



# Commission for Ethical Standards in Public Life in Scotland



# The Key Principles of Conduct in Public Life

## **DUTY AND PUBLIC SERVICE**

Holders of public office should uphold the law and act in accordance with the law and the public trust placed in them. They should act in the interests of the body they serve.

## **SELFLESSNESS**

Holders of public office have a duty to act solely in terms of the public interest. They must not act in order to gain financial or other material benefit for themselves, family or friends.

## **INTEGRITY**

Holders of public office must not place themselves under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

## **OBJECTIVITY**

Holders of public office must make decisions solely on merit when carrying out public business.

## **ACCOUNTABILITY AND STEWARDSHIP**

Holders of public office are accountable for their decisions and actions to the public. They have a duty to consider issues on their merits, taking account of the views of others and must ensure that resources are used prudently and in accordance with the law.

## **OPENNESS**

Holders of public office have a duty to be as open as possible about decisions and actions they take, giving reasons for their decisions and restricting information only when the wider public interest clearly demands.

## **HONESTY**

Holders of public office have a duty to act honestly. They must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

## **LEADERSHIP**

Holders of public office have a duty to promote and support these principles by leadership and example, to maintain and strengthen the conduct of public business.

## **RESPECT**

Holders of public office must respect all other holders of public office and employees of the body they serve and the role they play, treating them with courtesy at all times.

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This report is available in alternative formats on request by telephoning the Commission on 0300 011 0550 or by emailing [info@ethicalstandards.org.uk](mailto:info@ethicalstandards.org.uk)

## Foreword

Welcome to the first annual report from the Commission for Ethical Standards in Public Life in Scotland – referred to throughout as the Commission. This report summarises the activities of the Commission and Commissioners during the 2011/12 financial year.

The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 established the Commission, which was formed by the merger of the offices of the Scottish Parliamentary Standards Commissioner, the Chief Investigating Officer and the Commissioner for Public Appointments in Scotland. The Commission supports the work of two Commissioners, D Stuart Allan, the Public Standards Commissioner for Scotland and Karen Carlton, the Public Appointments Commissioner for Scotland. The new Commission opened its doors on 1 April 2011 and the financial year 2011/12 was a busy one as we finalised the merger of our systems and combined our operations.

**In this report you'll find details about:**

- the work of the Commission during the year
- the assessment of complaints dealt with during the year in relation to councillors, members of devolved public bodies and MSPs
- the work to improve the efficiency and performance of investigations
- the scrutiny of Scotland's ministerial public appointments process
- the work to increase the diverse range of people who apply and are appointed
- the Commission's future plans.

We hope you find the contents interesting and informative. If you would like further information about our work, please visit our website at [www.ethicalstandards.org.uk](http://www.ethicalstandards.org.uk) or call our Business Manager, Karen Elder on 0131 226 8138.



D Stuart Allan  
Public Standards Commissioner  
for Scotland



Karen Carlton  
Public Appointments Commissioner  
for Scotland

27 September 2012



## INTRODUCTION

**The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (the 2010 Act) established the Commission for Ethical Standards in Public Life in Scotland (the Commission) and two office-holders, the Public Standards Commissioner for Scotland (the Public Standards Commissioner) and the Public Appointments Commissioner for Scotland (the Public Appointments Commissioner).**

The Commission is responsible for providing the Commissioners with the property, staff and services they need in order to perform their functions. In addition, the Commission makes arrangements for the co-ordination of the performance of those respective functions.

### **The statutory functions of the Public Standards Commissioner are:**

- to investigate cases of contravention of the appropriate Codes of Conduct by
  - Councillors
  - Members of Public Bodies
  - Members of the Scottish Parliament (MSPs)and, where there has been contravention of the relevant Code
- to report
  - in the case of Councillors/Members of Public Bodies, to the Standards Commission for Scotland
  - in the case of MSPs, to the Scottish Parliament.

Website: [www.publicstandardscommissioner.org.uk](http://www.publicstandardscommissioner.org.uk)

### **The statutory functions of the Public Appointments Commissioner are:**

- to prepare and publish and, as necessary, review and revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code of Practice) to be followed by the Scottish Ministers and their officials when making appointments to the boards of public bodies.
- to examine the methods and practices employed by the Scottish Ministers when making appointments, to ensure they comply with the Code of Practice. The Commissioner may issue guidance on code compliance to the Scottish Ministers.
- to report to the Scottish Parliament instances of material non-compliance with the Code of Practice. If an appointment has not been made, the Commissioner may also direct the Scottish Ministers to delay making the appointment until Parliament has considered the situation.

Website: [www.publicappointments.org](http://www.publicappointments.org)

## THE STRATEGIC PLAN

The 2010 Act requires the Commission to lay before the Scottish Parliament a strategic plan setting out how the Commission and each Commissioner propose to perform their respective functions during the succeeding four year period. The first four year plan, for the period 2012/16, was laid before Parliament on 28 March 2012.

The 2010 Act sets out a formal framework to be used when developing the content and consulting on the strategic plan. The plan must set out the Commission's and each Commissioner's objectives and priorities during the four year period and must describe how they plan to achieve these objectives, specifying the timeframes and costs of achievement. Prior to laying the plan before the Parliament, the Commission provided a draft to the Scottish Parliamentary Corporate Body and consulted with other bodies and individuals the Commission considered appropriate. The plan may be replaced by a revised version if the Commission considers review and revision necessary.

The plan gives details of the estimated expenditure necessary to provide the services the Commission is required to deliver over the four year period. The strategic plan is available at [www.ethicalstandards.org.uk](http://www.ethicalstandards.org.uk).

The strategic plan is supported by annual business plans, specifying how each objective will be taken forward.



## THE BUSINESS PLAN FOR 2011/12

The business plan for 2011/12 had a number of objectives for the Public Standards Commissioner and the Public Appointments Commissioner. Progress towards objectives specific to the functions of the Commission is outlined in the following table:

### Objective

### Result

**Key:** ✓ Objective achieved C/f Carried forward to 2012/13

#### Financial and Resource Systems

Prepare a budget for the following financial year for Parliamentary approval, in full accord with the principles of best value and with full regard to the current public sector financial constraints.

✓

Establish a rigorous model of regular review of expenditure to ensure it remains within the currently approved budget.

✓

Keep proper accounts and accounting records and prepare annual accounts and submit them for audit in terms of statutory requirements. We will:

✓

Establish a Scheme of Delegated Functions.

✓

Develop joint financial procedures and monitoring systems.

✓

Establish a new financial audit regime.

C/f

#### Information Technology

Develop a shared IT service.

✓

Develop an integrated website for the benefit of the public.

✓

#### Staffing and Internal Communication

Effect the transfer of staff to the new Commission.

✓

Establish and introduce an acceptable set of employment policies having regard to the relevant legislation (including TUPE) and best practice in employment matters.

✓

Hold regular staff meetings.

✓

Establish effective staff consultative mechanisms, including the internal dissemination of staffing information.

C/f

The business plan for 2011/12 is available on our website. Business plans for subsequent years will also be published on our website.



## FREEDOM OF INFORMATION

Under the 2010 Act the Commission and the Public Appointments Commissioner for Scotland are subject to the Freedom of Information (Scotland) Act (FOISA).

The Commission received four requests under FOISA in 2011/12. In three cases, related to childcare vouchers, staff bonuses and IT expenditure, the information was released. The fourth request sought documents which were not held by the Commission but by the Public Standards Commissioner for Scotland for the purposes of an investigation and were, therefore, exempt information for the purposes of FOISA. The Public Standards Commissioner does, however, as a matter of policy endeavour to release information wherever possible.

## FINANCIAL OVERVIEW

<b>Analysis of Expenditure</b>	<b>Expenditure 2011/12 £000s</b>	<b>Budget 2011/12 £000s</b>	<b>Variance £000s</b>
<b>Staffing costs</b>	<b>567</b>	<b>568</b>	<b>(1)</b>
<b>Operating costs</b>			
Travel & expenses	9	20	(11)
Training & recruitment	1	5	(4)
Property	66	68	(2)
Auditors & financial advisers	15	9	6
Legal advisers	23	12	11
Public Appointments Assessor costs	74	107	(33)
Other professional fees	0	2	(2)
Office costs	19	32	(13)
Hospitality	3	3	-
IT	13	4	9
Printing	9	14	(5)
Research	1	5	(4)
Depreciation	7	0	7
<b>Operating costs</b>	<b>240</b>	<b>281</b>	<b>(41)</b>
<b>Total operating expenditure</b>	<b>807</b>	<b>849</b>	<b>(42)</b>
<b>Capital expenditure</b>			
Tangible Assets			
Fixtures and fittings	1	2	(1)
IT systems	6	1	5
Intangible Assets (software)	0	0	-
<b>Total capital expenditure</b>	<b>7</b>	<b>3</b>	<b>4</b>

<b>Analysis of Expenditure</b>	<b>Expenditure 2011/12 £000s</b>	<b>Budget 2011/12 £000s</b>	<b>Variance £000s</b>
<b>Cash Expenditure</b>			
Staffing costs	567	568	(1)
Operating costs (less depreciation)	233	281	(48)
Capital expenditure	7	3	4
<b>Total expenditure</b>	<b>807</b>	<b>852</b>	<b>(45)</b>

The £45,000 underspend comprises two elements:

- Demand for the services of Public Appointments Assessors (PAAs) fell, resulting in a £22,000 underspend. PAAs are involved in an average 68 rounds each year. During the year, this fell by one-third to 45. The Commission will closely monitor activity in 2012/13 to identify whether activity has permanently reduced or has merely been delayed.
- The Commission actively pursued cost reductions in the following areas resulting in a further £23,000 of savings.
  - £5,000 - Staff training
  - £5,000 - Public Appointments Assessor contracts
  - £4,000 - Annual report
  - £5,000 - **Diversity Delivers**, the equal opportunities strategy for public appointments
  - £4,000 - Thematic audit of public appointments

Full accounts, audited by Audit Scotland, are available at [www.ethicalstandards.org.uk](http://www.ethicalstandards.org.uk) or by contacting the Commission's office. The Commission is also required to provide information about expenditure under section 31 of the Public Services Reform (Scotland) Act 2010. This can also be viewed on the website.



