|  |  |  |  |
| --- | --- | --- | --- |
| **MINUTES *Meeting date: Monday 28 January 2019*** | | | |
| ***IN ATTENDANCE*** | |  | |
| * Kevin Dunion (Convener) * Lindsey Gallanders * Michael McCormick * Tricia Stewart * Paul Walker | | * Lorna Johnston (Executive Director) * Elaine McLean (Business Manager) | | |
| **ITEM** | **CONTENT** | | **ACTION** | |
| **STANDING ITEMS** | | | | |
|  | APOLOGIESThere were no apologies. **DECLARATIONS OF INTEREST**  No declarations of interest were made. | |  | |
|  | **DRAFT MINUTE OF PREVIOUS MEETING**  Members reviewed and approved the minutes of the meeting on 17 December 2018. | |  | |
|  | **MATTERS ARISING**  Members noted that all matters arising were either complete or were due to be discussed under the main agenda. | |  | |
| **STRATEGIC MATTERS** | | | | |
|  | **OUTREACH AND PROMOTION WORK**  The Convener advised that he and the Executive Director had met with a public relations company on 23 January 2019 and had agreed to instruct external support, on a project by project basis, to assist the Standards Commission in proactively communicating about any key messages on, and initiatives it was undertaking to support improvements to, the ethical standards framework and the Codes of Conduct. The Convener advised that it was intended that, initially, the company would assist the Standards Commission in drafting and issuing a news release and thereafter placing an opinion piece on the main points and messages arising from the responses to the Standards Commission’s survey of Members of Devolved Public Bodies. Members agreed that the possibility of trying to obtain some radio coverage should also be explored with the company. | | **Executive Director** | |
|  | **DRAFT BUSINESS PLAN 2019/20**  Subject to some amendments and additions, Members agreed the Business Plan for 2019 / 2020, in support of the final year of the Standards Commission’s Strategic Plan 2016 to 2020. Members noted the Executive Team would prepare a draft Risk Register for consideration at the Standards Commission meeting on 25 February 2019. Once this was agreed, references to the Risk Register would be added and the Business Plan brought back for noting at the following meeting. | |  | |
| **BUSINESS MATTERS** | | | | |
|  | **COMMUNICATIONS:**   1. **New Member Recruitment Update**   Members noted that the interviews for Mrs Gallanders’ replacement had been conducted by the Scottish Parliamentary Corporate Body (SPCB) on 21 January 2019. The SPCB had subsequently advised that they had chosen a successful candidate. Members asked the Executive Director to keep them updated on any further progress.   1. **Assisting Constituents Card**   Members noted that a draft Assisting Constituents Card had been issued to all Monitoring Officers, the Improvement Service and elected members of South Lanarkshire Council. The feedback on the content and format received to date had been positive. Members agreed that the once all feedback had been obtained and collated, the Executive Team should finalise and issue the Card at the end of the following month.   1. **Survey of Members of Devolved Public Bodies**   Members noted that the document outlining the further analysis of the survey results had now been finalised and approved. Members agreed that it should not be published, however, until advice had been sought from the public relations company about the best way to disseminate the main points and key messages arising from the responses received.   1. **Requests for Training from Individual Councils and Devolved Public Bodies**   Members noted that a number of requests for the Standards Commission to provide training on the Codes of Conduct had been received from a number of individual Councils and Devolved Public Bodies. Following discussions with the Convener, the Executive Director had advised that the Standards Commission did not have the resources to support individual training events but intended to continue to run two regional training events a year for councillors and *ad hoc* sectoral training events for Members of Devolved Public Bodies   1. **Commissioner for Ethical Standards in Public Life in Scotland**   Members noted that the Commissioner for Ethical Standards in Public Life in Scotland had changed his branding and now referred to himself in the abbreviated form as the ‘Ethical Standards Commissioner’. Members expressed the hope that this might result in there being less confusion between his role and that of the Standards Commission, and asked that the Executive Team use the new abbreviated title in any publicly available documents and correspondence. | | **Executive Director**  **Executive Team** | |
|  | **QUARTER 3 BUSINESS PLAN 2018/19 REPORT**  Members reviewed the report on progress made in quarter three against the 2018 / 2019 Business Plan. Members were pleased that no slippages of any significance, that were within the control of the Standards Commission, had been recorded in respect of previously identified activities. | |  | |
|  | **QUARTER 3 BUDGET v EXPENDITURE REPORT**  Members noted the Report, which detailed expenditure incurred to 31 December 2018 and projected expenditure against budget to the year end. Members noted that the Executive Team were confident that it was unlikely that there would be any other significant under or overspend against the overall budget. | |  | |
