

MINUTES

Meeting date: Monday, 26 September 2022

IN ATTENDANCE

Members:

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

Executive Team Members:

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

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES No apologies were received.</p> <p>DECLARATIONS OF INTEREST Ms Vestri declared an interest in item 16d and took no part in the discussion.</p>	
2.	<p>MATTERS ARISING Members noted that a 'save the date' invitation for the Standards Officers' Workshop to be held on 21 March 2023 would be sent to Standards Officers with the September Standards Update. Members noted that all other matters arising as noted were complete.</p>	
CONSENT ITEMS		
3.	<p>DRAFT MINUTE OF PREVIOUS MEETING Subject to a few minor amendments, Members reviewed and approved the minute of the meeting on 25 July 2022.</p>	
4.	<p>REVIEW OF BRITISH SIGN LANGUAGE PLAN AND WEBSITE ACCESSIBILITY COMPLIANCE Members noted that the Standards Commission intends to undertake the following to complete the actions outlined in its British Sign Language (BSL) Plan:</p> <ul style="list-style-type: none"> • Produce a BSL video on the Model Code of Conduct for Members of Devolved Public Bodies, to help BSL users understand what was expected of a member and what actions could constitute a potential breach of the Model Code. • Provide BSL awareness training for two members of staff (who were not in post at the time of the previous training session). <p>Members noted that the Standards Commission was required to ensure that its website complied with the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018. Members noted that a review by the website provider had been undertaken in 2020, with a number of recommendations being implemented at that time. Members noted that a further review of website accessibility would be performed once the new interactive training modules were in place on the website.</p>	
5.	<p>REVIEW OF SERVICE LEVEL AGREEMENT WITH THE SCOTTISH PARLIAMENT'S BUSINESS AND INFORMATION TECHNOLOGY TEAM Members noted this agenda item had been moved and would instead be considered at the next meeting on 7 November 2022.</p>	

6.	<p>OUTREACH WORK UNDERTAKEN BY EXECUTIVE TEAM</p> <p>Members noted the outreach work undertaken by the Executive Team since the last meeting.</p>	
STRATEGIC MATTERS		
7.	<p>CASE REFERRALS DURING PRE-ELECTION PERIOD</p> <p>Members noted that the Local Government Act 1986 (1986 Act) outlines restrictions on communication activities undertaken by local authorities during any pre-election period. Members noted that while the Standards Commission is not subject to the 1986 Act, it would nevertheless be covered by the usual guidance issued for civil servants working for the Scottish Government, its agencies and national devolved public bodies; which advises public bodies to take care when making public announcements in the three weeks preceding an election.</p> <p>Members noted that, upon receipt of a report from the Ethical Standards Commissioner (ESC), the Standards Commission could make any of the following decisions during a local government pre-election period:</p> <ol style="list-style-type: none"> 1. To 'do neither' under Section 16(c) of the 2000 Act (i.e. to decide to take no action and close a case). <p>Members agree that making, issuing and publishing a Section 16(c) decision during any pre-election period would not amount to a breach of the guidance. Members considered that, on the contrary, delaying the making, issuing and publishing of such a decision (particularly in cases where it was evident that the Code has not been breached) could have a bearing, or could be perceived as having a bearing, on a local council election if knowledge of the referral and /or complaint was in the public domain. This was because, essentially, the electorate would know that the matter had not been resolved and that the Respondent was still the subject of ongoing complaint proceedings. As such, Members agreed that the Standards Commission should continue to make and announce any decision to 'do neither' during a local government pre-election period.</p> <ol style="list-style-type: none"> 2. to direct the ESC to carry out further investigation in terms of Section 16(a). and 3. to decide to hold a Hearing in terms of Section 16(b). <p>Members noted that in all scenarios, the Standards Commission would advise the parties and the relevant council / public body (as appropriate) of its decision. In scenario three, the Standards Commission also published information about the Hearing, including the Respondent's name and council / public body, and the Hearing date and venue on the 'Cases' page of its website. It also advised the media of any decision to hold a Hearing.</p> <p>Members agreed that the announcement of a decision to hold a Hearing or to direct further investigation into a complaint about a councillor (which would bring the fact that a complaint has been made into the public domain), could be used by opposition candidates in any local government election campaign. Members noted that the prospect of a Hearing or further investigation into a Respondent's conduct could potentially affect how they were perceived by the electorate. Members therefore agreed that the Standards Commission should defer announcing any future decision to direct further investigation or to hold a Hearing until after any pre-election period had concluded.</p> <p>Members noted that it was arguable that issuing and publishing a decision to find a Respondent in breach of their Code of Conduct at a Hearing held during any local government pre-election period could amount to an announcement that could be used by opposition candidates in any election campaign. Members considered, however, that the electorate would have a right to know whether their elected representatives had or had not complied with the applicable Code of Conduct, to enable an informed decision to be made. As such, Members agreed that, subject to the consideration of any adjournment requests received, the Standards Commission should continue to hold, during any pre-election period, any</p>	

