

# MINUTES

Meeting date: Tuesday, 31 January 2023

## IN ATTENDANCE

Members:

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

Executive Team Members:

- Lorna Johnston (Executive Director)

ITEM	CONTENT	ACTION
<b>STANDING ITEMS</b>		
1.	<p><b>APOLOGIES</b> Apologies were received from Richard Wilson, Case Manager.</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, as noted, were complete or due to be discussed at the meeting.</p>	
<b>CONSENT ITEMS</b>		
3.	<p><b>DRAFT MINUTE OF PREVIOUS MEETING</b> Members reviewed and approved the minute of the meeting on 12 December 2022.</p>	
4.	<p><b>OUTREACH WORK UNDERTAKEN BY EXECUTIVE TEAM</b> Members noted the outreach work undertaken by the Executive Team since the last meeting.</p>	
<b>STRATEGIC MATTERS</b>		
5.	<p><b>RENEWAL OF DIRECTION OF OUTCOME OF INVESTIGATIONS</b> Members noted that they had agreed, at their meeting on 7 November 2022, to renew 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, for three months. This was so the views of the Scottish Parliament's Local Government, Housing &amp; Planning and Standards, Procedures &amp; Public Appointments Committees could be sought before a decision on whether to renew the Direction for a further two years was made.</p> <p>Members noted that the Convener of the Local Government, Housing &amp; Planning Committee had advised that the Committee did not feel it had anything it could add to the process until after it took evidence from the ESC at its meeting on 10 January 2023. Members noted that the Convener of the Parliamentary Committee had invited the Executive Director to give evidence on the Standards Commission's views on the operation of the ESC and its own annual report at the meeting on 10 January 2023. This invitation has been accepted and the Executive Director and ESC had both appeared before the Committee on 10 January 2023. Members noted that the Executive Director had outlined the reason why the Standards Commission considered the Direction should be extended. The Committee had not raised any issues with this proposal.</p>	

	<p>Members noted that the Convener of the Standards, Procedures and Public Appointments Committee had advised that their Committee did not wish to make any comments on the Direction, but had indicated it was very helpful to understand the purpose of the Direction.</p> <p>Members agreed that the Direction should be extended for a further two years, for the reasons previously discussed at, and recorded in the minutes of, their meeting on 7 November 2022. Members asked the Executive Team to prepare the extended Direction and issue it to the ESC.</p>	<p><b>Executive Team</b></p>
<p><b>6.</b></p>	<p><b>BUSINESS PLAN 2023/24 AND DEVELOPMENT OF STRATEGIC PLAN 2024/28</b></p> <p><b>Business Plan 2023/24</b></p> <p>Members reviewed the draft Business Plan for 2023/24, which was based on the objectives outlined in the Strategic Plan for 2020/24, and included suggestions made at the Standards Commission meeting on 12 December 2022. Members noted that the activities identified would be the ones that the Standards Commission would aim to deliver during the last year of the four-year cycle of the Strategic Plan for 2020/24. Members agreed the activities to be undertaken and the suggested timescales for completion of these.</p> <p>Members noted that a draft Risk Register for 2023/24 would be prepared for consideration at the Standards Commission meeting on 27 February 2023. Once that has been, references to the Risk Register would be added to the Business Plan before it was finalised and published.</p> <p><b>Development of Strategic Plan 2024/28</b></p> <p>Members noted that a new Strategic Plan for 2024/28 would need to be developed in 2023/24 to outline:</p> <ul style="list-style-type: none"> <li>• the Standards Commission’s objectives and priorities during the next four-year cycle;</li> <li>• how it proposed to achieve these;</li> <li>• a timetable for doing so; and</li> <li>• estimate of the costs of doing so.</li> </ul> <p>Members noted that Schedule 1 of the Ethical Standards in Public Life (Scotland) Act 2000 provides that, before laying the Strategic Plan, the Standards Commission was required to provide a draft of it to invite, and (if any are offered), consider comments from the SPCB and other relevant consultees (including a Parliamentary Committee). Members agreed that, as such, a draft plan should be developed and agreed by the middle of November 2023. This would provide sufficient time for the draft plan to be considered by stakeholders (including by the SPCB at its meeting in early December 2023), and for comments and suggestions for to be considered by Members before the contents of the final plan are agreed at the Standards Commission meeting in either January or February 2024. This in turn should allow enough time for design, before the plan was laid before the Scottish Parliament.</p> <p>Members agreed, therefore, to meet on two occasions in September or October 2023 to discuss and agree the strategic objectives and other content to be included in the plan. Members agreed that, in the meantime, notice of the consultation, and an invitation to provide any initial views on what should be included in the plan, should be outlined in the Standards Update that was due to be issued at the end of June 2023.</p>	<p><b>Executive Team</b></p> <p><b>Members</b></p> <p><b>Executive Team</b></p>
<p><b>BUSINESS MATTERS</b></p>		
<p><b>7.</b></p>	<p><b>STANDARDS OFFICERS’ WORKSHOP PROGRAMME</b></p> <p>Members noted that the Standards Commission’s annual Standards Officers’ Workshop was due to be held on Tuesday, 21 March 2023, as a hybrid event, both at COSLA Conference Centre and online.</p> <p>Members agreed the content for the open discussions and the topics they wished to discuss with attendees during the breakout groups. Members noted that the Ethical Standards Commissioner had agreed to speak, and that he intended to provide an update to attendees</p>	