|  | **AUDIT AND RISK COMMITTEE – UPDATE FROM MEETING 21 JANUARY 2019**  Members noted the minutes and the verbal report provided by the Chair of the Audit & Risk Committee, Mr McCormick, of the meeting on 21 January 2019. Members noted that the Internal Auditor had not yet undertaken his proposed review, as part of the 2017/18 internal audit, of the Standards Commission’s preparedness for the implementation of the GDPR. Members noted that this was because the Internal Auditor was due to undertake a similar audit of the SPCB’s preparedness in March 2019 and, as the Standards Commission had a shared service agreement with the SPCB in respect of the provision of data protection officer services, it made sense to do both reviews concurrently. Members indicated they had no difficulty with this approach. Members further noted that the internal auditor had agreed to check whether the SPCB’s online cyber security training package was still available and to revert. Members asked the Executive Team to circulate the training module if it was still available.  Members agreed the Audit Plan and fee as proposed by Audit Scotland for the 2018/19 audit.  Members welcomed the proposal from the Internal Auditor to review the procedures for and usage of the Standards Commission’s credit card as part of the 2019 / 2020 audit.  Members reviewed the recommendations made by the Audit & Risk Committee in respect of the Risk Register. Members agreed that the overall score for risk 6 (being the inability of the Standards Commission to deliver its business effectively due to it having insufficient Members to meet the quorum required for Hearings) should remain the same until such time as a new member was appointed and their availability and level of experience was known. Members further agreed that the overall score for risk 7 (being the inability of the Standards Commission to deliver its business effectively as a result of a lack of executive / administrative support), should also remain the same as despite the controls and specific actions taken, the small number of staff employed meant that any turnover or unplanned absence would have a significant impact on the organisation in terms of a loss of knowledge or experience. Members agreed, in respect of risk 9, that the completion and publication of the British Sign Language Plan and the work to ensure compliance with best practice cyber security and GDPR requirements meant that the probability score could be reduced. As such, the overall risk score should be reduced accordingly. | | **Executive Team**  **Executive Team** | |
|  | **APPEAL ON DECISION LA/Fi/2050**  Members noted that the decision on the appeal heard by the Sheriff Principal on 13 August 2018 had still not been issued. | |  | |
|  | **SECTION 19(8) GUIDANCE**  Members were advised that the Executive Director had raised the possibility of the Standards Commission drafting and issuing guidance under Section 19(1) of the Ethical standards in Public Life etc. (Scotland) Act 2000 with the Monitoring Officers’ Working Group. Monitoring Officers had agreed to provide suggestions on the types of activities a councillor might engage in, over and above attending meetings and Committee meetings of the Council and holding constituent surgeries. Members agreed that the Executive Director should discuss these with COLSA with a view to identifying ones that a councillor should be precluded from engaging in during any period of full suspension under Section 19(1)(c) of the Act. Members noted that the Executive Director could then prepare, and formally consult with COSLA, on a draft guidance note, as required under the Act, for consideration by Members at their March 2019 meeting.  Members noted that it may be that the activities a councillor would be precluded from engaging in under the terms of guidance may vary depending on the nature of the breach that led to the suspension. Members noted, for example, that if a suspension was imposed as a result of a finding of bullying and harassment of officers, it might not be appropriate for the councillor concerned to be allowed to contact the officers concerned, even if he or she was doing so to assist a constituent. | | **Executive Director** | |
|  | **STANDARDS COMMISSION’S STANDING ORDERS**  Members reviewed and agreed minor changes to the Standards Commission’s Standing Orders. Members agreed that the Standing Orders should be updated accordingly and thereafter published. | | **Executive Team** | |
| **CASES UPDATE** | | | | |
|  | **NOTES OF DECISION OF NO BREACH & SECTION 14 LETTERS**  Members noted the terms of three non-breach reports issued by the ESC concerning an elected member from North Ayrshire Council and two elected members of North Lanarkshire Council. Members expressed concerns about some of the reasoning and conclusions contained in these, and asked the Executive Director to bring these to the attention of the ESC.  Members noted the letters issued by the ESC under Section 14 of the Act advising that he had issued draft breach reports to a Fife councillor and a South Lanarkshire councillor.  Members agreed that there was no reason for the Standards Commission to be advised of the names of the Respondents in non-breach reports and Section 14 letters, given that the Standards Commission had no locus until such time as a report was referred to it to make a decision under Section 16 of the Act. Members agreed that the ESC should be asked to redact the names of the Respondents before sending the Standards Commission any non-breach reports and Section 14 letters. | | **Executive Director**  **Executive Team** | |
