



Commissioner for Ethical Standards
in Public Life in Scotland



Annual Report
2014/15

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 public trust placed in them and 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 0300 011 0550 or by e-mailing info@ethicalstandards.org.uk.

Annual Report
2014/15

Foreword

FOREWORD

This annual report covers the first full year of operation of the office of the Commissioner for Ethical Standards in Public Life in Scotland as presently constituted.

In this report you will find details about:

- investigation of complaints about the conduct of councillors, members of devolved public bodies and MSPs, and
- scrutiny of Scotland's ministerial public appointments process .

The report follows the style adopted in previous years, except that there is no Appendix referring to interesting cases involving breaches of the Councillors' Code of Conduct. All reports concluding that there has been a breach of the Code are now published on the website once the investigation, including any public hearing before the Standards Commission for Scotland, has been concluded.

This has been a busy year in terms of workload and because of a number of potentially tricky transitions. These included: a new Commissioner coming into post; an office move and the transfer of our IT systems to a new server; the introduction of records management requirements; and the application of the Freedom of Information regime to all aspects of the work of the office.

The number of complaints received was high, leading to a significant increase in the number of breaches reported to the Standards Commission. However, the number of appointment rounds was lower than anticipated. As a result, and with careful management, expenditure remained within budget.

A number of developments are planned for the year ahead. These include: consultation on a new strategic plan, for the period 2016 – 2020; a review of the database for conduct complaints; new tendering rounds for Public Appointments Advisers, for IT support and for legal services; and the recruitment and training of Investigating Officers.

There is the possibility of adjustments to the Commissioner's remit arising from the Members' Interests Bill and the anticipated Lobbying Bill. In relation to public appointments, we expect to continue working with officials responsible for the Scottish Government's Public Boards and Corporate Diversity Programme. The Programme promises to deliver improvements to the public appointments process and to encourage changes in attitude, both of which will enable further progress towards attracting applicants for board appointments who better reflect the diversity of society as a whole.

The performance of this office is based on team work. I acknowledge the expertise and commitment of all those who have contributed. I am, however, solely responsible for the decisions which are issued in my name.

I hope you find the contents interesting and informative. If you would like further information about the work of this office, please visit our website at www.ethicalstandards.org.uk or call the Business Manager, Karen Elder on 0131 347 3898.

Bill Thomson

Commissioner for Ethical Standards in Public Life for Scotland
17 September 2015

1. Executive Summary



1. EXECUTIVE SUMMARY

PUBLIC STANDARDS

The statutory functions of the Commissioner in relation to public standards are:

- to investigate complaints alleging contravention of the relevant Code 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 and members of public bodies, to the Standards Commission for Scotland
 - in the case of MSPs, to the Scottish Parliament.

Complaints against Councillors and Members of Public Bodies

This has been the twelfth year in which the Codes of Conduct have been in operation for councillors and members of devolved public bodies.

Where a complaint is made against more than one councillor, the number of complaints recorded will reflect the number of councillors allegedly involved. For example, a complaint involving three councillors would be three complaints, as there are potentially three separate outcomes. The number of cases investigated is recorded. A case may involve a complaint against a single councillor or board member, or it may relate to a number of closely related complaints which have been investigated together, for example where it is alleged that a number of councillors were involved in the decision which is the subject matter of the complaint. The number of cases reported is therefore consistently lower than the number of complaints.



The following are the key features of the complaints that have been dealt with during the year.

- 692 complaints against councillors and members of public bodies were completed this year compared with 291 last year - an increase of 138%. However, this figure is potentially misleading, since 524 complaints related to a single issue.
- These complaints were investigated as 99 cases compared with 146 cases last year - a decrease of 32%. Whilst the number of cases gives a more accurate picture of the number of issues raised, it masks variations in the complexity of cases which can have a significant impact on the time taken to investigate and report on an issue.
- There were 680 complaints against councillors, and three complaints against members of devolved public bodies. The remaining nine were outwith jurisdiction.
- 18% of complaints were found, after initial investigation, not to amount to a breach of the Code.
- In 2.5% of complaints a full investigation was required but the conclusion was that there had been no breach of the Code.
- There was a finding that there had been a breach of the Code in respect of 78% of complaints. This represents 540 individual complaints, 524 of which related to one issue.
- 1.4% of complaints were outwith jurisdiction.
- 0.3% of complaints were withdrawn.
- The 524 complaints which were investigated as a single issue related to alleged misuse of Council resources for the publication of politically contentious material.
- 52 complaints were completed in relation to alleged misconduct on individual planning applications. These were investigated as 17 separate cases.
- There were 39 complaints regarding alleged failure to declare an interest. These were investigated as 16 separate cases.
- There was a relatively high number of complaints involving alleged failure to show respect towards councillors, officials or employees (30 complaints). These were investigated as 25 separate cases.
- The Commissioner was represented at nine public hearings called by the Standards Commission to consider reports of breaches of the Code (see table 8).

Codes of Conduct for Members of Public Bodies

The Parliament approved a revised Model Code for Public Bodies in February 2014 to ensure that the Model Code was consistent with the Councillors' Code (which was revised in 2010) and remained fit-for-purpose. The Commissioner has assisted the Scottish Government in dealing with requests for approval of codes for individual public bodies during the reporting year.

Complaints against Members of the Scottish Parliament

This has been the twelfth year in which the Code of Conduct for MSPs has been in operation. The following are the main features of the complaints that have been dealt with during the year.

- There have been 20 complaints this year compared with 21 last year.
- All complaints were dealt with during the year. One complaint led to a report being submitted to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament following investigation.
- No investigations required to be carried out under Direction from the Parliament.

Consultations and Committees

The Standards, Procedures and Public Appointments Committee (SPPA) continued its consideration of a proposed Members' Interests Bill. The Commissioner responded to a request for an estimate of the cost of investigating complaints about new provisions and participated, at the Committee's request, in an informal stakeholder discussion of issues arising from the Committee's consultation on Lobbying. The Commissioner attended the Local Government and Regeneration Committee meeting on 6 November 2014 to give evidence and respond to questions on matters raised in the 2013/14 annual report.

Other jurisdictions

There has been continuing contact with Standards Commissioners across the United Kingdom. In October 2014, the Commissioner attended a Standards Network Conference with colleagues from across the UK and Ireland hosted by the National Assembly of Wales. In addition, at the invitation of the Parliamentary Assembly of the Council of Europe, the Commissioner addressed a conference in Rome on the topic of "Codes of conduct for parliamentarians and the prevention of corruption".

PUBLIC APPOINTMENTS

The statutory functions of the Commissioner in relation to public appointments are:

- to prepare and publish and, as necessary, review and revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The Commissioner may also issue guidance on the Code to enable compliance by the Scottish Ministers.
- to examine the methods and practices employed by the Scottish Ministers when making appointments.
- 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 case.

The Code of Practice

During the year the Commissioner issued the first piece of additional statutory guidance on application of the code. The reasons for this and the intended consequences of the introduction of the guidance are explored in more detail later in this report. Briefly, the guidance should assist the Scottish Ministers to define merit more effectively than may have previously been the case, with a view to delivering more diverse boards.

Scrutiny of appointments

Scrutiny of public appointments varied this year depending on the level of oversight applied by the Commissioner. Table 16 sets out how scrutiny levels varied and table 33 in Appendix A shows all rounds for which ministerial appointment decisions were made during the course of 2014. The Commissioner agreed to accept figures from the Scottish Government for calendar rather than financial years in this year and in future, for reasons articulated later in this report.

There were 1,742 applications during the calendar year leading to 125 appointments to 51 public bodies.

In all, 60 rounds were in progress during the financial year. Forty two were started during the year and 46 were completed. Table 18 provides more detail and shows a slight decrease to 2012/13 levels.



Delivering diversity

Figures for the year's appointment activity broken down by protected and other characteristics appear in the 'Delivering diversity' section as are figures comparing the demographics of regulated public body boards now with the figures in the first annual report, from 2004/05, published by the Commissioner for Public Appointments in Scotland. The figures from last year are also provided to allow readers to track progress of not just applications, as was previously the case, but also whether public body boards are or are not increasingly reflective of the diversity of society.

The figures in table 25 show that there continues to be a rise in the case of appointees who declare they are disabled. This figure sat at 2.4% in 2004/05 and has risen again in the last year: it now sits at 15.3%. The Commissioner acknowledges that significant progress is still required in respect of gender representation but is cautiously optimistic about this year's figure. The percentage of women on boards has risen, albeit modestly, to 38.4%. Appointments of people from a BME background remained relatively static although the level of under-representation in that case is not significant and can, based on the relatively low numbers involved, be addressed without significant effort. As with all cases of under-representation on boards, the Commissioner is confident that the untapped talent is out there. The Commissioner, his team and the Scottish Government must simply work harder to foster cultural change and to encourage applications.

The Commissioner continues to work with the Scottish Government's Public Appointments and Corporate Diversity Programme to that end. The Commissioner shares that board's ambitions and those of the Scottish Ministers and their officials to encourage a still wider range of talented people from all backgrounds to apply for and be appointed to the boards of public bodies. The activities that have been individually and jointly engaged in during the past year and the new and innovative opportunities for joint working that are recommended and planned for the year ahead are referred to later in this report. The Commissioner firmly believes that concerted effort can make a difference to the delivery of diversity.

CORPORATE AND FINANCIAL

Strategic and business planning

The work of the office is directed to meeting the objectives set out in the Strategic Plan for the four year period 2012 - 16 and described in this report.

