

MINUTES

Meeting date: Monday 13 November 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)
- Richard Wilson (Case Manager)

ITEM	CONTENT	ACTION
STANDING ITEMS		
1.	<p>APOLOGIES Not applicable.</p> <p>DECLARATIONS OF INTEREST No declarations of interest were made.</p>	
2.	<p>MATTERS ARISING Members noted that all matters arising, as noted, were complete.</p>	
CONSENT ITEMS		
3.	<p>DRAFT MINUTE OF PREVIOUS MEETING Members reviewed and approved the minute of the meeting on 26 September 2023.</p>	
4.	<p>WEBSITE ACCESSIBILITY REGULATIONS REVIEW Members noted that all public bodies are required to comply with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.</p> <p>Members noted that the Executive Team had asked the Standards Commission's website providers and an organisation previously used by the Scottish Parliamentary Corporate Body (SPCB) to quote for the work involved in undertaking an accessibility review of the website. A quote was received from the website provider. In the interim, the Standards Commission was randomly selected by the website accessibility monitoring team at the Government Digital Service (which falls under the remit of the Cabinet Office). The monitoring team advised that, having carried out a review of the website, they had found a number of accessibility issues and requested that these be resolved by the end of January 2024. The Executive Team advised that the Standards Commission did not have the time or resources to complete this work internally, and noted that the majority of the work would need to be carried out by its website providers. The Standards Commission requested an exemption on the basis that undertaking the work would place a disproportionate burden on the organisation.</p> <p>Members noted that a response to the exemption request is awaited. In the meantime, a detailed quote has been sought from the website providers in respect of all of the issues that required to be resolved. Once this has been received, a review will be undertaken to determine whether resources will permit any of the work to be undertaken.</p>	

	Members noted that once the review was completed, the Executive Team would update the accessibility statement on the website to make it clear which issues, if any, will not be addressed and why.	Executive Team
STRATEGIC MATTERS		
5.	<p>PROMOTING THE ETHICAL STANDARDS FRAMEWORK AND UPDATE ON OUTREACH WORK</p> <p>Members noted that:</p> <ul style="list-style-type: none"> • The Executive Director and Case Manager had presented a session on the Model Code of Conduct to members of City of Glasgow College on 4 October 2023. • The Executive Director undertook a joint presentation, with the Ethical Standards Commissioner (ESC), on the ethical standards framework at the annual SOLAR conference on 10 November 2023. • The Executive Director and Ms Dunn were due present on the Model Code to members of Clackmannanshire Health and Social Care Integration Joint Board on 29 November 2023. Ms O’Hara would attend the session as an observer, as part of her induction. • The Executive Director and Case Manager were due to present on the Model Code to Members of the Judicial Appointments Board on 18 December 2023. <p>Members further noted that the Executive Director had been invited to give evidence on the Standards Commission’s Annual Report for 2022/23 at the Local Government, Housing & Planning Committee meeting on 12 December 2023.</p> <p>Members noted that they were due to attend a session with the SPCB, at its meeting on 21 December 2023 to discuss the Standards Commission’s priorities, any issues, and its new strategic plan. Other topics to be discussed included the overall officeholder landscape, funding, shared services and any new functions. Members asked the Executive Team to prepare a briefing note on these matters, to be circulated to them in advance of the session.</p>	Executive Team
6.	<p>DRAFT STRATEGIC PLAN 2024/28</p> <p>Members noted that the Standards Commission was required, under Schedule 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, in respect of each 4-year period, to lay before the Parliament a strategic plan setting out how it proposes to exercise its functions during the four-year period.</p> <p>The Act states that the Strategic Plan should set out:</p> <ol style="list-style-type: none"> 1. SCS’s objectives and priorities during the 4-year period; 2. how the SCS proposes to achieve them; 3. a timetable for doing so; and 4. estimates of the costs of doing so. <p>The Act further states that, before laying the strategic plan, the SCS shall provide a draft of it to and invite, and (if any are given) consider, comments on it from:</p> <ol style="list-style-type: none"> 1. the Parliamentary corporation; and 2. such other persons as the Commission thinks appropriate. This needs to include a committee of the Parliament. <p>The SCS must lay each strategic plan before the Parliament not later than the beginning of the four-year period to which the plan relates (i.e. before 1 April 2024).</p> <p>Subject to some minor amendments, and the inclusion of a new paragraph outlining what had been achieved in terms of the aims for 2020-24, as outlined in the current strategic plan, Members agreed the draft Strategic Plan prepared by the Executive Team. Members further agreed the first draft should be sent to the proposed consultees, who should be asked to provide feedback before 15 December 2023 This is to allow time for any proposed suggestions to be considered, and the Plan reviewed and amended, before it was agreed and laid before Parliament. Members further agreed that the draft should be published on the Standards</p>	Executive Team

