

MINUTES

Meeting date: Monday, 7 November 2022

IN ATTENDANCE ONLINE

Members:

- Paul Walker (Convener)
- Ashleigh Dunn
- Suzanne Vestri
- Tricia Stewart
- Mike McCormick

Executive Team Members:

- Lorna Johnston (Executive Director)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES Apologies were received from Richard Wilson, Caseworker.</p> <p>DECLARATIONS OF INTEREST No declarations of interest were made.</p>	
2.	<p>MATTERS ARISING Members noted that an action to review for the Executive Team to create and circulate a new template for them to use to record their time had been omitted from the Matters Arising. Members noted that it had been agreed that the template should contain standard categories for them to choose, depending on the nature of the work. Members asked that the action now be added to the Matters arising from the current meeting.</p> <p>Members noted that all other matters arising as noted were complete.</p>	
CONSENT ITEMS		
3.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and approved the minute of the meeting on 26 September 2022.</p>	
4.	<p>REVIEW OF DATA PROTECTION POLICIES Members noted that the Executive Team had reviewed the Data Protection Policy, Data Protection Information Register and Data Protection Privacy Statement. Members noted that there were no substantive changes suggested to the Data Protection Policy as the content is driven by the requirements of the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.</p> <p>Subject to a minor amendment to the policy, Members approved the changes and requested that the documentation on the website be updated accordingly.</p>	Executive Team
5.	<p>REVIEW OF SCHEME OF DELEGATION Members noted that the Scheme of Delegation had been reviewed by the Executive Director. Subject to two small amendments, Members approved the proposed changes to the Scheme of Delegation to align it to the current Hearings Rules and requested that the documentation on the website be updated accordingly.</p>	Executive Team
6.	<p>REVIEW OF SERVICE LEVEL AGREEMENT WITH PARLIAMENT'S BUSINESS & INFORMATION TECHNOLOGY TEAM</p>	

	<p>Members noted that the Scottish Parliament's Business & Information Technology (BIT) team supplies and manages IT services to the Standards Commission. The service level agreement (SLA) was last agreed in 2015 and is now due for review and approval. The Executive Team contacted BIT with a view to reviewing the SLA this year. BIT advised, however, that it was unable to review the SLA at present, due to a shortage of resources, but that it will contact the Standards Commission in due course when it has availability to undertake the work.</p> <p>Members noted that the Executive Team had reviewed the SLA in the meantime and had not identified any significant issues. Members requested that they are kept up to date with progress in reviewing the SLA.</p>	Executive Team
7.	<p>OUTREACH WORK UNDERTAKEN BY EXECUTIVE TEAM</p> <p>Members noted the outreach work undertaken by the Executive Team since the last meeting. Members agreed that the Executive Team should advise them of any invitations to provide training so that they can check their availability and assist, where possible.</p> <p>Members further agreed that an opportunity to observe a training event should be added to the induction plan for new Members.</p>	Executive Team
STRATEGIC MATTERS		
8.	<p>MEMBERS' ANNUAL EVALUATION OF PERFORMANCE</p> <p>Members noted that, at their meeting on 26 September 2022, they had agreed that it would be good practice for them to undertake an annual review of the effectiveness of their performance as a collective body.</p> <p>Ms Vestri offered to prepare a checklist, based on both the Scottish Government's Guidance on Appraisal of Non-Department Public Body Board Members and Chairs and Audit Scotland's Guidance on the Role of Board. Members agreed that the checklist should also include questions about whether they considered the Standards Commission to be an officer or member led organisation, and whether they consider they were striking the right balance between strategic and operational work (such as casework). Members further agreed that the checklist should be divided by category, including team-working, relationships, policy development, strategic work and leadership. Members agreed that once developed, they would individually score their collective performance against the checklist. Members agreed that they would then meet, on an annual basis, to consider together the scores and overall collective performance.</p>	Ms Vestri
BUSINESS MATTERS		
9.	<p>EXPENDITURE REPORT QUARTER TWO 2022/23</p> <p>Members noted the report outlining the expenditure against budget for the first six months of the financial year (1 April to 30 September). Members noted that while there had been an underspend against budget in the period, some of this was down to the timing of expenditure. Members noted that it was anticipated that there would not be any significant over or underspend at the year end.</p>	
10.	<p>OUTCOME OF INVESTIGATIONS DIRECTION</p> <p>Members noted that they had agreed, at their meeting on 26 September 2022, that they were minded to renew, for a further two years, the Direction on the Outcome of Investigations issued to the Ethical Standards Commissioner (ESC), on 12 November 2020, under sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (2000 Act). The Direction being due to expire on 11 November 2022.</p> <p>Having consulted with key stakeholders, including the ESC and SOLAR, Members remained of the view the Direction should be renewed as:</p> <ul style="list-style-type: none"> it ensures there is a clear separation of investigative and adjudicatory functions between the Standards Commission and the ESC. This approach ensures any concerns about fairness of process or inconsistencies between the two organisations as to how the Codes of Conduct should be interpreted are addressed; 	

