

MINUTES

Meeting date: Monday, 24 May 2021

IN ATTENDANCE ONLINE

Members:

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

Executive Team Members:

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

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES Apologies were received from Mrs Stewart, Commission Member.</p> <p>DECLARATIONS OF INTEREST No declarations of interest were made.</p>	
2.	<p>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 28 June 2021.</p>	
CONSENT ITEMS		
3.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and approved the minute of the meeting on 26 April 2021.</p>	
4.	<p>BUSINESS CONTINUITY PLAN Members noted that the Executive Team had undertaken the annual review of the Business Continuity Plan. Members agreed to the suggested amendments, which mainly concerned working from home arrangements. Members noted that when the plan was updated, copies should be sent to the Scottish Public Services Ombudsman and the Scottish Parliamentary Corporate Body.</p>	Executive Team
STRATEGIC MATTERS		
5.	<p>MEETING WITH ACTING ETHICAL STANDARDS COMMISSIONER Members noted that the Convener and Executive Director had met with the Acting Ethical Standards Commissioner (ESC) on 6 May 2021. The Acting ESC had confirmed that he would comply fully with the Directions issued by the Standards Commission under sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Acting ESC had provided information about the number of complaints received and being investigated and had confirmed that he wished to engage constructively with the Standards Commission and to reinstate the quarterly meetings held with Members in the past. Members noted that the first of these would be held on 28 June 2021.</p> <p>Members were pleased to note the proposals in the acting ESC's draft revised Strategic Plan for 2020/24 and, in particular, the focus on the office and its staff being ethical, empathetic and effective. Members were further pleased to note that there was a focus on contributing to the restoration of the public's trust in the organisation, the individuals that fell within its remit and in how complaints about such individuals were handled.</p>	

BUSINESS MATTERS

6. SECTION 31 OF THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973

At their meeting on 29 March 2021, Members noted that the current presumption against the use of short custodial sentences 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. This was because Section 31 of the Local Government (Scotland) Act 1973 (and analogous provisions in statutory instruments for Health Board and Health and Social Care Integration Joint Board memberships) provide that councillors (or members) are only automatically disqualified for nomination, election and holding office if they are convicted of a crime that results in a custodial sentence of three months or more.

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 was worth considering whether the 1973 Act (and any analogous statutory provisions) should be reviewed to cover the gap where an individual, convicted of a crime which falls outwith the current automatic disqualification provisions in the 1973 Act, can continue to serve as a councillor or member of a devolved public body, despite their actions falling short of the standards the public could reasonably expect.

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 noted that the Executive Team had arranged a meeting with the Home Office to ascertain the reasoning behind the proposal and to ask whether a legislative opportunity had been identified. The Standards Commission had agreed to advise the Scottish Government's Local Government Team of the outcome of discussions, as it had indicated that other provisions in 1973 Act were due to be reviewed anyway (to reflect technological developments).

Members agreed that, following the meeting with the Home Office, the Standards Commission should write to the Minister for Local Government, Housing and Planning to highlight the issue and to suggest that a review of Section 31 of the 1973 Act be undertaken.

Executive Team

7. REVIEW OF SANCTIONS APPLIED AT HEARINGS

Members reviewed the sanctions applied at Hearings over the past seven years. Members noted that, from February 2014 to date, 71 cases had been considered.

Members were satisfied that the review showed that there was a great deal of consistency in the manner in which sanctions had been applied and, in particular, how Panels had considered the seriousness of the breach and the other mitigating and aggravating factors.

Members agreed that the Policy on the Application of Sanctions should be updated to reflect that decisions in respect of previous cases can be taken into account when Panels are determining the sanction to be imposed to help ensure consistency. Members noted, however, that the policy should make it clear that in so doing previous decisions should not be considered as being binding, in terms of precedent as each case is dealt with on its merits.