	<p>scheduled Hearings, provided there was sufficient time for the written decision of the Hearing to be finalised, issued and published before the election date itself.</p> <p>Members noted that the ESC provided regular updates on the progress of investigations in respect of complaints about councillors. Members noted, therefore, that the Standards Commission should have the opportunity to identify when any referrals might be made in the lead up to any local government pre-election period and could, therefore, encourage the ESC to prioritise investigations about councillors.</p> <p>Members agreed that the Executive Team should prepare a pre-Election statement summarising the decisions outlined above, for publication on the Standards Commission's website.</p>	Executive Team
8.	<p>MEMBERS' TIME (RECORDING AND ALLOCATION OF WORK)</p> <p>Members agree to keep recording time spent on Standards Commission work to determine, on average over a period of a year, whether they were meeting (or exceeding) the time commitments as set out in their terms and conditions of appointment; being three days per month (22.5 hours) for the Convener, and two days per month (15 hours) for other Members. Members noted that keeping an accurate record of time spent on specific tasks could help the Standards Commission assess whether any changes should be made internally to the way work was allocated, distributed and undertaken.</p> <p>Members asked the Executive Team to create and circulate a new template for them to use to record time. The template should contain standard categories for them to choose, depending on the nature of the work.</p> <p>Members further agreed that, to manage expectations, the Executive Team should ask the Scottish Parliamentary Corporate Body to note, in the recruitment pack for future Members, that the time they were required to spend on Standards Commission work could vary from month to month and, further, that it was spread throughout the month (rather than being condensed into specific two days).</p>	Executive Team
BUSINESS MATTERS		
9.	<p>BUSINESS PLAN 2022/23 REVIEW</p> <p>Members reviewed the progress made in quarters one and two against the actions outlined in the Business Plan for 2022/23. Members were pleased to note the majority of tasks identified for the first half of the year had been completed or progressed.</p> <p>Members noted that it had been agreed that, before the year end, the Standards Commission would consult with the ESC and, if any were identified, compile a 'wish list' of recommendations to amend the governing legislation, so potential breaches of the Codes of Conduct could be dealt with in the most effective and proportionate manner. Members noted that recruitment for the ESC's role was underway and agreed that the action may need to be flexed to the first or second quarter of 2023/24, depending on who was appointed and their experience of the ethical standards framework.</p>	
10.	<p>SEPTEMBER 2022 STANDARDS UPDATE</p> <p>Subject to some minor amendments, Members approved the Standards Update to be issued and published on 30 September 2022.</p>	Executive Team

<p>11.</p>	<p>OUTCOME OF INVESTIGATIONS DIRECTION</p> <p>Members noted that the Direction on the Outcome of Investigations issued to the ESC, on 12 November 2020, under sections 10 and 11 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (2000 Act) was due to expire on 11 November 2022.</p> <p>Members noted that the Direction required the ESC to report to the Standards Commission in relation of all investigations undertaken in respect of complaints about councillors and members of devolved public bodies, for the Standards Commission to then make a decision under Section 16 of the 2000 Act to: hold a Hearing; direct further investigation; or do neither (i.e. to decide that no further action should be taken on the complaint).</p> <p>Members noted that the Direction was issued to the then ESC as the Standards Commission was concerned about her interpretation of the Codes and the threshold being applied for the referral of cases. Members noted that the Standards Commission nevertheless also considered that:</p> <ul style="list-style-type: none"> • The Direction ensured that there was a clear separation of functions between the two organisations, in that the ESC’s role is to investigate complaints, and the Standards Commission, on receipt of the ESC reports, adjudicates on all complaints that had been deemed eligible for investigation. It was noted that this approach helped remove any concerns about fairness of process or inconsistencies between the two organisations as to how the Codes should be interpreted. • A separation of functions was more pertinent in recent times as more complaints had been received that concerned the respect, bullying and harassment provisions in the Councillors’ Code. It was noted that whereas, for instance, alleged breaches of the requirements to register or declare an interest may involve a straightforward assessment, the determination of disrespectful behaviour may involve forming a view as to whether the Respondent is acting in an official or personal capacity, and potentially assessing the intent and impact of the alleged conduct on other councillors or board members, members of staff or members of the public. A potential breach of the bullying and harassment and respect provisions in the Code may also depend on a judgement as to whether there has been a course of conduct or whether any alleged incident should be disaggregated and assessed separately. The question of whether a breach can be found seemed increasingly dependent on the interpretation of the extent of a politician’s right to enhanced protection of freedom of expression under Article 10 of the European Convention on Human Rights. Members considered that these were matters that, more often than not, should be considered at a Hearing. • The Direction allowed any disputed evidence or representations on how the provisions of the Codes should be interpreted to be tested fully at a Hearing, where evidence is taken on oath or affirmation, and where the participants and Panel can question and respond to submissions made. • The implementation of such a Direction made 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 noted that while the Acting ESC had complied with the Direction and, as such, there was no longer concerns about the threshold being applied in respect of referrals to the Standards Commission, the other reasons for the Direction, as outlined in the bullet points above, were still valid. As such, Members agreed that they were minded to extend the Direction for a further two years. Members agreed that the Executive Team should seek the views of the ESC, SOLAR, SOLACE and COSLA before a final decision was made before the existing Direction expired.</p>	<p>Executive Team</p>
<p>12.</p>	<p>PROGRESS OF INVESTIGATIONS DIRECTION</p> <p>Members reviewed the Direction on the Progress of Investigations issued to the ESC, on 1 July 2020, under sections 10 and 11 of the 2000 Act. Members noted that the Direction required the ESC to provide the Standards Commission with interim reports, every three months, on the progress of investigations into complaints about councillors and members of devolved public bodies. It also required the ESC to provide written updates every three</p>	