## WHO CAN BE COMPLAINED ABOUT?

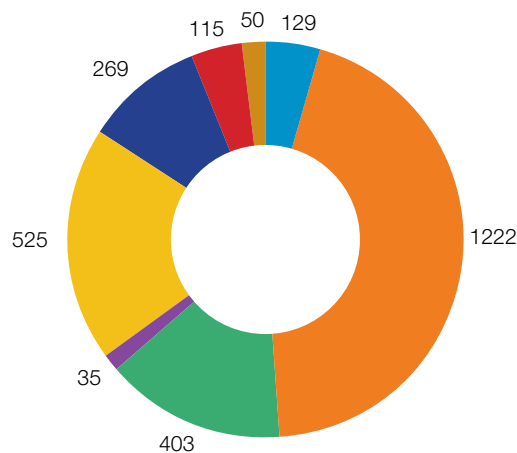
Table 1 provides general information about the number of MSPs, local authorities and public bodies whose members can be the subject of a complaint under the relevant Code of Conduct. The members that can be complained about were originally set out in the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) and the Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act). The number of devolved public bodies varies from time to time as legislation is passed for new bodies to be brought within the scope of the 2000 Act and existing bodies are either removed from the Commissioner's remit or abolished altogether.

**Table 1**

Organisations	Number of Bodies	Members of Bodies
MSPs	1	129
Local Authorities	32	1222
Public Bodies		
- National bodies	38	403
- National park authorities	2	35
- Further education colleges	37	525
- NHS regional boards	14	269
- Regional transport partnerships	7	115
- Community justice authorities	8	50
<b>TOTAL</b>	<b>139</b>	<b>2748</b>

### Number of MSPs, councillors of local authorities and members of public bodies

- MSPs
- Local Authorities
- National Bodies
- National Park Authorities
- Further Education Colleges
- NHS Boards
- Regional Transport Partnerships
- Community Justice Authorities



## COMPLAINTS ABOUT COUNCILLORS OR MEMBERS OF PUBLIC BODIES

Table 2 shows the number of complaints received by the Public Standards Commissioner during the year compared with previous years.

**Table 2**

Complaints against	2011/12	2010/11	2009/10
Councillors	170	178	190
Members of devolved public bodies	9	20	6
Other (outwith jurisdiction)	6	12	4
<b>TOTAL number of complaints*</b>	<b>185</b>	<b>210</b>	<b>200</b>
Total number dealt with as cases**	114	135	135

\* Where a complaint is made against more than one councillor, the number of complaints will reflect the number of councillors complained of; for example, a complaint involving three councillors would be three complaints, as there are potentially three separate outcomes.

\*\* A case relates to a number of complaints which have been investigated together as the subject matters of the complaints are the same or related.



## Complaints by category

Table 3 outlines the various categories of complaints received during the year, compared with previous years.

**Table 3**

Description	2011/12	2010/11	2009/10
Failure to register an interest	5	18	8
Failure to declare an interest	42	19	19
Disrespect of councillors/officials/employees	17	29	19
Financial misconduct	5	6	2
Breach of confidentiality	1	3	7
Misconduct relating to lobbying	2	2	0
Misconduct on individual applications	34	31	68
Other complaints*	45	35	59
Breach of the Key Principles	28	55	14
Outwith jurisdiction	6	12	4
<b>TOTAL</b>	<b>185</b>	<b>210</b>	<b>200</b>

\* These include complaints with limited or no merit, such as those about a member/councillor's personal conduct, failure to correspond or unsatisfactory action from a member/councillor.

## Origin of complaints

Table 4 shows the origin of complaints received during the year compared with previous years.

**Table 4**

Complainant	2011/12	2010/11	2009/10
Member of the public	152	177	161
Councillor	22	24	31
Officer of a local authority	6	6	3
Anonymous	1	2	1
Member of a devolved public body	0	1	2
MSP	4	0	2
<b>TOTAL</b>	<b>185</b>	<b>210</b>	<b>200</b>

## Complaints relating to Planning

Table 5 shows complaints relating to Planning.

**Table 5**

Planning complaints received from	2011/12	2010/11	2009/10
Member of the public - with a known material interest	60	55	77
Member of the public - with no known material interest	8	0	0
Councillor	1	3	4
Officer of a local authority	0	0	0
MSP	1	0	1
Anonymous	0	1	0
<b>TOTAL</b>	<b>70</b>	<b>59</b>	<b>82</b>

## Complaints progressed and dealt with in 2011/12

Table 6 shows complaints progressed and dealt with in 2011/12.

**Table 6**

Complaints progressed and dealt with	2011/12
Complaints outstanding as at 31 March 2011	52
Complaints received during 2011/12	185
Complaints completed during 2011/12	201
Complaints outstanding as at 31 March 2012	36

## Outcome of complaints completed

Table 7 shows, in relation to completed complaints, what the findings have been during the year compared with previous years. 201 complaints were completed this year and a significant number – 190 complaints – required some form of investigation, which follows a similar trend from previous years.

Following full investigation, 38 complaints (19%) concluded in a finding of no breach of the Code. Six complaints (3%) resulted in a report being submitted by the Public Standards Commissioner to the Standards Commission with a finding that there had been a breach of the Code.

There were 146 complaints (73%) which, after an initial investigation, were subject to no further action. These covered complaints which did not amount to a possible breach of the Code or had limited substance or merit. The initial investigation – in all cases – involved the assessment and consideration of the complaint and/or clarifying the complaint, or gathering information from parties involved in the complaint before concluding that the matter should not be pursued further.

Seven complaints (3%) were found to be outwith jurisdiction. Four complaints (2%) were withdrawn.

**Table 7**

Outcome of complaints	2011/12	2010/11	2009/10
Report of breach	6	1	7
Decision of no breach	38	64	42
No further action following initial investigation	146	129	140
Outwith jurisdiction	7	14	6
Withdrawn*	4	19	3
<b>Total number of complaints</b>	<b>201</b>	<b>227</b>	<b>198</b>
<b>TOTAL number dealt with as cases</b>	<b>129</b>	<b>150</b>	<b>127</b>

\* Three complaints were withdrawn prior to initial enquiries being made and one complaint was withdrawn during the final stages of the Public Standards Commissioner making enquiries.



## Case Summaries

The Public Standards Commissioner may publish a summary of his decision on a complaint on the website when it is considered the decision would be of wider public interest. Case summaries are published on the website: [www.publicstandardscommissioner.org.uk/decisions/](http://www.publicstandardscommissioner.org.uk/decisions/).

During the year there have been a number of cases which might be considered helpful in interpreting and understanding certain aspects and provisions of the Code. A number of these cases are set out in **Appendix A**.

## Breaches of the Code of Conduct

Table 8 shows cases where the Public Standards Commissioner found contraventions of the Code which were reported to the Standards Commission. A brief summary of the reports is shown in **Appendix B**.

**Table 8**

Complaint Number	Councillor/Member of Public Body	Nature of the breach	Hearing date	Hearing Decision	Sanction imposed
LA/ER/1046/C*	East Renfrewshire Councillor	Failure to register and declare an interest	14-Jun-11	Breach	Censure
LA/NL/961	North Lanarkshire Councillor	Breach of confidentiality	2-Aug-11	Breach	Suspension 3 months
LA/G/1049	Glasgow City Councillor	Disrespect of councillors/officials	1-Dec-11	Breach	Censure
LA/E/1098 and LA/E/1108	City of Edinburgh Councillor	Breach of confidentiality	22-Nov-11	Breach	Censure
LA/EL/1133 and 1138/A	East Lothian Councillor	Failure to declare an interest	20-Feb-12	Breach	Suspension (Planning Committee) 3 months

\*The Commissioner's report was submitted in 2010/11 and the hearing was held in 2011/12.

Further details on the outcome of the Hearings can be found on the Standards Commission website: [www.standardscommissionscotland.org.uk/full\\_list](http://www.standardscommissionscotland.org.uk/full_list)

## COMPLAINTS ABOUT MSPs

### Complaints received

Table 9 shows the number of complaints received by the Public Standards Commissioner about MSPs during the year compared with previous years. In addition to Tables 9 and 10, two complaints were carried forward from last year; these are included in Table 11 onwards.

**Table 9**

Complaints against	2011/12	2010/11	2009/10
MSPs	16	30	37

Table 10 outlines the various categories of complaints received during the year compared with previous years.

**Table 10**

Description	2011/12	2010/11	2009/10
Misrepresentation of MSP's role	0	3	1
Registration/declaration of interests	2	0	8
Lobbying and access to MSPs	0	0	0
General conduct	5	11	4
Confidentiality requirements	0	3	2
Awareness of MSP's staff	0	1	3
Engagement and liaison with constituents	6	8	9
Allowances and expenses/Use of Parliamentary facilities	3	4	10
<b>TOTAL</b>	<b>16</b>	<b>30</b>	<b>37</b>

## Complaints dealt with

Upon the receipt of a complaint, the Public Standards Commissioner assesses the admissibility of that complaint; this is known as Stage 1. Table 11 gives details of the number of complaints dealt with during the year at Stage 1 and whether they were admissible or not.

**Table 11**

Admissibility of complaints (Stage 1)	2011/12	2010/11	2009/10
Admissible	0	0	1
Inadmissible	17	30	34
Withdrawn	0	2	0
Still at Stage 1 at 31 March	1	2	4
<b>Total</b>	<b>18</b>	<b>34</b>	<b>39</b>

Table 12 gives details of complaints decided as admissible (at Stage 1) and which therefore proceeded to further investigation and report to Parliament in Stage 2.

**Table 12**

Admissible complaints	2011/12	2010/11	2009/10
Completed Stage 2	0	1	0
<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>

## Inadmissible complaints

Table 13 gives details of the grounds on which complaints were dismissed.

**Table 13**

Inadmissible complaints	2011/12	2010/11	2009/10
Complaint not relevant	11	28	16
Complaint not meeting procedural requirements	2	0	1
Complaint is insufficient and does not warrant further investigation	4	0	0
Still at Stage 1 at 31 March	1	2	17
<b>Total</b>	<b>18</b>	<b>30</b>	<b>34</b>

## **Timescale for Stage 1 (Assessment of admissibility)**

The Public Standards Commissioner is required to report to the Standards, Procedures and Public Appointments Committee, and also to the MSP complained about and the complainer, if Stage 1 takes longer than the indicative period of two months. Decisions on all of the complaints received and dealt with in 2011/12 were reached within the two month period.

## **Timescale for Stage 2 (Further investigation)**

The Public Standards Commissioner is required to report to the Committee, and also to the MSP complained about and the complainer, if Stage 2 takes longer than the indicative period of six months. There were no complaints that had to be taken to Stage 2 during the year.



## REVIEW OF THE YEAR BY THE PUBLIC STANDARDS COMMISSIONER

### **Ethical Standards Framework**

This is the first annual report since the offices of the Chief Investigating Officer and the Scottish Parliamentary Standards Commissioner have been combined into the new office of the Public Standards Commissioner for Scotland.

I am pleased to say that the new working arrangements have been introduced seamlessly and there is every indication that this will lead to increased effectiveness and economy.