	<p>on the investigation process and manual and the Code of Practice for Board Appointments (given its strengthened emphasis on board diversity and succession planning).</p> <p>Members asked the Executive Team to circulate the programme to all Standards Officers.</p>	<p><b>Executive Team</b></p>
<p><b>8.</b></p>	<p><b>REVIEW OF DIRECTION ON ELIGIBILITY</b></p> <p>Members noted that a direction regarding the eligibility of complaints about councillors and members of devolved public bodies (the Eligibility Direction) had been issued to the former ESC, on 1 March 2021, under sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Direction was effective from 2 March 2021 and was due to expire on 1 March 2023.</p> <p>The Direction required the ESC to investigate and report to the SCS on 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>Members noted that the Acting ESC had complied fully with the Eligibility Direction since commencing in post.</p> <p>Members noted that that the Eligibility Direction ensured that all complaints about councillors and members of devolved public bodies that could potentially amount to a breach of a Code, which are made timeously, were investigated. Members were of the view that, in order to be transparent, the ESC would need to create, consult on and publish eligibility or admissibility criteria even if the Eligibility Direction was not renewed. Members agreed that it was difficult to envisage that such criteria would be significantly different to that outlined in the Eligibility Direction. It was noted, however, that there was currently no procedure in place for an eligibility decision to be re-made should information come to light during the investigation that makes it evident that:</p> <ul style="list-style-type: none"> <li>• on the face of it the complaint could not, even if established, constitute a contravention of the relevant Code (regardless of whether any protection could be afforded by Article 10); or</li> <li>• the conduct occurred more than 12 months before the complaint was made.</li> </ul> <p>Members noted that this meant that the ESC would proceed to investigate the matter and refer it to the Standards Commission at the conclusion of the investigation. Members noted, however, that there was no requirement for all investigations to follow the same procedure and result in the same format of report being sent to the Standards Commission. This meant that there was nothing to prevent the ESC from taking a proportionate and pragmatic approach in cases where information was received that made it clear that, on the face of it the complaint could not, even if established, constitute a contravention of the relevant Code.</p> <p>Members nevertheless noted that it was possible that the ESC experienced other practical issues relating to compliance with the Eligibility Direction. Members agreed, therefore, that the Executive Team should write to the ESC and other stakeholders and circulate any responses received so that they could be considered at the next meeting, before a decision was then made on whether the Eligibility Direction should be extended.</p>	<p><b>Executive Team</b></p>
<p><b>9.</b></p>	<p><b>EXPENDITURE REPORT QUARTER THREE 2022/23</b></p> <p>Members noted the report outlining the expenditure in the year to 31 December 2022 and providing an update on the budget setting process for 2023/24. Members noted that while there had been an underspend against budget in the period, some of this was down to the</p>	

