for at least 20 Hearings to be held in 2021/22. Members agreed that the budget submission would need to reflect this possibility.</p> <p>Members further agreed that the increase in the volume of referrals and the increasing complexity of cases would create more work for the Standards Commission. Members noted that the three Standards Commission staff members were already working at nearly full capacity (particularly given there had been no sickness absence in the previous year and none in the year to date). Members agreed, therefore, to explore the possibility of recruiting a new member of staff to undertake casework. Members asked the Executive Director to draft a job description and identify how much time would be required, so that the potential grade of the role and whether the post may be full or part-time could be explored further. Members agreed that a business case should then been prepared for submission to the SPCB, along with the normal budget request, for approval.</p>	<p>Executive Director</p>
<p>11.</p>	<p>GUIDANCE FOR THE PUBLIC ON THE COUNCILLORS’ CODE OF CONDUCT</p> <p>Members reviewed a draft version of the Guidance on the Councillors’ Code of Conduct for the public, which aimed to outline, in very general and understandable terms, what the Code did and did not cover. Members agreed that the Guidance should help the Standards Commission to deal effectively with enquiries and to manage expectations about what is expected of a councillor and what could constitute a potential breach of the Code. Members noted that the document also outlined how members of the public could raise concerns about a potential breach of the Code and the complaint process itself.</p> <p>Subject to a few minor amendments being made, Members agreed that the Guidance should be finalised and published.</p>	<p>Executive Team</p>
<p>12.</p>	<p>IMPACT STATEMENTS AT HEARINGS</p> <p>Members noted that they had agreed, at their meeting on 29 June 2020, that, where possible, Hearings Panels should be provided with information about the impact on others when considering the sanction to be applied after a breach of a Code of Conduct had been found (given that they also heard from the Respondent in mitigation at that stage) in cases concerning respect and/or bullying and harassment. Members agreed that it would be appropriate to give anyone directly affected by such conduct the opportunity to provide a written statement for the Panel to consider at the mitigation stage of proceedings. Members further agreed that any Panel considering such a statement would be mindful of the fact that the contents had not been tested and that any irrelevant information would have to be disregarded.</p> <p>Members agreed a proforma that could be sent to individuals the Standards Commission identifies as having been affected by the Respondent’s conduct that was the subject of the allegation to be considered at the Hearing. The individual affected should be told that it was entirely up to them to decide whether or not to provide a statement, and that the Panel would only consider any information about how they have been affected that directly related to the conduct in question. Members agreed that both the Respondent and individual affected should also be advised that any irrelevant or prejudicial content would be disregarded (for example, content relating to the impact of any allegation or breach that had not been found established or had not been referred by the ESC). In addition, it should be</p>	

	<p>made clear that the Panel would be aware of, and would take into account, the fact that the information in any such a statement has not been given under oath or tested; and that it will only be used to assist the Panel in determining sanction (as opposed to whether there has been a breach).</p> <p>Members agreed the Hearing Rules and Section 19 Policy on the Application of Sanctions should be amended to include references to Impact Statements.</p>	Executive Team
13.	<p>REGIONAL ROADSHOWS ON THE COUNCILLORS' CODE OF CONDUCT</p> <p>Members noted that restrictions in place relating to the Covid-19 pandemic could make it difficult to proceed with the regional training roadshows the Standards Commission had planned to hold in the second and third quarters of the year.</p> <p>Members agreed that further work should be undertaken to explore how the roadshows could be held online. Members noted that it would be helpful to have the capacity to allow participants to be able to engage with them and ask questions on how the Code should be interpreted. Members noted that it might also be useful for participants to be able to work through case studies and for the events to be livestreamed or recorded. Members noted, however, that the Standards Commission would have to be mindful that not all participants would have the same IT experience or knowledge.</p> <p>Members noted that Ms Dunn and Mrs Stewart would explore potential options and report back.</p>	Ms Dunn and Mrs Stewart