	<ul style="list-style-type: none"> • it allows any disputed evidence or representations on how the provisions of the Codes should be interpreted to be tested fully at a Hearing, if appropriate, where evidence is taken on oath or affirmation, and where the participants and Panel can question and respond to submissions made; • the Standards Commission publishes both its ‘no action’ and Hearing decisions, meaning that information is made publicly accessible on all complaints investigated. This allows those who are subject to the Codes, council or public body officers / employees and members of the public to see how the Codes are being interpreted and what the threshold for a breach may be; • it ensures there is an independent review of all complaints where the ESC has recommended that no breach has occurred. This was considered to be of particular importance given there is no right of appeal by a complainer in respect of a ‘no breach’ decision by the ESC; and • it makes the procedures for the adjudication of complaints about councillors and members of devolved public bodies more consistent with the approach taken in respect of complaints about MSPs. <p>Members were of the view that the Direction should not cause the ESC any significant extra work, given that it does not change the amount of investigative work that would be required if the ESC was still responsible for making the final decision on a complaint, and given the ESC’s office would still be obliged to provide parties with some form of report including their reasoning for any ‘no breach’ decision. Members further noted that the Standards Commission had adjusted its roles and workloads to absorb the additional impact of the Direction within its existing resources.</p> <p>Members noted that the views of the Scottish Parliament’s Local Government, Housing & Planning and Standards, Procedures & Public Appointments Committees had also been sought. As letters seeking the Committees’ views had only been issued on 7 November 2022, it was not anticipated that responses would be provided before the existing Direction expired. Members agreed that it was important to consider any views the Committees may have and, agreed, therefore, to extend the Direction for three months, before a final decision on whether it should be renewed for a further two years was made.</p>	Executive Team
11.	<p>MANAGEMENT OF CASES BEFORE HEARINGS</p> <p>Members noted that, in cases where they decide to hold a Hearing despite the Ethical Standards Commissioner (ESC) reporting that he did not recommend that a breach of the applicable Code could be found, the principles of natural justice / fairness would require the Standards Commission to provide the parties with adequate notice of the following matters:</p> <ul style="list-style-type: none"> • the reasons why a Hearing is to be held (i.e. why it considers that there could be a breach of the Code); • the matters the Panel will wish to consider or address at the Hearing; and • any witnesses to be cited, or documents to be added to the productions, by the Standards Commission. <p>Members noted, that, in practice, providing the detail as outlined above as part of the notification of Hearing correspondence was potentially problematic. This was because:</p> <ol style="list-style-type: none"> 1. While it is possible that Members may identify some witnesses the Panel may wish to hear from and may have discussed some of the bullet points above, as part of their Section 16 decision, at that stage they are mainly considering public interest and proportionality, as opposed to reviewing, in any depth, the potential merits of the case and matters to be analysed to determine whether there has been a breach of the Code. 2. By the time the notification of Hearing correspondence is issued, the selected Panel will not have been afforded any time to consider the merits of the case and potential arguments in any detail. 	

