

MINUTES

Meeting date: Monday, 26 April 2021

IN ATTENDANCE ONLINE

Members:

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

Executive Team:

- Lorna Johnston (Executive Director)
- Richard Wilson (Caseworker)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	APOLOGIES No apologies were received. DECLARATIONS OF INTEREST No declarations of interest were made.	
2.	MATTERS ARISING Members noted that all matters arising were either complete or were due to be discussed at either at the meeting or at the next one, scheduled to take place on 24 May 2021.	
CONSENT ITEMS		
3.	DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and approved the minute of the meeting on 29 March 2021.	
4.	SCHEME OF DELEGATION AND FINANCE & PROCUREMENT POLICY Members agreed amendments to the Scheme of Delegation and the Finance and Procurement Policy, which were made to reflect changes to the staffing complement.	Executive Team
STRATEGIC MATTERS		
5.	INFORMATION OBTAINED UNDER ELIGIBILITY DIRECTION Members noted the Direction issued by the Standards Commission to the Ethical Standards Commissioner (ESC) on 1 March 2021 required her to carry out an investigation into every complaint about a councillor or member of a devolved public body received on or after 2 March 2021 unless: <ul style="list-style-type: none"> • the councillor or member of a devolved public body died prior to the complaint having been made; or was an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000. • the conduct that has or is alleged to have contravened the relevant Code of Conduct occurred (or in the case of a course of conduct ended) more than one year before the complaint was received. • on the face of it, the conduct referred to in the complaint would not, even if it could be established to have occurred, constitute a contravention of the relevant Code. The Direction further required the ESC to provide, within 28 days: <ol style="list-style-type: none"> 1. A list of all complaints received in the period from 12 November 2020 to 1 March 2021. 2. A list of all complaints in the period from 12 November 2020 to 1 March 2021 that the ESC categorised as being ineligible or inadmissible for investigation. 	

3. A copy of each letter issued by the ESC recording her decision that a complaint is ineligible or inadmissible for investigation and the reasons for that decision.

Members noted that the deadline for providing the information was extended to 12 April 2021, following a request from the ESC's office for more time.

Having reviewed the information received on 12 April 2021, Members identified the following issues and concerns:

Only three complaints out of 44 had been accepted for investigation (6.8%). The remainder had been rejected as inadmissible / ineligible. Members noted this represented a markedly different approach to that taken by the previous Commissioner (who accepted an average of 61% of cases over the last four years of his tenure). For the reasons outlined below, Members found that there had been failings in the handling of the majority of rejected cases as either a) an investigation should have been carried out or b) some investigation had been carried out before rejection, and so a report should have been made to the Standards Commission, for it to determine what action should be taken.

Members were concerned that a refusal to investigate 93.2% of the complaints received amounted to a dereliction of the ESC's investigatory role, as provided for by statute. Members considered the refusal to investigate a vast majority of cases was unacceptable as it gave the impression, whether correct or otherwise, that a complainant was wasting their time in making a complaint and that only the most self-evident alleged breaches of the Codes would even be considered.

Members noted that a number of complaints had been rejected on the basis that the complainant had provided insufficient evidence despite it not being apparent that the ESC had even requested they supply any further information or that she had made any attempt to gather any further evidence herself. Members were concerned that the onus to supply evidence at the outset was being placed on complainants, when it was the ESC's responsibility to seek all relevant and material evidence as part of her investigatory remit and role.

Members noted that a number of complaints had been rejected on the basis that the Respondent's alleged conduct attracted the protection afforded by Article 10 of the European Convention of Human Rights in respect of freedom of expression. Members noted, however, that Article 10 is a qualified right, as opposed to a blanket protection, and that it should only be considered if, on the face of it, there appeared to be a breach of the relevant Code. Members considered that an investigation would always be required to establish whether this was the case. In any case, the Standards Commission had made it clear that where Article 10 was a consideration then it would be for the Standards Commission to take it into consideration following a report on the facts by the ESC. It should not be a basis for rejecting a complaint as ineligible for investigation.

Members were further concerned that there appeared to be examples where complaints had been rejected on the basis that individual incidents of conduct did not amount to a breach of the relevant Code, without any consideration being given as to whether, taken together, the incidents could amount to a course of conduct, in breach of the bullying and harassment provisions.

Members noted that, in some cases, there had been refusal to investigate if there was an indication that the complaint concerned the performance of the Respondent, a decision they had taken, or where their conduct occurred when they were acting in a personal capacity. While Members accepted that such matters usually fell outwith the scope of the Codes, they considered that, in some cases, an investigation was required to determine whether the complaint was limited to such concerns or whether other aspects could concern a breach of the relevant Code.

