

# MINUTES

Meeting date: Monday 22 February 2021

## IN ATTENDANCE ONLINE

### Members:

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

### Executive Team:

- Lorna Johnston (Executive Director)
- Elaine McLean (Business Manager)

ITEM	CONTENT	ACTION
<b>STANDING ITEMS</b>		
1.	<p><b>APOLOGIES</b> No apologies were received.</p> <p><b>DECLARATIONS OF INTEREST</b> No declarations of interest were made.</p>	
2.	<p><b>MATTERS ARISING</b> Members noted that all matters arising were either complete or were due to be discussed under the meeting agenda.</p>	
<b>CONSENT ITEMS</b>		
3.	<p><b>DRAFT MINUTE OF PREVIOUS MEETING</b> Members reviewed and approved the minute of the meeting on 25 January 2021.</p>	
<b>STRATEGIC MATTERS</b>		
4.	<p><b>BUSINESS PLAN 2021/22</b> Subject to a few minor amendments, Members agreed the contents of the Business Plan for 2021/22, in support of the second year of the Standards Commission's Strategic Plan for 2020/24.</p> <p>Members noted that references to the Risk Register would be added before an external version of the Business Plan was published on the website.</p>	<b>Executive Team</b>
5.	<p><b>RISK REGISTER 2021/22</b> Subject to the inclusion of more detail in respect of the risks relating to staffing, the Risk Register for 2021/22 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 2021, and January 2022. The Audit &amp; Risk Committee would report on these reviews at the subsequent Standards Commission meetings.</p>	
6.	<p><b>DIRECTIONS ISSUED TO THE ETHICAL STANDARDS COMMISSIONER UNDER SECTIONS 10 AND 11 OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000</b> Members noted concerns had been raised with the Commission that the Ethical Standards Commissioner (ESC), was circumventing the Direction on the Outcome of Investigations,</p>	

issued to her by the Standards Commission on 12 November 2020, by issuing lengthy decisions rejecting complaints on the grounds that there was insufficient evidence of a breach and / or that it was not proportionate / in the public interest to investigate further. Members noted that it appeared substantial enquiries were being made before such decisions were being issued, such that it appeared that investigative work was being undertaken. By describing this as being part of the screening process, rather than an investigation, the ESC avoided having to make a report to the SCS.

Members noted that unless investigations were undertaken by, and reports received from the ESC, the Standards Commission could not exercise its adjudicatory role. Members were concerned, in particular, that complaints concerning the respect and bullying and harassment provisions in the Codes of Conduct may be being assessed as ineligible or inadmissible, without a full investigation, on the basis that there was insufficient evidence, or on the grounds that protection was afforded under Article 10 of the European Convention of Human Rights. Members were of the view that a failure to investigate such cases fully had the potential to erode confidence in the ethical standards framework and the protection afforded by the Codes to members of the public, officers and other councillors or members of devolved public bodies.

Members agreed, therefore, that a Direction should be issued to the ESC requiring her to investigate and report to the Standards Commission on all complaints about councillors and members of devolved public bodies unless:

- The Respondent had passed away or was an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000;
- On the face of it, the complaint could not, if established to have occurred, constitute a contravention of the relevant Code (regardless of whether any protection could be afforded by Article 10); or
- the complaint was made more than 12 months after the conduct being complained of occurred (or in the case of a course of conduct, the conduct ended)

Members noted that the ESC had published a notice on her website indicating that she did not agree with the Direction on the Outcome of Investigations, as she considered it could lead to public Hearings being held on complaints that she had deemed as being frivolous, vexatious or groundless or on ones that she had found to not amount to a breach the relevant Code of Conduct. The ESC had further stated that this could have led to 16 additional Hearings being held from when she had commenced in post to date. Members noted that the ESC had failed to raise her concerns in this regard directly with the Standards Commission, despite being invited to comment on a draft version of the direction before it was issued. In any event, Members noted that the ESC's notice misrepresented the situation, as she had failed to note that the Standards Commission had the option, under section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to take no action in cases referred to it by the ESC. The Standards Commission has published a policy on how it makes such decisions, which clearly states that no action will be taken, if it determines that it is not proportionate and in the public interest to hold a Hearing (for example, if there was a technical breach of a Code, such as where a councillor or member of a devolved public body registered an interest as required, but missed the deadline for doing so by one day). As such, Hearings will not be held in cases where the investigation demonstrates that the complaint was frivolous, vexatious or entirely groundless.

Members noted that the ESC had sent the Executive Director a letter on 18 February 2021 advising that she was not open to meeting Standards Commission Members and was only prepared to resolve any matters by correspondence. Members asked the Executive Director to respond noting this position, but advising that they remained receptive to meeting, at any stage, to discuss issues of mutual interest.