Members considered the extent to which sanctions should be driven or influenced by the prevailing public mood, both in terms of being a means of demonstrating the effectiveness of the ethical standards framework or as a deterrence. Members noted that, in some cases, it might be the case that media coverage of analogous behaviour should have alerted the Respondent to the fact that their conduct was unacceptable. Members noted, however, that the conduct that was the subject of the breach finding may have occurred before the media coverage. Members agreed, in any event, that it was only fair that Panels should continue to

	<p>make decisions based on the individual facts and circumstances of each case, and not any external events. Members noted, nonetheless, that it should be made clear that, in assessing whether the sanction under consideration achieved the following stated aims, as outlined in the Policy on the Application of Sanctions, a Panel would take into account the overall public interest.</p> <p>The stated aims are to:</p> <ul style="list-style-type: none"> • Preserve the ethical standards framework. • Promote adherence to the Codes of Conduct. • Maintain and improve the public’s confidence that councillors and members of devolved public bodies will comply with the Codes and will be held accountable if they fail to do so. • Achieve credible deterrence. • Provide clear reasons for decisions, in order to ensure transparency. <p>Members asked the Executive Team to update the Policy on the Application of Sanctions accordingly.</p> <p>Members noted that it would be good practice to continue to try to ensure Panels were as diverse as possible in terms of their composition. Members noted, however, that it would not be feasible for any hard guidelines on the composition of Panels to be introduced, given that there was a pool of only five Members to choose from and that Members were independently appointed (by the Scottish Parliamentary Corporate Body).</p> <p>Members noted that while they did not have any power to compel adherence, it may be helpful, on occasion, for Panels to make recommendations about the Respondent’s future conduct in their written decisions on sanction. Members noted, for example, that a Panel could suggest that the Respondent undergo training on a certain aspect of the relevant Code.</p> <p>Members agreed that a review of the sanctions applied at Hearings should be undertaken every three years and asked the Executive Team to update the workplan accordingly.</p>	<p>Executive Team</p> <p>Executive Team</p>
<p>8.</p>	<p>ANNUAL REPORT 2020/21 - SECTIONS 1 AND 6</p> <p>Subject to some minor amendments, Members agreed the content for Sections 1 and 6 of the Annual Report for 2020/21, being the Convener’s Executive Summary (covering key achievements and discussing work to be undertaken looking forward), and the Governance and Financial Overview, respectively. Members noted that as the content of the Annual Report was now agreed, work to design and format it would commence, before it was laid before the Scottish Parliament.</p>	<p>Executive Team</p>
<p>9.</p>	<p>REPORT OF AUDIT AND RISK COMMITTEE</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 17 May 2021. 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 2020/21 operational year included:</p> <ul style="list-style-type: none"> • Reviewing the draft Annual Accounts for approval by the Standards Commission; • Reviewing the Risk Register and identifying and reviewing actions to be taken to mitigate risks; • Recommending changes to the Risk Register and the individual risk scores in light of developments and actions taken; • Suggesting risks and mitigating actions to be included in the risk register for 2021/22; • Reviewing and recommending the external audit plan (including the timetable and fee); • Reviewing internal and external audit reports and any management responses; • Reviewing the project to identify and introduce a new payroll services contract. 	<p>Executive Team</p>

