

MINUTES

Meeting date: Tuesday, 25 July 2023

IN ATTENDANCE ONLINE

Members:

- Paul Walker (Convener)
- Ashleigh Dunn
- Suzanne Vestri
- Anne-Marie O'Hara
- Helen Donaldson

Executive Team Members:

- Lorna Johnston (Executive Director)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES</p> <p>Apologies were received from Richard Wilson, Case Manager.</p> <p>DECLARATIONS OF INTEREST</p> <p>Ms Donaldson declared an interest and took no part in the discussion on item 12C. Mr Walker declared an interest and took no part in the discussion on item 13C.</p>	
2.	<p>MATTERS ARISING</p> <p>Members noted that all matters arising, as noted, were complete, awaiting other's input, or due to be discussed at the meeting.</p>	
CONSENT ITEMS		
3.	<p>DRAFT MINUTE OF PREVIOUS MEETING</p> <p>Members reviewed and approved the minute of the meeting on 26 June 2023.</p>	
STRATEGIC MATTERS		
4.	<p>PROMOTING THE ETHICAL STANDARDS FRAMEWORK AND UPDATE ON OUTREACH WORK</p> <p>Members noted the outreach work undertaken by the Executive Team since the last meeting. Members noted, in particular, that the Executive Director had presented a session on the revised Councillors' Code of Conduct to members of the Scottish Member Services Development Network on Friday, 30 June 2023, in Stirling.</p> <p>Members noted that the Executive Director and Case Manager were due to present on the Councillors' Code to elected members of Clackmannanshire Council on 21 September 2023 and, with the Executive Director, Ms Dunn and Ms O'Hara will be presenting on the Model Code to members of Clackmannanshire Health and Social Care Integration Joint Board on 29 November 2023.</p> <p>Members noted that the Standards Commission has been asked to present on the Model Code to Members of the Judicial Appointments Board on 16 October 2023. Members agreed that the Executive Director and Case Manager would cover the event.</p> <p>Members noted that, in the Executive Director's absence for annual leave, the Case Manager would present, with the ESC, at the Scottish Government's 'Welcome on Board: an induction workshop for Ministerial appointees' six-monthly workshop to be held online on 13 September 2023.</p>	

	<p>Members further noted that the Executive Director had been asked to present a joint session with the ESC at the SOLAR Autumn Conference, provisionally scheduled for 10 November 2023.</p> <p>The Convener noted he had had a meeting with the Ethical Standards Commissioner to discuss matters of general and shared interest.</p>	
BUSINESS MATTERS		
5.	<p>ANNUAL REPORT & ACCOUNTS 2022/23</p> <p>Members reviewed the draft Annual Accounts for 2022/23, the contents of the proposed external audit report, and the terms of the draft ISA 580 management response letter.</p> <p>Members were pleased to note that the external auditors (Audit Scotland) had reported that:</p> <ul style="list-style-type: none"> the financial statements gave a true and fair view and were properly prepared in accordance with the financial reporting framework; expenditure and income were regular and in accordance with applicable enactments and guidance; and the audited part of the remuneration and staff report, performance report and governance statement were all consistent with the financial statements and properly prepared in accordance with the relevant legislation and directions made by Scottish Ministers. <p>Members approved the Annual Accounts and confirmed that the Executive Director was to proceed to sign both the Accounts and ISA 580 letter, before submitting them to Audit Scotland for their consideration and final approval.</p>	Executive Director
6.	<p>AUDIT & RISK COMMITTEE</p> <p>Members noted the verbal report provided by Ms Vestri, Chair of the Audit & Risk Committee, of the meeting held earlier that day. Members reviewed the terms of the Annual Audit Report from Audit Scotland and the Annual Assurance Statement from the Internal Auditor. Members were pleased to note that satisfactory assurances had been offered from both, with regard to the Standards Commission's systems of internal control.</p> <p>Members further noted, and advised that they supported, the recommendations made by the Committee in respect of updates to the Risk Register for 2023/24.</p> <p>Members also noted that feedback on their induction and training would be obtained from Ms O'Hara and Ms Donaldson to inform the induction programme for new members. Members agreed that the feedback would be shared with the Internal Auditor, who had confirmed that he intended to review the process for the training and induction of new Members as part of his internal audit work for 2023/24.</p>	Executive Team
7.	<p>REPORT ON EXPENDITURE AGAINST BUDGET - QUARTER ONE 2023/24</p> <p>Members noted the report on expenditure in quarter one against budget. Members noted too that the Standards Commission based its annual budget submission on its staffing and associated costs, business plan activities and funding for a projected number of Hearings. As expenditure associated with Hearings depends on a variety of factors, some of which are wholly outwith the Standards Commission's control, it was not possible to forecast the resources required with any degree of certainty.</p> <p>Members noted that, at 30 June 2023, year to date expenditure was some £5,500 over the budget set aside for the first quarter. Members noted, however, that it was expected that the overspend would unwind over the course of the year.</p>	
8.	<p>REVIEW OF SANCTIONS</p> <p>Members reviewed the sanctions imposed, under Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Act), at Hearings from 1 April 2022 to date, in order to:</p> <ul style="list-style-type: none"> identify any trends and issues; 	

