

MINUTES

Meeting date: Tuesday, 30 May 2023 (online)

IN ATTENDANCE

Members:

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

Executive Team Members:

- Lorna Johnston (Executive Director)

Also in attendance for items 1-9: Gillian McCreadie, Audit Manager, Audit Scotland (observing only)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES</p> <p>Apologies were received from Richard Wilson, Case Manager. Mr Walker welcomed Mrs McCreadie from Audit Scotland, who was attending the meeting as an observer, in her capacity as the Standards Commission's external audit manager.</p> <p>DECLARATIONS OF INTEREST</p> <p>No declarations of interest were made.</p>	
2.	<p>MATTERS ARISING</p> <p>Members noted that the Standards Commission had written to the Minister for Social Security and Local Government in June 2021 suggesting that the provisions in the Local Government (Scotland) Act 1973, which outline the circumstances in which an individual is automatically disqualified from being a councillor, be amended to include any individual who is the subject of the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the sex offenders register') or a Sexual Risk Order. Members noted that the Scottish Government had advised that it would be opening a consultation on proposed changes to the automatic disqualification provisions in the 1973 Act in the near future.</p> <p>Members noted that all matters arising, as noted, were complete 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 24 April 2023.</p>	
4.	<p>ANNUAL REVIEW OF BUSINESS CONTINUITY PLAN</p> <p>Members undertook their annual review of the Business Continuity Plan. Members agreed minor changes be made to reflect practice in respect of online meetings and IT arrangements and the fact that all records were now stored digitally.</p> <p>Members noted that the revised Plan would be circulated to all staff and Members, the Ethical Standards Commissioner (ESC) and the Scottish Parliamentary Corporate Body.</p>	Executive Team
STRATEGIC MATTERS		
5.	<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. In particular, Members noted that the Executive Director had presented a session, with the ESC, on the ethical standards framework and revised Model Code of Conduct at the Scottish Government's 'Welcome on Board: an induction workshop for Ministerial appointees' six monthly workshop on 17 May 2023.</p>	<p>Executive Director</p>
<p>BUSINESS MATTERS</p>		
<p>6.</p>	<p>ADVICE ON ARTICLE 10 AND SECTION 14 OF THE 2000 ACT</p> <p>Members noted that Section 14 of the Ethical Standards in Public Life (Scotland) Act 2000 requires the ESC to send any reports where he has concluded there has been a breach of the Code to the Respondent for comment, before the matter was referred to the Standards Commission.</p> <p>Members noted that the ESC has referred a number of reports to the Standards Commission in which he has stated that he has concluded that, on the face of it, there has been a breach of the respect provisions in the Councillors' Code, but where he has further concluded that a breach finding cannot be made, due to the application of Article 10 of the European Convention on Human Rights (being the right to freedom of expression). In those cases, the ESC had not sent the report to the Respondent for comment before finalising it and referring the matter to the Standards Commission, as he did not consider that Section 14 applied. That was because the ESC's view was the 2000 Act did not draw a distinction between a breach (or contravention) "on the face of the Code" and a final decision on breach (or contravention).</p> <p>Members noted, however, that the Executive Team's view was that such a distinction should be made. The Executive Team considered that as the ESC did not have the power to make a formal finding of breach or impose a sanction, he was not in a position to restrict a Respondent's right to freedom of expression, as provided by Article 10, even if he considered there had been a contravention of the Code. The Executive Team considered, therefore, that while it was helpful for the ESC to give his views on the potential impact of Article 10; essentially any such views would not affect his overall conclusion (being that the Code has, on the face of it, been breached). The Executive Team considered that this meant that the ESC should be sending reports in such cases to Respondents for comments, in terms of Section 14, before referring the matter to the Standards Commission.</p> <p>As the ESC advised that he did not agree with this interpretation, external legal advice on the matter had been sought and the ESC advised that he would be in touch once this had been received. Members asked the Executive Team to keep them updated on the matter.</p>	<p>Executive Team</p>
<p>7.</p>	<p>RESPONSE TO NATIONAL PERFORMANCE FRAMEWORK REVIEW</p> <p>Members noted that the Scottish Government was in the process of reviewing and consulting on the National Performance Framework (NPF), to ensure the National Outcomes reflected what mattered most to communities in Scotland. In particular, views were being sought on whether the existing National Outcomes are the right ones, and what changes the Government should consider making.</p> <p>Members agreed that the Standards Commission should provide a response, before the consultation closing date of 5 June 2023, in respect of the Communities and Human Rights National Outcomes, on the basis that they were the most relevant to its aims, work and remit.</p> <p>Members agreed that the Standards Commission should suggest the inclusion of indicators that measure engagement with public bodies and local councils, such as those relating to:</p> <ul style="list-style-type: none"> • whether there is public confidence that decisions are being made in the public interest only; • the level of understanding of what councils and public bodies do, and how they make decisions; • perceptions regarding honesty and respect in politics; • gauging the public's understanding of how they can engage with public bodies and their local councillors; 	