	Commission's website so that anyone outwith the agreed list of consultees could provide feedback.	
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BUSINESS MATTERS

<p>7.</p>	<p>MANAGEMENT OF HEARINGS</p> <p>Members noted that the ESC had raised concerns about the management of the Hearing on 9 October in respect of case reference LA/E/3645. Members noted that there was only enough time on the day to hear all witness evidence, and submissions from the representatives of the ESC and Respondent about whether there had been a breach of the Code. The Panel had, therefore, advised both parties that they would deliberate in private the following morning and ask them to provide, by 9am that morning, any submissions on the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights. Both parties did so by email.</p> <p>The ESC noted that his representative was not afforded an opportunity to hear or view the Respondent's Article 10 submissions or to make comments on these. The ESC noted that, similarly, the Respondent's representative was not afforded the opportunity to listen to, or comment upon, his representative's Article 10 submissions. The ESC advised he and his representative were forced to work outwith office hours that evening to prepare and provide written submissions on Article 10, in order to meet the Hearing Panel's request.</p> <p>The Executive Director responded noting that Rules 1.3 of the Hearing Rules provides that a Panel can vary the normal procedure to be followed. The Executive Director noted that while Panels normally give the parties the opportunity to summarise their cases, the intention was for them to be able to provide a brief resume of the key points made, rather than as an opportunity to rebut the other side's submissions. The Executive Director accepted, however, that Panels have tended to be fairly flexible about this. The Executive Director noted, nonetheless, that sometimes there is simply not enough time for summarising, and that in deciding whether there is time, Panels have to consider all issues of fairness and proportionality, which can include the expeditious disposal of the case.</p> <p>The Executive Director apologised to the ESC for the imposition of the deadline in this case. The Executive Director noted that it was her understanding that the Panel had assumed both the Respondent's representative and the ESC's representative had already drafted submissions on Article 10 to read out at the Hearing and, as such that they could simply forward these by email. The Executive Director advised that it would not have been the Panel's intention to cause extra, out of hours work. The Executive Director noted, however, that this had not been the case and accepted that the Panel should have asked how long the parties might need and checked that any deadline would not cause them any difficulty or inconvenience. Having noted that the Respondent's representative sent his submissions in the early hours of the morning of the deadline, the Executive Director sent an apology in similar terms to the Respondent's representative.</p> <p>Members agreed with the Executive Team's recommendation that, in future, the Panel Chair should check both parties are afforded the opportunity to express their views and any concerns about any proposed change to the normal process.</p> <p>Members further agreed that, in order to ensure that Hearings were conducted in the most fair but efficient manner, it was important that Panel Members had the confidence to intervene and advise the parties accordingly, when they have sufficient information on any specific point. Equally, they should also be able to intervene and ask of questions, and / or when they require additional submissions or clarification on any points to be made.</p> <p>Members agreed that it would helpful, as part of their training, to hold a mock Hearing so that they could discuss and identify:</p> <ul style="list-style-type: none"> • whether any changes should be made to the template Chair's opening remarks; 	
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	<ul style="list-style-type: none"> • when an intervention might be required and why; and • the most appropriate way to make such interventions and what to do if there is push back on this. <p>Members asked the Executive Team to arrange a date and prepare materials for a mock Hearing.</p> <p>Members further agreed that Panel Chairs should use pre-Hearing meetings to explore with the parties the nature of the evidence to be provided by each proposed witness. Members noted that doing so would give them the opportunity to check whether the evidence was likely to be directly relevant to the question of whether the applicable Code had been breached by the Respondent and /or whether it was possible that any, or all, of the potential evidence to be led by each witness could be agreed by way of a joint statement of facts.</p>	Executive Team
8.	<p>ANNUAL REVIEW OF KPIs AND FIRST HALF YEAR PERFORMANCE AGAINST 2023/24 INDICATORS REVIEW</p> <p>Members reviewed and noted the performance against the agreed key performance indicators (KPIs) for the period 1 April to 31 October 2023.</p> <p>Members further noted that it had been agreed previously that the suite of KPIs would be reviewed on an annual basis to ensure that they remain an appropriate set of measures of performance. Members agreed to review the suite of KPIs from the point of view of a service user, in order to consider which measures might provide the most value to those individuals. Having done so, Members agreed that the following changes should be made:</p> <ul style="list-style-type: none"> • The measure to send the draft decision to the Panel within 2 working days of the conclusion of the Hearing be increased to five working days, to reflect the extensive work required to produce the draft in more complex cases where there had been testimony for several witnesses. • The measure to respond substantively to any enquiry within 20 days be decreased to 14 days. • The measure to respond to dispensation requests within 21 days be decreased to 14 days. <p>Members agreed that there was no need to amend the Service Standards (in respect of the enquiry response timescales) or the Guidance on the Codes (in respect of the dispensation response timescales) to reflect the agreed changes above. This was because as the KPIs are intended to be targets the Standards Commission should strive to achieve, whereas the timescales in the Service Standard and Guidance represent a firm commitment in respect of the deadline for a response.</p>	Executive Team
9.	<p>BUDGET & EXPENDITURE 2023/24 QUARTER TWO REVIEW</p> <p>Members noted the report on expenditure against budget for the first two quarters of the year. Members noted 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 September 2023, year to date expenditure was some £4,000 over budget. Members noted this was largely due to the staff cost of living pay award agreed by the SPCB being higher than the 5.6% assumed in the budget. Members noted, nevertheless, that it was hoped that the overall overspend would unwind over the remaining half of the year, as a result of cost saving measures being undertaken.</p>	