This is complemented by an annual Business Plan covering the reporting year.

Both plans are available at www.ethicalstandards.org.uk.

Financial overview

The budget for 2014/15 was £785,000 as agreed with the Scottish Parliament.

Expenditure during the year was £781,000 - £4,000 under the allocated budget.

During the year, the Parliament approved a budget of £811,000 for 2015/16.

Audit Scotland have audited the accounts for 2014/15 and issued an unqualified opinion. In preparing the accounts, the Commissioner has – as accountable officer – been indebted to Jean Couper and Isobel Sharp, members of the Advisory Audit Board, whose advice and guidance have been much appreciated.



2. Public Standards



2. PUBLIC STANDARDS

ORGANISATIONS WITH STATUTORY CODES OF CONDUCT

The Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act) applies to the 129 Members of the Scottish Parliament. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) covers the 1223 councillors elected to 32 local authorities.

The 2000 Act also applies to the members of over 100 public bodies including national bodies, national park authorities, further education colleges, NHS boards, regional transport partnerships and community justice authorities. Each body has a Code of Conduct based on the Model Code. The number of devolved public bodies and members 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 merged, removed from the Commissioner's remit, or abolished. The 2000 Act currently applies to approximately 1,300 members of public bodies.

COMPLAINTS ABOUT COUNCILLORS AND MEMBERS OF PUBLIC BODIES

Complaints received in 2014/15

Table 1 shows the number of complaints received by the Commissioner during the year compared with the two previous years.

Table 1

Complaints against	2014/15	2013/14	2012/13
Councillors	680	298	181
Members of devolved public bodies	3	3	2
Other (outwith jurisdiction)	9	10	9
Total number of complaints*	692†	311	192
Total number dealt with as cases**	111	146	120

* 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 matter of the complaints is the same or closely related.

† 524 complaints were investigated as one case.

Complaints by category

Table 2 outlines the various categories of complaints received during the year, compared with previous years.

Table 2

Description*	2014/15	2013/14	2012/13
Failure to register an interest	4	14	7
Failure to declare an interest	26	43	18
Disrespect of councillors/officials/employees	33	23	15
Financial misconduct	3	7	4
Breach of confidentiality	4	8	25
Misconduct relating to lobbying	3	3	9
Misconduct on individual planning applications	44	97	49
Misuse of council facilities **	525	-	-
Other complaints ***	11	67	24
Breach of the Key Principles	30	39	32
Outwith jurisdiction	9	10	9
TOTAL	692	311	192

* The primary area of the complaint is noted. However, the complaint may also involve other secondary categories.

** This is a new category, effective from 2014/15. 524 complaints were related to one issue.

*** "Other complaints" include a councillor's personal conduct, failure to correspond/unsatisfactory action.

Origin of complaints

Table 3 shows the origin of complaints received during the year compared with previous years.

Table 3

Complainant	2014/15	2013/14	2012/13
Member of the public	663	257	146
Councillor	20	44	38
Officer of a Local Authority	3	5	2
Anonymous	3	0	3
Member of a Devolved Public Body	1	0	0
MSP	2	5	3
TOTAL	692	311	192

Complaints relating to Planning

Table 4 shows complaints received relating to Planning.

Table 4

Planning complaints received from	2014/15	2013/14	2012/13
Member of the public - with known material interest	49	104	46
Member of the public - with no known material interest	27	26	12
Councillor	4	9	14
Officer of a local authority	0	0	0
MSP	0	0	0
Anonymous	1	0	1
TOTAL	81	139	73

Complaints about Planning may be drawn from a number of complaint categories including failure to register or declare an interest, misconduct relating to lobbying and misconduct on individual applications (as referred to in table 2).

Complaints progressed and dealt with in 2014/15

Table 5 shows complaints progressed and dealt with in 2014/15.

Table 5

Complaints progressed and dealt with	2014/15
Complaints outstanding as at 31 March 2014	76
Complaints received during 2014/15	692
Complaints completed during 2014/15	692
Complaints outstanding as at 31 March 2015	76

Outcome of complaints completed

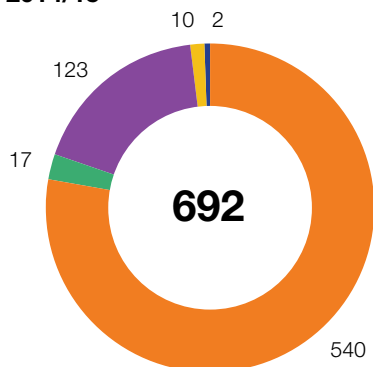
Table 6 shows the findings in relation to complaints completed during the year compared with previous years. Six hundred and ninety-two complaints were completed this year – 99 cases.

- Ten complaints (1.4%) – five cases (5%) were found to be outwith jurisdiction
- Two complaints (0.3%) – one case (1%) were withdrawn.
- There were 123 complaints (18%) – 67 cases (68%) which, after an initial investigation, were subject to no further action. In all cases, the initial investigation involved the assessment and consideration of the complaint by gathering information from parties involved in the complaint. These complaints were found not to amount to a possible breach of the Code because of limited substance or merit.
- A full investigation was carried out in respect of 557 complaints (80%) – 26 cases (26%).
- Following investigation, 17 (3%), which were investigated as 14 cases (54%), were concluded with a finding of no breach of the Code. 540 complaints (97%) – 12 cases (46% of all cases) resulted in a report being submitted by the Commissioner to the Standards Commission for Scotland with a finding that there had been a breach of the Code.

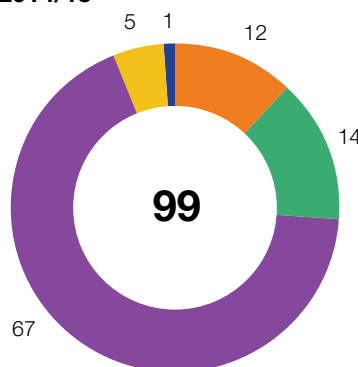
Table 6

Outcome of complaints completed	2014/15 complaints	2014/15 cases	2013/14 complaints	2012/13 complaints
Following an investigation:				
Breach	540	12	5	5
No breach	17	14	67	40
Not pursued further	123	67	200	111
Outwith jurisdiction	10	5	13	11
Withdrawn	2	1	6	5
Total number of complaints	692		291	172
TOTAL cases		99	146	107

Total number of complaints 2014/15



Total number of cases 2014/15



Key

- Breach
- No breach
- Not pursued further
- Outwith jurisdiction
- Withdrawn

Table 7 shows the findings in relation to cases completed during the year.

Table 7

Outcome of cases completed

	Breach	No breach	Following initial investigation	No enquiries	Anon	Outwith jurisdiction	Withdrawn	TOTALS
Introduction/Key Principles/not stated		5	20					25
Outwith 12 months		1	1			1		3
Personal conduct/ Not acting as a councillor		5	2					7
Previously investigated			1					1
Insufficient/no evidence to support allegation		22		3		1		26
Code not engaged/no misconduct		7						7
Complaint not about a Councillor or Member						3		3
Totals	12	14	40	24	3	5	1	99

Case summaries

The Commissioner may publish a web summary of his decision on a complaint when it is considered the decision would be of wider public interest. Case summaries are published in the Public Standards/Decisions section of the website, www.ethicalstandards.org.uk.

Breaches of the Councillors' Code of Conduct

Table 8 shows cases where the Commissioner found contraventions of the Councillors' Code of Conduct and the outcome of hearings by the Standards Commission.

Table 8

Complaint Number	Respondent	Nature of the Breach	Hearing date	Hearing decision	Sanction imposed
LA/S/1336	Stirling councillor	Conduct at meeting of Licensing Board	12-May-14	Breach	Suspension - 5 months
LA/WD/1418	West Dunbartonshire councillor	Disrespect to council officers, members of the public and councillors	03-Jun-14	Breach	Suspension - 2 months
LA/WD/1419	West Dunbartonshire councillor	Raised matters relating to conduct and capability of employees in public	03-Jun-14	Breach	Suspension - 9 months
LA/SB/1503	Scottish Borders councillor	Non-declaration of interest	10-Oct-14	Breach	Suspension - 3 months
LA/ER/1490	East Renfrewshire councillor	Inappropriate comments made at planning meeting	02-Dec-14	Breach	Censure
LA/WD/1493	West Dunbartonshire councillor	Disrespect of officers	17-Feb-15	Breach	Censure
LA/EL/1494/A	East Lothian councillor	Non declaration of financial interests	14-Jan-15	Breach	Censure
LA/R/1525	Renfrewshire councillor	Disrespectful comments made at a planning meeting	11-Mar-15	Breach	Censure
LA/S/1509	Stirling councillor	Breach of confidentiality	24-Mar-15	Breach	Censure
LA/AC/1537 /A & multiple*	Aberdeen City councillor	Misuse of council facilities	16-Apr-15	No breach	
LA/Fi/1501, 1516, 1518, 1536*	Fife councillor	Non declaration of interests	08-Jun-15	Breach	Suspension from planning meetings – 6 weeks

* The Commissioner's report was submitted in 2014/15 and the hearing was held in 2015/16.

Further details on the outcome of the hearings can be found on the website:
www.publicstandardscommissioner.org.uk/decisions/

and the Standards Commission website:
www.standardscommissionscotland.org.uk/full_list

COMPLAINTS ABOUT MSPS

Complaints received

Table 9 shows the number of complaints received by the Commissioner about MSPs during the year compared with previous years.