	<p>Finally, Members considered that, in a number of cases, very little reasoning had been provided by the ESC for her conclusion to reject the complaint. Members were concerned that this again gave rise to the perception that complaints were not being taken seriously and considered fully.</p> <p>Members noted that an Acting Commissioner had been appointed to cover for the ESC, who was currently absent from work. Members noted that the Executive Director and Convener were due to meet the Acting Commissioner on 6 May 2021 and agreed that he should be advised of the Standards Commission's concerns and asked to provide confirmation that he would comply with the Direction issued on 1 March 2021 (and only reject complaints as inadmissible or ineligible if they met the criteria outlined within it).</p>	Executive Director / Convener
6.	<p>COMPLIANCE WITH DIRECTIONS ISSUED UNDER SECTIONS 10 AND 11 OF THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000</p> <p>Members noted that the information obtained under the Eligibility Direction (see item 5 above) demonstrated that some form of investigation had been undertaken in respect of a number of complaints (despite them then having been rejected by the ESC as inadmissible or ineligible for investigation). Members noted, however, that reports on the complaints in question had not been submitted to the Standards Commission (for it to make the final decision on whether the complaint should be upheld), as required by the Direction on the Outcome of Complaints issued to the ESC on 12 November 2020. As such, Members concluded there had been a contravention of the Direction by the ESC. Members agreed that the Convener should send the Scottish Parliamentary Corporate Body a formal complaint concerning the ESC's failure to comply with a statutory direction and to carry out her statutory functions. Members further agreed that the ESC's external auditors should also be advised of the extent of failure to comply.</p>	Convener
BUSINESS MATTERS		
7.	<p>REPORT FROM HUMAN RESOURCES COMMITTEE ON 21 APRIL 2021</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 21 April 2021. 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 2020/21 operational year included:</p> <ul style="list-style-type: none"> • Providing assurance to the 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 the staffing structure and requirements in light of workloads and the Business Manager's decision to retire; • Assisting with a Business Plan to seek contingency funding for the new Caseworker post; • Reviewing and revising the Office Manager and Caseworker job-descriptions and person specifications; • Overseeing the recruitment exercises for both posts and participating in the sift and interview exercises for the Caseworker; • 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 in respect of the delivery of the equality training the Standards Commission had proposed in its response to the terms of a report on Race Equality, Employment and Skills by the Scottish Parliament Equalities and Human Rights Committee on Race Equality, Employment and Skills, as issued to all public bodies. Members noted that they would be provided with training that covered unconscious bias, given their role as members of Hearing Panels and resulting interaction with the parties and witnesses. Members agreed that it would be useful for Members to then attend a story-based training session that had been developed with the aim of transforming learning into a</p>	Executive Team

	<p>personal, awareness-raising experience, by seeking to use the experiences of others to provide an understanding of what constitutes race discrimination and systemic and institutional racism in the wider equality context. The Committee agreed that as part of staff development the Executive Director should attend training on creating an inclusive workplace and that all other staff should attend training on diversity in the workplace.</p> <p>The Convener confirmed that he would schedule annual appraisals for Members, to take place in May 2021.</p>	<p>Executive Team</p> <p>Convener</p>
<p>8.</p>	<p>REVIEW OF ONLINE HEARINGS</p> <p>Members noted that Hearings would continue to be held online for the time being, while the pandemic travel restrictions and working from home guidance remained in place. Members nevertheless undertook a review of the Standards Commission’s experience of online Hearings, feedback received on these, and the procedures and policies adopted by analogous organisations to identify the advantages and disadvantages of continuing to hold some or all Hearings online in the future.</p> <p>Members noted that the Standards Commission’s experience of online Hearings had generally been positive, with no reduction in the level of participation and very few technical issues having arisen. Members noted, however, that there was always the possibility that technical problems could occur. Members further noted that while the vast majority of councillors and members of devolved public bodies would, by now, be accustomed to using technology to join online meetings, this would not necessarily be the case for all potential witnesses.</p> <p>Members agreed that while it was straightforward for Panel Members to use breakout rooms for their private deliberations, it was more difficult for them to communicate in an open session when the Hearing was online. Members noted that they may wish to do so, for example, to alert the Chair if they were concerned that a party was badgering a witness or making submissions that were irrelevant to the matters in question, or to alert the Chair that they wished to ask a question. Members agreed, in general, that it was more difficult to pick up on non-verbal cues to determine, for example, if a party wished to speak or interject, in an online forum.</p> <p>Members further noted that while it was possible to share productions submitted by the parties (including documents and video evidence), using the share screen option, it was not as easy to review these on a screen as it was in person. Members recalled that there had, on occasion, been difficulties with the sound when video evidence was being played using the share screen option. Members noted that research demonstrated that another fairly uncontroversial disadvantage to holding Hearings online was how tiring/draining they can be compared to in-person proceedings.</p> <p>Members accepted that holding Hearings online saved travel time and costs and, as such represented better value for money than holding them in person. As such, Members agreed that it was not proportionate or in the public interest to hold a Hearing in person if the alleged breach of the Code was not particularly serious in nature and was not contested by the Respondent.</p> <p>Members noted, however, that most Hearings concerned or stemmed from local issues and, as such, the importance of holding them in the locality should not be ignored. Members further agreed that as the organisation was the Standards Commission <i>for Scotland</i> (italics added for emphasis), any decision over whether to hold a Hearing online or in person should not have a geographical basis.</p> <p>In addition, Members noted that research undertaken by analogous bodies suggested that holding Hearings online could detract from the seriousness of the process, as participants sometimes viewed an online hearing as more of a “call” or “meeting”. Members agreed the potential loss of gravitas was a major consideration.</p>	