	<p>timing of expenditure. Members noted that it was anticipated that there would not be any significant over or underspend at the year end.</p> <p>Members further noted that since an initial budget bid for 2023/24 had been submitted to the Scottish Parliamentary Corporate Body (SPCB) in September 2022, changes had been made to reflect agreed staff and member pay awards, a change to the employer national insurance contribution rate, and to reflect adjustments made to the assumed rate of inflation on costs.</p>	
<p><b>10.</b></p>	<p><b>AUDIT AND RISK COMMITTEE MEETING ON 24 JANUARY 2023</b></p> <p>Members noted the minutes and the verbal report provided by the Chair of the Audit &amp; Risk Committee, Mr McCormick, of the meeting on 24 January 2023.</p> <p>Members agreed the audit fee, as proposed by Audit Scotland, for the 2022/23 audit. Members noted that the draft audit plan would be issued and circulated in due course.</p> <p>Members noted that the Committee had proposed that the Internal Auditor be asked to review the Standards Commission's general financial control environment. This would include a review of the processes for the payment of invoices, financial reporting, the use of corporate credit cards and procurement, as well as the effectiveness of the Scheme of Delegation. Members noted that the audit would not only ensure the Standards Commission was prepared to respond to any requests for assurance, but would also ensure it identified any improvements that could be made to ensure best practice was achieved. Members agreed with the proposal and asked the Executive Team to notify the internal auditor accordingly.</p> <p>Members noted that the Committee had conducted a review of the 2022/23 Risk Register. Members agreed with the Committee's recommendations in respect of changes to overall risk scores in light of activities undertaken. Members agreed that any ongoing risks should be incorporated in the Risk Register for 2023/24.</p> <p>Members noted and echoed the comments to Mr McCormick upon the conclusion of the Audit and Risk Committee meeting, which was the final such meeting Mr McCormick would chair before his appointment to the Standards Commission ends. He was thanked for his chairing the sub-committee and its excellent work which had done much to support the Standards Commission by flagging up issues in early course and allowing appropriate and timely action to be taken.</p>	<p><b>Executive Team</b></p> <p><b>Executive Team</b></p>
<p><b>11.</b></p>	<p><b>MEMBERS' ANNUAL PERFORMANCE ANALYSIS</b></p> <p>Members advised that they had met on 27 January 2023 to evaluate their collective performance.</p> <p>Members advised that they had decided to:</p> <ul style="list-style-type: none"> <li>• Conduct an annual analysis of their collective performance (this was to be added to the workplan), with staff consultations being integrated into the process.</li> <li>• Consider commissioning an external assessment of the Standards Commission's impact to provide a sharper and more regular focus on how it adds value to the ethical standards framework and standards in public life generally.</li> <li>• Appoint two existing Members to act as mentors for the two new Members to be appointed shortly by the SPCB.</li> <li>• Add 'any emerging risks' as a standing agenda item for each Standards Commission meeting.</li> <li>• Consider undertaking training on 'tribunal craft' (the Convener was to lead on sourcing potential training providers).</li> <li>• Develop the Standards Commission's understanding of the nature of 'thought leadership' and determine how this could be advanced, also whether, by drawing on accredited prior learning / experience, a practical qualification syllabus could be worked up with relevant organisational and / or academic partners (the Convener was to prepare a paper developing this suggestion).</li> </ul>	<p><b>Executive Team</b></p> <p><b>Convener</b></p> <p><b>Convener</b></p>