<p>10.</p>	<p>MONITORING OFFICERS' WORKSHOP</p> <p>Members noted the issues raised and suggestions made at the Standards Commission's annual workshop for Council Monitoring Officers, which had been held on 23 October 2023.</p> <p>Members agreed that the Standards Commission should undertake the following actions, in light of the discussions and suggestions raised:</p> <ul style="list-style-type: none"> • To include information to the effect that anyone can make a complaint about a councillor to the ESC (and it does not need to be submitted by the Monitoring Officer, Chief Executive or any other senior officer) in the Guidance on the Code, on its website and in the Advice Note on the Code for Members of the Public. • To consider producing a card on when and how the Code applies, and the extent to which it requires councillors to engage, for members of the public and to also include information to that effect on its website. • To include information about when a declaration may need to be made in respect of the budget setting meeting in the draft revised Guidance and to circulate this for comment. • To consider potential options for providing more information on the Code's requirements to all council officers. • That Hearing Panels should consider any upcoming recess when determining length of any suspension. <p>Members asked the Executive Team to add the actions to the Business Plan.</p>	<p>Executive Team</p>
<p>11.</p>	<p>UPDATE ON RECENT CASES CONCERNING ARTICLE 10 OF THE ECHR</p> <p>Members noted the findings of the High Court and the European Court of Human Rights, in respect of the application of Article 10 of the European Convention on Human Rights in the recent cases of <i>Mohammad Adil and General Medical Council</i> and <i>Ikotity and Others v Hungary</i>.</p> <p>In respect of <i>Mohammad Adil</i>, concerning a doctor suspended by a Tribunal for spreading misinformation about Covid-19, Members noted in particular that the High Court found that:</p> <ul style="list-style-type: none"> • Laws, rules and regulations emanating from a regulator must meet qualitative standards of foreseeability - a person must be able, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. • Though the doctor had argued he was acting outwith his professional sphere, the Court disagreed, noting that he presented himself as a doctor, and that the substance of his remarks "squarely engaged his professional responsibilities". • Though the doctor had argued there was no evidence to support the Tribunal's conclusion that he had damaged the reputation of the medical profession, the Court noted that a Tribunal was required to apply its own expertise to assess whether, objectively, the conduct found to have occurred had that effect on ordinary, reasonable members of the public. <p>In respect of <i>Ikotity</i>, concerning a refusal to grant permission to opposition MPs to use posters during a colleague's speech in parliament, and sanctions imposed for doing so without permission, Members noted in particular that the ECHR found that:</p> <ul style="list-style-type: none"> • the exercise of freedom of expression in parliament carries with it duties and responsibilities in order to ensure the effective operation of parliament. Thus, parliaments are entitled to impose restrictions on speech that are motivated by the need to ensure that parliamentary business is conducted in an orderly fashion. • the orderly conduct of parliamentary debate is aimed at ensuring the authority and effective functioning of parliament and hence the efficiency of the democratic process. The use of non-conventional means of communication (the poster) could reasonably be regarded as carrying a risk of obstructing that aim. 	

