

SCOTTISH BORDERS COUNCIL STANDARDS COMMITTEE

MINUTES of Meeting of the STANDARDS
COMMITTEE held via MS Teams on
Thursday, 9 December 2021 at 3.30 pm

Present:- Councillors S. Aitchison (Chairman), A. Anderson, J. Greenwell, C. Hamilton,
E. Jardine, E. Robson and S. Scott.
Apologies:- Councillor S. Marshall.
In Attendance:- Chief Legal Officer and Clerk to the Council

1. STANDARDS COMMISSION ANNUAL REPORT 2020/21

Copies of The Standards Commission for Scotland Annual Report 2020/21 had been circulated. The Chief Legal Officer explained that Standards was two separate bodies: the Commissioner for Ethical Standards, and the role of that body was to receive complaints from the public, investigate, and then refer the investigation and conclusion to the Standards Commission; the Standards Commission adjudicated on these complaints and also promoted ethical standards and training. The report gave details of compliance, enforcement and adjudication carried out in 2020/2. Over the past 6 years, the Commission had held 63 hearings and where breaches of the Codes had been found, sanctions applied had ranged from censure, suspension for up to one year, and in one case, disqualification. For the first time in 2020/21, the Commission had issued Directions to the Ethical Standards Commissioner to more clearly separate out the investigatory functions of the Commissioner and the adjudicatory functions of the Commission. Up until then, reports had only been submitted to the Commission where the Ethical Standards Commissioner was of the view that a breach had occurred. However, whether a breach had occurred should be a matter for the Standards Commission to determine. There were 14 hearings held in 20/21, with one finding of no breach and the remainder finding a breach had taken place. Sanctions applied to the latter were 6 censures; 1 full suspension; 5 partial suspensions; and 1 disqualification. A summary of the cases was given from pages 27 to 41 of the report.

DECISION

NOTED the Standards Commission Annual Report 2020/21.

2. CODE OF CONDUCT FOR COUNCILLORS

2.1 Copies of the draft Code of Conduct for Councillors, as laid before Parliament, and the Guidance notes, had been circulated. Parliament had approved the Code on 7 December 2022. The Chief Legal Officer, Mrs Nuala McKinlay, explained that she would arrange to send out a copy of the new Code to all Members and thereafter organise a briefing for Members, with training if Members requested this. The changes to the Code included the use of the first person ("I") rather than "you", which helped Members own and take responsibility for the Code. The rules for behaviours had not changed but had been expanded. It was Members' responsibility to understand the impact their actions were having on others e.g. bullying.

2.2 There were changes to the rules around gifts and hospitality which had been tightened up and the default now was that Members would not accept these. Members could accept those items which were deemed to be minor or token or low value or a civic gift or hospitality which could reasonably be expected and also agreed in advance by Council. Previously officers held (and published) a copy of the Members' Hospitality Register but that was no longer required as the Standards Commission expected Members not to

accept gifts/hospitality. If a Member did decline a gift, they would tell the Monitoring Officer who would keep a note of that. If a Member considered refusing a gift would cause offence, then it could be accepted in terms of section 3.19 of the Code and handed over to the Council.

- 2.3 A new category had been added to the Register of Interests which required a Member to register an interest if a close family member had transactions with the Council. There was guidance to go with this part so the Council could properly identify in the accounts and had procedures in place to deal with this. That part would come into force in May 2022 and forms would be updated to reflect this after the election. The Declaration of Interest section had also now changed in an attempt to provide clarity. This had been broken down into two steps: Do I have a connection with this matter? Is that a connection that is someone knew about it would object? In response to a question, Mrs McKinlay confirmed that the Code applied to local authority Councillors and not to Community Councillors and the Standards Commission did not have power over Community Councils. The Clerk to the Council added that the Community Council Scheme was currently under review, with aspects of it being strengthened, including on complaints. In response to a question about different interpretations being made about the Code in different local authorities, Mrs McKinlay confirmed that there was a SOLAR Monitoring Officers Group which met regularly and discussed cases and interpretation of the Code to ensure there was commonality. The Ethical Standards Commissioner and the Standards Commission were the ones to provide the most important interpretation. The Monitoring Officers had gone back to the Commission asking for further guidance on the value of a gift as that had been picked up as an area of uncertainty.

DECISION

AGREED:

- (a) **to hold a briefing for Elected Members on the new Code of Conduct; and**
- (b) **that details and guidance on the Code of Conduct would be included in the induction training for new Councillors after the May 2022 election.**
3. **ROLE OF STANDARDS COMMITTEE IN COMPLAINTS AGAINST COUNCILLORS**
- The Chief Legal Officer, Mrs McKinlay, explained that as Members were aware, the current Scottish Borders Council complaints process for Councillors did contain provision to allow the Monitoring Officer to refer matters to this Standards Committee to make a decision on whether there had been a breach of Code and to impose sanctions. Mrs McKinlay was keen to hear views of Members whether this should continue or not or for something in between. Cllr Robson's view was that the Committee should adopt a learning role rather than a disciplinary role. Mistakes could be made by anyone at any time and the consequence of this was that there would always be a learning opportunity. Where we had an issue arising we needed to look to see if we could resolve this but also identify what we could take from the situation to improve what we would do in the future. Things should only be passed into the disciplinary process if there was no other way forward and should only be passed out-with the Council as a last resort. In general, rather than honing in on an individual misdemeanour, we should learn from them as a collective. Cllr Greenwell commented that he came from a military background so started from a different base with discipline and was a big believer that the Monitoring Officer had the training and understanding to decide whether something had to go to a higher level. This had worked well in the past and he queried the need for the Standards Committee. Cllr Aitchison advised that he had had a conversation with Mrs McKinlay about this and he had always struggled with the idea of politicians monitoring other politicians. Mrs McKinlay confirmed that having spoken with other Monitoring Officers and Scottish Borders Council was in the minority where Members were dealing with complaints internally. Only one incident had been dealt with by the Standards Committee since 2006. Cllr Hamilton commented that for many Members what was needed was just a little nudge, chat and realising where the boundaries were and that was really important. We

should not frighten other people off and the quiet word was a really good starting point. Cllr Scott concurred with the light touch approach with most Councillors sensitive to that, although there was sometimes a generational issue with language. Mrs McKinlay added that on occasions when things were a little more difficult, there was also the opportunity to involve the Leader or Group leader or Convener for mediation. There was the potential to have a Members who could be trained in mediation to deal with that. All this could be brought to Members at a briefing. Any changes to the Standards Committee or the complaints process for Councillors would require approval from full Council.

DECISION

AGREED:

- (a) to brief all Members on the role of the Standards Committee in the Complaints process for Councillors and ask for comments to come back to the Standards Committee for further consideration; and**
- (b) that a meeting of the Standards Committee would be set up towards the end of February 2022 to consider the matter further.**

The meeting concluded at 4.25 pm