Table 9

Complaints against	2014/15	2013/14	2012/13
MSPs	20	21	20

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

Table 10

Description	2014/15	2013/14	2012/13
Misrepresentation of MSP's role	0	0	1
Registration/declaration of interests	2	0	0
Lobbying and access to MSPs	0	0	0
General conduct	10	10	5
Confidentiality requirements	0	0	1
MSPs' staff	0	0	0
Engagement and liaison with constituents	6*	10	13
Allowances and expenses/use of Parliamentary facilities	2	1	0
Totals	20	21	20

* In five of these cases it was clear that the MSP had engaged: these were therefore dismissed. The sixth case had already been considered by the Presiding Officer. The procedure has been changed since the end of the reporting year: all such complaints are now referred directly to the Presiding Officer for investigation.

Handling MSP complaints

Upon the receipt of a complaint about an MSP, the 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. Certain categories of complaints about MSPs' conduct are excluded from the Commissioner's jurisdiction by paragraph 9.1.6 of volume 2 to the Code. Complaints concerning alleged actions by MSPs in their capacity as Ministers are referred to the First Minister for investigation under the Ministerial Code of Conduct.

Table 11

Admissibility of complaints (Stage 1)	2014/15	2013/14	2012/13
Admissible	1	0	0
Inadmissible	19	18	19
Withdrawn	0	3	1
Still at Stage 1 at 31 March	0	0	0
Total	20	21	20

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

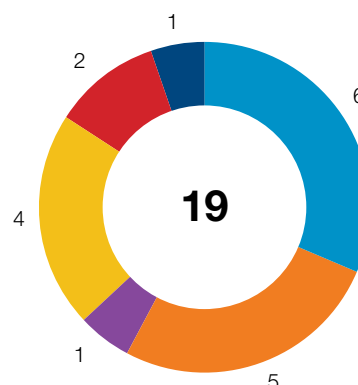
Admissible complaints	2014/15	2013/14	2012/13
Completed Stage 2	1	0	0
Totals	1	0	0

Inadmissible complaints

Table 13 gives details of the grounds on which complaints were found to be inadmissible.

Table 13

Inadmissible complaints	2014/15
Not pursued – following initial investigation	6
Not pursued – no enquiries	5
Outwith jurisdiction	
Referred to Presiding Officer and First Minister	1
Referred to First Minister	4
Referred to SPCB	2
No Referral	1
Total	19



Timescale for Stage 1 (Assessment of admissibility)

The 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 two months. Decisions on all of the complaints received and dealt with in 2014/15 were reached within the two month period.

Timescale for Stage 2 (Further investigation)

The Commissioner is also required to report to the Committee, and also to the MSP complained about and to the complainer, if Stage 2 takes longer than six months. One complaint proceeded to Stage 2 and was reported within timescale.

PERFORMANCE AGAINST TARGETS

Key development objectives are set out in the Commissioner's Business Plan 2014/15 in relation to the handling of complaints. Targets and achievements are set out below.

Initial assessment of complaints (Councillors and Members of 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 40 working days.

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: 99% of complaints were initially assessed within 40 working days of the receipt of the complaint.

Table 14

Target	Actual	Details
60%	96%	Initial assessment within 20 working days
85%	99%	Initial assessment within 40 working days

Time taken to complete investigations

The Commissioner sees 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 the 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 2014/15, 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
60%	78%	Completion within 3 months or less
75%	90%	Completion within 6 months or less
95%	97%	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%	100%	Completion of Stage 2 (Breach Report) within 6 months
95%	N/A	Completion of Stage 2 (Breach Report) within 9 months
100%	N/A	Completion of Stage 2 (Breach Report) within 12 months



3. Public Appointments



3. PUBLIC APPOINTMENTS

REGULATING APPOINTMENTS

The following pages describe the Commissioner's regulation of appointments and the main activities of the public appointments staff and advisers during the year.

The Code of Practice

One of the Commissioner's statutory functions is to produce, keep under review and as necessary revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code). The Code specifies the principles and practices to be followed when a public appointment is made.

A new code was introduced in October of 2013 and offered significant flexibility to selection panels. It was expected to lead to a reduction in bureaucracy and to more accessible and attractive methods being used to encourage applications.

Change of this nature is never easy: departing from tried and tested methods can be unsettling. However, if the target is to have more diverse boards, then the methods used to attract and identify applicants must be diverse too. This requires a measure of creativity on the part of selection panels and officials. It was therefore and continues to be important for the Commissioner and his team to be supportive of those who are tasked with attracting a broader range of applicants.

The revised code also saw a change to the way in which oversight of the public appointments process is provided by the Commissioner. It is clear that simply monitoring appointment activity, whilst this is a statutory function of the office, is insufficient to drive or indeed support and encourage better practice. The adviser now acts as a panel member on some appointment rounds and has no involvement at all in others, depending on the risks related to the appointment being made. This helps to ensure that regulation is proportionate and appropriately targeted.

The Commissioner also has the statutory function of issuing guidance on and promoting compliance with the code as well a statutory duty to acquit his functions with a view to ensuring that appointments are made fairly and openly. Taking all of this together, the Commissioner tasked the advisers with taking a more proactive and, as appropriate, supportive role in appointments rounds. The role title "Public Appointments Assessor" was revised to "Public Appointments Adviser" in April 2014 to reflect the revised approach.

The changes made to the code and to the way that the Commissioner and his team fulfil their functions have been broadly welcomed. This annual report provides an opportunity to explain what has happened during the first full year of this approach.

For ease of reference, the key changes included:

- a revision to the key principles, including the introduction of the principle of Diversity and Equality
- a change to the role of the adviser
- target timescales for both appointments and reappointments.

Who’s who in the process?

Public Appointments Advisers

Public Appointments Advisers provide oversight of appointment activity on behalf of the Commissioner. As explained above, they take a proactive approach to their role and add significant value by supporting selection panels and Scottish Government officials to run successful appointment rounds. The role they fulfil is progressively more substantial in those rounds which the Commissioner assesses as medium or high level and in those where the Commissioner agrees to a request from the Scottish Ministers for an adviser to participate as a panel member. The frequency with which such requests were made during the year is testament to how welcome their advice and oversight of appointment activity is considered to be.

Table 16 illustrates the different roles that advisers fulfilled during the year depending on the level at which the round was set. The factors that the Commissioner takes into account in setting oversight levels for rounds include: the seniority of the position(s) being filled, the level of expenditure for which the body is responsible and the level of public interest in the appointment(s) being made. This latter factor can vary considerably from year to year.

Table 16 - Level and oversight

	LEVEL ASSIGNED TO ROUND		
ANICIPATED OVERSIGHT	LOW	MEDIUM	HIGH (or HIGH at request of the Scottish Government)
	No oversight	Planning meeting and resulting papers	Full member of selection panel throughout process

Sponsor teams

The day-to-day link between the public body and the minister is provided by a Scottish Government sponsor team. In respect of public body activity, each team is also provided with advice by the Public Bodies Unit within the Scottish Government. During the course of the year the Commissioner contributed to the work of the Public Bodies Unit by providing content for the latest version of On Board, the guide for board members of public bodies in Scotland. That contribution related to the importance of diversity for the effective functioning of boards.

Selection panels

The selection panel plans the appointment process, conducts each of the stages of assessment and identifies for the appointing minister the people who have demonstrated the skills, knowledge and experience that most closely match those required to be effective in the role.

A panel normally includes the chair of the public body and a senior civil servant who serves as the panel chair, representing the Minister. The 2013 Code encourages but does not require the assignment of an independent panel member, particularly in cases where the Commissioner has not assigned an adviser as a panel member.

Of the 60 appointment rounds that were running during the reporting year, over half of them included an independent member on the selection panel. Just under half of the rounds assessed as low level by the Commissioner included an independent member on the panel.

Independent panel members can add significant value to panel activities, often because they have a stake in the successful outcome of the appointment process and are knowledgeable about the work of the body. They also offer a constructively critical perspective that may otherwise be lacking.

This is not to criticise the abilities of the chairs of public bodies and the senior civil servants with whom they tend to work most closely. It simply reflects what is widely and increasingly understood about the importance of alternative perspectives to more effective decision-making. Scottish Government officials in recognition of the value that independent panel members add are going out of their way to involve them as a consequence. Examples during the year include:

- For the appointment of a new chair for Creative Scotland, there were two independents on the panel. One was an artist and film producer and the other was a writer and playwright.
- For the appointment of the chair of Scottish Water, the independent panel member was a member of the Council of the Competition Commission and a non-executive director of OFWAT.
- For the appointment of members for the Royal Botanical Gardens Edinburgh, one of the independent panel members holds a personal chair in Ecological Genetics at the University of Edinburgh.

Public Appointments and Diversity Centre of Expertise (PACE)

PACE was established by the Scottish Government following a recommendation in the Commissioner's strategy, **Diversity Delivers**. PACE team members support selection panels during appointment rounds by providing expertise on, and relevant information required by, the appointments process. The role they fulfil has become increasingly important now that advisers no longer provide oversight of all appointment rounds. A new head of the team was assigned in July of 2014 and has proven to be both proactive and highly motivated and engaged. The same official has also been given responsibility for taking forward work on the Scottish Government's plans for addressing the lack of diversity on the boards of Scotland's public bodies. As reported last year, there has been limited movement in this area and so concerted action was required. The new head of PACE changed the name of the team shortly after taking up her role to reflect its broader remit. It is now entitled Public Appointments, Wellbeing and Diversity (PAWD).