12.	<p>ADVICE NOTE FOR COLLEGE SECTOR BOARD MEMBERS</p> <p>Members noted that the Standards Commission had been asked by the College Good Governance Steering Group to produce an Advice Note on the Model Code specifically aimed at college sector board members. In particular, the College Good Governance Steering Group asked that information to help members understand their roles and responsibilities, and how they could identify and manage conflicts of interest be included.</p> <p>Members noted that a draft Advice Note had been sent to the College Good Governance Steering Group for feedback. Their representative sent a copy of the Advice Note, with the feedback incorporated via track changes and comments, on 1 November 2023. The representative advised that she had taken account of feedback from governance professionals and the comments of the Good Governance Steering Group when suggesting the amendments.</p> <p>Members agreed the version of the Advice Note, with suggested track changes accepted. Members asked the Executive Team to issue the amended final version to all college sector public bodies and to publish it on the Standards Commission’s website.</p>	Executive Team
CASES UPDATE		
13.	<p>REPORTS FROM THE ESC & SECTION 14 LETTERS</p> <p>(a) LA/AC/3812: Members noted that following the conclusion of the ESC’s further investigation, a Hearing had been scheduled for 17 January 2024.</p> <p>(b) LA/WL/3698: Members noted that a decision had not yet been made on a report received from the ESC about a West Lothian councillor.</p> <p>(c) LA/As/3827: Members noted that a ‘do neither’ decision had been made on a report received from the ESC about an Aberdeenshire councillor.</p> <p>(d) LA/G/3818: Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a Glasgow City councillor.</p> <p>(e) LA/WL/3826: Members noted that a ‘do neither’ decision had been made on a report received from the ESC about a West Lothian councillor.</p> <p>(f) LA/ED/3832: Members noted that the ESC had sent a draft breach report to an East Dunbartonshire Councillor under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p> <p>(g) LA/As/3852: 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>(h) LA/I/3764: Members noted that the ESC had sent a draft breach report to an Inverclyde Councillor under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p> <p>(i) LA/AN/3822: Members noted that the ESC had sent a draft breach report to an Angus Councillor under Section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.</p>	
14.	<p>CASES</p> <p>(a) LA/Mi/3803: Members noted that Midlothian Council had confirmed that it had formally considered a decision the Standards Commission made at a Hearing held on 23 August 2023.</p> <p>(b) LA/SL/3558b: Members noted that South Lanarkshire Council had confirmed that it had formally considered a decision the Standards Commission made at a Hearing held on 30 August 2023.</p>	

	<p>(c) LA/NL/3705: Members noted that a Hearing was held on 29 September 2023. The Respondent was found to have breached the Councillors' Code and was censured.</p> <p>(d) LA/E/3645: Members noted that a Hearing was held on 9 October 2023. The Respondent was found not to have breached the Councillors' Code.</p> <p>(e) LA/As/3780: Members noted that a Hearing was held online on 30 October 2023. The Respondent was found to have breached the Councillors' Code and was censured.</p> <p>(f) LA/WL/3790: Members noted that a Hearing was scheduled to take place on 30 November 2023 at West Lothian Civic Centre, Livingston.</p> <p>(g) LA/NA/3707: Members noted that a Hearing had been scheduled to take place on 9 January 2024 at Council Chambers, Irvine, but had been adjourned to 26 January 2024 at the Respondent's request.</p> <p>(h) LA/AC/3812: Members noted that a Hearing was scheduled to take place online on 17 January 2024.</p> <p>(i) LA/H/3759: Members noted that a Hearing was scheduled to take place on 6 February 2024, with the venue yet to be agreed.</p>	
15.	<p>INVESTIGATIONS EXCEEDING 3 MONTHS – INTERIM REPORTS</p> <p>(a) LA/AN/3822: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about an Angus Councillor had taken more than three months to investigate.</p> <p>(b) LA/G/3829: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Glasgow City Councillor had taken more than three months to investigate.</p> <p>(c) LA/SB/3908: 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/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 six months to investigate.</p> <p>(e) LA/AC/3847: 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> <p>(f) 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 eight months to investigate.</p> <p>(g) CSE/3793: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Glasgow Colleges' Regional Board Member had taken more than three months to investigate.</p> <p>(h) LA/PK/3888: Members noted the contents of an interim report from the ESC advising that an investigation into a complaint about a Perth and Kinross Councillor had taken more than three months to investigate.</p>	

16.	<p>FEEDBACK INCLUDING ANY HEARINGS SURVEY RESPONSES Members noted the feedback received in respect of a recent Hearing held.</p>	
ANY OTHER BUSINESS		
17.	<p>DATE FOR STANDARDS OFFICERS' WORKSHOP Members noted that the annual workshop for Standards Officers of devolved public bodies would be held online on Tuesday, 19 March 2024.</p> <p>ANY EMERGING RISKS None identified.</p> <p>AGENDA ITEMS FOR NEXT MEETING Members agreed to advise the Executive Director of any items to be included in the agenda for discuss at the next meeting.</p>	Members
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, 11 December 2023.</p>	