### **The Year's Cases – Councillors and Members of Public Bodies**

This has been the ninth year where the Code of Conduct has been in operation for councillors and members of devolved public bodies.

A number of points can be made as a result of the cases that have been dealt with during the year.

- There have been 185 complaints this year compared with 210 last year, which is a decrease of 12%.

The complaints were investigated as 114 cases (which more accurately reflects workload) compared with 135 cases last year.

It is gratifying to see a reduction - albeit modest - in the number of complaints received as this does reflect an increasing understanding of the requirements of the Codes by elected and appointed members and is indicative of high standards of conduct in public life in Scotland being sustained.

- Most complaints (170) continue to be against councillors rather than members of devolved public bodies (9).
- Complaints relating to the failure to register or declare interests have risen to 46 this year (compared with 37 last year) which amounts to an increase of 24%.

If the public are to continue to have confidence in decisions taken by elected and appointed members, it is essential that members rigorously apply the statutory provisions that deal with the registration and declaration of interests.

These provisions - which give practical effect to the key principles of openness, honesty and integrity - are of paramount importance and councillors and members must be fully aware of them and ensure they give effect to them at all times.

Following the local government elections in May 2012, the opportunity must be taken to ensure that members are fully apprised of their responsibilities and the consequences if they fail rigorously to apply the terms of the Code.

- Complaints relating to misconduct on individual applications (such as planning applications) have increased marginally to 34 this year (31 last year) but the overall trend compared with earlier years suggests improving standards.
- 77% of complaints were found, after initial investigations, either not to amount to a breach of the Code or had limited substance or merit.
- In 20% of cases a full investigation was required but the conclusion was that there had been no breach of the Code.
- In respect of 6 complaints (3%) there was a finding that there had been a breach of the Code.
- 5 cases (see table 8) went forward to hearings before the Standards Commission. In all cases, the Commission upheld a breach of the Code and sanctions were imposed ranging from censure to suspension.



## **The Year's Cases – Members of the Scottish Parliament**

This has been the ninth year where the Code of Conduct for MSPs has been in operation.

A number of points can be made as a result of the cases that have been dealt with during the year.

- There have been 16 complaints this year compared with 30 last year resulting in a decrease of 46%. It should be appreciated that for a period of time during the year Parliament was in dissolution for the Parliamentary elections.
- 18 cases were dealt with during the year (including 2 carried forward from last year).
- 1 case has been carried forward to 2012/13.
- 5 cases were found to be inadmissible on the grounds of being irrelevant or insufficient and not warranting further investigation.
- 11 were excluded complaints, that is complaints which are excluded from the Commissioner's jurisdiction and fall to be dealt with by other authorities such as the Presiding Officer of the Scottish Parliament or the Scottish Parliamentary Corporate Body.
- 1 further case was outwith jurisdiction as the complaint related to the Code of Conduct for Scottish Ministers.
- There were no breach reports submitted to the Parliament.

Having regard to the complaints received and the outcomes of the investigations, I remain of the view that Members of the Scottish Parliament have sought to apply and have applied high standards of conduct in carrying out their Parliamentary duties.

## **Review of the Parliamentary Code and Directions**

The Standards, Procedures and Public Appointments Committee of the Parliament was reconstituted following last year's Parliamentary elections.

It embarked on a review of section 7 of the Code dealing with General Conduct and I submitted evidence to it for consideration.

It is likely that the Committee will report later in 2012.

The Committee also undertook a review of the Parliamentary Directions issued to the Commissioner relating to how investigations are conducted; again I submitted evidence for consideration.

The Committee has now approved revised Directions and I am obliged to them for the detailed consideration they have given to a number of matters.

The Committee, for instance, has approved a revised Direction so that the Commissioner is now authorised to acknowledge to the press and public that a complaint about a named MSP has been received and is being investigated, which is consistent with the Parliament's intention of promoting openness and transparency in dealing with its business.

## Performance against Targets

The key development objectives are set out in the Public Standards Commissioner's Business Plan 2011/12 and relate to the handling of complaints.

The related targets and achievements are set out below.

### Initial assessment of complaints (councillors and members of devolved public bodies)

Table 14 provides details of the target in relation to the initial assessment of the complaint, the criteria used to measure that target and the actual performance achieved.

**Target:** 85% of complaints will have an initial assessment within 2 months.

**Criteria:** The number of working days, from the date a new complaint is received to the date the first substantive letter (providing a response on progress to the complainant or requesting additional information) is dispatched.

**Performance:** A significant number – 99% of complaints (exceeding the target) – were initially assessed within 2 months of the receipt of the complaint.

**Table 14**

Target	Actual	Details
85%	99%	Initial assessment within 2 months



### Time taken to complete investigations

I see it as of the greatest importance that complaints should be dealt with as quickly as possible, consistent with a full and thorough investigation of the complaints. This will continue to be a high priority of my office.

Rigorous performance targets have been set and achieved as follows:

Tables 15a and 15b provide details of the target in relation to the length of time it has taken to complete the investigations within 2011/12, the criteria used to measure that target and the actual performance achieved.

**Table 15a – Time taken to complete investigations – councillors and members of public bodies**

Target	Actual	Details
40%	76%	Completion within 3 months or less
75%	94%	Completion within 6 months or less
95%	99.5%	Completion within 9 months or less

**Table 15b – Time taken to complete investigations - MSPs**

Target	Actual	Details
75%	100%	Completion of Stage 1 (Admissibility) within 2 months
95%	N/A	Completion of Stage 1 (Admissibility) within 3 months
100%	N/A	Completion of Stage 1 (Admissibility) within 6 months
75%	N/A	Completion of Stage 2 (Breach Report) within 6 months
95%	N/A	Completion of Stage 2 (Breach Report) within 9 months

## Continuing Public Service Reform

During the following year (2012/13), it will be as important as ever to promote efficiency, effectiveness and economy and to strive to achieve continual improvement in the delivery of our public service.

It is anticipated that statutory measures will be promoted to combine the offices of the Public Standards Commissioner and the Public Appointments Commissioner into an office of a single ethical standards Commissioner and to address the continuing role of the Commission for Ethical Standards in Public Life in Scotland.



D Stuart Allan  
Public Standards Commissioner for Scotland



# 3. The Public Appointments Commissioner for Scotland

Karen Carlton



## REVIEW OF THE YEAR BY THE PUBLIC APPOINTMENTS COMMISSIONER

**Regulating appointments:** Scrutiny of public appointments was provided for every appointment made to a regulated public body during the year - a list of all regulated bodies appears on our website. This report contains information on the role of the Commission in scrutiny, complaint handling and reporting and details of the two reports I laid before the Scottish Parliament during the year.

A significant change to the regulatory framework was introduced with the implementation of the new Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code of Practice). The 2011 Code of Practice was operational from 1 September 2011, as was the new risk-based approach to scrutiny with a redefined role for the Public Appointments Assessors. We conducted a full tendering exercise to appoint external suppliers for the Assessor role and welcomed four new members to the Assessor team.

This report provides information on the roles of the people involved in the appointments process and highlights appointment activity during the year. The transition to the new Code of Practice was not a smooth one. Despite comprehensive consultation with the Scottish Government, workshops run to introduce the Code and highlight the new regulatory requirements as well as a handbook designed to provide the Code's rationale and examples of how it may be applied, there was little real understanding of the changes amongst those responsible for implementing the Code of Practice. At the time of writing there are positive indications of improvement.

**Diversity Delivers:** In 2011 we marked an important milestone for my equality and diversity strategy for Scotland's ministerial public appointments process. We reached the third anniversary of its launch on 1 September 2008 and conducted a review of progress in implementing the short-term recommendations. Full details are available in the report to the Scottish Parliament's Equal Opportunities Committee, "**Diversity Delivers** – three years on", which you will find in the publications section of our website. That report highlighted the fact that the Commission will no longer be actively involved in implementing the recommendations contained in **Diversity Delivers** – our initial involvement was designed to support the Scottish Government in gaining momentum. Now that the Code of Practice has been rewritten to encompass diversity requirements, the Commission will monitor progress but not be actively involved in implementation. The report recommends future arrangements for monitoring how the Scottish Ministers are taking forward the recommended actions and the impact their actions are having on the diversity of applicants for, and people appointed to, positions on the boards on Scotland's public bodies.

This report highlights the work done by the Commission during the year to encourage a more diverse range of applicants and includes information on our work to support progress in achieving the strategy's vision.

It is fair to say that, since I launched **Diversity Delivers**, there have been a number of positive changes to the Scottish Government's approach to public appointments and an increase in applications from traditionally under-represented groups. Applications from people who declare a disability have increased to 15.3% from 11.1% in 2010 and those from minority ethnic groups have increased to 3.6% from 2.3%. However, as this report shows, overall application targets set for the Scottish Government in **Diversity Delivers** have not been met; analysis suggests that under-represented groups still face barriers within the application process. Whilst progress has been made, there is still work to be done to provide the Scottish Ministers with a choice of able applicants reflective of the population of Scotland.

**Applications and appointments:** 36 new appointment rounds started during the 2011/12 year, for a total of 76 positions. By the end of the year 27 appointment rounds were successfully completed with 62 posts being filled. 990 applications were received, giving an average of 16 applications for each position. This report provides a detailed breakdown of applicant statistics and highlights how many people in some of the categories covered by the Scottish Government's diversity monitoring form applied for public appointments on regulated bodies. It's clear that some applicants choose not to complete the form, or some sections of the form, so data is not complete. They do, however, provide an overall picture. During the year:

- 33% of applicants were female
- 34% of people appointed to boards were female
- 15.3% of applicants declared a disability
- 11.5% of people appointed to boards declared a disability
- 3.6% of applicants were from a minority ethnic background
- 6.7% of people appointed to boards were from a minority ethnic background.

As well as the above, the Scottish Government collects a wide variety of data, details of which may be found in the statistics section of this report. One noticeable trend, for example, is the fact that applicants aged under 35 did particularly well during the year, representing 2.9% of applicants and 6.5% of people appointed.

**And finally:** my term as Public Appointments Commissioner ends on 31 May 2012 after eight years in post, or, as this is a part-time role, 4.8 years regulating the ministerial public appointment process. I'd like to thank everyone who has supported me over the years, the extended team in the Commission, the Public Appointments Assessors past and present and, most importantly, the central team of Karen Elder, Ian Bruce and Lynn Anderson without whom my role would have been much more challenging and less enjoyable. Thank you all.



Karen Carlton  
Public Appointments Commissioner for Scotland

## REGULATING APPOINTMENTS

The following pages describe:

- Scotland's model for public appointments regulation
- the key elements of and participants in the appointment process
- the transition from the 2006 to the 2011 Code of Practice
- how we monitored the public appointments process during this period
- investigations and examinations conducted during the year.