An update on changes to the demographic profile of applicants, appointees and boards overall is provided later in this report. On the basis of these figures, and whilst recognising that the pace of change has been slow, there are grounds for cautious optimism.

Regulated public bodies

The Commissioner regulated 637 posts on 91 public bodies at the year end.

A list of these bodies is available at www.ethicalstandards.org.uk.

Table 17 – No of bodies and positions regulated

At 31 March	2015	2014	2013
No. of bodies regulated	91	87	75
No. of posts regulated	637	584	601
Avg. no. of regulated positions per board	7	6.7	8.0

In 2014/15 the following legislation relevant to appointments regulation was enacted:

- The Historic Environment Scotland Act 2014 which merged Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) to form Historic Environment Scotland (HES). HES will effectively replace RCAHMS in the Commissioner's regulatory remit. RCAHMS will continue to operate with board members on extended terms of appointment until it dissolves in October of 2015. It will cease to be a regulated body at the same time. To allow oversight of the HES appointments, secondary legislation was made such that it would be treated as though it were already a regulated body.
- The Revenue Scotland and Tax Powers Act 2014 which established Revenue Scotland as a non-ministerial department.
- The Children and Young People (Scotland) Act 2014 amended the Schools (Consultation) (Scotland) Act 2010 such that the new Schools Closure Review Panels came into being.
- The Food (Scotland) Act 2015 established Food Standards Scotland as a non-ministerial department.

Appointments to all of these boards were included in the Commissioner's regulatory remit other than the Schools Closure Review Panels where the appointment of the Convener position alone is regulated.

The appointments to the board of Food Standards Scotland were made prior to the enactment of the relevant legislation and so were not overseen by the Commissioner.

The tables on the following pages summarise the activities of the Public Appointments Advisers during the year and the range of enquiries and reports that the office dealt with.

APPOINTMENT ACTIVITY

Table 18 records appointment activity. A round is shown as started when the office receives notification that an open competition is being planned. A round is shown as completed when an adviser's involvement is over or, where no adviser is assigned, the PAWD manager advises that an appointment decision has been made.

Table 18 – Appointment activity

New appointment rounds	2014/15	2013/14	2012/13
Started in year	42	51	45
Carried forward from previous year	18	17	17
Total active in year	60	68	62
Incomplete at year end	14	16	17
Total completed in year	46	52	45

Two appointment rounds over and above those listed as incomplete at the 2013/14 year end have been added to bring forward to the next year. This adjustment was made to reflect a later completion date than was originally recorded in 2013/14.

Appointments made in 2014

Table 33 in Appendix A shows all rounds for which ministerial appointment decisions were made between 1 January 2014 and 31 December 2014. It also provides information on the level set by the Commissioner. In previous annual reports, the majority of the statistical information on applications and appointments has related to the financial year as opposed to a calendar year. The Commissioner has agreed for the first time to accept statistical information of this nature from the Scottish Government for reporting periods that cover the calendar rather than the financial year.

The Scottish Government made the request because it is already reporting on public appointments by calendar year. These reporting dates coincide with the Mainstreaming and Equality Outcomes report that the Scottish Government produces and publishes according to a statutory duty. In order to ensure meaningful year on year comparisons, the Scottish Government has provided calendar year figures for the years 2012, 2013 and 2014.

On this basis, the Commissioner confirmed that in recognition of the public resources that this will save he was content for the statistical information provided to cover a different reporting year.

The reporting year used for statistics in this and future annual reports will therefore vary depending on whether the statistics relate to the application and appointment activities of the Scottish Government or to the activities of the Commissioner's office.

Table 33 shows that the Scottish Government asked for a PAA to act as a panel member on a significant proportion of rounds. There were 33 rounds completed under the 2013 Code during 2014 and just under a third of these involved the Scottish Government requesting a representative of the Commissioner to act as a panel member.

One hundred and twenty five appointments were made to 51 public bodies during 2014.

Investigations and reports on open competitions

Two investigations were carried out and concluded during the reporting year and both were directly related to candidate concerns about not being selected by the appointing minister. In each case the candidates concerned were considered suitable for appointment by the selection panel and the minister was presented with a choice of suitable candidates. In each case the candidates were dissatisfied with the reasons given for the ministerial decision and with the way in which their complaint of non-appointment had been handled.

The first investigation established that there had been some dubiety in relation to the interplay between ministers being given a choice of suitable candidates in order to make an appointment decision and the need to make appointments transparently and exclusively on the basis of merit at the conclusion of an appointment round. The Commissioner partially upheld the complaint but did not determine there to have been material non-compliance with the code. Factors included in that decision were the apparent dubiety about the extent to which ministers had a choice in certain circumstances and also a clear undertaking on the part of the minister to meet the complainant, to apologise for legitimate concerns that had been raised by the complainant about the handling of his complaint and aspects of the appointment round's administration and to explain in more detail the reasons for the appointment decision.

The Commissioner decided that it would be prudent to issue statutory guidance on application of the code in order to remove any dubiety about the interplay between ministerial choice and application of the principle of merit. At the same time, the guidance included some helpful advice to ministers about the pivotal role that they play in defining merit at the start of the appointment process. Regardless of how well designed and attractive an appointment process is, it can only at best ever deliver what the minister specifies at the outset. The delivery of diverse boards clearly relies on ministers specifying different attributes when planning for new appointments.

The second complaint related to an applicant's view that he had been discriminated against at the point of selection by the appointing minister. The investigation established that there was no evidence whatsoever to support that view and that the code had been fully observed. It was also found that the Scottish Government's investigative procedures in that case had been improved upon and were very thorough.

Issues arising during the year

Appendix B summarises the substantive enquiries and reports submitted to the Commissioner's office during the year.

The number of substantive contacts with the office fell by roughly a quarter during the year. This was to be anticipated because people are more familiar with application of the 2013 Code and the Commissioner is not providing contemporaneous oversight of all competitions as was previously the case.

The year saw significant falls in the number of reported concerns, requests for guidance on the code, requests to diverge from the code's requirements and in reports of non-compliance. Reports of and requests for advice on good practice rose. This is a very positive trend that the Commissioner would like to see continue. The good practice case studies that are published to the Commissioner's website should, it is hoped, encourage more panels to adopt new and more innovative and accessible appointment processes.

Key Performance Indicators

The Commissioner's key performance indicators (KPIs) for the appointments process are set out in both the strategic and business plans under the heading "Monitor, measure and report on the achievement of **Diversity Delivers** targets and on stakeholder satisfaction with the public appointments process".

As with the appointments statistics, much of the material relating to these measures is provided to the Commissioner by the Scottish Government and so is reported by calendar year.

Time taken

During 2014, on average it took 18.5 weeks from the initial planning meeting to the Minister's appointment decision. This is an increase in time taken for appointment rounds overall but nevertheless sits inside the 16 to 20 week limit included in the guidance on application of the code.

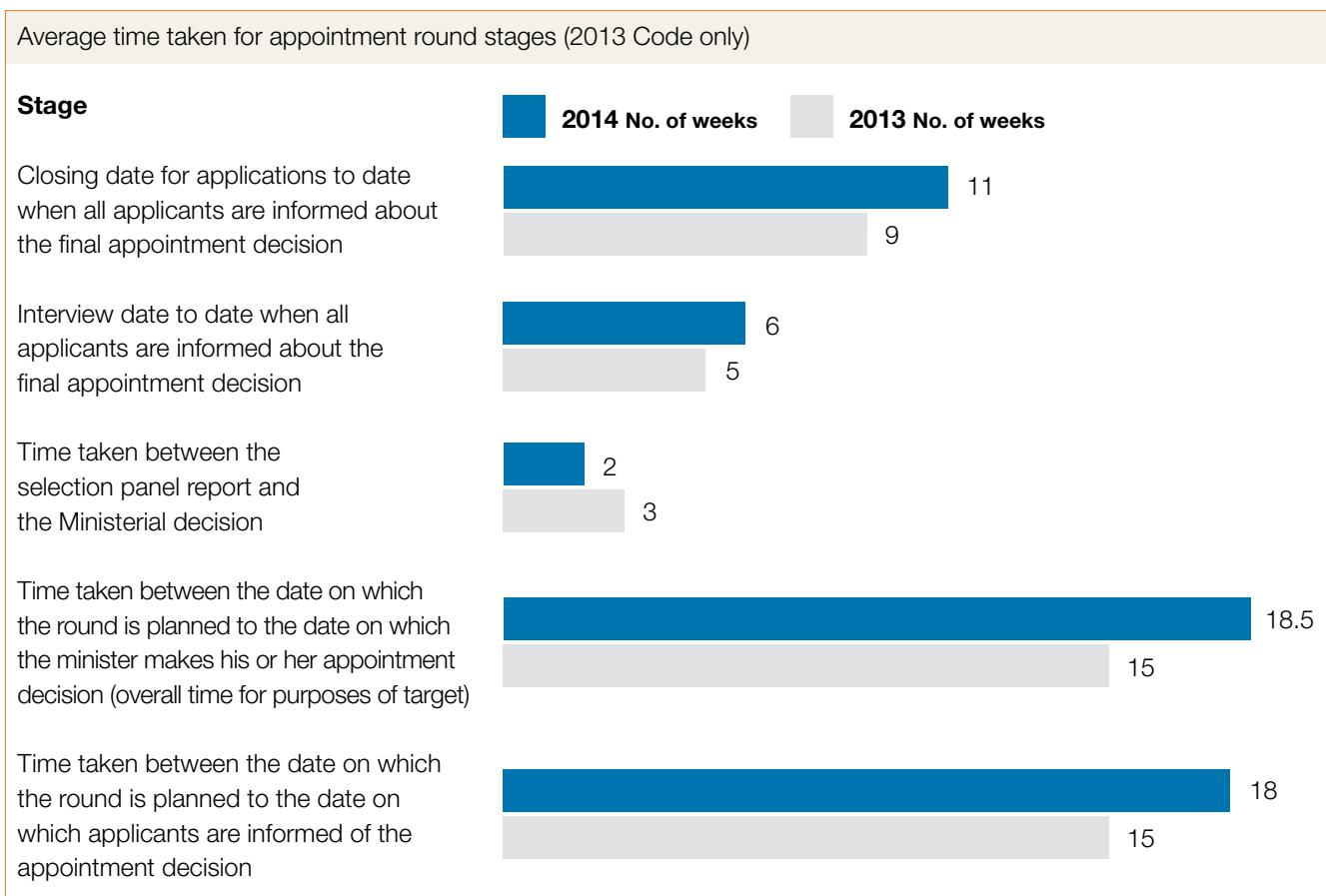
The figures in the following tables are provided by the Scottish Government. The 2014 rounds concerned are listed in Appendix A. The total number of rounds for 2014 is shown as 55.

