

# MINUTES

Meeting date: Monday, 29 March 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, subject to some minor typographical amendments being made, approved the minute of the meeting on 22 February 2021.</p>	
4.	<p><b>MEMORANDUM OF UNDERSTANDING WITH SPCB FOR DATA PROTECTION OFFICER SERVICES</b> Members noted that a review of the Memorandum of Understanding (MoU) with the Scottish Parliamentary Corporate Body (SPCB), in 2019, for the provision of Data Protection Officer Services had been undertaken by both the Standards Commission's Executive Team and the SPCB's Head of Information Governance. Members agreed that the proposed minor amendments be made to the MoU.</p>	<b>Executive Team</b>
<b>STRATEGIC MATTERS</b>		
5.	<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 that a Direction was issued to the Ethical Standards Commissioner (ESC) on 1 March 2021 requiring her to investigate all complaints about councillors and members of devolved public bodies unless:</p> <ul style="list-style-type: none"> <li>• The Respondent had passed away or was an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000;</li> <li>• 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</li> <li>• 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).</li> </ul>	

	<p>The Direction had also required the ESC to provide, within 28 days, the following:</p> <ul style="list-style-type: none"> <li>• a list of all complaints received in the period from 12 November 2020 to 1 March 2021;</li> <li>• A list of all complaints received in the period from 12 November 2020 to 1 March 2021 that the ESC had categorised as being ineligible or inadmissible for investigation; and</li> <li>• a copy of each letter issued by the ESC recording her decision that a complaint was ineligible or inadmissible for investigation and the reasons for that decision.</li> </ul> <p>Members noted that following a request from the ESC's staff, the deadline for the provision of the information had been extended to 12 April 2020.</p>	
<b>BUSINESS MATTERS</b>		
6.	<p><b>EXPENDITURE AGAINST BUDGET 2020/21</b></p> <p>Members noted the report on expenditure against budget and, in particular, that the overall expenditure for the year was within 1% of the projected and agreed budget.</p>	
7.	<p><b>CONVICTIONS AND STANDARDS COMMISSION'S DISPOSALS</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 parallel provisions exist (via statutory instruments) for Health Board and Health and Social Care Integration Joint Board memberships.</p> <p>Members noted that, at the time the 1973 Act came into force, 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 as a disposal was fairly common. Members noted that the Codes of Conduct (as present and in their proposed amended form) do not make specific provision for criminal conduct and do not apply unless the conduct occurred when the individual in question is acting in the capacity as a councillor or board member, or where they could reasonably be perceived as acting as such. Members agreed both the wording of the legislation and Codes suggested an expectation that behaviour that fell within the criminal sphere would be dealt with by the courts (with the consequences for an individual's status as a councillor addressed by the automatic disqualification if it was sufficiently serious as to result in a three month or more custodial sentence).</p> <p>Members noted, however, that current sentencing policy was to seek alternatives to custody, with a presumption against the use of short custodial sentences. This meant that, in some cases, individuals who were convicted of quite serious crimes would not be disqualified automatically from seeking or holding the office of councillor or member of a devolved public body. Members noted that, provided the conduct occurred when the councillor or member was acting in that capacity (or could reasonably be perceived as acting as such), it would be referred to the Standards Commission as a potential breach of a Code of Conduct. The difficulty, however, was that the wording of the Codes meant that potentially serious conduct, such as making verbal threats, engaging in threatening behaviour and physical and sexual assaults, had to be presented as a potential breach of the respect, or bullying and harassment, provisions in the Codes. Members agreed that while this was not inaccurate, it potentially represented a significant understatement. Members agreed, therefore, that the Standards Commission should recommend that the Scottish Government should review and potentially strengthen, or add to, the wording of the 'respect' provisions in the Codes to reflect the possibility that potentially serious behaviour, including criminal conduct, could be considered as, and amount to, a breach.</p> <p>Members noted that while they did not consider it appropriate for the Codes of Conduct to apply to individuals in their personal lives, or for all those convicted of any criminal offence to be disqualified from holding office, it would nevertheless be worthwhile trying to start a public discussion on whether individuals convicted of certain types of serious crime (including sexual or violent offences) should be prevented from standing as, or being, a councillor or member of a devolved public body. Members agreed that the Executive</p>	<p><b>Executive Director</b></p>