### **Our regulatory model**

Since the establishment of the office in 2003 the Commissioner has introduced three Codes of Practice. Each new Code of Practice built on the experience of implementing the previous one. Each has been designed to enhance the public appointments process and its operation and to provide the framework to deliver the Scottish Ministers' commitment to diversity in its widest sense.

Over the past eight years we have moved from a Code of Practice of over 80 pages to a plain English version of 25. We've moved from a Code containing direction and general guidance to one which is prescriptive in the areas required to meet the requirements of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the 2003 Act) and which provides scope to tailor every appointment round to the post, the body and the applicants.

The Code of Practice and regulatory regime have been recognised as a model for other administrations; where Scotland has led, they continue to follow. For example:

- The Commissioner for Public Appointments for England and Wales requested the advice of the Commissioner and Compliance Manager, during the development of his Code of Practice. We provided extensive advice and his consultation document referenced our work as a model they could follow.
- The current Northern Ireland Code of Practice borrows heavily from our 2006 Code and reflects the advice that we provided at the consultation stage.
- The Commissioner [for Scotland] was invited to talk to the chairs of state bodies in Eire about her approach to regulation and the 2011 Code of Practice at a conference organised by the Institute of Public Administration. The Institute publicly endorsed the Scottish model.

So, whilst the situation in Scotland has room for improvement, it has moved on significantly since 2003 and appears to be considered a model for public appointment regulation.

## The Code of Practice

The Code of Practice specifies the principles and practices to be followed when a public appointment is made.

The 2011 Code of Practice was published in April 2011 but did not come into force until September that year. The period between April and September was used to enable stakeholders and participants in the appointment process to

- become familiar with the key changes
- attend training courses, if required, to gain or develop the skills needed to take part in the appointments process.

As well as providing training for our Public Appointments Assessors, we ran monthly workshops across Scotland on the 2011 Code of Practice from May to November 2011 and invited senior civil servants and public body chairs to attend. We also ran a bespoke briefing session on the 2011 Code of Practice for the clerking team of the Standards, Procedures and Public Appointments Committee of the Scottish Parliament.

The 2011 Code of Practice is more prescriptive in areas that stakeholders felt required greater rigour, such as the competency of selection panel members. It is less prescriptive in other areas, such as the need for individual panel members to complete assessment forms, to encourage participants to move away from unnecessary bureaucracy. It introduces greater flexibility for selection panels to select publicity and application and assessment methods appropriate to the position(s) to be filled. It also places emphasis on the outcome of the appointment process and on the applicant journey.

## Who's who in the process?

### Public appointments assessors

Public Appointments Assessors monitor every regulated public appointment on behalf of the Commissioner.

The introduction of a revised Code of Practice and regulatory regime saw a significant transition in the Assessors' role.

Under the 2006 Code of Practice, Assessors were involved as selection panel members at every stage of every appointment round from the planning meeting to the point at which a submission, identifying suitable candidates, was presented to the appointing minister.

Under the 2011 Code of Practice Assessors no longer participate as selection panel members. Instead, they scrutinise all or part of each appointment round and offer a compliance opinion to the selection panel chair at each of the stages they oversee. The purpose of this new arrangement is to

- enable compliance – by offering an opinion at key stages, the Assessor affords the panel chair an opportunity to revise a potentially non-compliant practice or decision whilst the round is underway
- avoid potential conflicts of interest – as the Assessor is not now a panel member, they are no longer in a position of having to validate decisions that they have taken part in
- ensure clarity – it is now much clearer that the Assessor is responsible for scrutinising the appointment activity whereas officials are responsible for running the process.

Our revised method of regulating activity is also more proportionate. Assessors no longer take part in every stage of each appointment round. Instead, we decide on levels of regulatory oversight on the basis of the risk factors attached to every appointment round. The high level factors that we take into account are the likelihood of a round being run in a compliant way and the potential impact if it is not. We consider matters such as the scope and profile of the public body and the experience of selection panel members, including any appointment-specific training that they have received, in coming to our decision about levels of oversight.

You can find out more about how we set appropriate levels of oversight by reading our statutory guidance on the Commissioner's scrutiny, which can be downloaded from the Publications area of our website.

Our Assessors' role may have changed during the year but they continue to make a key contribution to the appointments process. Regardless of the risk level set for a round, they always participate in the planning phase, giving the panel the guidance it needs to design and run an appointment round that is successful, appropriate and mindful of the needs of applicants.

## **Sponsor teams**

The day-to-day link between the public body and the Minister is provided by a sponsor team sitting within the Scottish Government.

## **Regulated public bodies**

The Commissioner regulates 73 public bodies and 586 posts. A list of these bodies appears on our website.



## Selection panels

The panel plans the appointment process, conducts each of the stages of assessment and identifies the most able applicants – the people who have demonstrated the skills and knowledge that most closely match those required to be effective in the role – for the appointing Minister. A panel normally includes:

- the chair of the public body
- a senior civil servant, representing the Minister, who serves as the panel chair.

Another board member or perhaps a civil servant or subject expert with particular knowledge of the body and role to be filled, may participate as a panel member, depending on requirements.

Following feedback from our stakeholders, the 2011 Code of Practice is more prescriptive than the 2006 Code about the role and responsibilities of panel members.

## Public Appointments Centre of Expertise (PACE)

The Centre of Expertise was established by the Scottish Government following a recommendation in the Commissioner's strategy, *Diversity Delivers*. The PACE team was provided with additional resources during the year and the Scottish Government has plans to strengthen the team and to enhance the diversity aspect of its activities. PACE team members support selection panels during appointment rounds by providing expertise on, and management information required by, the appointments process. The role they fulfil has become increasingly important now that Assessors no longer take part as panel members in the process. They will also provide a valuable support and challenge function at the stages of appointment rounds that our Assessors no longer oversee.

## Public Appointments Assessors

Our team of Assessors comes from a variety of backgrounds spanning the public, private and voluntary sectors. Their backgrounds and fields of expertise range from audit to strategic change management, uniformed services, academia and the legal profession and all bring particular expertise in the field of scrutiny.

Assessors share a detailed knowledge of the Code of Practice and of good practice in recruitment and selection. Although they are consultants, we take responsibility for laying on bespoke training, guidance and updates for them to ensure that their knowledge is up to date and that their approach is consistent.

During the year we:

- updated our Assessors at least monthly to provide guidance, share knowledge and to let them know about common concerns and themes as we identified them.
- ran the following training sessions on the revised Code of Practice
  - April 2011 for all Assessors. A full day on the 2011 Code of Practice, including the revised Assessor role, the differences between the 2006 and 2011 Codes and recognising and reporting on compliance concerns.
  - May to November. Each Assessor was required to attend one of our workshops on the 2011 Code of Practice.
  - August and September 2011. A full day for two groups of Assessors, split into smaller groups, on potential scenarios that they might face when overseeing new appointment rounds. Practical sessions included the use of management information, questioning panels about proposals to assist them in their role and reporting on non-compliance in person and in writing.
  - March 2012 for all Assessors. A full day with practical exercises and an emphasis on the planning stage. We also had a forum to share experiences of overseeing appointment activity under the 2011 Code of Practice thus far.

Regular contact and training for the Assessors ensures that good practice is disseminated with a view to facilitating improvements in the Scottish Government's public appointments process.



**Appointment round activity 2011-12**

<b>Appointment rounds</b>	<b>2011/12</b>	<b>2010/11</b>	<b>2009/10</b>	<b>2008/09</b>	<b>2007/08</b>	<b>2006/07</b>	<b>2005/06</b>
Allocated	36	44	46	42	58	45	56
Incomplete at year end	17	9	27	15	28	13	23
Completed at year end	19	35	19	27	30	32	33
Allocated previous year and completed this year	9	27	15	28	13	23	12
Total completed in year	28	62	34	55	43	55	45
<b>Total active in year</b>	<b>45</b>	<b>71</b>	<b>61</b>	<b>70</b>	<b>71</b>	<b>68</b>	<b>68</b>
Average no. of Assessor days per round	5.4	5.6	6.3	4.7	4.8	4.2	3.1
Average Assessor cost per appointment round	£1,696	£1,758	£1,880	£1,321	£1,297	£1,108	£894
No. of public appointments made	62	146	73	111	94	109	Not available
Average cost per appointment	£766	£747	£876	£654	£593	£559	Not available
Average length of round (days)*	182.9	176.5	168.3	170.1	164.8	154.7	147.9

\*This describes the period of Assessor involvement in the appointment round.

Assessors were active in 45 rounds in 2011/12. This is one-third fewer than the six year average. A proportion of this fall in appointment activity may be attributable to the Scottish Parliament elections. In each election year there tend to be cases in which an appointment is due to end between the dissolution of the Scottish Parliament and the appointment of Scottish Ministers after the election. In such cases, Ministers consider whether new appointments should be made early, if the position should be left vacant until incoming Ministers are able to take a decision or if a term extension is suitable. Election years can therefore have an impact on new appointment activity.

In addition, the number of posts available has been falling, both as the number of bodies within the Public Appointments Commissioner's remit falls and as cuts to public finance results in board sizes being kept to a minimum.

## Investigations and reports

We conducted four investigations during the year, two of which resulted in reports of material non-compliance being laid with the Scottish Parliament. One investigation was still ongoing as at the end of the reporting year.

### Scottish Legal Complaints Commission – Complaint investigation

We laid a report before the Scottish Parliament on 30 September 2011 about the appointment process run for this body. The non-compliance identified in this case related to

- the quality of the candidate summary provided to the minister
- the quality of the feedback provided to the applicant
- a lack of transparency in the minister's appointment and non-appointment decisions
- the directorate's handling of the complaint of non-selection.

The Commissioner noted with disappointment that this was the third time that she had been obliged to lay a report of material non-compliance that related to the activities of a justice directorate sponsored body. The nature of the non-compliance identified was also similar to that identified in previous reports, suggesting that the directorate was not learning from past errors.

Having reviewed the report the Standards Procedures and Public Appointments Committee agreed that the Convener should write to the Cabinet Secretary for Justice expressing concern that the issue had arisen again.

The Commissioner also investigated a subsequent round run for this body due to significant delays that occurred during the appointment process. This did not result in a report but did result in recommendations for improvement in practices.

The Commissioner met with the Director Justice to discuss ways in which the directorate might improve on its appointment activity in future.



### Succession planning and reappointment report

In our last annual report we explained we had laid a report with the Scottish Parliament about the Convener appointment to the Advisory Committee on Sites of Special Scientific Interest. The non-compliance in the case of that report could be traced back to a lack of effective succession planning on the part of the directorate.