	<p>months to the Respondent(s), Complainer(s) and the relevant Council or devolved public body, on the progress of any such investigation.</p> <p>Members noted that the Executive Team had consulted with the Acting ESC in respect of whether the Direction should be renewed. The Acting ESC had advised that his office intended to keep updating the parties and Standards Commission on the progress of investigations, regardless of whether the Direction remained in place. The Acting ESC indicated that, due to internal issues with his office’s case management system, compliance with the Direction created some extra work. Members noted, however, that the Acting ESC had indicated that the case management system may be renewed, meaning the issue of additional work may be a temporary one.</p> <p>Members agreed that the information received as a result of the Direction was helpful as it allowed the Standards Commission to understand the timescales involved in dealing with complaint and it provided assurance that the parties were being kept updated on progress. As such, Members agreed that the Executive Team should prepare and issue a renewed Direction to cover a further two years.</p>	<p>Executive Team</p>
<p>13.</p>	<p>STANDARDS IN COMMUNITY COUNCILS</p> <p>Members were reminded of the recent series of enquiries, received by the Executive Team, regarding the conduct of community councillors. Members noted that although community councillors are asked to abide by an abbreviated version of the Councillors’ Code of Conduct, they did not fall within the remit of the 2000 Act and, as such, there is no formal mechanism for investigating and adjudicating on complaints about their conduct.</p> <p>Members noted the Executive Team and various stakeholders including COSLA, the Improvement Service and the Scottish Government had met to discuss standards in community councils. Members noted the Executive Team had offered to assist with the finalisation of the revised Scottish Government documentation for community councils, which includes a new Code of Conduct for community councillors and a revised Model Scheme for Establishment. Members further noted that the Executive Team was due to meet with Community Council Liaison Officers on 28 September 2022 to discuss the work of the Standards Commission, how standards of conduct could be improved and to help manage the expectation of community councillors in relation to the conduct they could expect from local government councillors when they were attending community council meetings.</p> <p>Members noted that the Executive Team had met with the Improvement Service’s Community Council Communications Officer on 14 September 2022 and that the possibility of the Standards Commission assisting with the development of a training module on its work, the ethical standards framework and the Councillors’ Code had been discussed. Members asked the Executive Team to keep them updated on this.</p>	<p>Executive Team</p>
<p>14.</p>	<p>HEARING RULES</p> <p>Members noted that there had been some feedback, for example in the recent surveys of Monitoring and Standards Officers, councillors and members of devolved public bodies, to the effect that the Standards Commission’s Hearing Rules were complicated and difficult to understand. Members noted that the Executive Team had, therefore, undertaken full review of the Rules.</p> <p>Members noted that the revised version of the Rules, proposed by the Executive Team, was greatly simplified, with all guidance in the previous version now published on a new ‘Information for Respondents’ page on the website, along with other Hearings related procedure, advice and policy documents. Members noted that the proposed revised version of the Rules only contained information about the procedures to be followed and directions about what steps or actions the parties and Hearing Panels must take. Members further noted that the ESC had been sent a copy of the proposed revised version and any suggestions made by his team had been incorporated.</p>	