Table 19 – Time taken to appoint – planning to appointment decision

	2014	2013
Number of rounds	55	45
Average time taken (weeks)	18.5	15

The 2013 Code introduced more stringent indicative targets both for appointment rounds and for reappointments. The targets do appear to be maintaining the time taken for rounds overall to within reasonable limits which was a concern to some stakeholders. Whilst this is heartening the Commissioner has cautioned against prioritising targets over proper planning and the conduct and outcome of appointment rounds. Whilst the figures for distinct round stages do appear to have risen they are within the tolerances set out in the statutory guidance.

Table 20 – Time taken for appointment round stages



Target timescales for reappointment were introduced to improve on succession planning and to ensure that incumbents were given appropriate notice about ministerial intentions. Much as with last year's report, it is noted that the Scottish Government continues to comply with the code in this area as illustrated in table 21. With a very few exceptions, the Scottish Ministers are making decisions and chairs and board members are being informed about their reappointments well in advance of the 13 week target.

Table 21 – Time taken for reappointments

Time taken for reappointments (target applicable to 2013 Code only)

	2014	2013	Target from October 2013 (Min. no. of weeks)
Amount of notice given to re-appointees before term of appointment due to end (weeks)	16	21	13
Number of people reappointed	91	36	

The Scottish Ministers have made it clear that they wish to increase the diversity of boards. This will in turn require people who have not previously considered applying for a role doing so. The Scottish Government continues to track new versus repeat applicants annually to give an overview of whether the changes they are making are encouraging more people to apply for the first time. As with much of the other data in this year's annual report, the following figures relate to the last three full calendar years.

Table 22 - Number of first time versus repeat applicants

Type of applicant	2014		2013		2012		Variation from 2012 to 2014
	No.	%	No.	%	No.	%	% age point
First-time applicant	1196	69	1160	68	866	67	+2%
Repeat applicant	546	31	554	32	424	33	-2%
Totals	1742	100	1714	100	1290	100	

Application numbers and numbers of first time applicants have both risen since 2012. However, the total of 1,742 applications for 2014 is not wholly accurate because the Scottish Government's system counted individuals who applied for more than one position in some competitions as single as opposed to multiple applications. Whilst the accurate figure for disaggregated applications by position applied for are provided in table 33 in appendix A at the end of this report, which shows that 1,830 applications were in fact received, the Commissioner was not provided with disaggregated monitoring data for the applicants concerned. It is understood that this issue will be addressed by the Scottish Government for the future.

Because of the changes that have been made to the application process, and in particular the fact that the Commissioner is encouraging a move away from the completion of lengthy written applications, he has agreed with the Scottish Government that it is no longer appropriate to measure the quality of initial applications and statistical information on that measure will not therefore be published in this or in future annual reports.

Ministerial interviews with applicants

The 2013 Code introduced an option for the Scottish Ministers to consider meeting the applicants assessed by selection panels to be suitable for appointment. The guidance on application of the Code indicates that such meetings are anticipated particularly in the case of significant chair appointments.

During 2014, the Scottish Ministers met the potential appointees on 21 occasions, (16 chair and five member rounds).

Applicant views on the process

A third survey of applicant experiences was conducted in late 2014. This built on the results of previous research, aiming to understand what improvements applicants had noticed during the year, and what further changes should be made to the process. An official from the Scottish Government's Corporate Analytical Services Team was involved in the review of the results for the first time this year and provided helpful feedback, particularly in respect of the statistical validity of the results based on the level of responses made by applicants. This in turn led to a revision to the recommendations for such surveys in the next and future years in order to encourage more applicants to share their views. It was always the Commissioner's hope and expectation that work on this type of activity would be done jointly and the closer involvement of the Scottish Government in reporting on this year's survey results was welcomed as a consequence.

The recommendations for consideration by the Scottish Government in the report for this year included:

- Revising the way in which applicants are surveyed to increase the response rate and thereby improve the reliability of the quantitative data.
- The qualitative data provided in respondents' comments should be considered by the Scottish Government in order to assess and prioritise where improvements to the overall applicant experience might be made.

Additionally, the Commissioner suggested consideration of the following:

- The comments made by respondents about the application pack and how it might be made clearer, simpler and more accessible point to an opportunity to improve on the materials for application. This may merit particular consideration given the need to attract applications from people from currently under-represented groups.
- Whether what the respondent results said about the increased use of word of mouth and direct approaches to encourage applications should be developed to widen the diversity and number of applications in the process.
- The possibility of introducing a pre-qualified pool of applicants. Applicants have not previously been asked whether this is a motivating factor, and it is not something that is currently done but it does seem to appeal to those who responded.
- Continue to develop the positive experience that applicants appear to be having at interview stage.

Body and panel chair views – satisfaction with the appointments process and on the input of the adviser

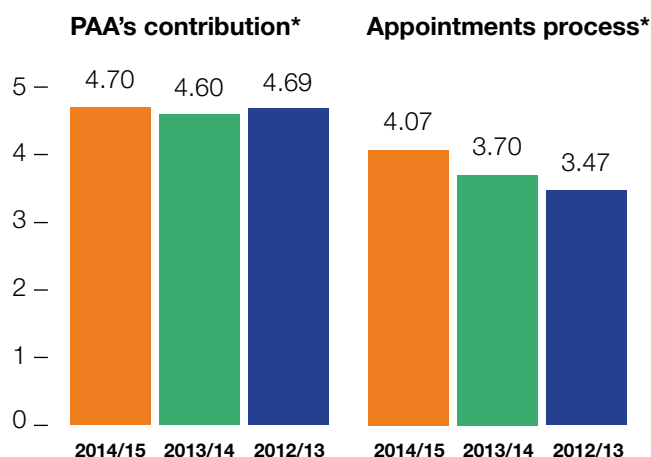
Valuable feedback from panel chairs and body chairs on the input of the advisers helps the Commissioner to quantify their levels of satisfaction with the advice that they receive. Constructive feedback also helps the office to tailor training and development opportunities as well as the material that is made available to PAAs to allow them in turn to better inform and support appointment activity.

Public body and panel chairs have been asked to provide this feedback using a simple 1 to 5 scale. The same scale is used to record their feedback about the appointments process. They are also invited to provide constructive narrative feedback on both the process and on the input of the advisers.

The results are as set out in table 23. As this information is not gathered by the Scottish Government, it is recorded and presented by financial year.

The scores and comments are shared with PAWD with a view to engendering improvements in the appointments process. It is worth noting the year on year rise in satisfaction that panel members have expressed about the appointments process.

Table 23 – Average satisfaction scores – three year comparison



*5 is very satisfied, 1 is very dissatisfied

During the course of the year, the Commissioner provided training for the advisers on how to apply his new statutory guidance during appointment rounds – and to assist panels in doing so – as well as refresher training on the topic of unconscious bias. Advisers were also provided with practical tools to assist with bias mitigation.

Two of the cohort of ten PAAs retired from the role during the year and so the Commissioner plans to tender for more in 2015/16.

Miscellaneous activities

During the course of the year the Commissioner and his staff took part in or led on a broad range of activities, all with a view to improving the public appointments system and the achievement of more diverse boards. Such activities have included:

- Giving a talk at an Officer's Association event to encourage applications, particularly from people who belong to currently under-represented groups
- Responding to a Scottish Government consultation on the potential to introduce quotas in order to achieve gender parity on boards. Briefly, and similarly to the Equality and Human Rights Commission, the Commissioner suggested that the voluntary measures still open to the Scottish Government should be pursued instead of quota introduction.
- The Commissioner meeting with a group of the Scottish Ministers and with Scottish Government directors to explain how his guidance on application of the code can be used to deliver more diverse boards
- Providing advice to the Scottish Government on more effective stakeholder engagement
- Posting new content to the website to encourage new methods for attraction, application and assessment to be tried
- Providing advisers to support panels with pilot appointment round activity
- Providing a draft competency framework for board member recruitment exercises
- Providing content and design ideas for a more accessible and attractive application pack
- Providing content for and advice on potential panel member guidance about unconscious bias and its potential impact on decision making
- Gathering and disseminating information on a successful board apprenticeship programme being run by a health trust in England
- Providing information and guidance on effective succession planning through the use of board nominations committees
- Giving a presentation at a businesswomen's event to encourage applications.