Under our revised regulatory framework introduced in September to coincide with the 2011 Code of Practice the Commissioner made it clear that she intended to scrutinise all material maintained by the Scottish Ministers relating to board member reappointments. Further to a previous audit on this issue, and to reassurances from the Permanent Secretary, the Commissioner wished to assess whether

- the Scottish Ministers were planning effectively for succession and
- the Code of Practice's requirements for reappointment were now being met.

Unfortunately, and as related in the Commissioner's report to the Scottish Parliament, it was her opinion that the failure to follow code compliant practices for reappointment and succession planning were endemic within the Scottish Government.

In response to the report, the Standards, Procedures and Public Appointments Committee invited the Commissioner and Scottish Government officials to a meeting on 24 April 2012. The Committee also planned to seek evidence on the implementation of the 2011 Code of Practice and the Commissioner's equal opportunities strategy.

This concern, among others about the Scottish Government's lack of readiness for implementation of the 2011 Code of Practice, was brought to the attention of the Permanent Secretary in January 2012. The Permanent Secretary has since drawn up an action plan to address the Commissioner's concerns.

### Introduction of the 2011 Code of Practice

The 2011 Code of Practice was published on 1 April 2011 and implemented from 1 September 2011. The months between publication and implementation were designed to enable stakeholders to become familiar with its contents and the Scottish Government to consider how they would address new requirements, such as management information. We ran workshops across Scotland for senior civil servants and potential selection panel members during this lead-in time. Disappointingly, despite prompting from within the Scottish Government, attendance at the workshops was low.

The key differences between the 2006 and 2011 Codes of Practice, which we highlighted with workshop participants, included

- **The revised principles.** Requiring a focus on the outcome and the applicant and a process tailored to the position to be filled rather than simply repeating embedded practices
- **Clarity about the responsibilities of participants.** Ministers and officials responsible for compliance, panel chairs and panel members competent to fulfil their role, Assessors to provide proportionate scrutiny and the Commissioner to enforce the Code's requirements through reporting
- **Application and assessment methods and publicity based on appointment-specific management information.** To encourage applications from, and remove barriers that prevent success in the process by, the widest appropriate pool of applicants
- **Fit and proper person test.** To give the public confidence in the open process used to identify and appoint our board members and in the appointments
- **Maintenance and succession planning.** To ensure that our boards are equipped to acquit their duties in a changing public sector landscape.

Additionally we ran a pilot appointment round under the 2011 Code of Practice and reported directly to the Scottish Government on the outcome of that pilot. We encouraged the Scottish Government to run more pilot rounds and to pilot reviews of reappointments but it declined to do so.

All measures were intended to enable effective preparation for the 2011 Code of Practice's introduction.

The Scottish Government committed to a number of the recommendations in *Diversity Delivers* such as training for selection panel members and establishing a competency framework for board members. These commitments were not realised, and coupled with the fact that workshop attendance was relatively low, this resulted in an inevitable impact on the way in which the 2011 Code of Practice was implemented.

We nevertheless remain convinced that the 2011 Code of Practice's requirements will see an improvement in the appointment process with a much clearer focus on the outcome of each appointment round and on the applicant experience.

We note and are heartened by the Permanent Secretary's commitment, made in March 2012, six months after the 2011 Code of Practice came into force, to resourcing the appointments process appropriately and will continue to monitor and report on the Scottish Government's progress in that respect.

## Issues arising during the year

Key trend	Issues raised	2011/12			2010/11	2009/10
		2006 Code of Practice	2011 Code of Practice	Total		
	Advice on the Code of Practice	50	109	159	136	170
	Advice on good practice	1	2	3	29	31
1	Request for exceptions, extensions or to discuss options	31	16	47	88	60
	General enquiry on the work of the office	17	13	30	37	35
	Other enquiries or reports	21	37	58	130	203
	Freedom of information requests	2	2	4	13	10
2	Complaints about appointment rounds	1	1	2	12	7
3	Concern about an appointment round	24	18	42	56	41
	Report about good practice	0	0	0	1	5
	Report about a failure in administration	1	0	1	1	5
4	Report about non-compliance with the Code of Practice*	2	12	14	13	6
	<b>Totals</b>	<b>150</b>	<b>210</b>	<b>360</b>	<b>516</b>	<b>573</b>

\*Only a proportion of these reports related to 'material non-compliance'

The overall number of enquiries and reports fell during the year, largely because of the reduction in appointment activity.

Some of these key trends are further analysed below.

## Key trend one - exception requests

The 2011 Code of Practice makes no reference to exceptions. Instead it advises that “if any [Code of Practice] requirement is considered inappropriate, the Scottish Ministers will discuss with the Commissioner the options open to them in advance of taking any action”.

Extensions to appointment terms still require the written agreement of the Commissioner.

Grounds for exception request/options discussion	2011/12	2010/11
Application deadline extended	1	5
Change to selection panel	10	19
Requests for term extensions	9	19
Insufficient candidates to offer Minister choice	5	12
Poor planning	4	5
Recent vacancy filled from reserve list	3	3
Other	15	25
<b>Total</b>	<b>47</b>	<b>88</b>

There were no increases this year in the number of categories of request. The reduction in selection panel changes and cases in which the minister had no choice of candidate were positive. Panel continuity is an important factor in the consistent assessment of applicants. A choice of applicants tends to indicate that the appointment round generated a high quality field.

Although the drop in requests for term extensions was positive, a proportion of the cases made were attributable to a lack of succession planning. The 2011 Code of Practice includes very clear direction for the Scottish Ministers on maintaining the skills and knowledge needed by the board for it to operate effectively. This, coupled with our report on succession planning, should see a fall in requests in the coming year that can be attributed to a lack of planning.

The majority of the “other” cases related to the 2006 Code of Practice and reflected panels’ uses of alternative application and assessment methods. Such changes of approach are embedded in the 2011 Code of Practice which requires selection panels to use a process tailored to the applicants and the position to be filled.



### Key trend two - complaints

Only two complaints were received during the year, which represents a significant fall. We cannot be sure that this is attributable to rising satisfaction levels, a reduction in appointment activity or to other factors such as reluctance to raise concerns. As we will be surveying applicants regularly from 2012 and because their responses will be anonymised we will build up a much clearer picture of their views.

One of the complaints we received concerned non-selection for interview. The complaint had not been investigated by the directorate responsible. The complainant was advised to first request feedback on their lack of success. They were also given advice on how to make a complaint if dissatisfied with any Scottish Government investigation.

The second complaint was also about non-selection – in this case for appointment to the Scottish Legal Complaints Commission. The complainant had already raised their concerns with the Scottish Government and was dissatisfied both with the response that they had received and with the way in which their complaint had been handled. Our subsequent investigation required the Commissioner to lay a report with the Scottish Parliament as described earlier in this section. One of the key findings in the report was that the investigation was conducted by the selection panel chair who, in part, was the subject of the complaint. We note that the Scottish Government has since, and in response to the findings, revised its complaint handling procedures to ensure that investigations are handled by PACE and not by the individual(s) subject to the complaint. This represents a significant and positive change to policy and demonstrates a willingness to learn from complaints.

### Key trend three – reported concerns

Reported concerns about appointment rounds fell this year although given the level of appointment activity they were relatively high.

Most of the concerns raised were reported by our Assessors and related to

- delays in the appointment process (ten reports) and to
- gaps in the audit trail generated during each round to demonstrate that it was conducted fairly and openly and to enable constructive feedback to applicants (ten reports).

The next most reported categories of concern related to panel proposals to use unnecessarily restrictive criteria (five reports) and apparent attempts by panels to introduce new requirements during the assessment of applicants (six reports).

Concerns about the quality, analysis and use of management information arose after the 2011 Code of Practice came into force. We received five such reports.

The stipulation that management information be used to inform decisions on publicity and application and assessment methods was introduced by the 2011 Code of Practice. Appointment-specific management information includes, for example, analysed demographic data on the progress of applicants through different stages of an appointment round and information about the success rates of particular methods of publicising opportunities to the target audience. The requirement for panel decisions to be based on appointment-specific management information ensures that there is a strong evidence base for these decisions and increases the likelihood of a resource-effective process and a successful outcome. Although we covered this topic extensively at our Code of Practice workshops, and included guidance in our handbook, it became apparent that both selection panels and PACE were initially struggling to implement the requirement effectively.

Three reports concerned the competence of panel members and/or other participants in the appointment process.

In the majority of these cases, when reported concerns arose, our Assessors' contemporaneous scrutiny and intervention prevented concerns from straying into actual non-compliance.

In the coming year we plan to provide additional support and guidance to the PACE team to equip it to address such concerns.

#### **Key trend four – reports of non-compliance**

Areas of non-compliance related primarily to:

- succession planning and reappointment (see our 'Investigations and reports' section earlier)
- insufficient or inappropriate management information and/or analysis of management information to inform panel decision-making
- skills and knowledge required of applicants not expressed clearly and accurately and/or unnecessarily restrictive
- material provided too late for the Assessor to provide an opinion at an appropriate stage in the appointments process.

In the case of 12 of 14 reports of non-compliance, they were provided to directorates at a stage at which the panel chair could rectify the situation. The office and Assessor were therefore able to address issues through a process of constructive dialogue with the selection panels and with PACE involvement.

When non-compliance with the Code of Practice is considered to be material the Commissioner is statutorily obliged to lay a report with the Scottish Parliament. This was done twice during the year. One report followed the investigation of a complaint about appointments to the Scottish Legal Complaints Commission and the second concerned reappointment and succession planning. These are described in more detail earlier in this document under the heading 'Investigations and reports'.

### Ministerial appointment decisions

In our previous annual reports we have set out the Scottish Government's commitment to ministers making appointment decisions within six weeks of the end of an appointment round. In our last annual report we indicated that we had seen a significant improvement on previous years.

This year we were not provided with the information in respect of ten appointment rounds. Of the 18 rounds for which it was provided the following appointment rounds exceeded the agreed limit:

Body	Position(s)	Time taken (calendar days)
Highlands and Islands Enterprise	Chair	61
Scottish Environment Protection Agency	Member	57
Bòrd na Gàidhlig	Member	52



## DELIVERING DIVERSITY

**Diversity Delivers**, the Commissioner's equality and diversity strategy for Scotland's ministerial public appointments process, focuses on how the public appointments process could develop to attract a wider and more diverse range of applicants. It resulted from significant research into the operation of the public appointments process and the barriers people face when considering, or applying for, a position on a board. Identification of these barriers combined with the understanding of the value of diversity generated by the research resulted in clear recommendations underpinned by an inspirational vision. The vision for Scotland's public appointments process is:

### Awareness and Attraction

A pool of applicants as diverse as the people of Scotland, aware of and attracted by the work of our public bodies and the opportunities to serve on their boards.