	<p>Having considered all the advantages and disadvantages outlined above, Members agreed that, when possible, the Standards Commission should hold Hearings in person in all cases, other than in ones where there was little dispute between the parties as to the facts of the matter, the alleged breach was accepted by the Respondent and no witnesses (other than the Respondent) were to give evidence (where the suitability of an online Hearing would be explored).</p> <p>Members noted that the online Hearings were all livestreamed on the Standards Commission's website. Members agreed that as this potentially allowed greater access to Hearings, the possibility of livestreaming should be explored even where a Hearing was held in person and members of the public and press were able to attend. Members noted that participants were invited to advise the Standards Commission in advance of Hearings of any particular requirements they had, so that reasonable adjustments could be made to the Hearing process. Members agreed this practice should continue as it applied to both online and in person Hearings.</p> <p>Members agreed that, in order to reduce costs and travel, pre-Hearing meetings should continue to be held online.</p> <p>Members asked the Executive Team to make any changes required to the Hearing Rules and policy and procedure documents to reflect the decisions above.</p>	Executive Team
9.	<p>SECTION 3 OF ANNUAL REPORT 2020/21</p> <p>Subject to some minor amendments and additional text being added, Members reviewed and agreed the proposed contents of Section 3 of the Annual Report for 2020/21; being the Performance Summary.</p>	Executive Team
10.	<p>STANDARDS COMMISSION'S COMMITTEE MEMBERSHIP</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> <ul style="list-style-type: none"> • Human Resources Committee: Mrs Stewart (Chair) and Ms Dunn. • Audit & Risk Committee: Mr McCormick (Chair) and Mr Walker (until 31 August 2021 after which he would be replaced by the new Standards Commission Member appointed by the Scottish Parliament Corporate Body when Professor Dunion's tenure concluded). 	
11.	<p>ADJOURNMENT REQUESTS</p> <p>Subject to some amendments being made and additional wording added, Members agreed the contents of a Policy on Hearing Adjournment Requests, which was intended to provide further clarity and guidance about the factors a Panel could take into account when determining whether to grant an adjournment. Members agreed that a copy of the policy should be sent to the ESC for comment, before being introduced and published on the Standards Commission's website.</p>	Executive Team
CASES UPDATE		
12.	<p>REPORTS FROM THE ESC & SECTION 14 LETTERS</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>CASES</p> <p>(a) LA/R/2257 & 3262: Councillor Paul Mack of Renfrewshire Council. Members noted that the Hearing scheduled to take place on 7 April 2021 had been adjourned and would now be held online on 3 May 2021.</p>	

14.	FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES None received.	
AOB		
15.	NEW APPEAL IN RESPECT OF CASE LA/AC/2276 Members noted that an appeal had been served in respect of the decision made at a Hearing held on 22 October 2020 in respect of the case LA/AC/2276. Members noted that the Respondent, Councillor Boulton, had been found to have breached the confidentiality provisions in the code and had been censured. Members noted that the Standards Commission was seeking external legal advice on the appeal and that this would be circulated to them on receipt. AGENDA ITEMS FOR NEXT MEETING Members agreed to advise the Executive Director of any further items to be added to the agenda for the next meeting. Mrs Stewart advised that she was unable to attend the next meeting and proffered apologies.	Executive Director
16.	2021 WORKPLAN Members noted the planned activities. DATE OF NEXT MEETING Members noted that the next meeting of the Standards Commission was scheduled to take place on Monday, 24 May 2021.	