The Commissioner and his team will continue to engage in such ad hoc activities and any others that it is believed to be expedient to acquit the statutory functions of the office successfully.

DELIVERING DIVERSITY

Diversity Delivers, an equal opportunities strategy for ministerial appointments in Scotland, was published in 2008. Publication of the strategy is a statutory function of the Commissioner under section 2(10) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003. The strategy set targets for the Scottish Ministers in relation to applications from groups under-represented on the boards of Scotland's public bodies. These targets were not met within the anticipated time frame of March 2012.

In April 2013 the Scottish Government published its Equality Outcomes and Mainstreaming Report. The equality outcome for appointments is "Ministerial public appointments are more diverse reflecting broadly the general population by 2017". A progress report was published in April 2015.

Diversity Delivers' targets were based on increasing applications from under-represented groups. By contrast, the equality outcome is based on the collective demographic profile of board members. However, application as well as appointment data will still be measured as these can be used to provide a useful indicator of progress and to identify barriers in the appointment process.

Table 24 shows the extent to which Scotland's board members reflect the population as a whole in 2015.

Table 24 - Demographic profile of board membership

Target Group	Profile of board members† in 2015	Scottish Population (2011 Census)
Female	38.4%	51.5%
Disabled	15.3%	19.6%
Black and minority ethnic	2.9%	4.0%
Aged 49 and under	17.3%	54.3%*
Lesbian, gay and bisexual	3.4%	6.0%**

†All board members inclusive of the chair unless otherwise stated. Percentages do not include those who did not make a declaration.

* Scottish Population aged 18 to 49 as a percentage of the whole population aged 18 and over.

** Estimated based on information from Stonewall Scotland website

Table 25 – How the demographic profile of boards is changing

Target Group	All board members (inclusive of chairs)			Scottish Population (2011 Census)
	2014/15	2013/14	2004/05	
Female	38.4%	35.0%	34.5%	51.5%
Disabled	15.3%	13.1%	2.4%	19.6%
Black and minority ethnic	2.9%	2.2%	2.8%	4.0%

Table 25 provides historic data on board demographics from 2004/05. Historic information for age or LGBT status is not available. In the 2013/14 annual report it was noted that significant progress would have to be made if the equality outcome for public appointments was going to be achieved. The Commissioner is now committing to publicly reporting on year on year progress by reference to the baseline for the demographics for Scotland's public body boards. The Commissioner is cautiously optimistic on the basis of the 2015 figures, whilst acknowledging that much more must be done to achieve gender and other forms of board parity with the population as a whole.

As explained earlier in the report, the statistical reporting year has changed from financial year to calendar year. The Scottish Government has provided us with data from 2012, 2013 and 2014 in order to draw some comparisons.

Applications and appointments over these 3 years is shown in table 26.

Table 26 – Number of Applications and appointments

Number of	2014	2013	2012
Applications	1830	1714	1290
Appointments	125	110	96
Average applications per appointment	14.6	15.6	13.4

As can be seen the overall number of applications continues to rise, although the number of applications per appointment was higher in 2013. Table 27 provides a breakdown of the stage that applicants reached during the appointment process over the past three years. The Commissioner and his staff and advisers have been actively encouraging selection panels to look for reasons to bring people forward to the later stages of assessment, rather than looking to rule people out, and this appears to be paying dividends.

Table 27 – Number and progress of applications

Number of applications	2014	2013	2012
Applied	1742	1714	1290
Reached shortlist	1729	1594	1168
Invited to interview	431	419	265
Recommended for appointment	170	155	150
Appointed	125	110	96

The total numbers do not represent individuals as many individuals apply for more than one position in the course of a year. Further information on the numbers of first time and repeat applicants is provided in table 22. Please also refer to the note following table 22 about the accuracy of total numbers of applications received during 2014.

Table 28 shows the percentage of applications in 2012, 2013 and 2014 by each target group. These continue to form part of the Key Performance Indicators (KPIs) for the Commissioner. These figures vary slightly from those published in the Scottish Government's Equality Outcomes and Mainstreaming report. The Scottish Government have attributed this to the introduction of a new body – Revenue Scotland, which was initially recorded as non-regulated and excluded when the Mainstreaming Report tables were produced. It was later amended to a regulated round and is now included in this data.

Table 28 – Performance against Diversity Delivers Targets

Target Group	Target	2014		2013		2012		Scottish Pop.*
	●	●	●	●	●	●	●	
	%	%	%	%	%	%	%	%
Female	40.0	37.9	45.6	34.1	34.5	30.8	38.5	51.5
Disabled	15.0	10.4	7.2	12.6	10.9	15.0	11.5	19.6
Black and minority ethnic	8.0	4.9	^	3.8	^	5.1	6.3	4.0
Aged 49 and under	40.0	29.4	24.0	24.6	20.0	21.8	27.0	54.3**
Lesbian, gay and bisexual	6.0	3.9	^	2.6	^	2.8	6.3	6.0***

Key: Applications ● Appointed ●

^ Values for less than 5 have been suppressed to decrease the risk of disclosure of information about individuals.

* Unless otherwise stated, all population figures are extracted from 2011 census data

** Scottish population aged 18 to 49 as a percentage of whole population 18 and over

*** Estimated based on information from Stonewall Scotland website

A number of applicants choose not to provide demographic data. These applicants are not counted in the percentages in order to give a more accurate picture of the success rates for people who have provided data. It is heartening to see the improvements in percentage applications and appointments for female candidates, with appointments now exceeding the target set in the strategy for applications.

The experience of women who apply continues to differ depending on the remit of the board. The figures have been replicated this year, with the new reporting year (calendar) and continue to show differences between Directors General. In 2014, Finance, Health and Social Care and Strategy and External Affairs appear to have appointed higher percentages of women, than applied. Both Health and Social Care and Strategy and External Affairs also appointed higher than the population percentage which is an encouraging step towards achieving overall gender balance.

A number of trial approaches to appointments have taken place during the course of the year. These have included the use of role play exercises, simulated board activities and considerably simplified routes for application that tested fewer and less complex criteria for selection. Good practice examples where the Commissioner is made aware of them are posted on his website. These new approaches may have had an impact on the level of women applying and being successful. Use of independent panel members has also increased during the year, and this may also have contributed. The Commissioner is encouraging the Scottish Government to take a more proactive approach to assessing the efficacy of the different methods it is using and anticipate that this will be a key recommendation from the thematic review that was conducted this year.

The application and appointment figures split by Director General were as follows:

Table 29 - Women who applied and were appointed by Director General

	% Female Applications	% Female Appointments
2012		
Enterprise, Environment & Digital	9.09%	12.50%
Health & Social Care	39.06%	50.00%
Learning & Justice	28.10%	30.95%
Strategy & External Affairs	43.48%	50.00%
2013		
Enterprise, Environment & Digital	27.49%	38.71%
Governance & Communities	31.98%	40.00%
Health & Social Care	37.00%	34.04%
Learning & Justice	36.13%	41.67%
Strategy & External Affairs	41.79%	10.00%
2014		
Communities	34.57%	37.50%
Enterprise, Environment & Innovation	25.16%	15.38%
Finance	28.13%	40.00%
Health & Social Care	46.45%	66.67%
Learning & Justice	37.27%	28.57%
Strategy & External Affairs	38.57%	54.55%







Table 30 shows that the level of applications from the 49 and under age group has continued to rise year on year from 2012 to 2014.

The Scottish Government, in its Equality Outcomes and Mainstreaming report, has stated:

“ Whilst we are giving some initial and particular focus to gender, with the aim of achieving gender balance by 2020, we will not lose sight of other groups who are under-represented on Scotland’s Boards. We will draw on the lessons we learn from our work on improving gender balance, recognising the potential benefits for a wide range of diversity groups. Furthermore increasing the number of women appointed has the potential to impact more broadly than gender as women bring with them other protected characteristics.”

The report also cites the use of social media and digital technology in trying to reach the widest audience possible and it is recognised that these methods of engagement are particularly popular with younger people. It is therefore anticipated that the Scottish Government Programme board will do more to continue to try to increase applications and appointments from younger people in the year ahead. It is particularly recommended that further outreach to employers is made to encourage time off for these pre-retirement age workers.

Table 30 - Age group comparison

	2014		2013		2012	
	 %	 %	 %	 %	 %	 %
49 and under	29.39%	24.00%	24.62%	20.00%	21.78%	27.08%
50-54	11.88%	16.00%	14.64%	18.18%	10.62%	9.38%
55-59	19.12%	21.60%	19.54%	24.55%	23.26%	28.13%
60-64	18.89%	19.20%	19.54%	21.82%	20.54%	17.71%
65 and over	11.19%	12.00%	13.65%	10.91%	13.57%	12.50%

Key: Applied  Appointed 

Making improvement

The Commissioner welcomes the Equality Outcome and Mainstreaming report update and the continuing work that is being achieved by the Public Appointments and Corporate Diversity Programme Board. Although, as mentioned in the Equality Outcome and Mainstreaming report update, the Programme Board's emphasis is on achieving gender balance, it is also recognised that, in putting in place work streams to support women, there will be an impact on accessibility to appointments for other under-represented groups.