### Confidence and Capacity

An appointments system that inspires confidence, increases capacity and embraces diversity, from the application process to the boardroom.

### Education and Experience

A programme of support for our future leaders, developing and providing opportunities for all to achieve their full potential and for Scotland to draw upon its brightest talent.

**Diversity Delivers** has been a key factor in the revision of the Code of Practice. The findings from our research helped us develop a Code that embeds diversity in every aspect of the appointments process. We believe this will support the Scottish Ministers delivering their own commitment to improve the diversity of applicants for and appointees to positions on the boards of our public bodies.

The formation of the Commission, a change in our own strategic focus and the introduction of the 2011 Code of Practice provided the circumstances for the Commission to take a step back from jointly leading on the activities detailed in **Diversity Delivers**; responsibility now sits with the Scottish Ministers. We remain committed to promoting diversity in the appointments process and in the last year we have delivered on our commitments to continue outreach to potential applicants from under-represented groups.

We were delighted to speak at three events across Scotland organised by the Council of Ethnic Minority Voluntary Organisations, joined at two of these by representatives from the Scottish Government. These provided good opportunities to raise awareness of our regulatory role as well as the appointments process itself. Inclusion Scotland, a consortium representing disability groups and disabled individuals, invited us to speak at three events aimed at disabled people and we were pleased to be part of a further event organised jointly by Inclusion Scotland and People First aimed at people with learning disabilities. We facilitated the involvement of Scottish Government at these events and again it was a positive experience to work jointly to promote inclusion in the appointments process.

We also delivered a session to senior women working for a major financial organisation and at the invitation of the Officers Association we spoke at an event attended by ex-officers in the uniformed services.

The Commissioner gave a presentation at the Institute of Directors Women's conference in September 2011 and was featured in an article on the 3rdi website, both providing further opportunities to connect with and raise awareness of the public appointments process to women.

In addition we established a discussion forum on LinkedIn in 2011. Without any active advertising the membership of this group has grown month on month and as at 24 May 2012 the membership stood at 195 members. The majority of members work in senior positions or are entrepreneurs and business owners. 43% of members are women. The group includes non-executives serving on the boards of public bodies, aspiring non-executives, including past participants on the OCPAS mentoring programme, members of the Commission's team and Public Appointments Assessors. This forum has been a useful tool to seek feedback on our policy developments and as a route to engage with and attract applications from potential Public Appointments Assessors. We encourage public bodies and the Scottish Government to use the network to seek feedback and share information on appointment activity.

In addition to our outreach and promotion activities we continue to provide a focus on promoting diversity in our oversight of appointment rounds as described in more detail in the 'Regulating Appointments' section of this report. The year 2011/12 was the first full year where the Commission did not drive forward the recommendations in **Diversity Delivers**. We continue to monitor the progress made by Scottish Ministers towards **Diversity Delivers** and the targets it contains.

## The targets

**Diversity Delivers** set targets for delivery by 2012 for the Scottish Ministers in relation to the appointment of groups currently under-represented on the boards of Scotland's public bodies. The aspirational targets set for and agreed by the Scottish Ministers and their progress to date are noted below:

Applicant type	General Population*	Target	2011/12**	2010/11	2009/10
Female	52%	40%	32.8%	36.6%	32.0%
Disabled	18%	15%	15.3%	13.9%	23.5%††
Black and minority ethnic (BME)	3.3%	8%	3.6%	4.1%	2.4%
Aged under 50†	63%	40%	22.8%	24.3%	22.9%
Lesbian, gay and bisexual	1.5%	6%	2.7%	2.9%	3.0%

\* Gender and age information provided by the General Register Office for Scotland Mid-2011 Population Estimates Scotland (Aug 2011), disability and ethnicity data from the Scottish Household Survey 2009/10 (Aug 2011) and lesbian, gay and bisexual data from the UK Integrated Household Survey 2010/11 (Sept 2011).

\*\* Throughout this section, results for 2012 exclude applications made in December 2011 for a position with NHS Highland, as the Ministerial decision was not confirmed until April 2012.

† Results show applicants aged 49 and under, not applicants aged 50 and under, reflecting the categories used by the Scottish Government when capturing data.

†† During 2009/10 a revised method for collecting monitoring information was introduced. This may have inadvertently led to a high number of 'Not stated' selections that year, skewing this figure. A revised figure is more likely to be 14.8%.

With the exception of applications from disabled people, there is still some way to go to meet the targets laid down in **Diversity Delivers**.

The above table is based on known responses, but it is important to note that not all applicants choose to disclose their demographic data. An individual's failure or reluctance to disclose personal data can be influenced by a number of factors ranging from the layout of monitoring forms through to lack of confidence in the use and storage of personal information.

The following table shows the percentage of applicants who did **not** provide demographic data for each equality strand.

Equality Strand	2011/12	2010/11	2009/10
Gender	4.6%	6.6%	4.7%
Disability	7.5%	11.2%	52.8%*
Ethnicity	6.8%	6.8%	6.0%
Age	9.3%	12.1%	8.1%
Sexual Orientation	9.5%	11.9%	10.1%

\*During 2009/10 a revised method for collecting monitoring information was introduced. A change in the layout of the form used to gather monitoring information may have inadvertently led to the high number of 'Not stated' selections that year. This issue was resolved for 2010/11.

Positive progress has been made in the declaration of information across most protected characteristics providing a more robust evidence base and this is to be welcomed.

The targets set in ***Diversity Delivers*** are focussed on increasing the diversity of applicants, rather than setting targets for appointments. This is to ensure that appointments are based on merit rather than driven by quotas. It is important to ensure that the process beyond application is fair and open to all; that there are no barriers facing particular groups. The following table details the outcomes by equality strand at each stage of the process.



Equality Strand	Year	Applied	Shortlisted	Recommended for Appointment	Appointed
Gender (Female)	2010	30.5%	32.8%	34.9%	37.5%
	2011	34.2%	30.6%	35.3%	37.1%
	2012	31.3%	32.9%	30.7%	33.8%
Disability (Declared)	2010	11.1%	12.2%	15.1%	17.2%
	2011	12.4%	7.7%	9.2%	7.8%
	2012	14.1%	10.8%	10.5%	11.3%
Ethnicity (BME)	2010	2.3%	2.2%	3.0%	3.1%
	2011	3.9%	2.7%	1.9%	3.4%
	2012	3.3%	5.0%	4.4%	6.5%
Age (49 & Under)	2010	21.1%	15.1%	16.3%	15.6%
	2011	21.4%	17.8%	20.8%	23.3%
	2012	20.7%	20.3%	21.1%	29.0%
Sexual Orientation (LGBT*)	2010	2.7%	2.0%	1.2%	1.6%
	2011	2.6%	2.7%	4.3%	6.0%
	2012	2.4%	2.7%	4.4%	4.8%

\*LGBT: Applicants selecting bi-sexual, gay man, gay women/lesbian or other sexuality

The figures supplied by Scottish Government and presented in the table above include those applicants who preferred not to provide demographic data. As stated previously the percentages of participants who did not provide personal data varies by equality group.

The outcomes by equality group offer a mixed picture. If we look at annual trends we can see positive outcomes at application for disabled candidates. However disabled people do not fare so well across the applicant journey. Although disabled people represent 14.1% of applicants shortlisted they represent 10.5% of those recommended for appointment and 11.3% of those appointed. Non-disabled candidates represent 78.4% of applications and account for 85.6% of those short-listed for interview, 86.8% of those recommended for appointment and 87.1% of those appointed.



The figures continue to show that women do well when they reach the final stage of assessment. It is, however, disappointing to note the decrease in percentage terms of applications from women, particularly as the spread of positions available in the year 2011/12 included a similar proportion of opportunities from bodies operating in fields such as education and health, as the year 2010/11. Analysis from the Scottish Government indicates that it is opportunities in these areas that are most likely to attract female applicants and we would encourage the Scottish Government to investigate this drop and take action as necessary.

For candidates aged 49 & under, the appointed percentage is encouraging and may reflect the move to concentrate on the core skills required for a board member position rather than requirements such as previous board positions or experience working at a senior level that would put a significant proportion of younger candidates at a disadvantage.

A similar positive increase in appointments of people identifying as black or minority ethnic is also encouraging and we hope will lead to an increase in applications in the future.

Looking behind the percentages it is disappointing to note that out of eight chair appointments made in the year 2011/12 no female applicants were recommended for appointment and only four of the 49 applications for chair positions were made by women.

Statistical breakdown for applicants for chair positions by gender.

Equality Strand	Applied	Reached shortlist	Invited to interview	Recommended for Appointment	Appointed
Female	8.2%	8.3%	7.7%	0%	0%
Male	87.7%	88.9%	88.5%	93.3%	100%
Prefer not to say	4.1%	2.8%	3.8%	6.7%	0%

This is in contrast to the position relating to member applications which shows a more balanced picture.

Equality Strand	Applied	Reached shortlist	Invited to interview	Recommended for Appointment	Appointed
Female	32.5%	32.8%	36.2%	35.4%	38.9%
Male	62.8%	63.5%	60.7%	62.6%	59.3%
Prefer not to say	4.7%	3.7%	3.1%	2.0%	1.8%

Based on the above there is clearly more work to be done to attract women to, and prepare them for, the position of chair on our public bodies. We have previously recommended that this should be an area of focus for the Scottish Government and we understand that they are now considering how they might widen the pool of applicants for chair positions.

**Diversity Delivers** has been instrumental in enhancing the appointments process and is helping those involved build an inclusive process. Success will be determined by the focus given to the agreed actions by the Scottish Ministers in the months and years ahead. Looking back, it is unfortunate that Scottish Government did not formulate a focussed plan for the year 2011/12 and we feel this is reflected in the lack of progress in this time period towards the targets originally agreed by Scottish Ministers in 2008.

## STATISTICS

### Bodies regulated by the Public Appointments Commissioner

	At 31 March 2012	At 31 March 2011
No. of bodies regulated	73	75
No. of posts regulated	586	621
Avg. no. of positions per board	8.0	8.3

Children's Hearings Scotland was added to our remit in 2011/12.

NHS Quality Improvement Scotland, the Scottish Commission for the Regulation of Care and the General Teaching Council for Scotland were removed from our remit following further implementation of the Public Services Reform (Scotland) Act 2010. NHS Quality Improvement Scotland and the Scottish Commission for the Regulation of Care were, respectively, the predecessors of Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland, which were added to our remit in 2009/10.

The Scottish University for Industry has been subsumed into Skills Development Scotland and we are awaiting legislation which will formally remove it from our remit.

A full list of the bodies regulated can be found on the Regulating Appointments section of our website.