	<ul style="list-style-type: none"> • check for fairness and consistency in the application of sanctions; and • determine whether any improvements can be made to the sanctions process. <p>Members agreed that:</p> <ul style="list-style-type: none"> • Hearing Panels should continue to ensure they give sufficient weight to the nature and seriousness of the breach found, before considering any mitigatory and aggravating factors. • As applicable, Panels should state in the written decision that a suspension would have been imposed should a Respondent still have been a councillor. In doing so, the Panel should amplify whether it would have been a full or partial suspension, and for how long. • When a Panel decides to suspend a Respondent from a quasi-judicial or regulatory committee for a breach of Section 7, it should also consider, as a matter of course, suspending them from any other / all quasi-judicial or regulatory committees / boards of which they are a member. • In cases where a Respondent’s right to freedom of expression had been considered, Panels should always provide reasons why the chosen sanction was the least restrictive possible. • Panels should remember to review the dates of any public body or council holidays and / or breaks in the scheduling of board, full council and any committee meetings when considering the length of any sanction. • Panels should, as a matter of course, consider restricting the Respondent’s entitlement to contact employees, hold constituent surgeries and to assist constituents or service users in circumstances where: <ul style="list-style-type: none"> ○ a breach of the respect for bullying and harassment provisions in the applicable Code had been found; and ○ where the Panel has concerns that the Respondent could either pose a threat to others, or could bring the council or the role of a councillor / board member into disrepute if they were permitted to continue to do so. 	
9.	<p>PERFORMANCE AGAINST KEY PERFORMANCE INDICATORS - QUARTER ONE 2023/24</p> <p>Members reviewed performance in quarter one against the agreed key performance indicators and percentage targets, as published on the Standards Commission’s website.</p> <p>Members noted that there had been strong performance against the majority of targets. Members noted, however, that draft written decisions had only been sent to Panels to approve within two working days of conclusion of Hearings in 75% of cases. Members noted that this slippage had occurred as a result of pressures on staff time due to annual leave commitments and three Hearings having been held in the space of four weeks. Members considered this reasonable given the circumstances.</p>	
10.	<p>REVIEW OF ELIGIBILITY DIRECTION</p> <p>Members noted that a direction regarding the eligibility of complaints about councillors and members of devolved public bodies, was issued to the Ethical Standards Commissioner (ESC) on 1 March 2021, and was effective from 2 March 2021. Following a review by Members, the Direction was then renewed on 27 February 2023. Members noted that the Direction was due to expire on 26 August 2023.</p> <p>Members noted that the Direction requires the ESC to investigate and report to the SCS on all complaints about councillors and members of devolved public bodies unless:</p> <ol style="list-style-type: none"> 1. the Respondent has passed away or is an incapable adult within the meaning of the Adults with Incapacity (Scotland) Act 2000; 2. on the face of it, the conduct that is the subject of 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 3. the complaint is made more than 12 months after the conduct being complained of occurred (or in the case of a course of conduct, the conduct ended). <p>In considering, at their meeting on 31 January 2023, whether they were minded to renew the Direction, Members noted that it ensured that all complaints about councillors and members</p>	