In particular, the Commissioner is supportive of the work that the Scottish Government has committed to developing in the following areas:

- training for selection panels in unconscious bias
- a simplified, accessible application pack and supporting materials
- a communications and engagement strategy which will encompass further targeted outreach to raise awareness for internal and external stakeholders
- pre-application support that will help under-represented groups to better understand the application process.

As mentioned earlier in this report, in August 2014 the Commissioner published some statutory guidance to support understanding of the Code's requirements in respect of "merit and most able". This guidance has the intention of helping Ministers to define which criteria are of most importance to the work of the board at the time of appointment, in order that the appointment process can be developed to find the most suitable candidate to fit these needs. In conjunction with this guidance, the Commissioner particularly welcomes the commitment in the Equality Outcomes and Mainstreaming report update to develop a revised, accessible appointability/competency framework to assist panels in setting selection criteria that do not inadvertently restrict the pool of people that may consider putting themselves forward for consideration. This will complement the statutory guidance and help to make the appointment process more accessible for a wide and diverse range of candidates.

Thematic review

The Commissioner conducted a thematic review during the course of the year and a draft report into the findings of the review is due to be provided to the Scottish Government during April. Stage 1 and 2 reports on the review, which consisted of quantitative and qualitative analysis respectively, were provided to the Scottish Government during this reporting year and it is anticipated that the final report, inclusive of findings and recommendations, will be published in July.

The review primarily sought to explore whether lessons from previous appointment activity were being fed into subsequent rounds and leading to improvements in the process and the system more widely.

The review took place in the context of the change programme being directed by the Public Boards and Corporate Diversity Board (PBCDB) and very much tied in with the Commissioner and the Scottish Government's joint commitment to the achievement of more diverse boards.

It is the Commissioner's expectation that the thematic review and resulting report should contribute to a better public appointments system by identifying and providing evidence of those factors which enable and inhibit improvement. The initial findings are already leading to agreed recommendations that were being planned for implementation in advance of the report's publication.

The Scottish Government and the chairs of public bodies who contributed to and provided evidence for the review cooperated fully with the office on this project.

Other jurisdictions

The Commissioner did not meet with the other appointments Commissioners for England and Wales or Northern Ireland during the year. A meeting had been planned for October but was subsequently postponed for reasons outwith his control. It is understood that a new Commissioner is due to be appointed in Northern Ireland during the course of summer 2015 and the Commissioner intends, thereafter, to arrange a meeting and update. The Commissioner did forge a new link during the course of the year with contacts at the Welsh Assembly and his team continues to exchange good practice information with officials there who are dedicated to increasing board diversity.

4. Corporate and Financial



4. CORPORATE AND FINANCIAL

THE STRATEGIC PLAN

The work of the office is planned and organised in accordance with the Strategic Plan for the four year period 2012-16 and sets out the Commissioner's main objectives. The plan is available at www.ethicalstandards.org.uk.

The strategic objectives are:

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 bodies
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.

PERFORMANCE AGAINST TARGETS

The Strategic Plan is supported by an annual business plan. This details how each strategic objective will be taken forward during the year.

The Commissioner formally reports on the activities undertaken each year to ensure that the following strategic objective is met.

The Commissioner will effectively manage performance and resources on the basis of continuous improvement and best value to sustain services in an environment of reduced public sector funding

Table 31

Annual Business Plan Action	Achieved
i Ensure expenditure in the current financial year is managed within the approved budget and appropriate management information provided.	✓
ii Ensure the effective operation of an Advisory Audit Board.	✓
iii Publish audited annual accounts.	✓
iv Prepare and agree a budget for the following financial year following the framework outlined by the Scottish Parliament.	✓
v Review the business plan.	✓
vi Review the 2012-16 strategic plan.	✓
vii Agree the business plan for 2015/16.	✓
viii Conclude the business plan for 2014/15.	✓
ix Conduct staff performance reviews.	✓
x Ensure staffing and PAA levels are appropriate, recruit/tender where necessary and review staff contracts/PAA Service Level Agreements to ensure they reflect current legislation, terms and conditions and revised policies.	✓
xi Ensure staff and PAA training requirements are identified and addressed, including providing comprehensive induction training for new starts.	✓
xii Prepare and implement plans for office relocation. Associated expenditure to be agreed with the Scottish Parliamentary Corporate Body.	✓
xiii Ensure contracts for goods and services provide best value. The Commissioner will tender for legal and IT support services in 2015/16	●

Annual Business Plan Action	Achieved
<p>In addition:</p> <p>Developed, implemented and provided staff training on a revised records management system.</p>	<p>✓</p>
<p>Developed and implemented revised Freedom of Information policies and procedures and provided staff training in advance of all functions of the Commissioner being brought under the Freedom of Information (Scotland) Act on 1 April 2015.</p>	<p>✓</p>
<p>Prepared for and successfully relocated the Commissioner’s offices.</p>	<p>✓</p>
<p>Prepared for and successfully transferred the Commissioner’s IT systems to a new server.</p>	<p>✓</p>
<p>Prepared for the implementation of amendments to the pension scheme.</p>	<p>✓</p>
<p>Induction for the new Commissioner included guidance on procedures and current workload and meetings with Investigating Officers, Public Appointments Advisers, the Standards Commission and with key Scottish Government staff dealing with public appointments.</p>	<p>✓</p>

Key Achieved ✓ Partially achieved ● Not achieved ✗



FINANCIAL OVERVIEW

The budget for 2014/15 was £785,000 as agreed with the Scottish Parliament.

Table 32

	2014/15		2013/14	
	Expenditure £000s	Budget £000s	Expenditure £000s	Budget £000s
Revenue Expenditure				
Staffing costs	562	536	569	545
Operating costs	190	240	232	249
Relocation	20	0		
Capital expenditure	9	9	3	3
Total expenditure	781	785	804	797

Expenditure during the year was £781,000 - £4,000 under the allocated budget.

Staff costs

The Commissioner employs a team of Investigating Officers to investigate complaints about the conduct of Members of the Scottish Parliament, local authority councillors and members of public bodies. Investigating Officers work on an ad hoc basis, increasing hours to meet demand. In 2014/15, the budget for remuneration was £129,000 (396 days). The actual spend was £150,000 (459 days), resulting in an overspend of £21,000 (16%). The number of complaints received increased by 114%: 712 in 2014-15 compared to 332 in 2013/14. Complaints may be grouped together and handled as cases. The number of cases received decreased by 20%: 130 in 2014/15 compared to 162 in 2013/14. The number of breaches reported increased from six to 11, an increase of 83%.

Cover for maternity leave was required during the year. All but £5,000 of these costs were absorbed.

Staff related costs

A £4,000 overspend relates to the travel and expense costs associated with the increased workload of Investigating Officers.

Relocation costs

The Commissioner relocated offices during 2014/15. The cost of the relocation was estimated to be £23,700; actual costs were £19,600.

The Commissioner was able to offset all the above additional expenditure from within his budget by generating savings in other areas.

Property costs

The Commissioner vacated his previous accommodation on 1 October 2014. Refurbishment of the new premises was not complete until mid-November 2014. The landlord provided temporary accommodation for which the Commissioner was not charged, thereby making notional savings of £13,000.

Professional fees

The Commissioner contracts the services of a team of Public Appointments Advisers who assist with the planning stage of medium and high risk rounds, participate in interviews for the latter and advise on whether appointments to the boards of public bodies are made in line with the Code of Practice. A budget of £90,000 (2013/14: £88,000) was allocated. Actual expenditure was £56,000 (2013/14: £78,000).

In addition £2,000 (14%) of the budget for legal advice was not utilised, despite an increase in the number of hearings held and partly because a major hearing had to be adjourned after one day to the next financial year.

Running costs

Small savings across a number of different cost centres were made achieving cumulative savings of £5,000.

During the year, the Parliament approved a budget of £811,000 for 2015/16.

Audit Scotland have reviewed the 2014/15 accounts and issued an unqualified opinion. Full accounts are available at www.ethicalstandards.org.uk or by contacting the Commissioner's office. The Commissioner 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.