	<p>Director and Mr McCormick should arrange a meeting with the public relations company, employed by the Standards Commission on a 'pot of hours' contract basis, to seek advice about the best way of initiating such a discussion.</p> <p>Members noted that the UK Government had announced, in October 2018, that it was introducing, at the next suitable legislative opportunity, new disqualification rules to prevent individuals who were the subject of an Anti-Social Behaviour Injunction, a Criminal Behaviour Order, a Sexual Risk Order or who were on the Sex Offenders' Register from being able to stand for elected office in their community. Members asked the Executive Director to write to the Home Office to ascertain the reasoning behind the proposal and to ask whether a legislative opportunity had been identified. Members further asked the Executive Director to research whether there were analogous provisions in other jurisdictions or in respect of individuals in public facing professions and roles.</p> <p>Members further agreed additional wording to be added to the Standards Commission's Policy on the Application of Sanctions to reflect the possibility that disqualification will 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.</p>	<p><b>Executive Director</b></p> <p><b>Executive Director</b></p> <p><b>Executive Team</b></p>
<b>8.</b>	<p><b>REPORT BY THE SCOTTISH PARLIAMENT EQUALITIES AND HUMAN RIGHTS COMMITTEE ON RACE EQUALITY, EMPLOYMENT AND SKILLS</b></p> <p>Members noted the Standards Commission's response in respect of the Report by the Scottish Parliament Equalities and Human Rights Committee on Race Equality, Employment and Skills, as issued to all public bodies.</p> <p>Members noted that the Standards Commission's proposed actions included:</p> <ul style="list-style-type: none"> <li>• undertaking an assessment of its understanding of racism and the structural barriers that may exist within the organisation in its next strategic plan, which will cover the period from 2024 to 2028; and</li> <li>• providing racial equality training to all staff and Members.</li> </ul> <p>Members noted that the Executive Team would research potential options for the delivery of the training, either through an online interactive training session or via a trainer (either online or in person) and would make a recommendation to the Human Resources Committee in April 2021.</p>	<p><b>Executive Team</b></p>
<b>9.</b>	<p><b>MEMBER AND STAFF RECRUITMENT UPDATE</b></p> <p>Members noted that a part-time Caseworker had been appointed and was due to start on 1 April 2021. Members further noted that interviews for an Office Manager (to replace the Business Manager who was due to retire at the end of the month) had taken place on 25 March 2021. Members noted that a conditional job offer, subject to references, had been made to, and accepted by, the successful candidate.</p> <p>Members noted that Officeholder Services had advised that as the Parliament would be in summer recess when Professor Dunion's tenure ended, it was likely that there would be a gap between his departure on 31 August 2021 and the appointment of a new Member.</p>	
<b>10.</b>	<p><b>SECTION 4 OF ANNUAL REPORT 2020/21</b></p> <p>Subject to some minor amendments, Members agreed the content and format of Section 4 of the Annual Report for 2020/21, which provided detailed statistics on the cases referred and Hearings held in the year.</p>	
<b>11.</b>	<p><b>STANDARDS UPDATE</b></p> <p>Subject to a minor amendment, Members approved the proposed Standards Update to be issued and published on 31 March 2021.</p>	<p><b>Executive Team</b></p>

12.	<p><b>AUDIT PLAN 2020/21</b></p> <p>Following a recommendation from the members of the Audit and Risk Committee to do so, Members agreed the Audit Plan as proposed by Audit Scotland for the 2020/21 external audit. Members noted this included the audit fee and timetable.</p>	
<b>CASES UPDATE</b>		
13.	<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>	
14.	<p><b>CASES</b></p> <p><b>(a) LA/R/2257 &amp; 3262:</b> Councillor Paul Mack of Renfrewshire Council. Members noted that the Hearing scheduled to take place on 8 March 2021 had been adjourned at the Respondent's request and would now be held online on 7 April 2021.</p> <p><b>(b) LA/Fi/3125:</b> Councillor Brian Thomson of Fife Council. Members noted that Fife Council had reviewed the decision made by the Panel at the Hearing on 9 November 2020.</p> <p><b>(c) LA/Fi/3039 &amp; 3075:</b> Councillor Tony Miklinski of Fife Council. Members noted that Fife Council had reviewed the decision made by the Panel at the Hearing on 23 November 2020.</p> <p><b>(d) LA/Fi/3728:</b> Councillor Andy Heer of Fife Council. Members noted that Fife Council had reviewed the decision made by the Panel at the Hearing on 16 December 2020.</p> <p><b>(e) LA/OI/3265:</b> Councillor John Ross Scott of Orkney Islands Council. Members noted that Orkney Islands Council had reviewed the decision made by the Panel at the Hearing on 18 January 2021.</p>	
15.	<p><b>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</b></p> <p>None received.</p>	
<b>AOB</b>		
16.	<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>MONITORING OFFICERS' WORKSHOP</b></p> <p>Members agreed 25 October 2021 as a provisional date for the workshop. Members asked then Executive Team to issue emails asking Monitoring Officers to save the date.</p> <p><b>BUSINESS MANAGER</b></p> <p>Members noted that Mrs McLean was due to retire on 31 March 2021 after some 18 years years with the Standards Commission. Professor Dunion thanked Mrs McLean, on behalf of all members and staff, for her hard work, commitment and for the significant contribution she had made over the years. Professor Dunion noted that Mrs McLean's "unflappable" tolerance and competency had been a major factor in ensuring that the organisation was run and managed in a smooth and efficient manner.</p>	
17.	<p><b>2021 WORKPLAN</b></p> <p>Members noted the planned activities.</p> <p><b>DATE OF NEXT MEETING</b></p> <p>Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 26 April 2021. Members noted that Elma Murray, Chair, and Paul Reilly,</p>	

	Secretary to the Accounts Commission, were to join them at start of the meeting for an informal discussion on matters of mutual interest.	
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