## Appointments made

We continue to work with the Scottish Government to introduce a more comprehensive method of gathering statistics about appointments made and applications received during each financial year.

### Appointments made

	Total	New	Re-appointments
2011/12	110	62	48

In the year 2011/12 the Scottish Government did not gather demographic data on reappointments. It has now started to gather this information from individuals who are reappointed. However the information is not complete with a significant percentage of individuals preferring not to provide demographic data regarding:

- gender and ethnicity - 43.7%
- age - 48.8%
- disability status - 43.6%
- religion - 56.2%
- sexual orientation, their area of residence or employment sector - 58.3%
- current household income - 62.5%.

Until such time as the data improves and there is a comparison with members who are not reappointed we will not be able to report meaningful information regarding continuing appointments. Accordingly, the following statistics for the year 2011/12 are drawn from new appointments only.

The new appointments in the year 2011/12 attracted 990 applicants for 62 positions. The figures below relate to the 27 rounds that concluded with a ministerial appointment by 31 March 2012.

## Men and women appointed

	<b>Total no. of appointees</b>	<b>Male</b>		<b>Female</b>	
2005/06	172	110	64%	62	36%
2006/07	197	129	65%	68	35%
2007/08	180	127	71%	53	29%
2008/09	154	98	64%	56	36%
2009/10	169	108	64%	61	36%
2010/11	116*	67	61%	43	39%
<b>2011/12</b>	<b>62**</b>	<b>40</b>	<b>66%</b>	<b>21</b>	<b>34%</b>

\* Six appointees did not state their gender.

\*\*One appointee did not state their gender.



### People appointed from a black or minority ethnic background and people appointed who declared a disability

	<b>Total no. of appointees</b>	<b>Black or minority ethnic</b>	<b>Disabled</b>
2005/06	172	2	1
2006/07	197	5	5
2007/08	180	5	2
2008/09	154	2	12
2009/10	169	2	16
2010/11	116	4*	9†
<b>2011/12</b>	<b>62</b>	<b>4**</b>	<b>7††</b>

\* Five appointees did not state their ethnicity

† Eight appointees did not state their disabled status

\*\* Two appointees did not state their ethnicity

†† One appointee did not state his/her disabled status

### Age range of people appointed

		<b>66+</b>	<b>56-65</b>	<b>46-55</b>	<b>36-45</b>	<b>35 and under</b>	<b>Not stated</b>
2005/06	%	7	44	34	12	2	1
2006/07	%	10	46	27	14	1	2
2007/08	%	1	14	46	24	8	7
2008/09	%	8	45	29	12	3	3
2009/10	%	5	43	24	7	3	18
2010/11	%	10	41	25	9	3	12
<b>2011/12*</b>	<b>%</b>	<b>7</b>	<b>47</b>	<b>29</b>	<b>6**</b>	<b>6</b>	<b>5</b>

\* Scottish Government has provided statistics relating to age in the following age bands 70+, 65-69, 60-64, 55-59, 50-54, 45-49, 40-44, 35-39 and 34 and under

\*\* No applicants aged between 35 and 39 were appointed.

## Applications received

	2011/12		2010/11 Population*		General
				%	%
Total	990		1,657		
Gender					
Female	310	31.3	566	31.3	52
Male	634	64.0	981	64.0	48
Not stated	46	4.7	110	4.7	
Disabled					
Declaring a disability	140	14.1	205	14.1	18
Not disabled	776	78.4	1,267	78.4	82
Not stated	74	7.5	185	7.5	
Black or minority ethnic (BME)					
White	890	89.9	1,481	89.9	96.7
BME	33	3.3	64	3.3	3.3
Not stated	67	6.8	112	6.8	
Age					
Aged 50 and over	693	70.0	1,102	70.0	37
Aged 49 and under	205	20.7	354	20.7	63
Not stated	92	9.3	201	9.3	
Sexual orientation					
Heterosexual	872	88.1	1,416	88.1	98.0
LGBT*	24	2.4	43	2.4	2.0
Not stated	94	9.5	198	9.5	

\* Gender and age information provided by the General Register Office for Scotland Mid-2011 Population Estimates Scotland (Aug 2011), disability and ethnicity data from the Scottish Household Survey 2009/10 (Aug 2011) and lesbian, gay and bisexual data from the UK Integrated Household Survey 2010/11 (Sept 2011).

\* LGBT: Applicants selecting bi-sexual, gay man, gay women/lesbian or other sexuality.

**Age range of people applying**

		<b>66+</b>	<b>56-65</b>	<b>46-55</b>	<b>36-45</b>	<b>35 and under</b>	<b>Not stated</b>
2005/06	%	5	41	33	11	5	5
2006/07	%	5	39	31	10	7	8
2007/08	%	5	40	30	9	5	11
2008/09	%	8	43	30	10	3	6
2009/10	%	10.4	44.0	25.0	9.6	2.9	8.1
2010/11	%	10.1	40.4	25.3	8.7	3.4	12.1
<b>2011/12</b>	<b>%</b>	<b>12.0</b>	<b>43.1</b>	<b>24.4</b>	<b>8.3</b>	<b>2.9</b>	<b>9.3</b>

**Success rates by age group in 2011/12**

		<b>66+</b>	<b>56-65</b>	<b>46-55</b>	<b>36-45</b>	<b>35 and under</b>	<b>Not stated</b>
Applied	%	12.0	43.1	24.4	8.3	2.9	9.3
Reached short list	%	12.1	46.5	23.5	7.0	2.9	8.0
Invited to interview	%	9.9	50.0	24.8	7.2	2.2	5.9
Appointable	%	7.9	50.9	26.3	7	3.5	4.4
Appointed	%	6.5	46.7	29.0	6.5	6.5	4.8

**Applications by religion**

	<b>2011/12</b>	<b>%</b>	<b>2010/11</b>	<b>%</b>
None	347	35.1	536	32.3
Church of Scotland	307	31.0	508	30.6
Roman Catholic	96	9.7	162	9.8
Other Christian	98	9.9	165	10.0
Another religion	23	2.3	58	3.5
Prefer not to say	119	12.0	119	7.2
Not stated	0	0	109	6.6
<b>Total</b>	<b>990</b>		<b>1,657</b>	

## Applications by sexual orientation

	2011/12	%	2010/11	%
Heterosexual/straight	872	88.1	1,416	85.4
LGBT*	24	2.4	43	2.6
Prefer not to say	94	9.5	87	5.3
Unknown	0	0	111	6.7
<b>Total</b>	<b>990</b>		<b>1657</b>	

\* LGBT: Applicants selecting bi-sexual, gay man, gay women/lesbian or other sexuality

## Average number of applications received

	Applications received	Average applications per round
2004/05	1703	41
2005/06	1675	31
2006/07	1326	33
2007/08	1235	27
2008/09	668	19
2009/10	2294	51*
2010/11	1657	34
<b>2011/12</b>	<b>990</b>	<b>37**</b>

\* In 2009/10, applications to the Parole Board for Scotland attracted 828 applications. Excluding this round, the average for the year was 37 applications per round.

\*\* In 2011/12, applications to the Parole Board for Scotland attracted 120 applications. Excluding this round, the average for the year remains at the 2010/11 level of 33 applications per round.





# 4. The Year Ahead



## THE YEAR AHEAD

The year 2011/12 was the first year of operation when we, as Public Standards Commissioner and Public Appointments Commissioner, came together, forming the new Commission for Ethical Standards in Public Life in Scotland. We have worked, we think, very effectively and the Commission has proved to be more than fit for purpose.

In 2012/13, however, we will have considerable challenges. The challenges facing us have been set out in the Commission's Strategic Plan for the years 2012/16 and, in more detail, in the Business Plan for 2012/13. Both publications can be viewed on our website.

### **Our strategic objectives will be to:**

1. provide a fair, effective and efficient investigative service of excellence in relation to the ethical standards of conduct of MSPs, councillors and members of public body boards
2. deliver risk-based, resource-effective scrutiny of the ministerial public appointments process and encourage continuous improvement through proportionate regulation and supportive guidance
3. create a leading standards body with effective performance and resource management.

In achieving these objectives we will deliver our services to high standards based on continuous improvement and best practice.

In particular, in relation to public standards, we will review the investigative service and monitor the Codes of Conduct to ensure they reflect best practice, are proportionate and offer best value.

In relation to public appointments, we will conduct an audit of the first year of operation of the new Code of Practice which will include a consultation process.

Finally, we will continue to plan and prepare for the formal merger of the offices of Public Appointments Commissioner and Public Standards Commissioner and for subsequent statutory restructuring in respect of the Commission for Ethical Standards in Public Life in Scotland. In this latter connection, we anticipate that the changes will bring about further improvements to the ethical standards service, with increased efficiency and effectiveness and greater economy.

# Appendices



## APPENDIX A

### CASES OF INTEREST: NON-BREACHES OF THE COUNCILLOR'S CODE OF CONDUCT

Note: Complaints summaries for MSP non-breach cases are not published due to statutory restrictions.

Full summaries of these cases can be found at [www.publicstandardscommissioner.org.uk](http://www.publicstandardscommissioner.org.uk).

#### 1. LA/SL/1093 – South Lanarkshire Councillors

Nature of Allegation: The complainant alleged that, by distributing to the Chief Executive and all of the Council's administrative and professional staff, e-mails which they had received from an anonymous source (containing allegations about a political colleague of the complainant), the respondents (two councillors) had breached the Code by misusing Council facilities.

It was concluded that, because the material distributed was not exclusively of a political nature but referred, in part, to matters relating to the welfare of staff, the respondents had not breached the Code. However, the motivation of the respondents in distributing the e-mails was questionable and their wide distribution to staff was wasteful of staff time. They should have reported any genuine concerns they had about the welfare of staff to the Chief Executive.

#### 2. LA/CES/1101 – Western Isles Councillor

Nature of Allegation: This complaint alleged a breach of the provisions on fairness and impartiality in relation to the consideration of a licensing application for Sunday opening. The complaint alleged inter alia that the doctrine of the respondent's religion was opposed to the opening of licensed premises on Sunday, and that his active involvement as a church elder should have been registered as a non-financial interest.

The Commissioner noted that the Code makes no specific reference to religion or faith regarding the registration of interests, and concluded that, as a matter of public policy, the Code's registration provisions could not be regarded as extending to religion. The Commissioner further observed that church membership has a very personal connotation which differs from membership of a lay body, and that registration is not a requirement of the Code.

**3. LA/G/1115 – Glasgow City Councillor**

Nature of Allegation: The complainant alleged a breach of paragraph 3.2 of the Councillors' Code of Conduct, relating to the requirement to respect the chair, colleagues, employees and any members of the public present during meetings of the Council.