APPENDICES





APPENDIX A

APPOINTMENTS MADE DURING THE CALENDAR YEAR, 2014

Table 33 – Appointments made during the year

Body	DG	Position	●	●	Code	Level
Accounts Commission for Scotland	G&C	Deputy chair	15	1	2013	HSG
Accounts Commission for Scotland	G&C	Member	27	2	2013	HSG
Architecture and Design Scotland	G&C	Member	39	2	2011	L
Bord na Gaidhlig	L&J	Member	25	3	2011	M
Cairngorms National Park Authority	EE&D	Member	30	1	2013	L
Caledonian Maritime Assets Ltd	EE&D	Chair	16	1	2011	H
Caledonian Maritime Assets Ltd	EE&D	Member	44	1	2011	H
Care Inspectorate Board	HSC	Member	67	3	2013	M
Children's Hearings Scotland	L&J	Chair	18	1	2013	HSG
Creative Scotland	S&EA	Chair	13	1	2013	H
Crofting Commission	EE&D	Member	11	1	2013	L
David MacBrayne Ltd	EE&D	Member	64	1	2011	M
Dumfries and Galloway NHS	HSC	Chair	9	1	2013	HSG
Dumfries and Galloway NHS	HSC	Member	106	4	2013	HSG
Dundee and Angus College	L&J	Chair	3	1	2011	H
Fife NHS Board	HSC	Member	51	4	2013	L
Fife NHS Board	HSC	Member	25	3	2013	HSG
Grampian NHS Board	HSC	Chair	10	1	2013	H
Grampian NHS Board	HSC	Member	14	2	2013	L
Greater Glasgow & Clyde NHS Board	HSC	Member	46	5	2013	H
Healthcare Improvement Scotland	HSC	Member	64	3	2013	HSG
Highlands and Islands Airports Ltd	EE&D	Member	60	2	2011	L
Highlands and Islands Enterprise	EE&D	Member	71	4	2011	H
Historic Environment Scotland	G&C	Chair	9	1	2013	HSG
Historic Environment Scotland	G&C	Member	62	9	2013	HSG
Judicial Appointments Board for Scotland	L&J	Member - Lay	42	2	2013	M
Judicial Appointments Board for Scotland	L&J	Member - Solicitor	6	1	2013	M
Mental Welfare Commission for Scotland	HSC	Member	15	1	2013	L
National Confidential Forum	HSC	Chair	14	1	2013	HSG
National Confidential Forum	HSC	Member	66	3	2013	HSG
National Library of Scotland	S&EA	Member	40	7	2013	L
National Museums Scotland	S&EA	Member	25	4	2013	L
NHS Highland	HSC	Member	24	2	2013	L
NHS Lanarkshire	HSC	Member	60	2	2011	H
NHS National Services Scotland	HSC	Member	33	1	2013	L

Body	DG	Position			Code	Level
Office of the Scottish Charity Regulator	L&J	Member	107	3	2011	M
Parole Board for Scotland	L&J	Member	51	5	2013	M
Aberdeen and Aberdeenshire Regional College	L&J	Chair	9	1	2011	H
Ayrshire Regional College	L&J	Chair	11	1	2011	H
Borders Regional College	L&J	Chair	8	1	2011	H
Central Regional College	L&J	Chair	12	1	2011	H
Dumfries and Galloway Regional College	L&J	Chair	8	1	2011	H
Dundee and Angus Regional College	L&J	Chair	8	0	2011	H
Edinburgh Regional College	L&J	Chair	11	1	2011	H
Fife Regional College	L&J	Chair	10	1	2011	H
West Regional College	L&J	Chair	12	1	2011	H
Glasgow Regional Strategic Board	L&J	Chair	14	1	2011	H
Lanarkshire Regional College	L&J	Chair	13	1	2011	H
West Lothian Regional College	L&J	Chair	9	1	2011	H
Revenue Scotland	F	Chair	4	0	2013	HSG
Revenue Scotland	F	Member	28	5	2013	HSG
Royal Botanic Garden, Edinburgh	EE&D	Member	5	1	2013	L
The Office of the Convener of the School Closure Review Panels	L&J	Convener	8	1	2013	HSG
Scottish Advisory Committee on Distinction Awards	HSC	Member - Lay	23	1	2011	L
Scottish Advisory Committee on Distinction Awards	HSC	Member - Medical	1	1	2011	L
Scottish Children's Reporter Administration	L&J	Member	27	1	2013	L
Scottish Further and Higher Education Funding Council	L&J	Member	68	2	2013	M
Scottish Law Commission	L&J	Chair	2	1	2013	HSG
Scottish Law Commission	L&J	Member	15	2	2013	H
Scottish Natural Heritage	EE&D	Chair	15	1	2013	H
Skills Development Scotland	L&J	Member	79	4	2013	L
Sportscotland	HSC	Member	41	3	2013	L
Western Isles NHS Board	HSC	Member	7	1	2013	L
Totals			1830	125		

Key for table

Applications: ● Appointments: ●

Column: DG

DG - Director General with sponsorship responsibility

F – DG for Finance

G&C - DG for Governance and Communities

HSC - DG for Health and Social Care

L&J - DG for Learning and Justice

EE&D - DG for Enterprise, Environment and Digital
(note this is now Enterprise, Environment and Innovation).

S&EA – DG for Strategy and External Affairs

Column: Level

L - Low

M - Medium

H - High

HSG - Set at high at
the request of the
Scottish Government



APPENDIX B

PUBLIC APPOINTMENTS: KEY TRENDS AND AREAS OF INTEREST

The following tables summarise the substantive enquiries and reports submitted to the office during the year. All but three of the substantive contacts made with the office during the year related to application of the 2013 Code.

Table 34 – Enquiries and reports

Issues raised	Key trend	2014/15**	2013/14**	2012/13
Advice on the Code of Practice	1*	107	179	295
Advice on good practice		30	24	15
Request for exceptions, extensions or to discuss options	2*	21	58	44
General enquiry on the work of the office		46	43	55
Other enquiries or reports		96	87	48
Freedom of information requests		5	2	1
Complaints about appointment rounds	3*	4	1	3
Concern about an appointment round or failure in administration	4*	56	76	85
Report about good practice		5	3	4
Report about non-compliance with the Code of Practice	5*	4	12	34
Totals		374	485	584

* Tables and/or narrative below provide further detail.

** Enquiries and reports in this year related to two different Codes of Practice.

Key trend or area of interest one – requests for advice on the Code of Practice

There is a continuing trend of falling requests for advice on the Code of Practice. The 2013 Code was introduced in October of that year and PAAs and officials are increasingly more familiar with its provisions.

The most common requests for advice related to application and assessment methods (16%), followed by continuing appointment, panel membership and public confidence (13% each). The enquiries in this latter category tended to concern application of the fit and proper person test and exploring and dealing appropriately with conflicts of interest.

Key trend or area of interest two – exception requests and options discussions

Under the 2011 Code there was a provision that allowed for the Scottish Ministers to agree alternative options in cases in which it was felt that a code requirement was considered inappropriate. The 2013 version of the Code replaced this provision with a new section entitled “exceptional circumstances”. The Scottish Ministers can approach the Commissioner and make a case for specific provision of the code to be set aside. Diversions from the Code’s requirements, in order to be compliant, require the Commissioner’s agreement. There has been a significant fall in requests this year, perhaps relating to the fact that the 2013 Code offers additional flexibility in a number of areas.

The highest percentage of such cases during the year related to changes to the composition of selection panels and to the use of reserve lists (25% each). The code anticipates that the composition of the selection panel will remain the same for the whole appointment round but sometimes circumstances preclude this and an approach is made to the Commissioner to assess whether changes can be made and whether any conditions are attached to such a change. The term reserve lists refers to situations in which unanticipated vacancies arise on boards relatively recently after an open competition has been held. In these circumstances the Commissioner will consider allowing for the people who were assessed as suitable for appointment at the end of that competition, but not appointed, to be considered for appointment by the minister again. There are clearly resource implications for every appointment round and the use of reserve lists represents a resource-effective and pragmatic solution in such circumstances.

The 2013 Code allows for up to a maximum 8 years in post. There were two cases granted to allow for extensions to people’s terms of appointment such that they could serve beyond the 8 year limit. In one case this was to ensure continuity for a body’s board during the period of its dissolution.

Key trend or area of interest three –complaints about appointment rounds

Of the four complaints received this year, two were substantive and concerned regulated public appointments. These two complaints were fully investigated by the office and neither led to a finding of material non-compliance with the Code.

Key trend or area of interest four –concerns about appointment rounds

Table 35 provides details on the common areas of concern that were reported to the office. Figures from the previous two reporting years are shown for reference as there is a downward trend in reported concerns. This has to be balanced against the fact that less direct oversight of appointment rounds is being provided due to the introduction of a new scrutiny framework. On low level rounds, no oversight is provided at all and on medium level rounds, involvement ceases following planning. This may also help to explain why, although levels of concern at the planning stage remain fairly consistent, those generated at the end of the process have fallen considerably.

Table 35 – Reports by type

Reported concerns and administrative failures	2014/15	2013/14	2012/13
Administrative problems and delays in the process	13	6	19
Poor planning	27	26	29
Assessment and records of assessment	5	21	26
Miscellaneous	11	23	11
Totals	56	76	85

Public Appointments Advisers continue to take a proactive approach to addressing concerns as they arise. Their interventions are clearly considered valuable in many cases which would account for their being asked to take part in rounds by the Scottish Government.

Concerns about delays in the process and failures in administration have risen this year although the numbers overall are not hugely significant.

Key trend or area of interest five – reports of non-compliance with the Code of Practice

Table 36 lists the reports of non-compliance with the Code. Advisers and/or the office were required to intervene in such cases to ensure that the non-compliance did not become material in nature. There were no instances of material non-compliance with the Code during the year and no concomitant need to report to the Scottish Parliament. As table 36 illustrates, there was a big fall in reports of non-compliance during the year. In two of the cases, the closing date for applications was extended without the approval of the selection panel. In a third case, the adviser had noted that the materials provided to the panel for the first stage of assessment were not fit for purpose. The final case involved a panel member who, during planning, demonstrated a lack of understanding of the requirements of the code. The same panel member was also resistant to forms of positive action planned to make the board in question more diverse. These issues were dealt with and the round was kept on track to a successful conclusion.

Table 36 – Reports of non-compliance with the Code of Practice

Reports of non-compliance by type	2014/15	2013/14	2012/13
Administrative failure	1	4	5
Planning non-compliant	1	0	8
Assessment and records of assessment	0	5	18
Miscellaneous	2	3	3
Totals	4	12	34





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