|  | **BREACH REPORTS HEARING AND POST HEARING UPDATES**   1. **LA/AB/2125**: Councillor Gary Mulvaney of Argyll and Bute Council. Members noted that a Hearing had been held on 18 January 2019, at which Councillor Mulvaney was found to have breached the Code and was censured. 2. **LA/AN/2134**: Councillor Brian Boyd of Angus Council. Members noted a pre-Hearing meeting was held on 22 January 2019, with the Hearing scheduled to take place on 20 February 2019. Members agreed that a suggestion made at the pre-Hearing meeting to the effect that the Standards Commission should produce a flowchart explaining the procedures that were followed at Hearings be actioned. Members asked the Executive Team to prepare a draft of this for consideration at the next meeting.   Members noted that further point had been raised at the pre-Hearing meeting in respect of whether a Hearing Panel was entitled to disagree with any conclusion by the Commissioner for Ethical Standards in Public Life in Scotland (ESC) that, due to the protection afforded by Article 10 of the ECHR, certain parts of a complaint referred to the Standards Commission under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 did not give rise to a breach.  Members agreed that a Hearing Panel could not do so because the ESC was obliged, by law, to consider the applicability of Article 10 as part of his investigation and reporting. This was done before he made a recommendation to the Standards Commission under Section 14 of the 2000 Act. While the ESC might find that a *prima facie* breach of a Code had been established in respect of certain aspects of the complaint, if the recommendation in the report (i.e. his conclusion) was that these aspects of the complaint attracted the enhanced protection afforded by Article 10 of the ECHR then his overall conclusion was that, as such, they did not give rise to a breach.  Members noted that their view on this was supported by the fact that if the ESC found a breach of the respect provisions on the face of it but applied Article 10 and concluded that no breach had occurred as a result, a report would not even be referred under Section 14 and the Standards Commission would have no locus to even consider the complaint.   1. **LA/An/2094:** Councillor Richard Moore of Angus Council. Members noted that Angus Council had confirmed in a letter of 17 January 2019 that it had noted the terms of the Standards Commission’s decision in respect of the Hearing held on 19 November 2018. 2. **LA/As/2173:** Councillor Paul Johnston of Aberdeenshire Council.Members considered the report from the ESC and the terms of the Standards Commission’s policy on making decisions under Section 16 of the 2000 Act and determined that it was proportionate and in the public interest to hold a Hearing. | | **Executive Team** | |
| **AOB** | | | | |
|  | **SCOTTISH PARLIAMENT’S JOINT WORKING GROUP ON SEXUAL HARASSMENT**  The Convener advised that he had arranged to meet the Parliament’s Chief Executive on 18 February 2019 to discuss the recommendations contained in the Joint Working Group’s report. Members agreed that, in particular, the Convener should draw the Parliament’s attention to the fact that it was the Standards Commission and not the ESC who had the powers to require individuals to attend Hearings, give evidence and produce documents and also to administer oaths to witnesses. The Convener should also raise the potential difficulties involved in dealing with sexual harassment complaints in a different way to other complaints. The Convener advised that he would report on the discussions at the next meeting.  **MRS GALLANDERS**  Members noted that it was Mrs Gallanders’ last meeting before her tenure as a Member of the Standards Commission came to an end. The Convener thanked Mrs Gallanders, on behalf of the other Members and staff, for her hard work and commitment to the organisation. In particular, the Convener noted that Mrs Gallanders collegiate approach and willingness to provide assistance had helped ensure that there had been a smooth transition when the Executive Director and new Members had been appointed. Members agreed that Mrs Gallanders had made a substantial contribution to the organisation and that it had made significant progress during her tenure. Members thanked Mrs Gallanders for her support and dedication.  **AGENDA ITEMS FOR NEXT MEETING**  Members agreed to advise the Executive Director of any items they wished included in the agenda for discuss at the next meeting. | | **CONVENER** | |
|  | **SUGGESTED 2019/2020 DIARY DATES – MEETING SCHEDULE**  Members noted the suggested dates for Standards Commission meetings in 2019/20 and confirmed they would advise the Executive Team if they wished to change any of these.  **2018 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, 25 February 2019. | |  | |