	Subject to some minor amendments, Members agreed the revised version of the Rules. Members noted that the final version, would be sent to the ESC and published on the Standards Commission's website.	Executive Team
15.	<p>KEY PERFORMANCE INDICATORS</p> <p>Members noted that the Standards Commission had various performance targets, which were outlined in its Service Charter and Hearing Rules. Members noted that the organisation also had other non-published targets that its staff and Members worked towards. Members agreed with the Executive Team's proposal that all key targets (both internal and external) be amalgamated and outlined in one place. Members reviewed and determined the key performance indicators and percentage targets. Members agreed that the external targets should be published on the website, with a report on progress against them included in future annual reports.</p>	Executive Team
CASES UPDATE		
16.	<p>REPORTS FROM THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/SL/3684: Members noted that a 'do neither' decision had been made on a report received from the Acting ESC about a South Lanarkshire councillor.</p> <p>(b) LA/SL/3587: Members noted that the Standards Commission has directed the ESC to undertaken further investigation in respect of a complaint about a South Lanarkshire Councillor. Following the completion of the further investigation, a 'do neither' decision had been made.</p> <p>(c) LA/Mo/3615: Members noted that a 'do neither' decision had been made on a report received from the Acting ESC about a Moray councillor.</p> <p>(d) CSE/3748: Members noted that a 'do neither' decision had been made on a report received from the Acting ESC about a Member of the Board of Children's Hearing Scotland.</p> <p>(e) 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>(f) LA/S/3641: Members noted that a 'do neither' decision had been made on a report received from the Acting ESC about a Stirling councillor.</p>	
17.	<p>CASES</p> <p>(a) LA/G/3563: Members noted that a Hearing about the former Glasgow City Councillor had been scheduled to take place on 13 September 2022, but had been postponed as a mark of respect following the death of Her Majesty the Queen. The Hearing was now due to take place on 26 October 2022.</p> <p>(b) LA/An/3546: Members noted that a Hearing about an Angus Councillor was due to be held on 1 November 2022.</p> <p>(c) LA/D/3580: Members noted that, in accordance with Section 18(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, Dundee Council had considered the decision made about a former Dundee councillor at a Hearing held on 1 June 2022.</p> <p>(d) LA/An/3561: Members noted that, in accordance with Section 18(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, Angus Council had noted the decision made about a former Angus councillor at a Hearing held on 15 June 2022.</p>	

18.	<p>INVESTIGATION EXCEED 3 MONTHS – INTERIM REPORT</p> <p>a) NHS/ACH/3570 & NHS/ACH/3527: Members noted the contents of an 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 three months.</p> <p>b) LA/NL/3581: Members noted the contents of third interim report from the Acting ESC advising that an investigation into a complaint about a North Lanarkshire Councillor had taken more than nine months.</p> <p>c) LA/S/3641: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about a Stirling Councillor had taken more than three months.</p> <p>d) LA/R/3598: Members noted the contents of an interim report from the Acting ESC advising that an investigation into complaints about three Renfrewshire Councillors had taken more than six months.</p> <p>e) LA/AC/3639: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about an Aberdeen City Councillor had taken more than three months.</p> <p>f) LA/E/3645: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about a City of Edinburgh Councillor had taken more than three months.</p> <p>g) LA/AN/3564: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about an Angus Councillor had taken more than nine months.</p> <p>h) LA/MO/3620: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about a Moray Councillor had taken more than three months.</p> <p>i) LA/E/3651: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about City of Edinburgh Councillor had taken more than three months.</p> <p>j) LA/E/3563: Members noted the contents of an interim report from the Acting ESC advising that an investigation into a complaint about six City of Edinburgh Councillors had taken more than three months.</p>	
19.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>Members noted the positive feedback received in respect of the training on the Model Code the Executive Team had provided to Members of NHS Forth Valley.</p>	
ANY OTHER BUSINESS		
20.	<p>EVALUATING PERFORMANCE</p> <p>Members agreed to that it would be good practice for them to undertake an annual review of the effectiveness of their performance as a board. Members asked the Executive Team to add this as an item to the agenda for the next meeting.</p> <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>	<p>Executive Team</p> <p>Members</p>

21.	2022 DIARY DATES AND WORKPLAN Members noted the diary dates and updated workplan for 2022. DATE OF NEXT MEETING Members noted that the next meeting of the Standards Commission was scheduled to take place online on Monday, 7 November 2022.	Members Executive Team
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