	<p>3. The Hearing Rules make it clear that decisions on the management of cases that are to be considered at Hearings are for the Panel to make (rather than the Standards Commission as a whole).</p> <p>4. The notification of Hearing correspondence already includes a great deal of information. Including further information at that stage could therefore be confusing and unhelpful.</p> <p>Members agreed, therefore, that detail about the matters to be considered at the Hearing and any questions and issues the Respondent would be expected to address should be provided in separate, later correspondence. Members noted, however, that, in order to provide adequate notice, any such correspondence would need to be issued in plenty of time for the parties to consider and prepare arguments and submissions to present at the Hearing. As such, Members agreed that some form of discussion between the Panel should take place within a week or so of the decision to hold a Hearing having been made and Panel composition agreed. The Executive Team could then prepare a draft list of matters to be considered, for approval either by the Panel or Chair, to be sent to the Respondent and ESC shortly thereafter (and before any pre-Hearing meeting).</p> <p>Members asked the Executive Team to update the Section 16 Decision-Making Process document to reflect the decisions above.</p>	<p>Executive Team</p>
<p>12.</p>	<p>ESC'S CONSULTATION ON DRAFT INVESTIGATIONS MANUAL</p> <p>Members noted that the ESC's office was consulting on a draft Investigations Manual, which codified its complaint handling processes and outlined the steps that would be taken during any investigation. Members noted that the Manual also set out target timescales for the completion of complaint assessments and investigations, and for the production of reports.</p> <p>Members agreed the content of the Standards Commission's response to the parts of the Manual that concerned complaints about councillors and members of devolved public bodies, and asked the Executive Team to send this to the ESC. Members noted that the ESC intended to publish responses on its website and agreed that the Standards Commission should also publish its response on its own website.</p>	<p>Executive Team</p>
<p>13.</p>	<p>ACTIONS ARISING FROM MONITORING OFFICERS' WORKSHOP</p> <p>Members noted the issues raised and suggestions made at the Standards Commission's annual workshop for Council Monitoring Officers, which had been held on 24 October 2022.</p> <p>Members agreed that the Standards Commission should undertake the following actions, in light of the discussions and suggestions raised:</p> <ul style="list-style-type: none"> • To make it clearer in the Standards Commission's Guidance, Advice Notes and other publicly available material that Council officers are not obliged to make complaints, even where they consider there may have been a breach of the Code, and that anyone can make a complaint to the ESC. • To review and consider whether information about no action cases should be included in the Standards Update (given they are published on the website) and / or whether can be presented in a different way. • To produce a Social Media card, to help councillors understand what they can and cannot do, in terms of the Code, when using social media, in terms of the Code. • To produce an Advice Note on Conduct at Online meetings (similar to the one the Standards Commission has already produced for members of devolved public bodies). • To explore whether the Standards Commission could run (potentially in collaboration with other stakeholders) an open online training session for councillors on the use of social media; • To produce an Attending Community Councils card, outlining what local government councillors can and cannot do when attending community council meetings, in order to prevent breaches of the Code and also to manage the expectations of community council members. <p>Members asked the Executive Team to add the actions to the Business Plan.</p>	<p>Executive Team</p>

CASES UPDATE		
14.	<p>REPORTS FROM THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/S/3571: Members noted that the ESC had sent a draft breach report to a Stirling Councillor under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p> <p>(b) LA/AB/3619: Members noted that a ‘do neither’ decision had been made on a report received from the Acting ESC about an Argyll & Bute councillor.</p> <p>(c) LA/SA/3672: Members noted that a ‘do neither’ decision had been made on a report received from the Acting ESC about a South Ayrshire councillor.</p> <p>(d) LA/NL/3758: Members noted that a ‘do neither’ decision had been made on a report received from the Acting ESC about a North Lanarkshire councillor.</p> <p>(e) LA/R/3598: Members noted that a ‘do neither’ decision had been made on a report received from the Acting ESC about one existing and two former Renfrewshire councillors.</p>	
15.	<p>CASES</p> <p>(a) LA/G/3563: Members noted that a Hearing about the former Glasgow City Councillor was held on 26 October 2022. The Respondent had been found to have breached the Code and was censured.</p> <p>(b) LA/An/3546: Members noted that a Hearing about an Angus Councillor was held on 1 November 2022. The Respondent had been found to have breached the Code and was suspended from a committee of the council for one month.</p>	
16.	<p>INVESTIGATION EXCEED 3 MONTHS – INTERIM REPORT</p> <p>a) LA/Fi/3614: Members noted the contents of a second interim report advising that an investigation into a complaint about a Fife Councillor had taken more than six months.</p> <p>b) NHS/ACH/3570 & NHS/ACH/3527: Members noted the contents of a second interim report from the Acting ESC advising that an investigation into complaints about a member of Aberdeen City Health and Social Care Partnership had taken more than six months.</p>	
17.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>a) Members noted the positive feedback received in respect of the training on the Model Code the Executive Team had provided to Members of SEPA.</p> <p>b) Members noted the feedback email from the Respondent in respect of case LA/G/3563. Members agreed that in cases where the Respondent had chosen not to attend a Hearing, the Executive Team should attempt to contact them by telephone at the conclusion of the Hearing to advise them of the outcome and, if applicable, should send them a copy of the press release issued by the Standards Commission.</p>	
ANY OTHER BUSINESS		
18.	<p>AGENDA ITEMS FOR NEXT MEETING</p> <p>Members agreed to advise the Executive Director of any further items to be added to the agenda for the next meeting.</p>	Members
19.	<p>2022 DIARY DATES AND WORKPLAN</p> <p>Members noted the diary dates and updated workplan for 2022. Members agreed that the January 2023 meeting should be held in person and the September 2023 meeting online. Members asked the Executive Tam to update the calendar accordingly and to circulate the revised version.</p> <p>DATE OF NEXT MEETING</p> <p>Members noted that the next meeting of the Standards Commission was scheduled to take place in person at the Scottish Parliament on Monday, 12 December 2022.</p>	Executive Team