	<p>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 ensure such complaints continued to be investigated and 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. As the ESC had not yet concluded his consultation on his Investigation Manual, Member agreed to renew the Direction for a further six months (which meant it was effective until 26 August 2023).</p> <p>Members noted that the ESC had now completed and published an Investigation Manual, which outlined the eligibility criteria as set out in the Direction. Members noted that the ESC had indicated, however, that he considered it might be useful to be able to amend the second eligibility criterion above to enable him to reject complaints about conduct that ‘on its face’ could constitute a breach, in circumstances where there is evidence (for example it has been confirmed by the Complainer) that the complaint is entirely speculative in nature, or where evidence that entirely disproves the allegation has been provided or is readily accessible. It had been agreed, therefore, that the ESC would draft potential wording for the amended criterion for the Standards Commission to consider.</p> <p>Members noted that the ESC had suggested, in an email of 20 July 2023, the following amended wording for criterion 2 above: <i>“the conduct or course of conduct complained of would, on its face, represent a contravention of an applicable provision of the relevant Code if it could be established that the conduct occurred. If, however, an initial assessment of the publicly available evidence demonstrates that the alleged conduct could not represent a contravention of the relevant Code, then the complaint can be dismissed as ineligible for investigation.”</i></p> <p>The ESC did not propose that criterion 1 and 3 be changed.</p> <p>Members confirmed they were content with the revised wording as proposed. Members asked the Executive Team to advise the Standards Commission’s key stakeholders of the proposed wording. Members agreed that if no significant issues were raised, the Executive Team should ask the ESC to update his publicly available investigations manual to reflect the amended eligibility criteria. Members agreed that depending on the date this work was completed, the Standards Commission would either rescind the Eligibility Direction or allow it to expire.</p>	Executive Team
11.	<p>MO WORKSHOP PROGRAMME</p> <p>Subject to some minor amendments, Members agreed the draft programme for the Monitoring Officers’ workshop, due to be held on Monday, 23 October 2023. Members noted that an invitation and copy of the programme would be issued to all Monitoring Officers, the ESC and to representatives from the Scottish Government, COSLA and the Improvement Service.</p>	Executive Team
CASES UPDATE		
12.	<p>REPORTS FROM THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/As/3780: Members noted that the ESC had sent a draft breach report to an Aberdeenshire Councillor under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p> <p>(b) LA/E/3775: Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a City of Edinburgh Councillor.</p> <p>(c) LA/AC/3711: Members noted that a ‘do neither’ decision had been made on a report received from the ESC about an Aberdeen City Councillor.</p>	
13.	<p>CASES</p> <p>(a) LA/H/3755: Members noted that Highland Council had confirmed that it had formally considered a decision the Standards Commission made at a Hearing held on 25 May 2023.</p> <p>(b) LA/SL/3558a: Members noted that a Hearing was held on 27 June 2023. The Respondent was found to have breached the Councillors’ Code and was suspended.</p>	

	<p>(c) LA/Fi/3614: Members noted that a Hearing was held on 11 July 2023. The Respondent was found to have breached the Councillors' Code and was censured.</p> <p>(d) LA/Mi/3803: Members noted that a Hearing was scheduled to take place on 23 August 2023 at Council Headquarters, Dalkeith.</p> <p>(e) LA/SL/3558b: Members noted that a Hearing was scheduled to take place on 30 August 2023 online.</p> <p>(f) LA/NL/3705: Members noted that a Hearing was scheduled to take place on 29 September 2023. The venue is to be confirmed.</p> <p>(g) LA/E/3645: Members noted that a Hearing was scheduled to take place on 9 October 2023. The venue is to be confirmed.</p>	
14.	<p>INVESTIGATIONS EXCEEDING 3 MONTHS – INTERIM REPORTS</p> <p>(a) LA/Fi/3740: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Fife Councillor had taken more than six months to investigate.</p> <p>(b) LA/AC/3794: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about an Aberdeen City Councillor had taken more than three months to investigate.</p>	
15.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>(a) Members noted the positive feedback received from the Scottish Government's Public Bodies Unit of the Advice Note for Chairs of Public Bodies.</p> <p>(b) Members noted the positive feedback received from the Member Services Development Network on the Executive Director's presentation on 30 June 2023</p>	
ANY OTHER BUSINESS		
16.	<p>BUDGET SUBMISSION 2024/25</p> <p>Members noted, that, as previously agreed, the Executive Team would prepare a draft budget submission for 2024/25. Members noted that this would be circulated to them for approval in the next few weeks so that they had time to make suggestions and comments before the submission deadline on Monday, 4 September 2023.</p> <p>ANY EMERGING RISKS</p> <p>None identified.</p> <p>AGENDA ITEMS FOR NEXT MEETING</p>	
17.	<p>2023 DIARY DATES AND WORKPLAN</p> <p>Members noted the diary dates and ongoing workplan.</p> <p>DATE OF NEXT MEETING</p> <p>Members noted that the next meeting of the Standards Commission was scheduled to take place in the Scottish Parliament on Tuesday, 26 September 2023, which would be immediately followed by the first of the two scheduled Members' development and strategy sessions.</p>	