	Members agreed that the induction of the two new members should include training on the decision-making under section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.	
<b>12.</b>	<b>NEW MEMBER APPOINTMENT AND INDUCTION</b> Members noted that the SPCB had conducted interviews for two new Members on 23 January 2023. The new Members would replace Mr McCormick, whose tenure ended on 31 January 2023, and Mrs Stewart, whose tenure was due to end on 31 March 2023. Members asked the Executive Team to keep them update on the appointment and approval process.	<b>Executive Team</b>
<b>13.</b>	<b>FEBRUARY 2023 MEETING</b> Members noted that they had previously agreed to hold their next meeting in public, by livestreaming it on the Standards Commission’s website. Having considered the draft agenda, Members agreed that all items, except the Cases Updates, should be heard in public. Members noted that the agenda would be published on the website a week before the meeting.	
<b>CASES UPDATE</b>		
<b>14.</b>	<b>REPORTS FROM THE ESC &amp; SECTION 14 LETTERS</b> <b>(a) 3527 &amp; 3570:</b> Members noted that the Standards Commission had send a report from the ESC about an <i>ex officio</i> member of a Health & Social Care Partnership Integration Joint Board to the public body, as required by Section 24 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. <b>(b) LA/SB/3654:</b> Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a Scottish Borders councillor. <b>(c) LA/I/3688:</b> Members noted that a ‘do neither’ decision had been made on a report received from the ESC about an Inverclyde councillor. <b>(d) LA/Fi/3661:</b> Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a Fife councillor. <b>(e) LA/G/3776:</b> Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a Glasgow City councillor. <b>(f) LA/Fi/3634:</b> Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a Fife councillor.	
<b>15.</b>	<b>CASES</b> <b>(a) LA/E/3651:</b> Members noted a pre-Hearing meeting was scheduled to take place on 2 February 2023. A Hearing was scheduled to take place online on 22 February 2023.	
<b>16.</b>	<b>INVESTIGATIONS EXCEEDING 3 MONTHS – INTERIM REPORTS</b> <b>a) LA/E/3653:</b> Members noted the contents of a second interim report from the ESC advising that an investigation into a complaint about a City of Edinburgh Councillor had taken more than six months to investigate. <b>b) LA/Fi/3614:</b> Members noted the contents of a third interim report from the ESC advising that an investigation into a complaint about a Fife Councillor had taken more than nine months to investigate. <b>c) LA/Mi/3803:</b> Members noted that an interim report had been received from the ESC about a Midlothian Councillor on a complaint that had taken more than three months to investigate. Members noted that the ESC had asked the Standards Commission to consider whether or not it wished to impose an interim suspension. Members noted that, having	



	<p>Members noted that the first activity was that staff would work together to give back to the community by offering one day each in the next twelve months to a local charity. The second activity was to offer a short work experience placement to a school pupil or student to allow them to gain office and work experience and also an understanding of the work of the Standards Commission and the ethical standards framework in Scotland.</p> <p><b>MEMBERS' ACTIVITY ANALYSIS</b> Members noted the activity analysis prepared by Mr McCormick. Members agreed to conclude the time recording exercise on the basis that they were satisfied that it demonstrated that they could fulfil their role within the 24 days a year specified in their terms and conditions. Members asked the Executive Team to advise the Internal Auditor accordingly.</p> <p><b>AGENDA ITEMS FOR NEXT MEETING</b> Members agreed to let the Executive Director know of any further items to be added to the agenda for the next meeting.</p> <p><b>MR MCCORMICK</b> The Convener noted that Mr McCormick's tenure as a Member of the Standards Commission was due to end that day. On behalf of all Members and staff, the Convener thanked Mr McCormick for his hard work, professionalism and dedication during his six years in post. The Convener noted, in particular, that Mr McCormick had successfully chaired the Audit and Risk Committee and had led or initiated work on several projects including the introduction of impact statements to be considered at Hearings and work to promote reform of the automatic disqualification criteria in the Local Government (Scotland) Act 1973. The Convener further noted that Mr McCormick had provide invaluable support to other Members and the Executive Director and that he would be greatly missed.</p>	<p><b>Executive Team</b></p> <p><b>Members</b></p>
<p><b>19.</b></p>	<p><b>2023 DIARY DATES AND WORKPLAN</b></p> <p><b>DATE OF NEXT MEETING</b> Members noted that the next meeting of the Standards Commission was scheduled to take place online on Monday 27 February 2023.</p>	<p><b>Executive Team</b></p>