	<ul style="list-style-type: none"> • the extent of involvement in community councils over time (i.e. overall number and how many community councillors); • how many individuals apply to the boards of public bodies or stand as candidates in local elections; • measurement of councillor turnover (for reasons other than retirement or not being re-elected); and • measurements of representation and voter turnout over time. <p>Members agreed that the Standards Commission should preface its suggestions with some narrative on its experiences and trends it had identified.</p>	Executive Team
8.	<p>SECTION 6 AND APPENDIX B OF THE ANNUAL REPORT FOR 2022/23</p> <p>Members reviewed the draft version of Section 6 and Appendix B of the Annual Report for 2022/23, being the governance and financial overview, and a summary of performance against agreed key performance indicators (KPI), respectively. Members approved both drafts, subject to some additional commentary being included about why three key performance indicators had not been met in full, including the number of cases applicable to one measurement and the tight turnaround times agreed for some of KPIs by the Standards Commission.</p>	
9.	<p>AUDIT AND RISK COMMITTEE MEETING ON 23 MAY 2023</p> <p>Members noted the verbal report provided on behalf of Ms Vestri, the Chair of the Audit and Risk Committee, and the draft minutes of its meeting on 23 May 2023. Members undertook their annual review of the Committee’s Terms of Reference and agreed that no changes were required.</p> <p>Members further noted the Committee’s activities during the 2022/23 operational year included:</p> <ul style="list-style-type: none"> • Reviewing the draft Annual Accounts for approval by the Standards Commission; • Reviewing the Risk Register and identifying and reviewing actions to be taken to mitigate risks; • Recommending changes to the Risk Register and the individual risk scores in light of developments and actions taken; • Suggesting risks and mitigating actions to be included in the risk register for 2023/24; • Reviewing and recommending the external audit plan (including the timetable and fee); and • Reviewing internal and external audit reports and any management responses. <p>The Chair confirmed that she was confident that the Committee had discharged its duties effectively in 2022/23, in accordance with the Terms of Reference.</p> <p>Members noted that the Committee had reviewed the Risk Register for 2023/24. Members agreed with the Committee’s recommendations in respect of some amendments to the probability scores for three of the risks, in light of actions taken.</p> <p>Members asked the Executive Team to update the Risk Register accordingly.</p>	Executive Team
10.	<p>ADVICE NOTE FOR CHAIRS OF DEVOLVED PUBLIC BODIES</p> <p>Members noted an agreed action arising from the responses to the 2022 surveys on the ethical standards framework and compliance with the Codes of Conduct (that the Standards Commission had issued to Members and Standards Officers of devolved public bodies), was for it to produce an Advice Note for Chairs of Public Bodies. This is to include suggestions on:</p> <ul style="list-style-type: none"> • when and how any issues relating to compliance with the relevant Code of Conduct could be resolved internally; • how to promote diversity of thought and ensure all members have an opportunity to contribute; and • how Chairs may wish to deal with a situation where a member was being disrespectful or was failing to register or declare an interest, as required by the relevant Code. 	