The complainant was present when the Personnel Appeals Committee considered an employee's appeal against dismissal. She alleged that the respondent, as Committee Chair, made comments and conducted himself in an alarming and inappropriate manner. It was established that the respondent did not raise his voice during the hearing, he was not loud and he did not treat any witness badly. The Committee members probed some of the evidence presented to them and it was incumbent on them to do so where they had any doubts. Some of the respondent's words during the hearing were ill-chosen, but it was not found that he breached the provisions relating to the respect due to the complainant under the Code of Conduct.

**4. LA/R/1118 – Inverclyde Councillor**

Nature of Allegation: The respondent was alleged to have posted on his personal website inaccurate and disrespectful comments about a political opponent, and to have breached the rules on local government publicity by including a link to his website in correspondence transmitted through the Council's e-mail system. The comments were published as part of the respondent's political activities rather than as a councillor or in the context of Council business, and thus fell outwith the scope of the Code. The inclusion of the link to the respondent's personal website did, however, direct recipients towards political material.

In the particular circumstances of this case the Commissioner concluded that a breach of the Code had not been established but observed that the practice was inappropriate and should be discontinued forthwith.

**5. LA/G/1127– Glasgow City Councillor**

Nature of Allegation: The complainant alleged that the respondent had breached paragraph 3.16 of the Code (Use of Council Facilities) as a result of comments which he had made in the Council's "Glasgow" magazine about cuts which the Finance Secretary of the Scottish Government had made to the Council's 2011/12 budget allocation.

It was concluded that, because officers had actually drafted the comments on behalf of the respondent, the conduct complained of could not be personally attributable to the respondent and that he had not, therefore, breached the Code. It was considered, however, that the comments were of a nature which local authorities are prohibited from publishing and that they should have been confined to factual information only on the impact of the Government's funding allocation on the Council's budget.

## **6. LA/R/1166 – Renfrewshire Councillor**

Nature of Allegation: The complaint related to an alleged breach of the provisions in section 5 of the Code relating to Declaration of Interests.

The respondent's wife was a Council employee. It was alleged that he failed to declare a financial interest when a report on terms and conditions of local government employees was considered. This had been raised at the Council's budgetary meeting in February 2011. No declaration of interest was required for this as a general dispensation from declaration is granted under paragraph 5.18 of the Code. It was again considered by the Council in June 2011 when it was recommended that the terms and conditions proposals be withdrawn. This could not reasonably be thought to have affected the respondent's wife to the extent that a declaration of interest was required by him and it was found the respondent did not breach the Code of Conduct.

## **7. LA/NL/1186 – North Lanarkshire Councillor**

Nature of Allegation: The complaint related to alleged failures of the respondent councillor to make appropriate declarations of interest in respect of financial assistance provided by the Council to a relative for educational transport.

The respondent did participate in decisions on the setting of the Council's overall annual budget including budgetary allocations for each Council Department/Service which is generally permitted by the Code. There was no evidence that the respondent took part in any case decision that a particular individual was entitled to assistance. The decision to provide assistance was not taken at a Council meeting but at delegated officer level.

## **8. LA/AB/1212 - Argyll and Bute Councillors**

Nature of Allegation: The complainant, an MSP, alleged that the respondent councillors (two in number) had failed to apply the general principles of the Code relating to Duty, Objectivity, Accountability and Stewardship, Leadership and Respect.

He alleged that their failure related to a motion at a meeting held in Kilmory on 23 May 2011 which stated if the Council funded the operation of the Jura Passenger Ferry in 2011, the Scottish Government would help with the funding in future years. The motion added that he said that the continuation of the Jura Passenger Service was vital and that the Scottish Government would help if the Council kept it going for 2011.

The complainant explained that throughout the meeting, of which no formal or agreed minute or record had been kept, he had made it clear that he was present as the local MSP, and had been very careful – as the Ministerial Code requires – not to make any statement which could have been construed as being on behalf of Government. In particular he explained that his support for the Jura Ferry service was not given in his ministerial capacity but was his personal support as the local MSP.

The complainant's personal support as an MSP for the continuation of the Jura Ferry service had been misinterpreted as a Government commitment. However it did not follow that the respondents, who appeared to have misunderstood the situation, had contravened any of the provisions of the Code. In any event the complaint was that the respondents had failed to apply various key principles of the Code. The Standard Commission for Scotland's Guidance on the Code now makes clear that even a breach of one or more of the key principles does not by itself constitute evidence of breach of the Code. Accordingly the respondents had not breached the Code.

### **9. LA/PK/1213 – Perth and Kinross Councillor**

Nature of Allegation: The complaint related to the alleged conduct of the councillor respondent (as Planning Convener) in incorrectly summarising the application history thereby undermining the objectors' presentation and not permitting democratic debate before voting.

The evidence was that the respondent and the legal adviser both corrected the initial mistake before the decision was made, due process was followed and the respondent was discharging his duties as chair to conduct business efficiently, including determining the point at which a decision should be made.



## APPENDIX B

### CASES OF INTEREST: BREACHES OF THE COUNCILLOR'S CODE OF CONDUCT

Note: Complaints summaries for MSP breach cases are published; however there were no such cases in 2011/12.

Full details of all breach cases involving councillors can be read on the Standards Commission's website: [www.standardscommission.org.uk](http://www.standardscommission.org.uk).

#### 1. LA/ER/1046/C – Councillor Mary Montague, East Renfrewshire Council

##### Nature of Allegation

Breach of the provisions in the Councillors' Code of Conduct set out in paragraphs 4.2, 4.3, 4.7 (Registration of Interests) and 5.2, 5.6 and 5.16 (Declaration of Interests).

##### Report by the Public Standards Commissioner

It was alleged that the respondent failed to register her employment as a teacher and to declare that interest at certain meetings of the Education Committee. The investigation established – which the respondent acknowledged - that she had inadvertently omitted to register her employment as a teacher. The investigation also, however, established that the respondent did not have an interest in the subject matter considered by the Committee which she was required to declare. The Commissioner reported to the Standards Commission for Scotland that Councillor Mary Montague had contravened the Councillors' Code of Conduct and Regulation 4 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interest) Regulations 2003.

##### Decision by the Standards Commission

The Standards Commission for Scotland decided to hold a hearing. The outcome of the hearing was that the Commission held there had been a breach of the Code and decided to censure the respondent. The Commission's decision on this case can be read on the Standards Commission's website: [www.standardscommission.org.uk](http://www.standardscommission.org.uk).



## **2. LA/E/1098, 1108 – Councillor Elaine Morris, City of Edinburgh Council**

### **Nature of allegation**

Breach of the provisions in the Councillors' Code of Conduct set out in paragraphs 3.14 and 3.15 (Confidentiality Requirements).

### **Report by the Public Standards Commissioner**

The respondent publicly circulated an e-mail containing confidential information about rent arrears owed to the Council by the complainant's firm. The investigation concluded this was a breach of confidentiality and that the respondent failed to exercise due care and restraint. The Commissioner reported to the Standards Commission for Scotland he had concluded that Councillor Elaine Morris had contravened the Councillors' Code of Conduct.

### **Decision by the Standards Commission**

The Standards Commission for Scotland decided to hold a hearing. The outcome of that hearing was that the Commission held there had been a breach of the Code and decided to censure the respondent. The Commission's decision on this case can be read on the Standards Commission's website: [www.standardscommission.org.uk](http://www.standardscommission.org.uk).

## **3. LA/NL/961 – Councillor Paul Delaney, North Lanarkshire Council**

### **Nature of allegation**

Breach of the provisions in the Councillors' Code of Conduct set out in section 3 (General Conduct) and, in particular, paragraphs 3.1, 3.2, 3.3, Annex C (respect for and relationships with Council employees) and 3.15 (confidentiality).

### **Report by the Public Standards Commissioner**

The investigation established that the respondent colluded with a local journalist to leak confidential information to a newspaper (circulating in the Council area) about a personnel appeal hearing involving a Council employee. He also provided the same newspaper with a copy of a letter unjustifiably calling for a senior officer to be suspended. The Commissioner concluded that Councillor Paul Delaney had contravened the Councillors' Code of Conduct and reported this to the Standards Commission for Scotland.

## **Decision by the Standards Commission**

The Standards Commission for Scotland decided to hold a hearing. The outcome of that hearing was that the Commission held there had been breaches of the Code and because of the seriousness of the breaches, the Commission suspended the respondent from all meetings of North Lanarkshire Council for a period of three months. The Commission's decision on this case can be read on the Standards Commission's website: [www.standardscommission.org.uk](http://www.standardscommission.org.uk).

## **4. LA/G/1049 – Councillor David Turner, Glasgow City Council**

### **Nature of allegation**

Breach of the provision in the Councillors' Code of Conduct set out in paragraph 3.14 of the Code relating to respecting colleagues within the Chamber during Council meetings.

### **Report by the Public Standards Commissioner**

The investigation established that the respondent seconded a motion concerning a transport contract awarded by the Council. He did so by making abusive remarks directed at another councillor, including allegations that that councillor had improperly influenced the decision of the Council. While the respondent has the right to freedom of expression, it is not absolute, and while it does allow a councillor to engage in political expression, it does not justify personal abuse of this type. The Commissioner reported to the Standards Commission for Scotland he had concluded that Councillor David Turner had contravened the Councillors' Code of Conduct.

## **Decision by the Standards Commission**

The Standards Commission for Scotland decided to hold a hearing. The outcome of that hearing was that the Commission held there had been a breach of the Code and decided to censure the respondent. The Commission's decision on this case can be read on the Standards Commission's website: [www.standardscommission.org.uk](http://www.standardscommission.org.uk).

## **5. LA/EL/1133, 1138 – Councillor Barry Turner, East Lothian Council**

### **Nature of allegation**

Breach of the provisions in the Councillors' Code of Conduct set out in section 7 (Taking Decisions on Quasi-Judicial or Regulatory Applications) and in particular section 7.3 (fairness and impartiality), 7.10 (lobbying) and 7.11 (impartiality and pre-judgement).

### **Report by the Public Standards Commissioner**

The investigation established that prior to a meeting of the Council (sitting to determine a controversial planning application) the respondent (the chair of the Council's planning committee) circulated an e-mail urging other members to vote against the application. The Commissioner concluded and reported to the Standards Commission that Councillor Barry Turner had approached the determination of the application with a closed mind, and contrary to the requirements of the Code, had lobbied other members to adopt his perspective.

### **Decision by the Standards Commission**

The Standards Commission for Scotland decided to hold a hearing. The outcome of that hearing was that the Commission held there had been a breach of the Code and decided to suspend the respondent from the planning committee for three months. The Commission's decision on this case can be read on the Standards Commission's website: [www.standardscommission.org.uk](http://www.standardscommission.org.uk).





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