**Executive  
Director**

**Executive  
Director**

**BUSINESS MATTERS**

<b>7.</b>	<p><b>SECTION 31 OF THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973</b></p> <p>Members noted that if a councillor is convicted of a crime, which results in a custodial sentence of three months or more, they are automatically disqualified for nomination, election and holding office as a member of a local authority under Section 31 of the Local Government (Scotland) Act 1973. Members noted that, at the time the legislation was enacted, its introduction would have resulted in the disqualification of individuals convicted of relatively minor crimes as the use of three-month or other short sentences was relatively common. Members noted, however, that current sentencing policy was to seek alternatives to custody, with a presumption against the use of short custodial sentences. Members agreed that an inference could be drawn, from the lexicon and specifics of the governing legislation, that it was formerly anticipated that criminal conduct and consequent disqualification from the role of councillor would be delivered by the criminal courts (rather than by the ethical standards framework and any sanction imposed by the Standards Commission). The title of the Ethical Standards in Public Life etc (Scotland) Act 2000 and its focus on ‘a code of conduct’, as well as an absence of any references to violence, criminal damage, disorder, breach of the peace and physical and sexual assault all suggested an expectation that such matters would be dealt with in the criminal courts, particularly in an era where sentencing practice would have led to disposals that would have resulted in disqualification from seeking election.</p> <p>Members agreed that this assumption or inference is further enforced by the fact that the Councillors’ Code of Conduct does not make specific provision for criminal conduct and does not apply unless the conduct occurred when the individual in question is acting in the capacity as a councillor or can reasonably be perceived as acting as such. This means that when conduct that could amount to criminality, such as verbal threats, threatening behaviour and physical and sexual assaults, are referred to the Standards Commission, they are presented as a potential breach of the respect or bullying and harassment provisions in the Code. Members noted that while this was not inaccurate, it was a notable understatement – again suggesting that the expectation would be that behaviour which falls within the criminal code would be dealt with by the courts (with the consequences for an individual’s status as a councillor or candidate addressed by the disqualification emanating from a three-month or more custodial sentence).</p> <p>Members questioned, therefore, whether the intention was for an individual found to have perpetrated threatening, violent or sexually predatory behaviour whilst acting, or perceived to be acting, as a councillor to be disqualified from such a role in public life. Members noted, if so, then the current sentencing policy meant that the provisions of the Local Government (Scotland) Act 1973 could not be relied on to disqualify all individuals who are convicted of quite serious crimes from seeking or holding the office of councillor.</p> <p>Members agreed that the Standards Commission’s Policy on the Application of Sanctions should be amended to reflect the possibility that disqualification would always be considered as a possible disposal in cases where a councillor has been convicted of an offence in respect of conduct they engaged in while they were acting in the capacity as a councillor or where they could reasonably be perceived to be acting as such. Members further agreed that the Standards Commission should seek to start or engage in any existing public debate about whether Section 31 of the Local Government (Scotland) Act 1973 should be amended to reflect current sentencing policies and practice. Mr McCormick agreed to consider how to take this proposal forward.</p>	<b>Executive Director / Mr McCormick</b>
<b>8.</b>	<p><b>APPEAL IN RESPECT OF LA/R/2257 &amp; 3262</b></p> <p>Members noted that, at a Hearing on 4 February 2021, a Sheriff Principal considered an appeal lodged by a Respondent against a decision made by a Panel of the Standards Commission, at a Hearing on 10 September 2020, to find him in breach of the Councillors’ Code of Conduct and to disqualify him. The Sheriff Principal did not consider, or make any finding, on the Panel’s decisions on breach and sanction, but determined that, when the Panel became aware on the day of the Hearing that the Respondent was self-isolating from</p>	

	<p>9 September 2020 (having been in close contact with an individual who had tested positive for Covid-19) it should not have continued with the Hearing in his absence.</p> <p>Members noted that the Sheriff Principal remitted the matter back to the Standards Commission to consider at a new Hearing (see item 13 below).</p>	
9.	<p><b>RECRUITMENT UPDATE</b></p> <p>Members noted that the Human Resources Committee had agreed that the Business Manager role should be re-advertised as vacancy for an 'Office Manager' in the hope that this would increase interest in the post. Members noted that the deadline for applications for the Caseworker vacancy was noon that day and asked the Executive Director to provide them with updates on the subsequent sifting and interviewing exercises that she was to undertake with the assistance of members of the Human Resources Committee.</p>	Executive Director
10.	<p><b>SECTIONS 2 AND 5 OF ANNUAL REPORT 2020/21</b></p> <p>Subject to some minor amendments, Members agreed the content and format of Section 2 of the Annual Report for 2020/21, 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, and Hearing held, during the year.</p>	
11.	<p><b>ONLINE TRAINING WORKSHOPS ON THE COUNCILLORS' CODE OF CONDUCT</b></p> <p>Members noted that Mr McCormick and Mr Walker had facilitated an online training workshop on the Councillors' Code of Conduct for elected members of Highland Council on 15 February 2021. Members noted that the online format was working well and agreed a small change to way the case study breakout group sections were presented.</p>	Executive Team
<b>CASES UPDATE</b>		
12.	<p><b>REPORTS FROM THE ESC &amp; SECTION 14 LETTERS</b></p> <p>Members noted that no section 14 letters or reports following the conclusion of an investigation had been received from the ESC since the last meeting. (Members noted that no such reports had been received since 17 December 2020.</p>	
13.	<p><b>CASES</b></p> <p><b>(a) LA/OI/3265:</b> Councillor John Ross Scott of Orkney Islands Council. Members noted that, at a Hearing on 18 January 2020, Councillor Scott had been found to have breached the Councillors' Code of Conduct. Councillor Scott was subsequently suspended from attending full meetings of Orkney Islands Council for three months, with effect from 26 January 2021.</p> <p><b>(b) LA/R/2257 &amp; 3262:</b> Councillor Paul Mack of Renfrewshire Council. Members noted that a Hearing was scheduled to take place on 8 March 2021. (<i>Post Hearing note: this is now scheduled to be held on 7 April 2021</i>).</p>	
14.	<p><b>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</b></p> <p>None received.</p>	
<b>AOB</b>		
15.	<p><b>AGENDA ITEMS FOR NEXT MEETING</b></p> <p>Members agreed to advise the Executive Director of any further items to be added to the agenda for the next meeting.</p> <p><b>HUMAN RESOURCES COMMITTEE</b></p> <p>Members of the Committee agreed to hold their annual meeting on 21 April 2021.</p>	
16.	<p><b>2020 WORKPLAN</b></p> <p>Members noted the planned activities.</p>	

	<b>DATE OF NEXT MEETING</b>	
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Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 29 March 2021.