	Subject to some minor amendments, Members agreed the content and format of a draft Advice Note. Members agreed that the Executive Team should seek to consult some Chairs of Public bodies that were covered by the Ethical Standards Framework (via the body's Standards Officers) on the proposed content before the Advice Note was finalised, issued and published.	Executive Team
11.	<p>SECTION 16 DECISION-MAKING FORMAT</p> <p>Members noted that, at the Commission's meeting in March 2023, they had asked the Executive Team to review the way that referral reports from the ESC were sent to Members for them to make decisions under Section 16 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p> <p>Members noted that the Case Manager had explored various options but had not identified one that was more efficient than the present method for sharing referral reports and seeking Members' views. Other options involved Members signing in and out of different software formats and, therefore, any benefits, security-wise, would be outweighed by diminished ease and efficiency. Members noted that the process would be reviewed again once any migration to the Scottish Parliament's SharePoint system had been completed.</p>	Executive Team
12.	<p>ADVICE NOTE FOR COLLEGE BOARD MEMBERS</p> <p>Members noted that the Executive Team had drafted an Advice Note for Members of College and Regional College Boards, following discussions with the College's Good Governance Steering Group. Members noted that views on the first draft had been sought from the Good Governance Steering Group. Once these had been received, an updated draft would be circulated to Members for review.</p>	Executive Team
CASES UPDATE		
13.	<p>REPORTS FROM THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/R/3781: Members noted that a 'do neither' decision had been made on a report received from the ESC about two Renfrewshire Councillors.</p> <p>(b) LA/Fi/3614: Members noted that a Hearing had been scheduled following a no breach report received from the ESC about a former Fife Councillor.</p> <p>(c) LA/R/3770: Members noted that a 'do neither' decision had been made on a report received from the ESC about two Renfrewshire Councillors.</p> <p>(d) LA/E/3708 and 3724: 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>(e) LA/E/3158: Members noted that a 'do neither' decision had been made on a further investigation report received from the ESC about a former City of Edinburgh Councillor.</p> <p>(f) LA/E/3768: Members noted that the ESC had sent a draft breach report to a City of Edinburgh Councillor under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p>	
14.	<p>CASES</p> <p>(a) LA/AC/3788: Members noted that a Hearing had been scheduled to take place online on 28 April 2023. Following receipt of new and material information, however, the Standards Commission had decided to take no action on the referral.</p> <p>(b) LA/An/3690: Members noted that a Hearing was held online on 1 May 2023. An Angus councillor was found, on the face of it, to have breached the Councillors' Code. The Panel determined, however, that as she would attract the enhanced freedom of expression, under Article 10 of the European Convention on Human Rights, afforded to politicians when discussing matters of public concern, a formal finding of breach was not justified.</p>	

	<p>(c) LA/H/3755: Members noted that a Hearing was held on 25 May 2023. The Respondent was not found to have breached the Councillors' Code.</p> <p>(d) LA/D/3745: Members noted that a Hearing was scheduled to take place on 6 June 2023 at Dundee City Chambers.</p> <p>(e) LA/S/3571: Members noted that a Hearing was scheduled to take place on 21 June 2023 at Council Chambers, Stirling.</p> <p>(f) LA/SL/3558: Members noted that a Hearing had been scheduled to take place on 27 June 2023 at Council Headquarters, Hamilton.</p> <p>(g) LA/Fi/3614: Members noted that a Hearing had been scheduled to take place on 11 July 2023 at Council Headquarters, Glenrothes.</p>	
15.	<p>INVESTIGATIONS EXCEEDING 3 MONTHS – INTERIM REPORTS</p> <p>a) LA/R/3770: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about two Renfrewshire Councillors had taken more than six months to investigate.</p> <p>b) LA/S/3791: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Stirling Councillor had taken more than three months to investigate.</p> <p>c) LA/SB/3722: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Scottish Borders Councillor had taken more than three months to investigate.</p> <p>d) LA/As/3784: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about an Aberdeenshire Councillor had taken more than three months to investigate.</p> <p>e) LA/E/3645: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a City of Edinburgh Councillor had taken more than twelve months to investigate.</p> <p>f) LA/H/3759: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Highland Councillor had taken more than six months to investigate.</p> <p>g) LA/AC/3711: 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 six months to investigate.</p> <p>h) LA/I/3764: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about an Inverclyde Councillor had taken more than six months to investigate.</p>	
16.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES</p> <p>None received.</p>	
ANY OTHER BUSINESS		
17.	<p>PUBLISHING AGENDAS</p> <p>Members agreed that, going forward, the Standards Commission should publish on its website the agendas, with a brief summary of the matters to be considered, for its forthcoming meetings.</p>	Executive Team

	<p>ANY EMERGING RISKS None identified.</p> <p>AGENDA ITEMS FOR NEXT MEETING Members to discuss and agree the date for the next meeting of the Standards Commission that might be held in public.</p>	
18.	<p>2023 DIARY DATES AND WORKPLAN Members noted the diary dates and ongoing workplan.</p> <p>DATE OF NEXT MEETING Members noted that the next meeting of the Standards Commission was scheduled to take place in the Scottish Parliament on Monday 26 June 2023.</p>	