	<p>Members noted that the Committee had reviewed the Risk Register for 2021/22. Members agreed with the Committee's recommendation that the scores for the risks relating to:</p> <ul style="list-style-type: none"> • a failure by the Ethical Standards Commissioner to comply with Directions issued under Sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000; • the organisation having insufficient resources in terms of staff time and knowledge, and Members' time and availability; and • disruption to relationships with key stakeholders <p>be decreased, in light of activities undertaken since the start of the year and the appointment of the Acting ESC. Members asked the Executive Team to update the Risk Register accordingly.</p>	<p>Executive Team</p>
<p>10.</p>	<p>APPEAL LA/AC/2276</p> <p>Members noted that the Standards Commission's external legal advisers had indicated that they considered there were good prospects of successfully defending the appeal lodged in respect of the decision on LA/AC/2276, made at an online Hearing on 22 October 2020. As such, answers had been lodged on behalf of the Standards Commission on 7 May 2021.</p> <p>Members noted that the Sheriff Principal had assigned a procedural hearing on 1 June 2021. Members asked the Executive Director to provide them with an update by email after the hearing.</p>	<p>Executive Director</p>
<p>11.</p>	<p>WORKSHOP FOR CHAIRS OF DEVOLVED PUBLIC BODIES</p> <p>Members agreed that the Standards Commission should hold a training event for chairs of devolved public bodies in quarter four. Members noted that the aim of such a workshop was to increase awareness of the provisions in the Model Code so that Chairs can, where possible, help to prevent issues and breaches from arising. Members further noted that the Scottish Government's Public Bodies Unit had advised that it would be happy to support and promote the event.</p> <p>Members agreed that the training should be a half day event (e.g. from 9:30 to 12:00) to be held in November in person (if possible) or online. Members noted that while a detailed programme would be prepared nearer the time, topics to be covered should include:</p> <ul style="list-style-type: none"> • Asking Chairs for their experiences in respect of potential breaches of the Code and of poor conduct and good practice. • The main changes to the Model Code (once revised). • Discussions on: <ul style="list-style-type: none"> ➤ Respect, bullying and harassment; ➤ Confidentiality (including how to ensure members know what is confidential and when and are clear on when / if they are entitled to respond to media enquiries); ➤ Differentiating between strategic and operational matters (ensuring even members are aware of the boundary between their role and that of officers, even when they have some legitimate involvement in operational work, such as in respect of casework); ➤ Gifts and Hospitality; and ➤ Identifying and declaring interests, (including the timing of when they should ask for declarations to be made, what Members should say when declaring, the requirement for them to leave the room, how to avoid informal or unrequired declarations being made, how to ensure members who are on an outside body understand their obligations and how to deal with any conflicts between the interests of both organisations, and what to do if they or officers have concerns that a member has not declared an interest required by the Code). ➤ Suggestions for how and when to deal with concerns informally and the circumstances in which a formal complaint should be made (and how to do this). 	

	Members agreed that a proposal to this effect should be sent to the Scottish Government for its approval, before a save the date invitation was issued to the chairs of all devolved public bodies.	Executive Team
12.	TRAINING WORKSHOP ON COUNCILLORS' CODE OF CONDUCT Members noted a request had been received from Renfrewshire Council for the Standards Commission to provide an in-person training workshop on the Councillors' Code of Conduct. Members agreed to the request and asked the Executive Team to liaise with the Council to identify a mutually suitable date.	Executive Team
CASES UPDATE		
13.	REPORTS FROM THE ESC & SECTION 14 LETTERS (a) LA/Mo/3469: Section 14 notification about a Moray councillor. Members noted that a draft report had been issued to a Moray councillor following the conclusion of an investigation by the Ethical Standards Commissioner.	
14.	CASES (a) LA/R/2257 & 3262: Councillor Paul Mack of Renfrewshire Council. Members noted that a Hearing was held online on 3 May 2021, at which the Respondent had been found to have breached the Code and was disqualified.	
15.	INVESTIGATION EXCEED 3 MONTHS – INTERIM REPORT (a) LA/CES/3453: Investigation about a Comhairle nan Eilean Siar councillor. Members noted the contents of a report from the Ethical Standards Commissioner advising that an investigation into a complaint about a Comhairle nan Eilean Siar councillor had taken more than three months. Members noted that it was anticipated the investigation would conclude shortly.	
16.	FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES None received.	
AOB		
17.	REVISED CODES OF CONDUCT Members noted that the Working Group established by the Scottish Government to review the Codes of Conduct for councillors and members of devolved public bodies was considering the responses received to the consultation on the proposed revised Codes. Members noted that it was anticipated that the revised Codes would be finalised in next month or so, before being put before Parliament for approval after the summer recess. 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.	
18.	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, 28 June 2021.	