14.	<p>ONLINE HEARINGS</p> <p>Members noted that two hearings had now been held online and livestreamed through the Standards Commission's website. Members noted that the ability to livestream meant that members of the public and press in the Respondent's local area could watch proceedings, meaning that it would not always be necessary to hold in person Hearings in the area where the Headquarters of the Local Authority where the Respondent was elected is located; or, if the Respondent is a member of a devolved public body, in the area where the public body holds its meetings. Members agreed, however, that it was not appropriate to hold online Hearings in cases where there was a great deal of dispute between the ESC and Respondent as to the facts of the matter and whether these amounted to a breach, particularly if witnesses were to be called. This was because the increased number of participants meant an increased risk of technology failing or the Standards Commission being unable to conduct the Hearing effectively and without disruption. Members further agreed that, in the interests of fairness, an online Hearing should only be held if the Respondent in question was comfortable with using the technology required.</p> <p>Members agreed that the Hearing Rules should be updated to reflect the fact that an online Hearing could be held in cases where there was little dispute between the parties and no witnesses (other than the Respondent) were to be called.</p>	Executive Team
CASES UPDATE		
15.	<p>NO BREACH DECISIONS BY THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/ER/3271: Section 14 Letter. Members noted that the ESC had advised that a draft breach report had been sent to an East Renfrewshire councillor.</p> <p>(b) 112021: ESC Decision of no breach. Members noted the contents of a no breach decision issued by the ESC.</p>	
16.	<p>CASES</p> <p>(a) LA/H/3003: Councillor Alan Henderson of Highland Council. Members noted that an online Hearing took place on 8 July 2020. The Hearing Panel found that the Respondent had breached the Councillors' Code of Conduct and censured him.</p>	

	<p>(b) LA/SL/2252: Councillor Gerry Convery of South Lanarkshire Council. Members noted that an online Hearing took place on 23 July 2020. The Hearing Panel found that the Respondent had breached the Councillors' Code of Conduct and censured him.</p> <p>(c) LA/R/2257 & LA/R/3262: Councillor Paul Mack of Renfrewshire Council. Members noted that a pre-Hearing meeting was held online on 22 July 2020. Members noted that, following a request from the respondent, the Hearing that was due to take place on 19 August 2020 had been postponed and would now take place on 10 September 2020.</p> <p>(d) LA/Fi/2268: Councillor Linda Erskine of Fife Council. Members noted that a Hearing was scheduled to take place on 24 August 2020, with a pre-Hearing meeting to be held on 17 August 2020.</p> <p>(e) LA/AC/2276: Councillor Marie Boulton of Aberdeen City Council. Members noted that a Hearing was scheduled to take place on 8 September 2020, with a pre-Hearing meeting to be held on 7 August 2020.</p> <p>(f) LA/WD/3016: Councillor James Bollan of West Dunbartonshire Council. Members noted that a Hearing was scheduled to take place on 14 September 2020, with a pre-Hearing meeting to be held on 7 August 2020.</p> <p>(g) LA/AC/3199: Councillor Alan Donnelly of Aberdeen City Council. Members noted that a Hearing was scheduled to take place on 6 October 2020.</p> <p>(h) LA/Mo/3132: Councillor Shona Morrison of Moray Council. Members noted that a Hearing was scheduled to take place on 12 October 2020.</p> <p>(i) LA/Fi/3125: Councillor Brian Thomson of Fife Council. Members noted that a Hearing had been scheduled to take place on 9 November 2020.</p> <p>(j) LA/Fi3039 & 3075: Councillor Tony Miklinski. Members noted that breach report had been received from the ESC on 22 July 2020. Members agreed that it was proportionate and in the public interest to hold a Hearing and asked the Executive Team to schedule one and notify the parties accordingly.</p>	
17.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>a) Feedback from ESC's representative - online Hearing LA/H/3003.</p> <p>b) Feedback from Respondent LA/H/3003.</p>	
AOB		
18.	<p>AGENDA ITEMS FOR NEXT MEETING</p> <p>Members are to advise the Executive Director of any items they wish added to the agenda for the next meeting.</p>	
19.	<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, 28 September 2020.</p>	